Case No. SCSL-2003-01-A
THE PROSECUTOR OF THE
SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

Wednesday, 23 January 2013
10.00 a.m.
ORAL HEARING

APPEALS CHAMBER

Before the Judges:	Justice Shireen Avis Fisher, Presiding Justice Emmanuel Ayoola Justice George Gelaga King Justice Renate Winter Justice Jon Kamanda Justice Philip Nyamu Waki
For Chambers:	Rhoda Kargbo, Kevin Hughes, Gaia Pergolo, Laura Murdoch, Melissa Ruggiero, Kamran Choudhry and Jennifer Beoku-Betts
For the Registry:	Binta Mansaray Fidelma Donlon Elaine-Bola Clarkson Zainab Fofanah Rachel Irura
For the Prosecution:	Brenda J Hollis, Nicholas Koumjian, Mohamed A Bangura, Nina Tavakoli, Ruth Mary Hackler, Ula Nathai-Lutchman, James Pace, Cóman Kenny and Christopher Santora
For the accused Charles Ghankay Taylor:	Morris Anyah, Eugene O'Sullivan, Christopher Gosnell, Kate Gibson, James Tamba Kamara, Michael Herz, Szilvia Csevár, Yael Vias Gvirsman, Isaac Ip and Alexandra Popov
For the Principal Defender:	Claire Carlton-Hanciles

The Prosecutor of the Special Court v. Charles Ghankay Taylor

(The hearing starts at 10.00 a.m.)

THE COURT OFFICER: All rise.

Please be seated.

The Special Court for Sierra Leone is sitting in an open session for an oral appeal hearing in the case of the Prosecutor versus Charles Ghankay Taylor, Justice Shireen Fisher presiding.

JUSTICE FISHER: Thank you.

Good morning, everyone. I'll take appearances, Prosecution?

MS HOLLIS: Good morning, Madam President, your Honours, opposing counsel. This morning for the Prosecution Brenda J Hollis, Nicolas Koumjian, Mohamed A Bangura, Nina Tavakoli, Ruth Mary Hackler, Ula Nathai-Lutchman, James Pace, Cóman Kenny and Christopher Santora.

JUSTICE FISHER: Thank you, Ms Hollis. And for the Defence?

MR ANYAH: Good morning, Madam President. Good morning, your Honours. Good morning, counsel opposite. For the Defence, myself, Morris Anyah, Dr Eugene O'Sullivan, Mr Christoper Gosnell, Ms Kate Gibson, Mr Isaac Ip, Mr Michael Herz, Ms Szilvia Csevár, Ms Alexandra Popov and Ms Yael Vias Gvirsman. We are also joined by the Principal Defender, Ms Claire Carlton-Hanciles. Thank you.

JUSTICE FISHER: Thank you, Mr Anyah. I would also note that Mr Taylor is present. Good morning, Mr Taylor.

Okay, this morning we will proceed with responses to yesterday's submissions. We will begin with the Prosecution and you have, I believe, an hour-and-a-half. Please proceed.

MS HOLLIS: Thank you, Madam President. My colleague, Mr Koumjian, will begin the Prosecution's submissions in response. Thank you.

MR KOUMJIAN: Good morning, your Honours. Good morning, counsel. And thank you very much.

May it please the Court, your Honours, I'd like to begin by discussing some of the Defence arguments regarding the adjudicated fact 15, the law on adjudicated facts and specifically regarding Freetown and the role of the RUF in Freetown, because I believe, I am sure unintentionally, some of the facts of this case were not correctly represented to your Honours.

In one of the arguments during the arguments of the Defence yesterday, it was stated that the adjudicated fact 15 said the RUF didn't make a contribution. Actually, the RUF -- what the adjudicated fact 15 states is that - part of it - when RUF reinforcements arrived in Waterloo they were unable or unwilling to make the necessary contribution, and what I understand by "necessary contribution" is to repel ECOMOG, to kick them out of the city, to take Freetown and hold it, but the evidence has always been clear that the RUF contributed to the Freetown operation.

Again, I believe Mr Gosnell mistakenly represented to you that the AFRC forces reached Freetown led by SAJ Musa. Your Honours, only if SAJ Musa was a ghost, because it's a finding in this case that SAJ Musa was killed on 24 December 1998 in Benguema. As Mr Gosnell said, he was assassinated. I agree the evidence shows that. The Trial Chamber didn't make that finding, but they found he was at least killed on that day in Benguema.

And when he -- once he died, the situation changed immediately, because immediately the AFRC forces led now by Gullit began communicating with the RUF and, the Trial Chamber found, co-ordinating with the RUF and following the orders of Sam Bockarie. So that changed immediately.

The forces that went into Freetown were not led by SAJ Musa. They were led by Gullit, acting under the instructions of Sam Bockarie, and the forces that went into Freetown were AFRC and RUF forces that Gullit was commanding. That is an agreed fact in this case. Agreed fact 31 in this case is RUF and AFRC forces inter alia

attacked Freetown on 6 January 1999.

And what happened when they took Freetown that morning, when the people of Freetown woke up to find RUF/AFRC rebels in their midst? As I mentioned yesterday, from State House they called Robin White at BBC and he asked "Who? Who are the forces that have taken the city?" He said, "We, the combined forces, the RUF and the AFRC."

Furthermore, the Trial Chamber found other contributions, one critical contribution that Charles Taylor and his forces -- those acting under his instructions were making to this invasion. The one clear advantage that ECOMOG had was control of the air, and the Alpha Jets of the Nigerian forces were a great concern. The RUF/AFRC forces had no defence against the Alpha Jets.

448 warnings, that was the code. 448 warnings were given from Buedu and from Monrovia to the forces in the city to let them know, "Jets have taken off. You're going to be attacked," and these were critical because -- in making sure that the AFRC/RUF forces were not caught in the open by the Alpha Jets. These warnings made a critical contribution.

But, moreover, before Gullit led those forces in the city, it's critical that he knew the RUF was at his back. The situation in Sierra Leone had changed tremendously from the beginning of the attack on Kono, I believe that was 24 December, before 6 January, because large ECOMOG forces were destroyed in Kono and the RUF captured a great amount of matériels and in Makeni.

Makeni, it's the evidence in this case, is a two-hour drive to Freetown.

Does the fact that ECOMOG forces had now been removed from Makeni have an effect? Yes. Does the fact that Gullit knows the RUF is with him have an effect? Of course it does. Would it make sense for a force of only about a thousand men, Gullit's forces, to go into the city with ECOMOG forces on the peninsula at Jui, near Waterloo, without knowing that they had reinforcements at their back?

They had reinforcements at their back, and in fact adjudicated fact 15 says exactly that.

RUF reinforcements arrived in Waterloo. So the evidence in this case is overwhelming that the forces that went into the city were acting in co-ordination with the RUF and the RUF made critical contributions to that invasion and to the crimes. I understood -- and forgive me if I didn't understand everything, but I understood Defence counsel to say yesterday that the Rambo Red Goat group committed no crimes; that there were no findings of crimes by the Rambo Red Goat group. That's not true. Remember Rambo Red Goat group, Issa Sesay - we're very grateful for his testimony - told us included RUF troops.

Rambo Red Goat -- in the Trial Judgement, paragraph 6962, the Trial Chamber found that troops led by Rambo Red Goat reached Freetown and Bockarie's forces got to the outskirts of Freetown. It says that, "During the course of the implementation of the plan, these forces committed crimes charged in the indictment," and then in paragraph 5718 the Trial Chamber said, "Notably, the group led by Rambo Red Goat remained in Freetown after the departure of Gullit and the civilian brigade and constituted the forces predominantly charged with carrying out Bockarie's instructions to make the area fearful."

And then in paragraph 5720 the Trial Chamber found, "Part of the matériel from the Burkina Faso shipment was taken by a contingent of fighters led by Rambo Red Goat to reinforce the troops in Freetown and was used in the commission of crimes in Freetown and the Western Area." So the evidence is clear that these RUF forces with Rambo Red Goat were involved in the commission of crimes, and again it's an agreed fact that RUF forces were part of the invasion forces. They were with the Red Lion Battalion, a fearsome group that the Trial Chamber found also committed crimes inside Freetown during the invasion.

And part of adjudicated fact 15 is it says, "The RUF forces were unable or unwilling to provide the necessary support." Well, what evidence is there about the willingness of the RUF to support the AFRC, the co-ordination? "

One of the Defence's own witnesses, Charles Ngebeh, testified on 12 April. At page

38682 he said, "By then it was ECOMOG that was at Jui. ECOMOG was based at Jui at the time that we entered Hastings. We were trying to fight our way to join our brothers in Freetown, but there was no way. God never gave us the opportunity. We tried, but we were unable. I can't tell you lies. We were trying to join the AFRC in Freetown, but the ECOMOG blocked us at Jui. We attacked them and we did not succeed. Thank you." That's what the Defence witness said.

Now, does that -- even an unsuccessful attack at Jui Bridge on the Freetown peninsula, does that have an effect on the battle of Freetown? Is that support? It may not have been -- it wasn't the necessary support to win the battle, but of course if ECOMOG is facing a double attack from inside the city and RUF forces are right at Jui, this is support for the forces inside the city; the attempt to, as Charles Ngebeh said, "Link up with our brothers from the AFRC."

Now, on the adjudicated fact issue, in listening to the Defence argument they're basically saying that they were prejudiced because they were surprised they weren't allowed to call evidence that could have rebutted Prosecution evidence from 2008. Because the Trial Chamber took notice of the adjudicated fact in 2009 before the start of the Defence case, they said they couldn't call evidence to rebut it. They've never told you what evidence. They're even -- they're continually vague about what this fact supposedly proved in favour of the Defence and they've never told you what evidence they have that they did not call that could have rebutted that fact.

The truth is of course throughout this trial, Prosecution case, Defence case, whether or not the RUF had a role in Freetown was a central issue that the Defence fought tooth and nail, they fought it and they lost it, and now they're complaining and asking you to in effect find adjudicated facts after the trial is over with.

What the Defence says is that the jurisprudence provides that a Trial Chamber, once it takes notice of an adjudicated fact, can't consider the evidence that's already on the record. They haven't cited a single case that says so. No case says that.

All that they've cited - they said it was an example, but it's the only case they've

cited - was the Krajisnic decision of 2003. That was pre-trial where again the judge said that they were only taking notice of facts not in reasonable dispute, as opposed to our case where the facts were clearly in dispute and the Trial Chamber said so.

And in Krajisnic they didn't say you couldn't rebut the case, the facts. They said in fact a rebuttable presumption remains open to challenge. They said simply it's challenged by presenting evidence and the evidence in this case was already presented.

What is the Defence argument? That we should have called the witnesses back to restate what they had already said? That would make no sense. They were arguing that this is a factor for judicial economy, so the Prosecution is supposed to recall the witnesses? That makes no sense.

What all of the jurisprudence says is that the Trial Chamber remains under the obligation and duty to consider all of the evidence at the end of the case in assessing the weight, the context and the validity of an adjudicated fact, and that jurisprudence includes the same Trial Chamber in Krajisnic.

Two years later in the midst of the trial they took notice of other adjudicated facts, and they said in paragraph 17, "Admission of adjudicated facts from previous proceedings does not affect the Chamber's function of assessing the relevance and weight in light of the totality of the evidence in the trial."

And yesterday I read to you from Tolimir and I won't repeat that, but basically it says the same thing. The Trial Chamber has the obligation to assess the adjudicated fact in relation to the totality of the evidence.

There even is an Appeal Chamber decision on that in Karemera from 29 May 2009, and in paragraph 21 of that appeal decision the ICTR Appeals Chamber stressed that, "... adjudicated facts that are judicially noticed by way of Rule 94(b) remain to be assessed by the Trial Chamber to determine what conclusions, if any, can be drawn from them when considered together with all the evidence brought at trial.

Rule 94(b) mechanism does not allow a Chamber to simply defer to the assessment of

evidence by another Chamber on the ground that this mechanism was fashioned to favour consistency."

So the law is absolutely clear. It would be a gross violation of the Trial Chamber's duties to ignore evidence on the record that the parties did not have an opportunity to argue because the Defence made a motion for an adjudicated fact midway. The Trial Chamber in fact in this case assessed the totality of the evidence taking into account the adjudicated fact.

And I should mention, by the way, that this position was consistently taken by this Defence during the trial. When they made the motion for adjudicated facts from the AFRC case in paragraph 10 they said, "The Prosecution would not be disadvantaged." They said, "The Prosecution may have already led evidence to challenge the rebuttable presumption and that would be established if the Chamber judicially notes these facts." So they're saying the Chamber clearly can consider the Prosecution evidence.

In their reply to the motion in paragraph 7 they said, "The Prosecution concede that a certain volume of evidence has already been led to the issues contained in the proposed adjudicated facts. This evidence could be used to challenge any rebuttable presumption created."

So the Defence told the Judges when they successfully obtained, one, this adjudicated fact motion, "Don't worry, because of course we understand you can consider the Prosecution evidence already on the record," and now they're saying you can't. Even after the decision was issued in this case they came back a couple months later and asked for adjudicated facts from the RUF case, and the Defence took exactly the same position.

After the decision in our case, the AFRC facts were found. In paragraph 12 of their motion of 16 March 2010, the Defence said the Prosecution would not be disadvantaged. The Prosecution may already have led evidence to challenge the rebuttable presumption, and then in their reply on that motion in paragraph 16 the

Defence said, "They assume the Chamber has not yet made a final determination on the accuracy, credibility or reliability of the Prosecution evidence. A presumption for the accuracy of adjudicated facts in comparison with contrary Prosecution evidence is only one more factor for the Trial Chamber to consider when weighing all the evidence at the conclusion of the case. A rebuttable presumption can obviously rebutted -- be rebutted at the end of the proceedings by the Trial Chamber considering all of the available evidence."

That was the position of the Defence in March of 2010 after this decision was rendered, so for the Defence now to be coming to the Court and saying, "... we were surprised that the Trial Chamber considered the Prosecution evidence that's contrary to the adjudicated fact," well, they weren't surprised. They said themselves consistently that that's what the Trial Chamber could do.

What the facts are is that the -- in fact the Trial Chamber did consider all of the evidence and they reached the conclusion, in fact the only reasonable conclusion - from that evidence and the Defence is not happy with it. So now they're changing what they say the law should be and regarding the rules for adjudicated facts.

I'd now like to go back to some of the issues on aiding and abetting. I understood the Defence to talk about causation, and I -- perhaps again I misunderstood. I understood Mr Gosnell to say that causation is required for a substantial contribution. In fact, your Honours in your decision on the CDF appeal have specifically said that causation is not a requirement for aiding and abetting. That's also consistent with other Appeal Chamber decisions: The Simic Judgement, paragraph 85; Blaskic at paragraph 48; Mrksic -- excuse me, Furundzija, paragraph -- I'm not sure about that one. Let me just stop there.

Further, your Honours, the evidence -- but what I would say before I move on is - and I'll come back to this - causation is not required, but the findings in this case clearly show a causative link. In fact, the findings in this case of the Trial Chamber, well

supported by the evidence, show that if not for Charles Taylor's assistance, thousands of people wouldn't have been killed, they wouldn't have been amputated, they wouldn't have been taken as sex slaves, they wouldn't have been conscripted as children into the forces of the RUF and the AFRC, for the reasons that the Trial Chamber very logically and completely describes in its Judgement, because if the operational strategy of the RUF was to commit those crimes they were, as the Trial Chamber found, reliant on Charles Taylor's support, and without his support these operations maintaining the territory where these crimes occurred would not have happened.

Some other factors about substantial contribution and acts of assistance for aiding and abetting. It's not required of course that the acts of assistance occur at the time and place of the crime. That's Celebici, 352. It's not a defence in aiding and abetting to say, "I was just doing my routine duties. This was just part of my job," that's Blagojevic Appeals Judgement, paragraph 189, and it certainly is not relevant whether or not the assistance itself that's given is not criminal or is neutral on its face.

In Zigiranyirazo - forgive my pronunciation - paragraph 423, in that case the Trial Chamber found that giving food to a group at a roadblock, sending them lunch, amounted to substantial contribution, because the accused knew that these people at the roadblock were engaged in killing Tutsis and the food that was given to sustain their presence at the roadblock was leading to the deaths of more people.

Furthermore, in the Zyklon B case, which counsel mistakenly called that Flick, but that's the case involving the poisoned gas that killed four million people plus in Auschwitz and the different camps that the Nazi Germans held, that gas, contrary to what counsel said, is not only useful to kill human beings. It actually was that they were manufacturing that gas and selling it for a long time to kill vermin. That was what the gas was normally used for.

And in fact it could have had a very benevolent use in these concentration camps, because it could have been used to make them more sanitary by killing vermin, but

the accused in those cases, in the Zyklon B case, were convicted, in fact were given the death penalty, for their aiding and abetting, not because they wanted these four million people killed, but because they knew -- although the gas could be used to kill vermin, they knew that it was being used to kill human beings. That's what the Court found. And based on that knowledge, even if they didn't want the people killed, even if their motive was only to profit or to remain in the good graces of the Nazi politicians, they were responsible for knowingly assisting crimes; in this case the killing of over four million people.

And, further, there's jurisprudence that the contribution does not have to be direct. That's Blaskic, paragraph -- Appeals Judgement paragraph 48. In the Furundzija Trial Judgement, paragraph 232, it says that it's not necessary that it be direct and it's not required the contribution have a tangible or a causal effect, and in the Oric Judgement which somehow didn't make it into my notes, in the Appeal Judgement -- in the Trial Judgement in Oric they also stressed the fact that the contribution need not be direct.

The Defence in their arguments, as I listened to them yesterday, continues to say specific direction has a mental element. You know, counsel are much wiser than me and I am sure that they -- I believe they know the law much better than me, but we all know actus reus and mens rea are two very different things and a mental element belongs in mens rea. The Judges, as the Defence has conceded, in all of the cases at the ICTY and ICTR, have said specific direction is part of the actus reus. There's no case that says it's part of the mens rea.

And the Tadic Appeal Judgement that came up with this term "specifically directed," I'm sure that Judge Shahabuddeen, Judge Cassese, Judge Mumba and the other two judges whose names I don't recall, understood the difference between mens rea and actus reus. They said it was part of the actus reus and, as I explained yesterday, it was to distinguish a contribution simply to a joint criminal enterprise to a common plan from a contribution to the specific crime.

I agree -- we agree wholeheartedly with the Defence submission yesterday that the contribution, the accused's acts of assistance, encouragement or moral support have to contribute to the crime. The Trial Chamber applied that standard in this case. They found that each of the 11 counts were affected. Charles Taylor's contribution was substantial to the commission of each of these 11 counts.

And the logic that they used was they talked about the operational strategy of the RUF being to use terror; that the modus operandi of the RUF was to use terror. The Defence continues to talk in their submissions about sporadic crimes. In their submissions - oral submissions - yesterday, they talked about a group that among other lawful activities is committing crimes, but the findings on this case are not about sporadic crimes. The findings are that this was an operational strategy, that the crimes were inextricably linked and it's based upon a wealth of evidence from victims and from perpetrators who testified in this case.

We had victims talking about -- Reverend Tamba Tey about witnessing the massacre of I believe it was at least 60 people in a mosque, who then had their heads cut off by SBUs. The bodies were decapitated on the orders of the RUF commander.

We had a woman who had to carry -- who had to listen -- she herself was raped repeatedly and had to listen while her children were being killed outside and then carry their heads in a bag to the next village, and we had evidence of massacres by the top RUF commander, Sam Bockarie, in Kailahun, and over and over again.

And the Defence told us at the beginning of the Defence case, "We don't understand why the Prosecution called all these victims. We've never disputed atrocities happened," but now they're saying, "Oh, these were just sporadic. We don't have enough evidence before you that this was an operational strategy." We did. We heard it consistently from the victims, "Where the RUF was there was terror."

As one of the victims of the enslavement camp, the forced labour camp, Mr Gbonda, testified, "We were slaves." He was forced to carry loads and work for the RUF. Those who were forced to labour for the RUF were slaves. Women were kept in

slavery. We had so much testimony about that it doesn't make sense to keep talking about it.

So the Trial Chamber -- and to show that this was a policy from the very top, this is what one of the Defence witnesses said. One of the Defence witnesses was read the transcript from a radio broadcast that Sam Bockarie made, the exhibit was P-430B, where Sam Bockarie said, "When I take Freetown, I shall clear every living thing and building. To my God, I'll fight. I'll kill and kill, and the more they tell me to stop the more I'll kill."

Ms Hollis read this to Charles Ngebeh and asked him about it, and his response was, "I've heard Sam Bockarie say words even worse than this. Let's go ahead, he was a wicked commander." So this was a policy from the very top, and that was from 12 April 2010, page 38660. And that's why the Judges found in paragraph 6793 of the Judgement, "The crimes were inextricably linked to how the RUF and AFRC achieved their political and military objectives."

In 6905 the Chamber found that, "The operational strategy of the two groups was characterised by a campaign of crimes against Sierra Leone civilians, including ...", and it goes through the crimes in this indictment: Murders, rapes, sexual slavery, looting, abductions, forced labour, conscription of child soldiers, amputations, acts of terror.

And the evidence in this case is indisputable that Charles Taylor knew about these crimes. He knew that this was going on and this is how the RUF operated. On the very first day of his testimony he said, "There's no one on this planet ...", this is 14 July 2009, "... who hasn't heard of the crimes of the RUF."

On 3 August 2009, and this is mentioned in the Trial Judgement at paragraph 6684, Taylor said -- he was asked by his counsel, "And everyone will recall that thereafter those kicked out of Freetown ...", talking about the intervention February 1998, "... embarked on an orgy of violence throughout the country of Sierra Leone, yes?" And Mr Taylor answered, "Yes." And he then was asked, "And you were keeping abreast

of that situation from your embattled position in Liberia?", and he answered, "Yes." And then on 8 September his counsel read him a report, I believe it was a letter, or a public letter from the United States Government, in which it said, "Our ambassador in Freetown and State Department officials have visited survivors ...", this is dated May of 2008, "... and heard of stories of entire villages being slaughtered and mutilated by the rebel forces. The RUF calls this 'Operation No Living Thing.' Hundreds of people are being treated in hospitals after rebels chopped their arms, legs and/or ears with machetes. Thousands more have died before they were able to reach medical help. Many women and children have been raped."

And then the Defence counsel asked, "Now, first of all, the date May. At that time, Mr Taylor, were you aware that there was this horrific campaign being waged against the civilian population in Sierra Leone?" Mr Taylor answered, "May of 1998? Yes, there were news reports of that. Yes." So Taylor knew what was going on.

In November, 25 November 1999, Taylor testified -- and this is at Judgement paragraph 6803/6804 -- 2009. Taylor said, "In 1997 there were news reports of problems in Sierra Leone, yes." The question was, "Have you heard of atrocities committed by the RUF?", and the answer was, "In 1997 there were news reports of problems in Sierra Leone, yes." So then he was asked, "So did you learn about the atrocities committed by the junta as it fled Freetown?", and he answered, "Yes, there were reports. Yes, we learned of the reports that there were atrocities all over the place, yes."

On 18 January 2010, this is the Trial Judgement paragraph 6805, 6884, Mr Taylor was asked, "Would you agree that a horrific campaign was being waged against civilians in Sierra Leone after the intervention?", and he answered, "Oh, yes. Oh, yes."

So -- and there's more, but your Honours I won't go on with more.

So the evidence is overwhelming: Charles Taylor was well aware of the campaign of atrocities by the rebels, by the RUF and the AFRC in Sierra Leone and he continued throughout the indictment period to supply them with the ammunition, the

weaponry that they needed and to encourage them, to give them advice and moral support. As the standard for aiding and abetting goes, that encouraged these crimes in their military operations.

The Trial Chamber specifically found that the RUF and the AFRC relied on Taylor's logistical assistance for its operations and in order to hold territory. The Trial Chamber said, paragraph 5842, "On a number of occasions the arms and ammunition supplied or facilitated by Mr Taylor were indispensable for the RUF/AFRC military offensive."

At paragraph 5835 the Chamber said about the arms and ammunition, "It was critical in enabling the RUF and AFRC to carry out offences and maintain territories until the end of the indictment period." At 5842 and 6914 they called it, "... critical in enabling the operational strategy of the RUF and the AFRC." Paragraph 6914, "The AFRC/RUF heavily and frequently relied on the matériels supplied and facilitated by Mr Taylor." And in paragraph 6911 the Trial Chamber says that, "The RUF/AFRC, the junta or alliance and Liberian fighters used matériel provided by Mr Taylor in criminal operations throughout the indictment period."

Your Honours, there's a -- and there was a great deal of evidence to support those conclusions. One of them that is discussed in the Judgement, paragraph 4939, is Exhibit P-066, which was a letter from Sam Bockarie to Charles Taylor through his Chief of Protocol. In that letter Bockarie says -- it begins by describing the RUF's supply shortages, talking about ECOMOG leading attacks against RUF positions in Koidu and Kailahun, and it says, "We do not have rockets, or bombs, which are badly needed to handle the situation. We're merely managing on the small ammunition we have." It says, "We appreciate the assistance we have been receiving and we want you to believe that we have nowhere else to turn to cry for help besides you ...", that's the Chief of Protocol, "... and His Excellency."

So the RUF itself said that they relied upon Charles Taylor and had nowhere else to turn.

And those familiar with the geography or look -- anyone who looks at a map of Sierra Leone will see that the country has -- borders only two countries. It borders Guinea and Liberia. We know that except for the brief period during the junta when the RUF was in the capital they controlled no ports, they controlled no airfields and during the junta period there was an embargo, so it was difficult for them to get anything into a port and ECOMOG controlled the Lungi Airport. After they were kicked out of Freetown, it was even more difficult.

So they had two borders. They had Guinea, which was a member of ECOMOG and an enemy that they were fighting against, and they had Liberia. So the subject of where the RUF got its ammunition was one that was explored in testimony for three years in this case, both Prosecution witnesses and Defence witnesses. The Defence called, for example, DCT-025 to talk about where the RUF got its ammunition. Supposedly he was in charge of the storage of weapons and ammunition.

So when the trial -- and Issa Sesay, of course, the number 2 in the RUF, talked about where the RUF got its ammunition. He himself said that at the time before the big offensive in late 1998 they were out of ammunition. They would not have attacked Kono without the matériel that came from Liberia. That was Issa Sesay's testimony.

So all of those attacks, and the Trial Chamber finds this specifically in their Judgement, taking Kono, taking Makeni and moving on to Freetown, and the Trial Chamber found, which is very logical, that the attacks on Kono and Makeni were critical. They had a causative link. They were critical to the attack on Freetown. None of that would have happened without the matériel that came from Liberia in late 1998, and that is the Burkina Faso shipment.

The Trial Chamber found the RUF was short of matériel, paragraph 5702, at the time of that shipment and it found the shipment to be critical to the December '98 and January '99 offensives, in paragraph 5841. Paragraph 571 -- 5715, the Trial Chamber found, quote, "The Burkina Faso shipment was causally critical to the success" -- I think I need water -- "to the success of the Kono operation and hence the

matériel captured there, as Issa Sesay himself acknowledged, without the shipment that Bockarie brought back in November/December 1998, the RUF would not have launched these operations on Kono. And without taking Kono, the RUF would not have had the matériel necessary to attack other areas."

In paragraph 5718 they said, "The contribution of the attacks on Kono and Makeni to later attacks on the Freetown axis by the RUF and the RUF and AFRC was critical."

And they also went on to talk about this joint attack in February 1999 on Tombo. After the AFRC retreated from Freetown in February 1999, the two forces were based together close to Benguema and the evidence showed and the Trial Chamber found they jointly tried another attack on Freetown this time going through Tombo and the Trial Chamber found that in that attack there was forcible conscription of children and rape of women captured by the RUF and AFRC. So these were causally critical, all of these supplies of logistics by Taylor.

And I'm running short of time, but I'd like to try to get to what Mr Gosnell began with in his submission, and that is these crimes against eight people in Payema. Payema is in Kono, and lots -- most of the evidence about those eight killings came from the testimony of a witness who came to this Court by the name of Ibrahim Fofana, and Mr Fofana testified that in February 1998 some soldiers showed up in Payema and they said this is Operation Pay Yourself and they were looting, and a few days later -- and taking things from everyone.

A few days later more soldiers came, and then they said this is No Living Thing, and he saw one of his neighbours murdered by a soldier who asked for diamonds and the man didn't have any. And he saw the bodies of two other neighbours who were killed that day. He and his family then fled to Guinea, he said, for a month or month-and-a-half and came back in April of 1998 to Payema and there he was captured, and his family was also captured, three children, his mother and an aunt. And his three children, his mother and his aunt were put into a house and they were burnt to death. They were burnt alive.

Mr Fofana, along with four other adult men, were made to carry loads and they carried these loads to another part of Kono, Tombudu, another diamond mining area, where Mr Fofana witnessed 53 people being put into a house and the house set on fire and the people burned to death. And then Mr Fofana and others who were with him, one of them was Mustapha Mansaray, who I mentioned yesterday, were forced to put their hands out and their hands were amputated, and Mr Fofana lost both of his hands.

So this is the operational strategy. This is what the Defence calls in their submissions "sporadic crimes of the RUF." And why? Well, we know that when the AFRC/RUF were in retreat, Johnny Paul Koroma, and this is in the Judgement, was desperately calling Charles Taylor for sanctuary in Liberia, and Taylor gave him an instruction and that instruction was, "Hold Kono. Take back Kono." And the RUF, the Chamber found, made two attacks on Kono and the second one was successful to take it back in about February 1998.

And why -- why was Mr Fofana, why did all these things happen to him? Well, I can give you my explanation, but I think it's also important to listen to what he said, so I'd like at this time to play a very short bit of an exhibit, P-14. This is not his testimony, but this is part of a Canadian documentary where Mr Fofana appeared. So if that could be played. And you all need to turn to "Courtroom." Please push the "Courtroom" button on your black box. So to see it please push "Courtroom."

(Video excerpt played)

MR KOUMJIAN: Mr Fofana testified he didn't go to school, but he certainly is an intelligent man. Without the outside support, none of these attacks would have occurred. And what did diamonds have to do with it? Well, the outside support was coming from Charles Taylor in return for diamonds.

The evidence shows in this case that prior to the Junta period, the RUF held diamond areas for relatively short periods of time, but during the junta period they controlled more or less the country, including Kono, including Tongo Fields. And Charles

Taylor began to get -- to taste diamonds and the taste was sweet.
And so when the ECOMOG kicked the RUF out of Freetown, when the intervention happened, repeatedly, and the Judgement finds this, Charles Taylor stressed to the RUF and AFRC to Johnny Paul Koroma and Sam Bockarie, "You've got to take Kono. You've got to hold Kono." Why? Because Kono is the diamond capital of Sierra Leone.
So Charles Taylor, in return for those diamonds, provided the means that allowed all of these crimes to happen. Without, as Ibrahim Fofana said, without the diamonds, he'd still have his hands, his family would still be alive. And without the contributions of Charles Taylor to the AFRC/RUF alliance, the crimes charged in Counts 1 through 11 in the indictment would not have occurred. Causation is not required but it was shown in this case, and the evidence in this case is overwhelming that Charles Taylor made a substantial contribution, as the Trial Chamber found, to each of the 11 counts.
Thank you.
Now Ms Hollis will address you on other issues.
JUSTICE FISHER: Thank you.
You may proceed, Ms Hollis.
MS HOLLIS: Madam President, your Honours, may it please the Court. I will address the questions 2(i)(c), relating to whether customary international law recognises certain modes of liability are more or less serious than others, and then I will address 2(i) -- or 2(v) in relation to this question about whether there is a rule of customary law that says uncorroborated hearsay may not be the sole basis for incriminating findings of fact.
Very briefly, as to question 2(i)(c) relating to customary international law and forms of liability, we agree with the Defence that customary international law does not establish a hierarchy of seriousness or blameworthiness for these modes of liability. We disagree there is even a general principle that establishes such a hierarchy.

And in relation to the support the Defence place on the jurisprudence of the Yugoslav and Rwanda tribunals, we suggest that this jurisprudence does not negate the fact that in the world today, and in the world at the time this Court was created, there are two very different approaches to this issue of the relative seriousness of different forms of liability under 6(1).

One approach is they are different. There is some kind of hierarchy, and States -- there are States that pursue that in their national systems. Another approach is, no, there is not. You cannot say one is inherently more blameworthy than the other.

So we suggest that, given the state of the world today, you cannot derive a general principle that says there's a hierarchy. And the jurisprudence of these two Courts simply shows that they have chosen one of those two approaches, which they can do, but in our submission that does not create a general principle. It simply means they're going to follow one of these two very different approaches.

Now, as to the jurisprudence that was cited, and it really is less than a principle, because what was said is that in these cases -- they say that, in general, aiding and abetting would warrant a lesser punishment. But we suggest to you that this statement, this statement of generality, is so general that it really lacks any force of authority. And that is true because the overwhelming obligation for sentencing, the critical underlying principles of sentencing, are that it must be individualised, it must look at the seriousness of the crimes, it must look at the conduct, the totality of the culpable conduct of the accused, it must look at the consequence of the crimes and conduct, and it must look at the individual circumstances of the accused. And this can only be done on a case-by-case basis, based on the facts and circumstances of each case.

But even if you were to apply this very, very general approach that, generally, aiding and abetting would warrant a lesser punishment, even if you were to apply that, which we suggest is not a general principle, in this case, there would be no error in

the sentence adjudged, at least no error in terms of it being excessive, because the facts and circumstances of this case are unique.

Now, not so unique in terms of the seriousness of the crimes. These crimes are horrific. They are crimes none of us could ever imagine, but no more horrific than the genocide in Rwanda, no more horrific than many of the crimes in the former Yugoslavia, but the seriousness of the crimes themselves are very, very serious. But the uniqueness is the central, ongoing, critical role that this accused played in the commission of these crimes throughout the indictment period.

His position of authority that the Trial Chamber found amongst the RUF, the AFRC/RUF, the additional influence and authority that this position gave to him, and the critical, indispensable role that his ongoing assistance provided to the commission of these crimes, his degree of involvement, the totality of the culpability of his criminal conduct is unique.

And so even if you were to say, as the Trial Chamber did, as a general matter the Trial Chamber accepted that aiding and abetting warrants a lesser punishment, but on the facts and circumstances of this case, which is the basis on which any sentence must be determined, that would not warrant a sentence any less than 50 years. And as we have suggested to you, on the facts and circumstances of this case, a truly, truly appropriate sentence would be greater than 50 years.

Now, in relation to question 2(v), about whether the sources of law identified in 72 bis (ii) and (iii) establish a rule that uncorroborated hearsay can't be relied upon as the sole basis for incriminating findings of fact, the Defence argued yesterday that there is a substantial body of law that establishes that indeed there is such a rule, that there's a widespread practice disallowing the use of uncorroborated hearsay.

That's an unfounded assertion in our view, and it's an unfounded assertion based on the examples they want to rely on. They say, "Well, we want to rely -- for this assertion, we want to rely on the cases, examples from the European Court of Human Rights." Well, the European Court of Human Rights says there is no such rule.

Certainly no such rule as it relates to a prohibition against using uncorroborated hearsay as a sole basis for incriminating findings of fact, because the jurisprudence of the European Court of Human Rights is based on a conviction, a conviction being based solely or in a decisive manner on testimony that was not subject to cross-examination. And that is a line of cases that they have abandoned and they say that's no longer the rule. That's no longer an absolute rule. And what do they look at? They look at what the international courts look at: Looking at the proceedings as a whole, were they fair? That is the rule of the European Court of Human Rights, not the rule that is set out in this question sub (v).

And again in their argument the Defence says, "Well, this notion of customary law, there are two critical ingredients. The notion of State practice at a consistent level." There is no such consistency at the national level. Now, they again will point you to a handful of common law jurisdictions, a handful of common law jurisdictions, no civil law jurisdictions, where the rule has historically been very different. There is a great division in the world at the national level about admission and use of hearsay. There is no consistency.

And even in the common law jurisdictions that they cite you to, what do their arguments really show you? Do they show you that these jurisdictions say you can't rely on uncorroborated hearsay? No. What they show you is a line or two in these laws that says you can't introduce hearsay at trial, and then there are always exceptions.

So even in terms of introducing hearsay there's no absolute rule, and they say nothing about how you can use it once it's introduced. Now, they've talked about factors that should be considered. Well, the Trial Chamber in this case talked about factors that should be considered, but again this jurisprudence does not establish any general principle of the national laws of the legal systems of the world that says you cannot use uncorroborated hearsay.

And, for example, if we look at United States Federal Rules of Evidence that the

Defence has provided, we'll see that at Rule 802, I believe it's just over one line, that says hearsay is not admissible and then there are pages of exceptions. And even in that Rule itself it says, well, "Hearsay is not admissible unless ...", and then "... unless Federal Statutes, these rules or other rules prescribed by the United States Supreme Court allow its admission." So, again, the exceptions overwhelm the rule.

Now, the Defence also pointed you to a case in the United States in 2004, a Supreme Court case, Crawford v. Washington. But if you look at that case, in particular at page 20 of that case, you will see that what that case really stands for is, the Supreme Court said, "You know, we have looked at the history of exceptions to the hearsay rule, and those exceptions don't include testimonial evidence," and they gave examples. They didn't give a definition but they gave examples, and they said, so, for example, prior testimony or if a person had given -- had been interrogated, made a statement in a police interrogation.

They said, "If you look at the history of exceptions to the hearsay rule, they don't include that kind. They are exceptions where it's not testimonial." So that case stands for the opposite of what we have to deal with here today, because we don't have testimonial evidence that we're asking you to accept as -- into evidence except as allowed under our rules.

Indeed, what we have is non-testimonial. Sam Bockarie didn't go into a court and testify. What court would he have gone into? Who would have questioned him about what? So we're not looking at the very kind of hearsay that Crawford says is not admissible.

And that's also true, and it has to be true because the Crawford case was decided in 2004. The Rules, the Federal Rules of Evidence you were shown are dated 2011 and they have all kinds of exceptions to the hearsay rule still in those Rules. So if the Crawford Court had basically said, "That's an end to it, no hearsay in criminal trials," there would not be any of those exceptions, but they're there. So the Crawford rule does not establish any absolute rule either.

And if we look at the Horncastle case, which the Defence also provided you, at paragraph 41 -- and by the way that Court certainly doesn't accept that this absolute rule exists, it says specifically "We don't accept that absolute rule." But at paragraph 41 they say, "Well, there are even other common law jurisdictions ..." and they name Canada, Australia, and New Zealand, "...that recognise hearsay as potentially admissible where it is not possible to call the witness, even where this evidence is critical to the Prosecution case." And they go on to say, "This demonstrates there's no rigid rule excluding evidence if it is or would be either the sole or decisive evidence." So there is no consistency for this rule, and the European Court of Human Rights has made that clear in its latest decisions, including the Al-Khawaja decision.

It's also helpful to recall that in the Prlic Appeals Chamber decision that cited to the no longer valid line of cases from the European Court of Human Rights, at paragraph 51, at footnote 86 of paragraph 51, the Court said, "You know, caution should be exercised in referring to the European Court of Human Rights precedents regarding issues of admissibility of evidence because, as the European Court itself has recognised, admissibility of evidence is primarily a matter for regulation by national law and, as a general rule, it is for national courts to assess the evidence before them." And we suggest to you that this applies with equal force to the Yugoslav Court, the Rwanda Court and to this Court.

And that Appeals Chamber went on to rightfully note that the task of the European Court of Human Rights is not to give rulings about whether statements are properly admitted but rather to ascertain whether proceedings as a whole were fair.

And, indeed, going back to Horncastle, if we look at paragraph 113, the Court said, "If there is an inflexible, unqualified principle that any conviction based solely or decisively on evidence of an absent or anonymous witness is necessarily to be deemed unfair, the whole domestic scheme for ensuring fair trials cannot stand and guilty defendants will have to go free."

And the European Court of Human Rights Grand Chamber again recognised these statements and these concerns as correct in the Al-Khawaja decision at paragraphs 126 and 146 where it said that "It would not be correct for the European Court to ignore the specificities of a particular legal system and confirm that Article 6 does not lay down any rules of admissibility." So there is no consistency of practice that would give rise to the custom that is enquired about in this question.

The Defence places, in our submission, unfounded reliance on the analysis at Annex 4 of Horncastle, because if you look at that what they are saying it is, "You know, under our common law system we would not have allowed this evidence either, but it's not because it is uncorroborated hearsay. It's because either they didn't prove that the witness was truly unavailable or they didn't find sufficient factors to ensure a fair trial."

Now, your Honours, the Defence also alleged that if you looked at Rule 92 quater, of our rule, similar -- actually, identical to the Yugoslav Rule 92 quater, that you had to have corroboration for these statements. Well, if you look at that rule, there's nothing in the plain language of that rule says that you have to have corroboration for that statement.

Really what does the rule say? They say if you have evidence in the form of a written statement or transcripts, so they're talking about that kind of evidence, and then the person subsequently dies, which would be the situation in our case, that this evidence may be admitted if the Chamber is satisfied from the circumstances in which the statement was made and recorded, that it's reliable, and if it's satisfied as to the unavailability of the witness as set out above.

And then it goes on the say that if the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence. Nothing in there says that kind of evidence would have to be corroborated. Nothing in there says any of this evidence would have to be corroborated.

Now, the Defence also argued yesterday that where hearsay is admitted into evidence, the safeguards against this hearsay in many instances provide for a directed acquittal by a judge in circumstances where the hearsay is an integral part of the evidence and is extremely unconvincing.

We suggest, your Honours, that's not the test. The test for that type of directed verdict of acquittal is much higher, and again we refer to Al-Khawaja at paragraph 149. And here's what we say the test is: That there would be such a directed verdict of acquittal if the judge finds that the hearsay is so unconvincing that, considering its importance to the case, a conviction would be unsafe. So it's not just that it's unconvincing, but considering its importance to this case it would actually render the verdict unsafe. That's the test. That test was not met by any of the evidence that the Defence talks about here.

Now, in addition, it's helpful to recall that, again in the Al-Khawaja case, the European Court of Human Rights rightly says that in determining if a trial is -- has been fair, if the proceedings have been fair, you look not only to the proceedings as a whole and you look not only to the rights of the accused, but you also look to the interest of the public and victims that crimes be properly prosecuted.

Now, in the chart that the Defence provided to you, there are several examples of alleged uncorroborated hearsay, and among the originators of that hearsay, or the secondary sources of that hearsay, are Sam Bockarie, Superman, Daniel Tamba and a person by the name of Moinama. All of these people are dead. Sam Bockarie is dead at the hands of Charles Taylor's forces. Superman is dead in mysterious circumstances in an ambush in Liberia. Daniel Tamba is dead in mysterious circumstances while fighting alongside other members of Charles Taylor's forces. Moinama is dead at the hands of the RUF.

So if we apply this balance, how do we say that this evidence should not be admitted to be considered by professional judges, by the gatekeepers who will assess the evidence, weigh the evidence, based on their professional abilities? We're not

concerned here about a jury trial, about a lay jury being overwhelmed with emotion or looking at the evidence because they don't understand the law. We are talking about professional judges.

And in addition to that, the Defence has talked yesterday about, well, you know, there are some exceptions where they require that you have to depose these people in order to present their testimony. Well, that's not the case in all the jurisdictions. It's not the case in this Court. But also, in 1997, in 1998, 1999, who was going to take depositions from these individuals, and for what purpose, and how were they actually going to do it? So could that rule really be applicable to the circumstances in which those statements were made, non-testimonial statements made during the events in question?

Now, very briefly I would like to go over the examples given to you in the chart that was provided to you by the Defence. Now, I know yesterday there was an issue about whether you had that chart. We have copies if your Honours do not have it, and we can give those copies to you.

JUSTICE FISHER: We have it in the bundle that was provided to us by the Defence, but if you have copies easily accessible, that would be very helpful.

MS HOLLIS: Yes, and we are talking -- we just replicated the chart that the Defence gave us. This -- and it would be -- it will be tab 9 in that bundle, your Honours. Tab 9. And if we could just very, very briefly go over these alleged examples of uncorroborated hearsay, starting with number 1 alleged message from Base 1 to troops retreating from Kono.

Is this really hearsay? It is uncorroborated. Is this really hearsay? And as we go throughout the entire bunch of examples, we would suggest that you also have to ask yourself was this -- even under the old jurisprudence, was this a sole or decisive factor in any conviction? But first of all, as to the first one, is it hearsay? The finding in contention is that the radio station of Benjamin Yeaten in Monrovia intercepted an AFRC/RUF communication and then sent out a radio message

concerning the withdrawal from Kono. So is that hearsay? And secondly, it's based on the direct involvement of TF1-516, who was monitoring the communications.

As to the second one, the alleged order to attack Kono, under "Operations in Kono (Early 1998)", this evidence is corroborated, and we refer your Honours to the Judgement, paragraph 2855, and our Response, paragraphs 527 to 531 of our Rule 112 Response.

The next one, the "Alleged Order to Attack Kono (Second Order)". This was corroborated, and we refer your Honours to the Trial Judgement at paragraphs 2855, 2840 to 2841.

The next one, the "Alleged Order to Hold Kono." This was corroborated, and we refer your Honours to the Trial Judgement at paragraph 2857 and to our Response at paragraphs 533 to 536.

In relation to " The Freetown Invasion," the planning -- "The Plan," which is at page 3, this evidence was corroborated, and we refer your Honours to paragraphs 3100 to 3104 of the Judgement and also to paragraphs 5513 and 5514 of the Judgement and to our Response at paragraphs 89 to 92.

As to the examples relating to the instruction to make the operation fearful and to use all means, we refer you to our Response at paragraph 269 and at paragraphs 247 to 256 and 260 to 262, and we suggest that indeed this is corroborated by TF1-371 in relation to the meaning of these two terms.

But at this point we also want to talk a little bit about, you know, that even jurisdictions that say, "You can't admit hearsay," have exceptions to hearsay. Do any of these statements fall into any exceptions to the hearsay rule? And especially when we look at this instruction from Charles Taylor to make the operation fearful, to use all means, we suggest there are exceptions. There used to be one that was generically called a res gestae exception. This was an inherent part of the plan - this was an inherent part of the implementation of the plan - and we suggest that would

be an exception to the hearsay rule.

Now, in today's iterations of the exceptions to the hearsay rule, we suggest this would most commonly be found under an exception under then existing mental condition, because that relates to intent, motive, plan.

We also suggest that it would be admissible because this was against Charles Taylor's interest. If you look at it in context, this was an instruction of a criminal nature and this was against his interest, and so we suggest that would be an exception as well.

We suggest that it would also be an exception for Sam Bockarie, because by passing this on this, of course, was part of the res gestae of the plan and the implementation, but it was also against his interest because by passing it on he was adopting it, accepting it and passing it on.

And also when we look at this type of thing, if one person gives another person an instruction that is going to involve an act that is inherently criminal, or in the circumstances is criminal, how can you say you cannot talk about that instruction, that only the one who gave the instruction could come forward to testify about it? So we suggest that it would be admissible.

And the same thing is true -- well, also I should point out that there was an argument yesterday that, "Well, you know, the originator of the statement was unable to confront ...", or, "The Defence was unable to confront the originator of the statement." Well, in fact the originator of the statement was Charles Taylor. Now, he could not be forced to testify, but he did testify, and he testified for months, and in fact he did address this on 27 October 2009 at pages 30419 to 30420 of the record.

When we look at this issue of "by all means," we suggest that the same analysis would apply in terms of, "Are there exceptions to the hearsay rule? Even in those jurisdictions that have a rule excluding hearsay, are there exceptions?", and we suggest that, yes, indeed there are.

We also suggest that there can be no argument that, "Well, the originator, we didn't have a chance to confront the originator." The originator was Charles Taylor and,

once again, he testified about this when he chose to testify.
Now, if we move on to the "Allegation that the Accused Directed the Freetown Invasion," prisoners from Buedu, TF1-516 corroborates Dauda Fornie and you can look at our Response at paragraphs 216 to 217.
JUSTICE FISHER: Ms Hollis, where are you in the document at this point? What page?
MS HOLLIS: Your Honour, that would be at the bottom of page 4. The box -- there's only a couple of lines in that box and it goes over to page 5 talking about the Pademba Road prisoners.
JUSTICE FISHER: Thank you.
Perhaps you could keep us on track by letting us know where you are?
MS HOLLIS: All right, certainly. Certainly, your Honour.
So, again, that was corroborated.
Now, your Honours, if we look at the next one, which is "Operational Support - Communications", and that's at the top of page 6, this was corroborated and we direct you to paragraph 3830 of the Judgement and our Response, paragraph 565.
We would also suggest to you this is not quadruple hearsay, as alleged. If you read it closely, you see that Lansana is recounting something Bockarie told him and there's no evidence that Bockarie is recounting the statements of anyone else, rather what he is observing.
Now, it's important when we look at all of this that we don't just take isolated paragraphs, but we look at the context and we look at the reasoning that the Court used to arrive at its findings. You can't select one paragraph out of a whole section and say, "This means X or Y," and that's particularly important here because, if we look at what is in the centre box here, we see reference to Foday Lansana's testimony and TF1-338's testimony.
Now, in looking at 338, it's important to look at the transcript of 2 September 2008 at pages 15203 to 205 and 1 September 2008 at pages 15114 to 116, because this is the

explanation for the basis of knowledge of 338, and that's important to know when you are assessing his testimony.

But more importantly, if you look at the far right box, it says, "The Trial Chamber recalls that it had no general reservations regarding the credibility of TF1-338, Mallah or Lansana." Well, where's Mallah? Where's Mallah in the middle box? He's not there. He's not there but, if we look at the findings that lead them to talk about Mallah on this issue, at paragraph 31 -- 3831, the Trial Chamber states that Mallah gave a first-hand account of Foday Sankoh using the NPFL network to communicate to Sam Bockarie.

So, what was the full basis for their conclusions? It's important to look at the full context, the full deliberation, the full assessment of evidence and the full findings.

Now, if we move very quickly to "Aiding and abetting crimes through operational support," talking about the 448 messages, Mr Taylor's awareness that his subordinates were sending 448 messages is not based only on AB Sesay's evidence. The Trial Chamber also found that Taylor's radio operators sent 448 messages to the RUF, based on the evidence of five witnesses, and we direct you to the Judgement at paragraphs 3906 and 3911, and we also direct you to the Trial Judgement at paragraphs 3907 and 3910.

Now, if we move on to the next page, "Alleged Support and Training," that's page 7, "Aiding and abetting crimes through the preparation of the Fitti-Fatta mission in mid-1998," this evidence is corroborated, and we direct your Honours to paragraph 4086 and also 4084, 4077, 4075, and also to our Response at 584 to 588.

Quickly looking at the example given on page 8, "Aiding and abetting the commission of crimes through the instruction to open a training camp," this is corroborated. The Trial Chamber found corroboration, and we direct your Honours to paragraphs 4102 and 4107 of the Judgement and our Response at paragraph 547.

And, your Honour, if we look at "Provision of Military Personnel" at page 10, it's a bit unclear what portion of the finding the Defence has an issue with. It appears that

there are two issues here; two findings.
The finding in relation to issue number 1, that NPFL members were in the Red Lion Battalion. Now, in relation to that finding, Sesay's evidence was corroborated, and that is at pages -- or at paragraphs 4372 of the Trial Judgement and 4373.
The second finding, that crimes were committed on the way to Freetown by the Red Lion Battalion, this finding is also corroborated, and we would refer your Honours to paragraph 4389, footnote 9832, and paragraph 4387 of the Trial Chamber Judgement.
And the allegation -- the allegation that the accused facilitated the crimes through the Magburaka shipment, that finding was corroborated and we would refer your Honours to paragraph 5393 and our Response at paragraphs 430 to 438.
As to, on page 11, the "Use of Matériel Supplied or Facilitated by the Accused, Operations in Kono in early 1998," that also is corroborated, and we would refer your Honours to paragraphs 5593, 5587 to 5589, and we suggest there is corroboration there. And, in addition, if we look at Bobson Sesay's testimony, paragraph 5567 relates to one particular operation, the recapture of Koidu Geiya. The findings of the Trial Chamber at paragraph 5593 relate to matériel supplied by Taylor for operations in the entire Kono District.
Now, in relation, your Honours, to page 12, "The December 1998 Offensives and the Freetown Invasion," in addition to the evidence of Bobson Sesay, the Trial Chamber relied on the testimony of Perry Kamara, TF1-375, Komba Sumana and TF1-174 at paragraphs 5706 to 5708 to support the finding at 5720.
Your Honours, the Defence asserts that, when it comes to whether or not a Trial Chamber should have sought corroboration and whether or not the hearsay evidence relied upon was reliable, that's a question of law. We suggest that that is incorrect. Rather, that the question of a Trial Chamber's assessment of evidence will not be disturbed unless no reasonable fact-finder could have concluded otherwise, or the finding was wholly erroneous.
Now, if your Honours find that the Trial Chamber applied the wrong law to those

facts, then you would apply the correct law and determine if you, applying the correct law, found these facts beyond a reasonable doubt. But we suggest they did not erroneously apply the law, because the law that we're discussing, whether it exists or not in this question, it does not exist. There is no rule that prohibits a Trial Chamber to rely solely on uncorroborated hearsay, even if it is truly uncorroborated, for proof of an incriminating fact.

And even the law about convictions is no longer the law. It has been replaced by, "What should be the appropriate measure?", and that is, looking at the proceedings as a whole, were they fair? We suggest they were. We suggest the Trial Chamber engaged in an exhaustive analysis of a huge amount of evidence and it arrived at the proper conclusions, the proper findings of fact, in relation to the areas that are contested by the Defence.

Thank you very much.

JUSTICE FISHER: Thank you, Ms Hollis.

We'll now take our mid-morning break and we'll resume at quarter-to-12.

THE COURT OFFICER: All rise.

(Recess taken at 11.30 a.m.)

(Upon resuming at 11.45 a.m.)

THE COURT OFFICER: All rise.

Please be seated.

JUSTICE FISHER: Mr Anyah, you may proceed.

MR ANYAH: Thank you, Madam President.

Madam President, before we commence, just two brief observations with leave of your Honours.

The first is that your Honours have outlined how we should proceed vis-à-vis the submissions made yesterday, but in listening to the submissions of the Prosecution this morning invariably some of the remarks made to -- made in response to our submissions yesterday have intertwined with our preparations for presentations to be

made today, and we do not want it to appear when we deal with those issues that matters we would ordinarily have had to deal with in reply we are dealing with in response. The issues are now juxtaposed and intertwined, to a large extent. I can give you a quick example about the hearsay issue, for example. So we seek your indulgence in that respect.

JUSTICE FISHER: That would be fine. Provided we don't go beyond the scope of the submission yesterday, you may address the issue fully that you were intending to address as a response to the submission.

MR ANYAH: Thank you.

And the last issue is just a housekeeping matter. We will proceed in the same manner as yesterday: Mr Gosnell goes first, Ms Gibson second and I will go last. We do not have a response to the issue - the third issue - subsumed under Roman numeral (i) which deals with a hierarchy of sorts under Article 6(1) mode of liability.

JUSTICE FISHER: That will be fine.

MR ANYAH: Thank you.

Mr Gosnell, please.

MR GOSNELL: Madam President, your Honours, good morning.

You will know, from having heard both the Prosecution and Defence submissions yesterday, that of course not everything that was said yesterday during the Prosecution's initial presentation is agreed to by the Defence. On the contrary, we disagree with it quite substantially.

However, I won't be responding to most of what was said yesterday by the Prosecution because we consider that either it was already implicitly addressed in our initial submissions, or because it is already adequately briefed for your Honours in our written submissions.

However, I do want to address you on just three short points, and mercifully I can be much shorter than I was yesterday, and those three points, your Honours, are: First the Prosecution's conception of the actus reus of aiding and abetting and what can be

considered in respect of substantial contribution; secondly what is precisely the meaning of the knowledge standard in respect of those countries that do apply that standard; and third how the knowledge standard has been applied in two cases that have now been mentioned several times, the van Anraat case and the Zyklon B case, and our position as you will see is that in fact the decisions in those cases strongly support the position that we have adopted in this appeal.

Now, the first question concerns the actus reus, and yesterday you heard from the Prosecutor - and unfortunately I don't have a specific page reference, because the transcript that we received was not paginated, but the transcript from yesterday indicates that the Prosecution stated -- and unfortunately there is an ellipsis here where apparently a word - a very perhaps critical word - was missed, but the Prosecution submitted in describing the elements of aiding and abetting, "Secondly, the accused has to ...", ellipsis, "... acts that facilitate the crime. Not all military assistance facilitates the crime. It facilitates crimes when the group has an operational strategy to commit crimes when you know that when they go out and make operations they're going to be killing, they're going to be using terror, when you know that even when they hold territory crimes are being committed like the RUF, then that military assistance assists crimes, but ordinarily it does not necessarily assist crimes."

Your Honours, I would submit to you that that's a very confusing definition of actus reus in this context, and the reason it's confusing is because it's not clear whether the Prosecution would submit to you that only assistance to groups that have an operational strategy could constitute aiding and abetting as opposed to assistance to a group that habitually, repeatedly, continuously, but not as a matter of operations, is committing those crimes. I don't know, your Honours, whether the Prosecution considers that to be a significant distinction in respect of the actus reus of aiding and abetting.

I can tell your Honours that this issue is also confusing in the Judgement, because the

Trial Chamber says, "The basis for finding that Charles Taylor knows that future crimes are going to be committed and the basis for saying that his assistance has assisted those crimes is that those crimes are going on continuously, habitually, repeatedly. Therefore, we infer an operational policy."

Perhaps there may have been extrinsic evidence to also infer an operational policy, but we have heard nothing from the Prosecution indicating whether they deem the actus reus to only be fulfilled in respect of aiding and abetting when it is an operational policy alone.

I would suggest that if they're trying to make that submission, that's quite wrong. It is quite contrary to the basic definition of aiding and abetting which, as the Prosecution itself has tried to maintain, has nothing to do with mens rea.

It's purely a question of, "Are you in substance, in practice, in fact, are the instrumentalities that you are providing, are they substantially assisting a crime?"

And I would respectfully submit it doesn't matter whether that is an operational policy, or merely an ongoing series of crimes that are recurring.

In either case, your Honours, those crimes are foreseeable and, according to the Prosecution's submission about actus reus, that should be enough. You know that those crimes that providing that -- those weapons or that ammunition may indeed encompass future crimes.

And I have, even in addressing you, slipped into discussing a little bit about mens rea, because even formulating it is hard to do without talking a little bit about the intentions of the person providing the ammunition.

But how did the Trial Chamber apply the actus reus of aiding and abetting? It didn't rely on the operational strategy as such, nor has the Prosecution in its own submissions. In fact, they have adopted a very loose and minimalistic definition of what can contribute to substantial contribution.

For example, today and yesterday they told you that giving bullets which enable capturing other bullets which are then possibly used in crimes, that can be taken into

account in the actus reus of aiding and abetting. That's enough. They have also told you that one attack which has a beneficial impact strategically or tactically on another attack also can satisfy the actus reus of aiding and abetting.

So it's hard to see how the Prosecution, given its own submissions and given the Trial Chamber's own position, could say that the actus reus is somehow limited to assistance to an operational strategy. That's not what's done in the Trial Judgement and it's not what the Prosecution itself has done in its submissions before you.

Now, the Prosecution cited -- well, I won't indicate specifically what they referred to, but they in their initial submissions suggested that, if it hadn't been for assistance provided by Charles Taylor, certain consequences - criminal consequences - would not have ensued and that that was enough to be considered for the actus reus of aiding and abetting. It's a simplistic "but for" causation threshold. That's what they on the one hand have attempted to argue to you, that that gets them into discussing actus reus, but then on the other hand they come around and say, "Oh, but it's an operational strategy that's required."

Well, I'm not really sure what the Prosecution's position on this is, but I would suggest to you that in practice what the Trial Chamber did was not in any way rely on an operational strategy. They merely said, and this is perfectly in accordance with the minimalist definition of actus reus, "If you provide bullets knowing that they might be used, and even if you don't know that, if you just supply the bullets and they are used and they are contributing to a crime, then that's enough to satisfy the actus reus. This operational policy element is not in the Judgement as a part of the actus reus."

Now, why is that important? It's important because on the one hand the Prosecution is trying to seduce you to say, "Don't worry about the mens rea, because actually there is an element - a robust element - in the actus reus that will prevent liability in strange circumstances," but then on the other hand, "When it comes to application, the door is wide open to considering anything in terms of determining substantial effect."

Now, mens rea, two very specific points. The Prosecution submitted to you that the mens rea standard for aiding and abetting is that the accused knows his assistance is aiding and abetting the crimes. He is aware at least of the substantial likelihood that his assistance will facilitate the commission of those crimes.

Now, here you have the Prosecution again referring to crimes in general. And it might seem like a minor linguistic distinction, the difference between crimes in general and specific crimes, but in fact it's a very significant distinction.

Yesterday I submitted to you that there were in fact various countries that helped -- the law of various countries that helps understand what exactly knowledge of what is required, and I refer your Honours to paragraph 368 of our appeal brief and I want to cite two very, very different legal systems to show you that in fact the conception being applied by the Prosecution and that was applied by the Trial Chamber is quite wrong.

Paragraph 368 of the appeal brief refers to the United States Model Penal Code, which gives you a very precise definition of knowledge and it indicates that indeed there must be a knowledge to a virtual certainty in respect of the crime.

That is the required mens rea in respect of knowledge. That's -- even where you see the word "knowledge," that's the standard. You must have a virtual certainty that the instrumentality is going to be used in a crime.

And that's the case in the United States in those States that do not adopt a full intention standard, a dolus directus in respect of the final outcome, and there are such States. There are States that say, "Not only must the aider intend to assist, not only must the aider know that the assistance is going to be used in that crime, the aider must know -- must intend the outcome."

That's -- I'm not urging that standard on your Honours as the standard in customary international law. I am merely illustrating for you that, even based on the lesser standard of mens rea of knowledge, there is still that requirement that you're intending to assist. It's either intending to assist or intending to accomplish the

crime.
And that's also the position even in those States like Germany, where you have the broadest possible definition of the mens rea, because in Germany you have a knowledge standard plus dolus eventualis. In other words, the person providing the assistance must be -- must know of the substantial likelihood - substantial likelihood - that the instrumentality will assist a crime and must nevertheless provide that assistance aware of that substantial likelihood. Dolus eventualis is a very particular form of intention, which is just slightly higher I would submit than recklessness.
And even in Germany, with the lowest or the broadest possible definition of the mens rea, you'll know from looking at our brief that in Germany there is an exception. There is a recognition that if you are providing neutral assistance, in other words assistance that either could be used lawfully, either could be used non-criminally, or that could be used criminally, there is a further requirement of establishing a purpose in relation to the crime.
So there you have two extremely different disparate systems of law, and yet in either case the outcomes would be quite different than you've seen established by the Trial Chamber in this case.
Now, I'd like to refer thirdly to two cases that in fact highlight and illustrate this very concept, this threshold, the importance of this threshold, and it's the Zyklon B case - and I thank my learned colleague opposite for correcting my erroneous reference of yesterday - and the van Anraat case.
Now, what did these two cases say in relation to the knowledge of the accused? This is what's vitally important, and it's unfortunate that the Zyklon B case involves a one-line verdict. The Chamber itself doesn't explain its reasons and so drawing inferences is already a hazardous exercise from this Judgement, but what we do have is an account of the summary of the Judge Advocate in that case. The Judge Advocate poses the question at the end, or summarises a question posed by the

Prosecution, "Why is it that these competent businessmen are so sensitive about these particular deliveries? Is it because they themselves knew that such large deliveries could not possibly be going there for the purpose of delousing clothing, or for the purpose of disinfecting buildings?"

So it's correct when the Prosecution says, "Yes, this chemical in principle could have been used for perfectly lawful and appropriate purposes." Yes, if it had been supplied in lower quantities, but if it is -- if it is supplied in such large quantities that the only possible use is not legal, is not non-criminal, then the inference can be drawn that the knowledge factor exists. You know that that instrumentality is going to be used for crime. In the language of the Model Penal Code of the United States, "to a virtual certainty." That meets the standard for mens rea and that's a knowledge standard.

Van Anraat, exactly the same reasoning. Yes, it's true that TDG in small quantities could be used as a dye, non-criminal purposes, but what did the Chamber, the Appeal Court in The Hague, find about the quantities and what that meant about the knowledge of the accused?

I'm quoting from Section 11.10 of the Judgement, "The fact that TDG in the quantities as supplied by the defendant, more than 1,100 tonnes altogether, could only serve for the production of mustard gas and not as continuously argued by the defendant and his Defence for use in the textile industry has been stated by Expert Witness A, amongst others, during the court session of 4 April 2007," and the Chamber accepted that.

These cases precisely illustrate the point that we have been trying to make. Knowledge is not knowledge of a possibility. It's not even knowledge of a probability in relation to the ultimate outcome. It's -- and when we say, when we use the term in our brief "actual knowledge," it means knowledge to a virtual certainty that you are providing the instrumentality for a specific crime, not that it might be, not that it could be, not that there's a chance, not that it's likely, not even

that it's probable, your Honours. None of those standards meet the mens rea - the appropriate mens rea - standard of aiding and abetting and the cases that have been relied on by the Prosecution show that.

I thank your Honours.

JUSTICE FISHER: Thank you. You can proceed.

MS GIBSON: Good afternoon, Madam President, and your Honours, and good afternoon to colleagues around the courtroom.

I'm just going to very, very briefly respond to some arguments made by the Prosecution yesterday on adjudicated facts and just two quick points. Firstly, it appears necessary to go back to the content of adjudicated fact 15 and have a look at what it actually says, because the Prosecution spoke yesterday at some length about the RUF contribution to the invasion in Freetown as a whole, but in fact adjudicated fact 15 is much more limited. It concerns, and I quote, "the end of the AFRC offensive". It talks about the AFRC retreat from Freetown. It specifically relates only to RUF reinforcements that arrived in Waterloo at the end of the offensive, and no one has yet read out adjudicated fact 15 in total, and it's quite short, only a few lines, and it seems necessary at this point so we know exactly what we are talking about factually.

Adjudicated fact 15, and this is from the AFRC Trial Judgement, reads: "Following heavy assaults from ECOMOG, the troops were forced to retreat from Freetown. This failure marked the end of the AFRC offensive as the troops were running out of ammunition. While the AFRC managed a controlled retreat engaging ECOMOG and Kamajor troops who were blocking their way, RUF reinforcements arrived in Waterloo. However, the RUF troops were either unwilling or unable to provide the necessary support to the AFRC troops."

So adjudicated fact 15 just concerns this section of the Freetown invasion, right at the end, so arguments about the RUF's contribution or co-ordination as a whole during the Freetown invasion don't assist the Prosecution's position, because the Prosecution

insists the Defence is now changing its position. That we've always agreed that the RUF was part of the Freetown invasion and in fact, if you look at the Judgement, and I'm talking about page 1177 of the Judgement, the Trial Chamber recognised that the Prosecution and the Defence agreed on or about -- on about 6 January 1999 inter alia RUF and AFRC forces attacked Freetown.

The Chamber goes on, "The Defence has indicated that the admission is simply a factual recognition that there may have been RUF elements that participated in the AFRC attack on Freetown. It says nothing about what the RUF may have done as a cohesive organisation, or whether or not the RUF sent reinforcements to Waterloo or to the Freetown environs in the days after the 6 January invasion."

So the Defence submissions on the failure of the RUF reinforcements from Waterloo to connect with the troops in the city have remained consistent, and this is what adjudicated fact 15 is really all about.

The Defence case was presented on the understanding that there was a presumption of truth that attached to this adjudicated fact 15, and the Prosecution could have and had the opportunity to put this issue back on the table through the introduction of reliable and credible evidence in the manner set out by the Trial Chamber in its decision on 23 March 2009, but the Prosecution did not.

And lastly the Prosecution has emphasised quite extensively in its response brief, and again yesterday, that the Defence position at trial was that the Prosecution could rely on evidence led in its case in-chief to rebut an adjudicated fact of which notice was taken in the Defence case.

This Defence argument was resoundingly rejected at trial. It was defeated by the Trial Chamber. The Trial Chamber said, no, there are two ways in which you can rebut an adjudicated fact that's been noted during the Defence case. You can do it through the cross-examination of Defence witnesses or you can do it by calling a rebuttal case, and this is the decision of 23 March 2009 at paragraph 32.

The Prosecution didn't appeal that decision. Then again in the later RUF decision,

this time on 17 June 2010, this argument from the Defence was again rejected. At paragraph 30, the Chamber held that, given the late state in the case, in all likelihood, if the Prosecution wanted to rebut adjudicated facts, it would have to call a rebuttal case and that's the basis on which the Defence request for adjudicated facts from the RUF trial was rejected.

If the Prosecution had thought these decisions were incorrect in law, they could have appealed them at the trial, but now simply repeating Defence arguments or submissions that weren't accepted by the Trial Chamber, that in fact were rejected by the Trial Chamber, doesn't advance the Prosecution's position on the issue on appeal.

I'll now pass to lead counsel, Mr Anyah.

MR ANYAH: Madam President, your Honours, may it please the Court, I will deal with the issue of uncorroborated hearsay. I will be brief. There is really one significant issue we feel we ought to respond to.

Yesterday learned counsel opposite suggested to your Honours that the manner in which question 5 has been framed is perhaps inapposite to the circumstances of this case. The particular distinction was between a conviction, on one hand, vis-à-vis specific findings of incriminating facts on the other hand. That was repeated this morning in their response to our submissions yesterday.

I wish to deal with that issue briefly because it's important, and we feel it's a specious distinction, it is deceptively attractive, and the manner in which hearsay, uncorroborated hearsay has been used in this case, in particular circumstances, have led to convictions being entered against Mr Taylor and we will use one or two examples as illustrative of that point.

Two issues: The jurisprudence that we are relying on implicates a conviction. Yes, the language of the European Court of Human Rights cases speak of a conviction, that a conviction may not be based solely or in a decisive manner on uncorroborated hearsay, but yesterday learned counsel opposite referred to the Al-Khawaja decision, and in particular to paragraph 31, and in that paragraph we found the Court

elaborating on what the words "sole" or "decisive" mean, and we learned yesterday that the word "sole" has not posed any difficulties in cases that have come before the Court, but that the word "decisive" has been the problematic word and the Court said that "decisive" is tantamount to determinative. So the evidence must be of the level or threshold that it is determinative of the outcome.

This is what we say is significant. You look at the evidence, you look at the context of the case and you ask: Does it determine the outcome in a significant way?

Now, Al-Khawaja concerned what ordinarily are assault cases. In England and Wales, I hear they call them grievous or grave bodily harm cases, so these are assaults, whether it is actual bodily harm or grievous bodily harm. In those sorts of cases, which make up the predominant types of cases that we considered yesterday that went before the European Court of Human Rights, the factual matrix is very simplified. They are usually cases that the identification of one witness is critical to the outcome.

Al-Khawaja was a physician. He assaulted two female patients. One was deceased and you have one alive. Tahery was somebody who stabbed somebody in the back, the victim did not see who stabbed him, and the critical issue was the eye-witness identification of Tahery.

This case is a war crimes case. You will have to search significantly to find any specific finding of fact that would directly undergird a conviction. It is a mosaic of finding of facts that lead to a conviction in this type of case, a case where the indictment spans six years, and you have to look at the individual findings of fact and how the Trial Chamber used them to arrive at a conviction.

Yesterday I spoke of different permutations of uncorroborated hearsay as we see it and I gave the example of Isaac Mongor, TF1-532 and TF1-371, and Isaac Mongor's testimony was relied upon by the Trial Chamber to find that the mens rea element of planning was satisfied in this case. This is the reference that Isaac Mongor says he heard from Sam Bockarie that the accused told Sam Bockarie to make the operation

fearful.
TF1-371's testimony was also relied upon to sustain a finding that the requisite mens rea level for planning was satisfied, and that was the hearsay evidence that Sam Bockarie told TF1-371 that the RUF should use all means to get to Freetown. Those are critical findings in this case. Standing alone, it is difficult to pinpoint or it's difficult to expressly state that they were the sole or decisive factor for a conviction, but coupled together you would not have a mens rea finding for planning without those two pieces of hearsay.
We've addressed this issue in our brief under Ground number 15, and I would cite your Honours to paragraphs 300 and 302 of our brief and 308 to 309 of our brief.
For the other issues from yesterday, Madam President, we would stand on our written and oral submissions, but before I take my seat I will yield to Mr Gosnell who wishes to make a brief correction to the record.
Thank you.
JUSTICE FISHER: Thank you.
MR GOSNELL: I apologise, your Honours. I gave you an erroneous reference earlier to the United States Model Penal Code. It is actually referred to in our brief at paragraph 386, and the precise language used is not "to a virtual certainty." The precise language used is "A person acts knowingly with respect to a material element of an offence when ..." and then the end of that, the lowest threshold is "... if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result."
I just wished to make that correction for the record.
Thank you, Madam President.
JUSTICE FISHER: Does that conclude the Defence's submission in response?
MR ANYAH: Yes, it does, Madam President.
JUSTICE FISHER: Okay. I did not ask my panel whether they had any questions for the Prosecution, so at this point I will ask whether anyone has any questions for

either the Prosecution or the Defence?
No, apparently we do not. We will resume then, since we are ahead of time, let's be back by 1.30.
Thank you.
THE COURT OFFICER: All rise.
(Luncheon recess taken at 12.20 p.m.)
(Upon resuming at 1.38 p.m.)
THE COURT OFFICER: All rise.
Please be seated.
JUSTICE FISHER: Good afternoon. We will now proceed with the replies. The Prosecution has until let's say 1.20. If you don't need -- I'm sorry, 2.20. If you don't need that much time, that's fine too.
MS HOLLIS: Thank you, Madam President, your Honours.
I will very briefly address the Defence remarks in relation to question 2(v) about reliance on uncorroborated hearsay and then Mr Koumjian will address the Defence remarks relating to adjudicated fact 15 and the questions on aiding and abetting. Very briefly, your Honours, in regard to the Defence remarks about the findings in relation to Isaac Mongor and TF1-371, of course it will be very helpful when your Honours review paragraphs 6969 and 6970, which are the paragraphs that relate to the mens rea for planning. And you will note, when you review those paragraphs, that the Trial Chamber cited multiple bases, for its ultimate finding that Mr Taylor had the intent or awareness necessary for planning.
However, it's also important to note that the only authority, in our submission, to support the Defence position on this question is the line of cases from the European Court of Human Rights which has since been abandoned. And even in those cases, balancing the rights of the accused with the rights of the public and victims to a proper prosecution of crimes, the standard established was a prohibition on reliance on evidence not subjected to cross-examination only where - only where - such

evidence was the sole or decisive basis for the conviction. This line of cases sets out that standard, and nothing in those cases says that the standard only applies to cases which are not complex.

But perhaps of more assistance to your Honours in relation to the Defence argument that we have to have a different standard here because we're talking about war crimes, it's helpful to recall that the ICTY Appeals Chamber decision in the Prlic case on which the Defence relied involved an accused charged with crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws and customs of war. And, with an accused facing those charges, the Appeals Chamber accepted the then existing European Court of Human Rights' law as being guidance that was very valuable to them on the issue of what weight a fact-finder was allowed to give evidence not subjected to cross-examination. And they relied on the standard set out in this line of cases, that you cannot rely on such evidence as the sole or decisive basis for a conviction. Nowhere in the Prlic decision does the Appeals Chamber say, "But you know, we have to have an even lower standard. We have to be able to prohibit that evidence even at a lower level because we are dealing with war crimes." They didn't say that. They accepted the European Court of Human Rights jurisprudence as it was set out. They did not say a lower standard must apply.

But most importantly, your Honours, that prohibition set out in that line of cases from the European Court of Human Rights is not the rule in this Court, and indeed it is no longer the rule in the European Court of Human Rights. The Trial Chamber did not err in this case in its assessment of the evidence including its assessment of whatever evidence your Honours may determine to be hearsay.

Thank you.

JUSTICE FISHER: Thank you. Go ahead.

MR KOUMJIAN: Thank you. Your Honours, in relation to the adjudicated fact decision in this case, the Defence this morning submitted to you that in the Trial Chamber's decision on that, that they rejected the position that the Prosecution could

challenge adjudicated facts with evidence from the Prosecution case. That's simply wrong. That decision, you can read it. It never, ever says that the evidence that's already on the record will not be considered or could not be used for a challenge of adjudicated facts. No one understood that decision that way, not the Prosecution, not the Chamber, not the Defence.

The decision itself, the only reference it makes to using evidence from the Prosecution case to challenge adjudicated facts is that it twice quotes the Defence in their submission, their motion and their reply, saying that this evidence could be used, evidence from the Prosecution case could be used, to challenge the fact, and no one understood otherwise.

The reason I say that is in March the Defence came back, and as I said this morning they made a motion and in both the motion and the reply they made the point the Prosecution can challenge the evidence based upon what is already on the record. I'm not going to repeat what I read this morning, but Defence counsel has not explained. If the Defence was misled or understood that decision as precluding the use of evidence already on the record from the Prosecution case to challenge an adjudicated fact, why then would they write in their RUF motion and in the reply that the Prosecution can challenge the fact based upon evidence already on the record?

So what's absolutely clear is that in March 2010, before they called their first witness, the Defence in this case understood that the Prosecution could challenge the adjudicated facts based upon evidence already on the record.

And the reason I say the Judges also understood that, we know that because in Justice Sebutinde's dissent on the RUF adjudicated fact decision, she specifically said so. I read that the first -- yesterday. Justice Sebutinde specifically said the Prosecution's not prejudiced because they can use evidence from their own case to challenge the adjudicated fact.

In any event, what the Defence -- what the decision said simply that the Defence is trying frankly to distort is that the Prosecution could rebut the evidence by either

rebuttal evidence or cross-examining Defence witnesses, and in fact the Prosecution did cross-examine Defence witnesses, and evidence relevant to adjudicated fact 15, relevant to the current Defence interpretation of adjudicated fact 15, was elicited from the Defendant's own witnesses. And particularly Issa Sesay, who testified in cross-examination, 19 August, page 46793, that's 2010, to 94, that Rambo Red Goat did lead a group into Freetown, did link up with the AFRC, and in his direct examination Issa Sesay confirmed that the Red Goat group was made up of RUF fighters, and that was 9 July 2010, page 44167. So while the Prosecution was certainly -- could have simply relied, and the Trial Chamber relied on evidence of the Prosecution case, in fact there also was evidence that rebutted the Defence current interpretation of the adjudicated fact from the Defence's own case and own witnesses.

Now I'd like to briefly address the issues on aiding and abetting. Counsel noted the van Anraat case here in The Hague, that was the man who was selling a chemical to the Iraqi regime that they were using to make mustard gas, and the Zyklon B case, where a gas used to kill vermin was being sold to the Nazis and they were using it to kill human beings in concentration camps. What's clear and does not seem to be disputed by the Defence is that in neither of those cases did the courts invoke a purpose standard. Had they invoked a purpose standard, they would have acquitted because there's no discussion in Zyklon B of any intent other than knowledge. And in the van Anraat case, the Court specifically says that they do not believe that he was sympathetic to this campaign against the Iraqi civilians and they presumed his only, or they understood from the evidence, they found his only motive was large financial gains.

Under the Defence interpretation of how they would want you to change international jurisprudence, someone who commits these crimes and facilitates crimes simply for financial motive wouldn't have the purpose and would be acquitted, and that would be a great step back for international law.

Now, the Defence also made a point about the actus reus for aiding and abetting, and

I may not have understood everything in the Defence counsel's submission, but the submission talked about, "Well, what is it the Prosecution is saying needs to be shown for the actus reus of aiding and abetting?" What needs to be shown, we've said consistently, is what this Trial Chamber, the standard that was applied, is that there's acts that facilitate the crimes and amount to a substantial contribution, and that's either practical assistance, encouragement or moral support.

The cases say that this is a fact based inquiry. I believe your Honours said this in the CDF Judgement, also there's Djordevic Trial Judgement, paragraph 1874, Mrksic Appeal Judgement, paragraph 146, Blagojevich Appeal Judgement 134, Kalimanzira Appeal Judgement, paragraph 86. It's a fact based inquiry that depends on the facts of the case.

Now, I understood counsel to be asking is the Prosecution saying that the accused should be held responsible because the crimes of the RUF were part of the operational strategy of the RUF, or was it because these crimes were regularly carried out, part of their modus operandi in all territories that they held? And we are saying both. The Trial Chamber found both. Those are the facts of this case. Is that the minimum standard for aiding and abetting? No, I believe it's far above, but it's sufficient. That is sufficient, part of the actus reus. He's providing assistance to a group, military assistance, that facilitates these crimes, and the reason we know it facilitates these crimes is because, partly because, this is a group with an operational strategy to commit crimes. It's part of their modus operandi both in combat and in areas they control and territory they control.

This does not mean, again, that all military assistance to any State or any group is a crime. And the fact that you cannot, you don't have a right to give assistance to a group that's engaged in widespread atrocities, we believe is recognised by States, and there's evidence of that. I would point to, there's a document which we distributed I believe this morning, it's the EU Council common position on exports of military technology, the European Union has an agreement or treaty among the States.

Article 2(c) provides that Member States shall deny export licence when there is a clear risk it will be used in the commission of serious violations of international humanitarian law. So this is recognised, this basic principle that we're talking about, common sense, is recognised and even codified in a treaty or agreements among the European Union states.

It's also, there's a provision in United States law, and this is the Leahy amendment named after Senator Patrick Leahy, that prohibits US assistance to a group. It's section 563 of the Foreign Assistance Act, "Funds may not be provided for security forces when there is credible evidence of gross human rights violations." So here we have States recognising in their own law an obligation not to provide assistance to groups when there's recognition of a risk of violations of international humanitarian law or a record of gross violations of human rights law.

Again, both of these are far below the standard of the findings in this case. This case, it's not the finding that there were "some" crimes. It's not that there were "reports" of atrocities. The findings well supported by the evidence are this was an operational strategy and a modus operandi and victim after victim came before this Court, the Defence said too many came before the Court, and explained that strategy and the effects that it had upon them. And the Trial Chamber was correct, and I believe obligated, to make that finding that they did about this operational strategy and modus operandi.

Now, in talking about the actus reus, we agree with the Defence it has to be linked to a crime and the accused has to have some knowledge about the -- that the actions of the accused will facilitate a crime, but your Honours in the CDF case, paragraph 243 -- excuse me, I think this is AFRC Judgement, Appeal Judgement, paragraph 243, in which your Honours said, "The Appeals Chamber of the ICTY in both Blaskic and Simic found that it was not necessary to prove that the aider and abettor know the precise crime that was intended or actually committed by the principal perpetrator." In both cases, the ICTY Appeals Chamber held further that, "Liability for aiding and

abetting requires proof that the accused knew that one of a number of crimes would probably be committed and that one of those crimes was in fact committed," and that's the AFRC Appeals Judgement, paragraph 226.

Now, in speaking about the knowledge standard, the Defence proposed that the correct standard is purpose and that the evidence of that is the Model Penal Code from the United States.

Well, first of all, your Honours, we're not in the United States in this case and the Model Penal Code itself, while it has some authority, is not adopted as law in its entirety in any jurisdiction, any of the States of the United States. What we do have is a standard that's been applied by this Appeals Chamber in each of the cases the three Judgements rendered, and again this is in the AFRC Appeal Judgement, paragraph 226, in which your Honours held, citing ICTY's Appeals Chambers, that, "Liability for aiding and abetting" -- excuse me.

Well, your Honours held -- and I cut and pasted in the wrong position apparently. The standard that you held is that it has to be an awareness of the substantial likelihood that a crime would be committed. That comes from each of your Honours' Appeals Chamber decisions discussing the mens rea for aiding and abetting.

Finally, Your Honour, we'd like to point out that even if the Court changes the standard under international criminal law for the mens rea for aiding and abetting and adopted that proposed by the Defence, that is what we heard this morning, did Charles Taylor know to a virtual certainty that his acts of assistance would facilitate the crimes?

Well, the evidence and the findings of the Trial Chamber are clear. He did know to a virtual certainty that his actions would facilitate the crimes. We know this from other -- from among other reasons, his own words. 25 November 2009, page 32395, Charles Taylor was asked, "If someone was providing support to the RUF/AFRC as of April '98 they would be supporting a group engaged in a campaign of atrocities

against the civilian population of Sierra Leone; do you agree?" He said, "Well, to an extent, you could say yes. Anybody that would supply would be doing it against civilians, yes."

So Charles Taylor himself acknowledged that because of these wide-spread reports, as he said no one on this planet did not hear of the atrocities, anyone who was providing support to that RUF/AFRC group would know that they were facilitating crimes against civilians.

Thank you. And the correct citation from the AFRC Appeal Judgement where your Honours required a finding of an awareness of substantial likelihood is paragraph 242 of the AFRC Appeal Judgement.

Your Honour, I'm happy to answer any questions, but just in case you don't have any I just want to say what a privilege it's been to appear in this case and we're available for questions.

JUSTICE FISHER: Thank you. No further questions.

Mr Anyah?

MR ANYAH: Thank you, Madam President. Mr Gosnell will first address issues dealing with aiding and abetting and then I will briefly address issues dealing with uncorroborated hearsay. Thank you.

MR GOSNELL: Madam President, good afternoon again.

I first wish to address some of the remarks that were made this morning, in particular first the suggestion that I said that SAJ Musa had led AFRC forces into Freetown. I made no such submission to your Honours. What I said was, and I quote according to the transcript, "Under SAJ Musa they commenced the attack and pursued the attack independently." That's the submission I made, that submission is correct. I then went on and said that SAJ Musa was assassinated, and it is true I didn't then elaborate that those forces continued on to Freetown under different leadership, but they did. So those forces were not lead into Freetown by a ghost.

The second submission that was made by my learned friend opposite was concerning

Rambo Red Goat, and whether or not there was a finding by the Trial Chamber that indeed the RUF, whether in the form of Rambo Red Goat or anyone else, had supported or committed crimes in Freetown. And I have several submissions on this point.

The first is that in over 500 pages of findings on crime base, including a section that specifically addresses crimes committed in Freetown, there is not a single finding that specifically says that RUF forces committed crimes in Freetown.

Now, to be fair to what the Trial Chamber said, they do frequently say using boilerplate language RUF/AFRC forces. Sometimes they do give more specific indications as to who they believe were the perpetrators. Never is there a finding of perpetration of a crime by RUF forces or specifically the Red Lion Battalion under Rambo Red Goat, and as the Chamber later makes clear the only forces that might have been, the only forces that it found from the RUF that were in Freetown was that group led by Rambo Red Goat.

Now what specifically did the Chamber say about whether or not - and this is my third submission on this particular point - about whether or not Rambo Red Goat's group committed crimes? I quote from paragraph 4393 of the Trial Judgement: "There is no direct evidence showing that the former NPFL fighters from the AFL personally committed crimes or that the crimes committed were committed specifically by members of the Red Lion Battalion which was part of a larger group that committed the crimes."

So there you have a broad finding saying that there was -- confirming that the Chamber had not found that any members of this group had committed crimes.

And finally, your Honours, at paragraphs 5707 and 5708, you'll see the Trial Chamber describing the arrival of a group of -- of the Red Goat group in Freetown and despite saying that they're well-armed, implying that they had a substantial amount of ammunition with them, there's no mention in the Trial Chamber's Judgement saying, "And they gave these weapons to AFRC forces," and that omission we say is

significant. There's no finding saying that they shared those resources.
And the only point that I was attempting to make in all this was to tell you that there is no finding of material support by Charles Taylor to the AFRC forces in Freetown. That doesn't mean that there aren't attempts by the Prosecution to characterise the Trial Chamber's findings as showing that there was some kind of indirect support. But in respect of direct support, we must be clear that there was no direct support by Charles Taylor and none found by the Trial Chamber to those AFRC forces as they moved into Freetown and as they committed crimes there, as found by the Chamber.
And finally, your Honours, know that of course we challenge vigorously the Trial Chamber's finding that Red Goat's forces were there at all, contrary to the adjudicated fact which has been discussed so extensively here before you.
Now, your Honours, you heard my learned friend opposite make reference to Ibrahim Fofana, who was one of the victims of the terrible crimes that occurred in Sierra Leone, and his view that Charles Taylor was, if it hadn't been for Charles Taylor, this wouldn't have happened to him.
Now, I don't know why the Prosecution deems it necessary, much less appropriate, to rely on what is obviously a very emotionally charged belief by a victim, who of course believes that, of course has that sentiment, but that kind of belief is not the legal standard of causation that applies in respect of substantial contribution under the actus reus of aiding and abetting. Indeed, I'd suggest to you it's simply not relevant at all and it shouldn't have been brought before you in the context of these proceedings. But if that's the kind of concept that the Prosecution considers appropriate, then I have to ask what exactly do they consider is the meaning of specific direction? Because the kind of causation that the Prosecution seems to be relying on reminds me of the very famous movie "It's a Wonderful Life," where the main character has the opportunity to see what would happen to the world if he hadn't been born. And what can happen when you don't have that influence can be sometimes quite dramatic, even if you don't even know, even if the influence may be

very minor, even if your act may be extremely minor, the consequences may be dramatic and terrible, and no one is denying that those consequences may be dramatic and terrible, but actus reus is about the connection between action and consequence, not about the dramatic consequence.

Now, you've just heard now during the Prosecution's submissions this afternoon about several more issues and I propose to address you on those specific issues. The Defence did in fact refer to two cases, the van Anraat case --

MS HOLLIS: Excuse me, your Honour, but are they going to be able to respond to our reply? Do we then get to respond to their reply?

JUSTICE FISHER: Please limit your reply to the responses made earlier, or we'll have sur-reply after a sur-sur-reply. They have made their last statement on their point. You are free to make your statement in response to -- in reply to their response this morning, but we have to stop at some point and we do have these issues very thoroughly briefed and you've both done an excellent job in arguing them.

MR GOSNELL: I appreciate that entirely, your Honour. In that event I will not refer specifically to what has been just said. I will rely on your Honours of course to, as you say, look at what has already been briefed.

I will just make one general closing submission in respect of the totality of the Prosecution's remarks in respect of aiding and abetting, and one submission with two parts. And one submission, the first part of that submission is, if you analyse consequences, if you analyse knowledge, knowledge of consequences in the aggregate, then it is virtually impossible not to extend liability to all kinds of activities that are widely regarded as not criminal. Why is it that Wal-Mart is not guilty of aiding and abetting gun violence in the United States even though it is quite clear they are the number one seller of ammunition and guns in the United States? And statistically there's no doubt that guns are being used every day and will continue to be used every day in very serious violence. There can't be any doubt in the minds of anyone working or running Wal-Mart that that ammunition is being used for that purpose.

That doesn't mean that they are subject to criminal suits, to criminal prosecution, and then just leave it up to a fact based inquiry. That's not the case, your Honours. It is -- there is a legal basis. There is a legal understanding that that does not come close to the causation that is required under the actus reus of aiding and abetting. That's my first point. You cannot view these issues in the aggregate, because for the very same reason you would have the United States and other countries who do supply large quantities of matériel support to for example Yemen, and we've briefed your Honours on this issue. In the very year that they spent more than a hundred million dollars supplying Yemeni security forces the Department of State indicated that crimes were being committed either directly or with the support of those security forces. No one I hope, and I hope the Prosecution wouldn't say, "Well whether the United States is guilty of aiding and abetting crimes in Yemen is merely a fact based inquiry," that we can have States with universal jurisdiction statutes bringing in Barack Obama to Court and saying, "Well, it's okay, the judges will just decide based on a fact based inquiry whether or not indeed you have substantial contribution." I suggest that there is a legal standard at work here that would preclude such a criminal prosecution.

And, your Honours, my final point. What is the point of all of the very careful discussion by this very Appeals Chamber and other Appeals Chambers around the world about the limits of JCE3 liability? JCE3 liability, which in terms of foreseeability is also dolus eventualis, but the predicate of getting into JCE3 liability is criminal intent. What the Prosecution is in effect asking you to do is to create -- to ratify a form of liability that accepts dolus eventualis alone without that predicate criminal intent as a form of liability, sufficient in itself, and the Prosecution during its submission said, "Well, don't worry about that," in effect, they didn't say this in terms but they implicitly told you "Well, it's okay, there's a major difference between significant contribution in JCE and substantial contribution in aiding and abetting so don't worry about overextending aiding and abetting."

Your Honours, there isn't a single case that I know of that has ever turned on the distinction between "significant" and "substantial," and indeed when you read the case law about JCE you know -- and I'm sure you have, you know that indeed the standards are essentially indistinguishable. The quantum, the extent of influence, is essentially the same even though the case law does use those two different words.

So in essence what you have is the Prosecution coming to you, and your Honours -- unlike the Trial Chamber, your Honours have the broader view in mind. Your Honours know the broader scope, the broader structure of liability that is in place. Your Honours understand the need for a coherent and logical whole. You understand that it doesn't make sense that such a contested form of liability as JCE3 could simply be swept aside and subsumed in a new form of liability that simply says, "It's okay, you don't even need that threshold of criminal intent."

And, your Honours, I would suggest that that distinction, that comparison between this novel and grossly overextended form of aiding liability in comparison with JCE3 shows you that there's something quite wrong and quite dangerous going on in the Trial Judgement.

And with that, your Honours, I would turn the floor over to Mr Anyah.

MR ANYAH: Madam President, I will speak to two issues relative to uncorroborated hearsay very briefly.

This morning learned counsel opposite said in respect of Rule 92 quater, which is identical before the Special Court as well as the ICTY, that the rule explicitly does not require corroboration. If you look at the language of the rule, it doesn't.

That's obviously the case, it's not in the rule, but if you analyse what the Prosecution is suggesting, that because corroboration is not explicitly written in the rule there is some significance to that, you have to ask yourself which judge in a common or civil law system would utilise the statement of for example a deceased witness, no longer available, not subject to cross-examination, in a decisive manner to sustain a conviction? Where could that possibly happen? And that is why you have to shift

from the language of the rule to the jurisprudence, and in case after case after case in relation to Rule 92 quater the judges look at whether or not there is corroboration. Now, this issue arose this morning in court. We did not have the time yesterday to provide references by way of the set of documents we provided your Honours, so I will read a few decisions from the ICTY into the record, at least the citations, and indicate the jurisprudential principle that they represent.

The first case, Prosecutor versus Milutinovic, this is a decision in respect of Rule 92 quater dated 16 February 2012, decision on Prosecution motion for admission of evidence pursuant to Rule 92 quater.

That case stands for the proposition that a statement or transcript admitted without cross-examination cannot support a conviction by itself, unless the statement is otherwise corroborated. This is the point we've been trying to make.

Another question -- another case that identifies corroboration as a factor to look at, and there are several of these, Prosecutor versus Stanisic and Simatovic. This is a decision dated 16 December 2010, decision on Prosecutor's motion for admission of evidence of Witness Milan Babic pursuant to Rule 92 quater.

Another case to place on the record would be the Seselj case, and this is a decision from 13 May 2009 and this was a circumstance where the testimony of the witness was admitted pursuant to Rule 92 quater and this testimony went to the acts and conducts of the accused, but there was corroboration by other evidence in the case. However, the Trial Chamber noted that it could not base a conviction solely or to a decisive extent on evidence that has not been subject to examination by both parties. So although the notion of corroboration is not written explicitly in the rule, de facto in practice invariably it is always considered by Chambers when faced with proposed evidence under Rule 92 quater.

The second issue I will address deals with the remark this morning by learned counsel opposite that our submissions yesterday to the effect that there is a wide-spread practice of disallowing the use of uncorroborated hearsay as the sole

basis for specific incriminating findings of fact is inaccurate because the cases we rely upon do not sustain that assertion. That was said this morning by learned counsel opposite.

Well, the question presented to us that we addressed is not necessarily whether the cases we relied upon sustained that assertion. The question presented was whether the sources of law under Rule 72 bis (ii) and (iii) stand for such a proposition, and that is the question to which we responded.

The issue now is not whether or not the cases we cited in our briefs, which at the time we filed them did not reflect the question presented, although we did say in our brief in paragraph 26 that it is impermissible to base a conviction solely on a decisive manner on uncorroborated hearsay and we stand by that.

But more significant is the -- are the submissions I made yesterday, and your Honours will recall that when we undertook the review of the decisions of the European Court of Human Rights, when we undertook the review of the statutory provisions and other decisional law safeguards in the various national legal systems including Sierra Leone, what we submitted was that at the end of the day, regardless of how they arrived at the result, regardless of what provision obtained in their respective jurisdictions, that there was a wide-spread and consistent practice, easily discernible, that uncorroborated hearsay could not serve as the sole or decisive basis for a conviction. We stand by that.

So whether you say the European Court of Human Rights has back-pedalled a bit on the rule it pronounced in Al-Khawaja or not, if an English judge applies the 2003 Criminal Justice Act and its provisions to the same facts and the European Court of Human Rights judge applies the European Convention to the same facts, we are saying the result element invariably is usually consistent.

So those are our submissions, and on behalf of my colleagues at the Defence Bar we thank you for your attention.

JUSTICE FISHER: Thank you very much. Let me see if there are any questions.

I have just a couple of questions, if I may, and these are for the Defence.
During the course of the arguments -- and, Mr Anyah, I think this is the subject you are most familiar with. During the course of the arguments we've heard a lot about corroboration, and I believe that the Prosecution did offer us a definition of what it believed corroboration to mean.
I wonder, Mr Anyah, does the Defence have a definition of what is meant by corroboration?
MR ANYAH: The short answer is, yes. It's in our brief under ground of appeal number 1 and I will give you the paragraph, if I have a second?
JUSTICE FISHER: Thank you.
MR ANYAH: It is in paragraph 30 of our brief, and we have relied on the Nahimana Appeals Chamber decision and that decision defines the term "corroboration" as follows, "Two testimonies corroborate one another when one prima facie credible testimony is compatible with another prima facie credible testimony regarding the same fact, or a sequence of linked facts. It is not necessary that both testimonies be identical in all aspects, or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. It follows that corroboration may exist, even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony."
JUSTICE FISHER: Okay. As I understand that passage, it applies corroboration between two testimonial pieces of evidence. Is that the same definition that you would apply when the corroboration is in the form of non-testimonial evidence?
MR ANYAH: Well, if I may just point out one important word in that paragraph, it is that each independent set of evidence must be credible, "... one prima facie credible testimony ..." If independently they are credible then we would say, yes, that would apply also in the context of non-testimonial evidence.

JUSTICE FISHER: Okay, thank you.
My second question is for Ms Gibson, and that is I'm afraid after the -- I thought I understood what the point that you felt you were prejudiced in not having been able to address because of the rejection of the AFRC adjudicated fact was, but at this stage, after hearing you and hearing the afternoon submissions, I am not clear what is the point in the AFRC adjudicated fact that you feel was contradicted by the Trial Chamber for which you did not have an opportunity to respond?
MS GIBSON: Thank you, Madam President.
(A mobile phone began to ring)
JUSTICE FISHER: Wait just a moment.
Go ahead.
MS GIBSON: Thank you very much, Madam President, and I'm grateful for this opportunity to clarify this most important point.
The position of the Defence, which is set out we hope succinctly and completely in Ground 6, is that when the Chamber took judicial notice in 2009 of adjudicated fact 15, the Defence understood that there was now a presumption of truth that attached to the idea as found in the AFRC case that the RUF reinforcements, who were at Waterloo on the edge of Freetown, did not manage to provide support to the troops who were in Freetown. So the case proceeded, and the Defence streamlined its case accordingly and was no longer required to bring evidence on this particular point whether or not the RUF actually managed to get into Freetown.
Now, what happened in the Judgement was that in paragraph 3378, the Trial Chamber recognised that, "Yes, we have taken judicial notice of this adjudicated fact. We understand the trial's progressed in the manner that adjudicated fact govern this particular point, namely the connection of the two groups, but we think that the Prosecution in its final trial brief has challenged that presumption. They've submitted in their final trial brief, at paragraph 540, that in fact there was this connection between the two groups. So we think now, because of that paragraph in

the final trial brief, we can consider all the evidence that's been called in relation to that fact."

Now, the prejudice --

JUSTICE FISHER: So I understand completely. The fact that you are disputing, or wished -- would have disputed had you had the opportunity, is the fact that there were any reinforcements from RUF that entered Freetown, or that as I thought I understood you this morning there were RUF forces involved in the retreat from Freetown? Which is it?

MS GIBSON: Adjudicated fact 15 concerns a particular group of reinforcements who arrived in Waterloo at the end of the Freetown invasion, and that is the group that we're talking about, that's the group that the adjudicated fact addressed and that's the group that the Trial Chamber ultimately found, after reversing the adjudicated fact, connected this group led by Rambo Red Goat.

Unfortunately, the evidence that supports the Trial Chamber's finding - and we've pointed this out in our brief - is quite contradictory as to what this group entailed. One witness said there were 60 fighters together with Rambo Red Goat, another witness puts the number at about 15, but we do know that it was a group of RUF reinforcements that were led by Rambo Red Goat at the end of the Freetown invasion who the Trial Chamber ultimately found connected with the troops in Freetown.

JUSTICE FISHER: Okay.

MS GIBSON: And in fact --

JUSTICE FISHER: Thank you. You've answered my question.

MS GIBSON: Okay, thank you.

(Appeals Chamber confers)

JUSTICE FISHER: Okay, I want to thank counsel on both sides. Your arguments have been excellent. They've been very helpful to us. You have addressed the questions that had raised concern with us after reading the briefs. You have elaborated on those points on which we had questions, and I think we have a pretty

clear understanding of where you disagree and even a few points about which you do agree.

Before we conclude, I would just like to address Mr Taylor and ask Mr Taylor if he has any questions at all about the proceedings so far that he -- or if he has any comments he would like to make? Mr Taylor?

MR TAYLOR: (Microphone not activated).

JUSTICE FISHER: I think you need your microphone, sir.

MR TAYLOR: I do have no questions.

JUSTICE FISHER: And is there anything - any comments - you would like to make to the Panel before we adjourn?

MR TAYLOR: When you say "to the Panel," you mean to the Panel of Judges, or to the entire Court?

JUSTICE FISHER: Yes, the Panel of Judges.

MR TAYLOR: Well, I'd just like to -- yes, your Honour. I'd just like to state that I'm very appreciative of the handling of the proceedings so far and I have -- I believe that the right thing will be done by the grace of Almighty God. Thank you.

JUSTICE FISHER: Thank you, Mr Taylor.

Is there anything further before we adjourn? Very well, court is adjourned.

THE COURT OFFICER: All rise.

(The hearing ends at 2.29 p.m.)