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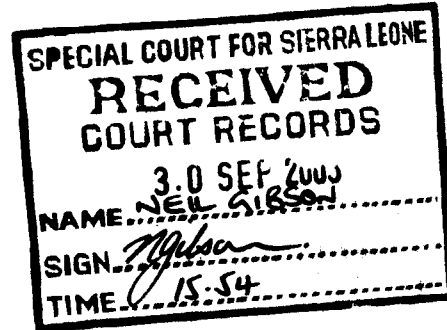
**SPECIAL COURT FOR SIERRA LEONE**  
OFFICE OF THE PROSECUTOR  
FREETOWN – SIERRA LEONE

**IN THE APPEALS CHAMBER**

Before: Judge Geoffrey Robertson, QC, President  
Judge Emmanuel O. Ayoola  
Judge Gelaga King  
Judge Renate Winter

Registrar: Mr. Robin Vincent

Date filed: 30 September 2003



**THE PROSECUTOR**

**Against**

**CHARLES GHANKAY TAYLOR also known as  
CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR**

CASE NO. SCSL – 2003 – 01 – PT

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**PROSECUTION AUTHORITIES FILED PURSUANT TO THE  
DIRECTION ON FILING AUTHORITIES OF 26 SEPTEMBER 2003**

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Office of the Prosecutor:

Mr Desmond de Silva, QC, Deputy Prosecutor  
Mr Walter Marcus-Jones, Senior Appellate Counsel  
Mr Christopher Staker, Senior Appellate Counsel  
Mr Abdul Tejan-Cole, Appellate Counsel

Defence Counsel:

Mr Terence Terry

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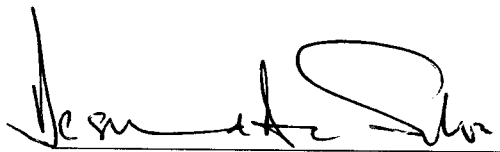
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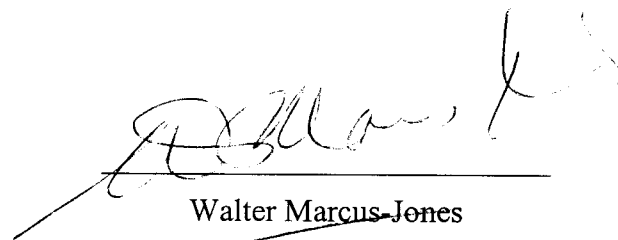
The Prosecution files herewith the authorities required to be filed by the “Direction on Filing Authorities”,<sup>1</sup> issued by the Pre-Hearing Judge on 26 September 2003.

Freetown, 30 September 2003.

For the Prosecution,



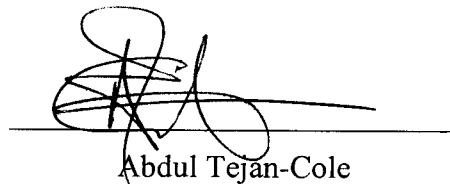
Desmond de Silva, QC



Walter Marcus-Jones



Christopher Staker



Abdul Tejan-Cole

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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**Before:**

Judge Laïty Kama, Presiding Judge  
Judge Lennart Aspegren  
Judge Navanethem Pillay

**Decision of:** 4 September 1998

**Registry:** Mr. Agwu Okali

**THE PROSECUTOR**

**VERSUS**

**JEAN KAMBANDA**

*Case no.: ICTR 97-23-S*

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**JUDGEMENT and SENTENCE**

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**Office of the Prosecutor:**

Mr. Bernard Muna  
Mr. Mohamed Othman  
Mr. James Stewart  
Mr. Udo Gehring

**Counsel for the Defence:**

Mr. Oliver Michael Inglis

**I. The Proceedings**

**A. Background**

1. Jean Kambanda was arrested by the Kenyan authorities, on the basis of a formal request submitted to them by the Prosecutor on 9 July 1997, in accordance with the provisions of Rule 40 of the Rules of Procedure and Evidence (the "Rules"). On 16 July 1997, Judge Laïty Kama, ruling on the Prosecutor's motion of 9 July 1997, ordered the transfer and provisional detention of the suspect Jean Kambanda at the Detention Facility of the Tribunal for a period of thirty days, pursuant to Rule 40 *bis* of the Rules. The provisional detention of Jean Kambanda was extended twice for thirty days, the first time under the provisions of Rule 40 *bis* (F) and the second time under the provisions of Rule 40 *bis* (G).

2. On 16 October 1997, an indictment against the suspect Jean Kambanda, prepared by the Office of the Prosecutor, was submitted to Judge Yakov Ostrovsky, who confirmed it, issued a warrant of arrest against the accused and ordered his continued detention.

3. On 1 May 1998, during his initial appearance before this Trial Chamber, the accused pleaded guilty to the six counts contained in the indictment, namely genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, crimes against humanity (murder), punishable under Article 3 (a) of the Statute and crimes against humanity (extermination), punishable under Article 3 (b) of the Statute.

4. After verifying the validity of his guilty plea, particularly in light of an agreement concluded between the Prosecutor, on the one hand, and the accused and his lawyer, on the other, an agreement which was signed by all the parties, the Chamber entered a plea of guilty against the accused on all the counts in the indictment. During a status conference held immediately after the initial appearance, the date for the pre-sentencing hearing, provided for under Rule 100 of the Rules, was set for 31 August 1998. Later, at the request of the Prosecutor, this date was postponed to 3 September 1998. During that same status conference, the parties agreed to submit their respective briefs in advance of the above-mentioned pre-sentencing hearing. The submission date was later set for 15 August 1998. The Defence and the Prosecutor, in fact, filed their briefs before this date. The pre-sentencing hearing was held on 3 September 1998.

#### **B. The guilty plea**

5. As indicated *supra*, Jean Kambanda pleaded guilty, pursuant to Rule 62 of the Rules, to all the six counts set forth in the indictment against him. As stated earlier, the accused confirmed that he had concluded an agreement with the Prosecutor, an agreement signed by his counsel and himself and placed under seal, in which he admitted having committed all the acts charged by the Prosecution.

6. The Chamber, nevertheless, sought to verify the validity of the guilty plea. To this end, the Chamber asked the accused:

(i) if his guilty plea was entered voluntarily, in other words, if he did so freely and knowingly, without pressure, threats, or promises;

(ii) if he clearly understood the charges against him as well as the consequences of his guilty plea; and

(iii) if his guilty plea was unequivocal, in other words, if he was aware that the said plea could not be refuted by any line of defence.

7. The accused replied in the affirmative to all these questions. On the strength of these answers, the Chamber delivered its decision from the bench as follows:

"Mr. Jean Kambanda, having deliberated and after verifying that your plea of guilty is voluntary, unequivocal and that you clearly understand its terms and consequences,

Considering the factual and legal issues contained in the agreement concluded between you and the Office of the Prosecutor and that you have acknowledged that both you and your counsel have signed, the Tribunal finds you guilty on the six counts brought against you,

Orders your continued detention; and Rules that a status conference will be held immediately after this hearing, with the Registrar, to set a date for the pre-sentencing hearing [...]".

## II. Law and applicable principles

8. The Chamber will now summarize the legal texts relating to sentences and penalties and their enforcement, before going on to specify the applicable scale of sentences, on the one hand, and the general principles on the determination of penalties, on the other.

### A. Applicable texts

9. The Chamber recalls below the statutory and regulatory provisions on sentencing, applicable to the accused.

#### Article 22 of the Statute: Judgment

" The Trial Chamber shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law."

#### Rule 100 of the Rules: Pre-sentencing procedure

"If the accused pleads guilty or if a Trial Chamber finds the accused guilty of a crime, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence."

#### Article 23 of the Statute: Penalties

" 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chamber shall have recourse to the general practice regarding prison sentences in the courts of Rwanda."

2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chamber may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners."

#### Rule 101 of the Rules: Penalties

"(A) A person convicted by the Tribunal may be sentenced to imprisonment for a term up to and including the remainder of his life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 23 (2) of the Statute, as well as such factors as

(i) any aggravating circumstances;

(ii) any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction;

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(iii) the general practice regarding prison sentences in the courts of Rwanda;

(v) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) The sentence shall be pronounced in public and in the presence of the convicted person, subject to Rule 102 (B).

(E) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal."

#### Article 26 of the Statute: Enforcement of sentences

"Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted person. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Tribunal."

#### Rule 102 of the Rules: Status of the convicted person

"(A) The sentence shall begin to run from the day it is pronounced under Rule 101(D). However, as soon as notice of appeal is given, the enforcement of the judgment shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided for in Rule 64.

(B) If, by a previous decision of the Trial Chamber, the convicted person has been provisionally released, or is for any reason at liberty, and he is not present when the judgment is pronounced, the Trial Chamber shall issue a warrant for his arrest. On arrest, he shall be notified of the conviction and sentence, and the procedure provided in Rule 103 shall be followed."

#### Rule 103 of the Rules: Place of imprisonment

"(A) Imprisonment shall be served in Rwanda or any State designated by the Tribunal from a list of States which have indicated their willingness to accept convicted persons for the serving of sentences. Prior to a decision on the place of imprisonment, the Chamber shall notify the Government of Rwanda.

(B) Transfer of the convicted person to that State shall be effected as soon as possible after the time-limit for appeal has elapsed."

#### Article 27 of the Statute: Pardon or commutation of sentences

"If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in

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consultation with the judges, so decides on the basis of the interests of justice and the general principles of law."

Rule 104 of the Rules: Supervision of imprisonment

"All sentences of imprisonment shall be served under the supervision of the Tribunal or a body designated by it."

**B. Scale of sentences applicable to the accused found guilty of one of the crimes listed in Articles 2, 3 or 4 of the Statute of the Tribunal.**

10. As noted from a reading of all the above provisions on penalties, the only penalties the Tribunal can impose on an accused who pleads guilty or is convicted as such are prison terms up to and including life imprisonment, pursuant in particular to Rule 101 (A) of the Rules, whose provisions apply to all crimes which fall within the jurisdiction of the Tribunal, namely genocide, (Article 2 of the Statute), crimes against humanity (Article 3) and violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto (Article 4). The Statute of the Tribunal excludes other forms of punishment such as the death sentence, penal servitude or a fine.

11. Neither Article 23 of the Statute nor Rule 101 of the Rules determine any specific penalty for each of the crimes falling under the jurisdiction of the Tribunal. The determination of sentences is left to the discretion of the Chamber, which should take into account, apart from the general practice regarding prison sentences in the courts of Rwanda, a number of other factors including the gravity of the crime, the personal circumstances of the convicted person, the existence of any aggravating or mitigating circumstances, including the substantial co-operation by the convicted person before or after conviction.

12. Whereas in most national systems the scale of penalties is determined in accordance with the gravity of the offence, the Chamber notes that, as indicated *supra*, the Statute does not rank the various crimes falling under the jurisdiction of the Tribunal and, thereby, the sentence to be handed down. In theory, the sentences are the same for each of the three crimes, namely a maximum term of life imprisonment.

13. It should be noted, however, that in imposing the sentence, the Trial Chamber should take into account, in accordance with Article 23 (2) of the Statute, such factors as the gravity of the offence.

14. The Chamber has no doubt that despite the gravity of the violations of Article 3 common to the Geneva Conventions and of the Additional Protocol II thereto, they are considered as lesser crimes than genocide or crimes against humanity. On the other hand, it seems more difficult for the Chamber to rank genocide and crimes against humanity in terms of their respective gravity. The Chamber holds that crimes against humanity, already punished by the Nuremberg and Tokyo Tribunals, and genocide, a concept defined later, are crimes which particularly shock the collective conscience. The Chamber notes in this regard that the crimes prosecuted by the Nuremberg Tribunal, namely the holocaust of the Jews or the "Final Solution", were very much constitutive of genocide, but they could not be defined as such because the crime of genocide was not defined until later.

15. The indictment setting forth the charges against the accused in the Nuremberg trial, stated, in regard to crimes against humanity that these methods and crimes constituted violations of international law, domestic law as deriving from the criminal law of all civilised nations. According to the International Criminal Tribunal for the former Yugoslavia ("ICTY"):

"Crimes against humanity are serious acts of violence which harm human beings by



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striking what is most essential to them: their lives, liberty, physical welfare, health, and or dignity. They are inhumane acts that by their extent and gravity go beyond the limits tolerable to the international community, which must perforce demand their punishment. But crimes against humanity also transcend the individual because when the individual is assaulted, humanity comes under attack and is negated. It is therefore the concept of humanity as victim which essentially characterises crimes against humanity"

16. Regarding the crime of genocide, in particular, the preamble to the Genocide Convention recognizes that at all periods of history, genocide has inflicted great losses on humanity and reiterates the need for international cooperation to liberate humanity from this scourge. The crime of genocide is unique because of its element of *dolus specialis* (special intent) which requires that the crime be committed with the intent >to destroy in whole or in part, a national, ethnic, racial or religious group as such=, as stipulated in Article 2 of the Statute; hence the Chamber is of the opinion that genocide constitutes the crime of crimes, which must be taken into account when deciding the sentence.

17. There is no argument that, precisely on account of their extreme gravity, crimes against humanity and genocide must be punished appropriately. Article 27 of the Charter of the Nuremberg Tribunal empowered that Tribunal, pursuant to Article 6 (c) of the said Charter, to sentence any accused found guilty of crimes against humanity to death or such other punishment as shall be determined by it to be just.

18. Rwanda, like all the States which have incorporated crimes against humanity or genocide in their domestic legislation, has envisaged the most severe penalties in the criminal legislation for these crimes. To this end, the Rwandan Organic Law on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity, committed since 1 October 1990, adopted in 1996, groups accused persons into four categories as follows:

"Category 1

- a) persons whose criminal acts or those whose acts place them among planners, organizers, supervisors and leaders of the crime of genocide or of a crime against humanity;
- b) Persons who acted in positions of authority at the national, prefectural, communal, sector or cell, or in a political party, the army, religious organizations, or militia and who perpetrated or fostered such crimes;
- c) Notorious murderers who by virtue of the zeal or excessive malice with which they committed atrocities, distinguished themselves in their areas of residence or where they passed;
- d) Persons who committed acts of sexual violence.

Category 2

Persons whose criminal acts or whose acts of criminal participation place them among perpetrators, conspirators or accomplices of intentional homicide or of serious assault against the person causing death.

Category 3

Persons whose criminal acts or whose acts of criminal participation make them guilty of other serious assaults against the person.

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#### Category 4

Persons who committed offences against property."

19. According to the list drawn up by the Attorney General of the Supreme Court of Rwanda, pursuant to the afore-mentioned Organic Law, and attached to the Prosecutor's brief, Jean Kambanda figures in Category 1. Article 14 of the Organic Law stipulates that :

" penalties imposed for the offences referred to in Article 1 shall be those provided for in the Penal Code, except that :

a) persons in Category 1 are liable mandatorily to the death penalty;

b) for persons in Category 2, the death penalty is replaced by life imprisonment (....)"

20. For persons in Category 3, the term of imprisonment shall be of shorter duration.

21. As indicated *supra*, in determining the sentence, the Chamber must, among other things, have recourse to the general practice regarding prison sentences in the courts of Rwanda (Article 23 of the Statute and Rule 101 of the Rules).

22. The Chamber notes that it is logical that in the determination of the sentence, it has recourse only to prison sentences applicable in Rwanda, to the exclusion of other sentences applicable in Rwanda, including the death sentence, since the Statute and the Rules provide that the Tribunal cannot impose this one type of sentence.

23. That said , the Chamber raises the question as to whether the scale of sentences applicable in Rwanda is mandatory or whether it is to be used only as a reference. The Chamber is of the opinion that such reference is but one of the factors that it has to take into account in determining the sentences. It also finds, as did Trial Chamber I of the ICTY in the Erdemovic case, that "the reference to this practice can be used for guidance, but is not binding". According to that Chamber, this opinion is supported by the interpretation of the United Nations Secretary-General, who in his report on the establishment of the ICTY stated that: "in determining the term of imprisonment, the Trial Chamber should have recourse to the general practice of prison sentences applicable in the courts of the former Yugoslavia."

24. Regarding the penalties, the Chamber notes that since the trials related to the events in 1994 began in this country, the death penalty and prison terms of up to life imprisonment have been passed on several occasions. However, the Chamber does not have information on the contents of these decisions, particularly their underlying reasons.

25. Also, while referring as much as practicable to the general practice regarding prison sentences in the courts of Rwanda, the Chamber will prefer, here too, to lean more on its unfettered discretion each time that it has to pass sentence on persons found guilty of crimes falling within its jurisdiction, taking into account the circumstances of the case and the standing of the accused persons.

#### **C. General principles regarding the determination of sentences**

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26. In determining the sentence, the Chamber has to always have in mind that this Tribunal was established by the Security Council pursuant to Chapter VII of the Charter of the United Nations within the context of measures the Council was empowered to take under Article 39 of the said Charter to ensure that violations of international humanitarian law in Rwanda in 1994 were halted and effectively redressed. As required by the Charter in previous cases, the Council noted that the situation in Rwanda constituted a threat to international peace and security. And resolution 955 of 8 November 1994, which was passed by the Council in this connection, clearly indicates that the aim for the establishment of the Tribunal was to prosecute and punish the perpetrators of the atrocities in Rwanda in such a way as to put an end to impunity and thereby to promote national reconciliation and the restoration of peace.

27. It will be noted that the preamble of the Rwandan Organic Law, referred to above, states that :

"Considering that it is vital, in order to achieve national reconciliation, to forever eradicate the culture of impunity;

Considering that the exceptional situation facing the country requires the adoption of adequate measures to meet the need of the Rwandan people for justice."

28. That said, it is clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed, on the one hand, at retribution of the said accused, who must see their crimes punished, and over and above that, on other hand, at deterrence, namely dissuading for good those who will attempt in future to perpetrate such atrocities by showing them that the international community was not ready to tolerate the serious violations of international humanitarian law and human rights.

29. The Chamber recalls, however, that in the determination of sentences, it is required by Article 23 (2) of the Statute and Rule 101 (B) of the Rules to take into account a number of factors including the gravity of the offence, the individual circumstances of the accused, the existence of any aggravating or mitigating circumstances, including the substantial co-operation by the accused with the Prosecutor before or after his conviction. It is a matter, as it were, of individualising the penalty, for it is true that "among the joint perpetrators of an offence or among the persons guilty of the same type of offence, there is only one common element: the target offence which they committed with its inherent gravity. Apart from this common trait, there are, of necessity, fundamental differences in their respective personalities and responsibilities : their age, their background, their education, their intelligence, their mental structure....It is not true that they are *a priori* subject to the same intensity of punishment "[unofficial translation]

30. Clearly, however, as far as the individualisation of penalties is concerned, the judges of the Chamber cannot limit themselves to the factors mentioned in the Statute and the Rules. Here again, their unfettered discretion to evaluate the facts and attendant circumstances should enable them to take into account any other factor that they deem pertinent.

31. Similarly, the factors at issue in the Statute and in the Rules cannot be interpreted as having to be mandatorily cumulative in the determination of the sentence.

32. Recalling these factors, the Chamber would like to emphasise three of them, in particular. These are the aggravating circumstances, individual circumstances of Jean Kambanda (Article 23 (2) of the Statute) and the mitigating circumstances.

33. Regarding the aggravating circumstances, it will be noted that the gravity of crimes such as genocide and crimes against humanity which are particularly revolting to the collective conscience alone, is

enough to merit lengthy elaboration. The Chamber will, however, come back to it when weighing the aggravating factors against the mitigating factor or factors in favour of the accused for the determination of the sentence.

34. As far as the "individual circumstances of Jean Kambanda" are concerned, the individualisation of the sentence, as the expression itself seems to suggest, is not possible unless facts about his "personality" are known, including his background, his behaviour before, during and after the offence, his motives for the offence and demonstration of remorse thereafter.

35. With regard to the mitigating circumstances, Article 6 (4) of the Statute states that the fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires. The problem should not arise in the instant case, since the accused was the Prime Minister. For its part, Rule 101 (B) (ii) of the Rules, as mentioned earlier stipulates as mitigating circumstances "the substantial co-operation by the convicted person with Prosecutor before or after the conviction." In this regard, when determining the sentence for Jean Kambanda, the Chamber will have to assess the extent of the co-operation by the accused referred to by the Prosecutor in the documents under seal entitled "Agreement on a guilty plea.", signed by herself, the accused and his counsel.

36. However, the wording of the above-mentioned Rule 101 ( ...any mitigating circumstances including the substantial ..... ) shows, in the opinion of the Chamber , that substantial co-operation by the accused with the Prosecutor could only be one mitigating circumstance, among others, when the accused pleads guilty plea or shows sincere repentance.

37. Having said that, the Chamber should, nevertheless, stress that the principle must always remain that the reduction of the penalty stemming from the application of mitigating circumstances must not in any way diminish the gravity of the offence. The aforementioned Rwandan Organic Law No. 8/96 of 30/8/96 goes further because under the Law, persons falling under Category 1 cannot benefit from a reduction of sentences even after a guilty plea.

### III. Case on Merits

38. Having reviewed the principles set out above, the Trial Chamber proceeds to consider all relevant information submitted by both parties in order to determine an appropriate sentence in terms of Rule 100 of the Rules.

#### A. Facts of the Case

39. Together with his >guilty= plea, Jean Kambanda submitted to the Chamber a document entitled "Plea Agreement between Jean Kambanda and the OTP", signed by Jean Kambanda and his defence counsel, Oliver Michael Inglis, on 28 April 1998, in which Jean Kambanda makes full admissions of all the relevant facts alleged in the indictment. In particular:-

(i) Jean Kambanda admits that there was in Rwanda in 1994 a widespread and systematic attack against the civilian population of Tutsi, the purpose of which was to exterminate them. Mass killings of hundreds of thousands of Tutsi occurred in Rwanda, including women and children, old and young who were pursued and killed at places where they had sought refuge i.e. prefectures, commune offices, schools, churches and stadiums.

(ii) Jean Kambanda acknowledges that as Prime Minister of the Interim Government of

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Rwanda from 8 April 1994 to 17 July 1994, he was head of the 20 member Council of Ministers and exercised *de jure* authority and control over the members of his government. The government determined and controlled national policy and had the administration and armed forces at its disposal. As Prime Minister, he also exercised *de jure* and *de facto* authority over senior civil servants and senior officers in the military.

(iii) Jean Kambanda acknowledges that he participated in meetings of the Council of Ministers, cabinet meetings and meetings of *prefets* where the course of massacres were actively followed, but no action was taken to stop them. He was involved in the decision of the government for visits by designated ministers to prefectures as part of the government's security efforts and in order to call on the civilian population to be vigilant in detecting the enemy and its accomplices. Jean Kambanda also acknowledges participation in the dismissal of the *prefet* of Butare because the latter had opposed the massacres and the appointment of a new *prefet* to ensure the spread of massacre of Tutsi in Butare.

(iv) Jean Kambanda acknowledges his participation in a high level security meeting at Gitarama in April 1994 between the President, T. Sindikubwabo, himself and the Chief of Staff of the Rwandan Armed Forces (FAR) and others, which discussed FAR's support in the fight against the Rwandan Patriotic Front (RPF) and its "accomplices", understood to be the Tutsi and Moderate Hutu.

(v) Jean Kambanda acknowledges that he issued the Directive on Civil Defence addressed to the *prefets* on 25 May 1994 (Directive No. 024-0273, disseminated on 8 June 1994). Jean Kambanda further admits that this directive encouraged and reinforced the *Interahamwe* who were committing mass killings of the Tutsi civilian population in the prefectures. Jean Kambanda further acknowledges that by this directive the Government assumed the responsibility for the actions of the *Interahamwe*.

(vi) Jean Kambanda acknowledges that before 6 April 1994, political parties in concert with the Rwanda Armed Forces organized and began the military training of the youth wings of the MRND and CDR political parties (*Interahamwe* and *Impuzamugambi* respectively) with the intent to use them in the massacres that ensued. Furthermore, Jean Kambanda acknowledges that the Government headed by him distributed arms and ammunition to these groups. Additionally, Jean Kambanda confirms that roadblocks manned by mixed patrols of the Rwandan Armed Forces and the *Interahamwe* were set up in Kigali and elsewhere as soon as the death of President J.B. Habyarimana was announced on the Radio. Furthermore Jean Kambanda acknowledges the use of the media as part of the plan to mobilize and incite the population to commit massacres of the civilian Tutsi population. That apart, Jean Kambanda acknowledges the existence of groups within military, militia, and political structures which had planned the elimination of the Tutsi and Hutu political opponents.

(vii) Jean Kambanda acknowledges that, on or about 21 June 1994, in his capacity as Prime Minister, he gave clear support to Radio Television Libre des Mille Collines (RTLM), with the knowledge that it was a radio station whose broadcasts incited killing, the commission of serious bodily or mental harm to, and persecution of Tutsi and moderate Hutu. On this occasion, speaking on this radio station, Jean Kambanda, as Prime Minister, encouraged the RTLM to continue to incite the massacres of the Tutsi civilian population, specifically stating that this radio station was "an indispensable weapon in the fight against the enemy".

(viii) Jean Kambanda acknowledges that following numerous meetings of the Council of

Ministers between 8 April 1994 and 17 July 1994, he as Prime Minister, instigated, aided and abetted the *Prefets, Bourgmestres*, and members of the population to commit massacres and killings of civilians, in particular Tutsi and moderate Hutu. Furthermore, between 24 April 1994 and 17 July 1994, Jean Kambanda and Ministers of his Government visited several prefectures, such as Butare, Gitarama (Nyabikenke), Gikongoro, Gisenyi and Kibuye to incite and encourage the population to commit these massacres including by congratulating the people who had committed these killings.

(ix) Jean Kambanda acknowledges that on 3 May 1994, he was personally asked to take steps to protect children who had survived the massacre at a hospital and he did not respond. On the same day, after the meeting, the children were killed. He acknowledges that he failed in his duty to ensure the safety of the children and the population of Rwanda.

(x) Jean Kambanda admits that in his particular role of making public engagements in the name of the government, he addressed public meetings, and the media, at various places in Rwanda directly and publicly inciting the population to commit acts of violence against Tutsi and moderate Hutu. He acknowledges uttering the incendiary phrase which was subsequently repeatedly broadcast, "you refuse to give your blood to your country and the dogs drink it for nothing." (Wima igihugu amaraso imbwa zikayanywera ubusa)

(xi) Jean Kambanda acknowledges that he ordered the setting up of roadblocks with the knowledge that these roadblocks were used to identify Tutsi for elimination, and that as Prime Minister he participated in the distribution of arms and ammunition to members of political parties, militias and the population knowing that these weapons would be used in the perpetration of massacres of civilian Tutsi.

(xii) Jean Kambanda acknowledges that he knew or should have known that persons for whom he was responsible were committing crimes of massacre upon Tutsi and that he failed to prevent them or punish the perpetrators. Jean Kambanda admits that he was an eye witness to the massacres of Tutsi and also had knowledge of them from regular reports of *prefets*, and cabinet discussions.

## Judgement

40. In light of the admissions made by Jean Kambanda in amplification of his plea of guilty, the Trial Chamber, on 1st May 1998, accepted his plea and found him guilty on the following counts:

(1) By his acts or omissions described in paragraphs 3.12 to 3.15, and 3.17 to 3.19 of the indictment, Jean Kambanda is responsible for the killing of and the causing of serious bodily or mental harm to members of the Tutsi population with intent to destroy, in whole or in part, an ethnic or racial group, as such, and has thereby committed **GENOCIDE**, stipulated in Article 2(3)(a) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

(2) By his acts or omissions described in paragraphs 3.8, 3.9, 3.13 to 3.15 and 3.19 of the indictment, Jean Kambanda did conspire with others, including Ministers of his Government, such as Pauline Nyiramasuhuko, Andre Ntagerura, Eliezer Niyitegeka and Edouard Karemera, to kill and to cause serious bodily or mental harm to members of the Tutsi population, with intent to destroy in whole or in part, an ethnic or racial group as such,

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and has thereby committed **CONSPIRACY TO COMMIT GENOCIDE**, stipulated in Articles 2(3)(b) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

(3) By his acts or omissions described in paragraphs 3.12 to 3.14 and 3.19 of the indictment, Jean Kambanda did directly and publicly incite to kill and to cause serious bodily or mental harm to members of the Tutsi population, with intent to destroy, in whole or in part, an ethnic group as such, and has thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, stipulated in Article 2(3)(c) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

(4) By his acts or omissions described in paragraphs 3.10, 3.12 to 3.15 and 3.17 to 3.19 of the indictment, which do not constitute the same acts relied on for counts 1, 2 and 3 Jean Kambanda was complicit in the killing and the causing of serious bodily or mental harm to members of the Tutsi population, and thereby committed **COMPLICITY IN GENOCIDE** stipulated in Article 2(3)(e) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

(5) By his acts or omissions described in paragraphs 3.12 to 3.15 and 3.17 to 3.19 of the indictment, Jean Kambanda is responsible for the murder of civilians, as part of a widespread or systematic attack against a civilian population on ethnic or racial grounds, and has thereby committed a **CRIME AGAINST HUMANITY**, stipulated in Article 3(a) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

(6) By his acts or omissions described in paragraphs 3.12 to 3.15, and 3.17 to 3.19 of the indictment, Jean Kambanda is responsible for the extermination of civilians, as part of a widespread or systematic attack against a civilian population on ethnic or racial grounds, and has thereby committed a **CRIME AGAINST HUMANITY**, stipulated in Article 3(b) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

## **B. Factors relating to Sentence**

41. Article 23(1) of the Statute stipulates that penalties imposed by the Trial Chamber shall be limited to imprisonment and that in the determination of imprisonment, the Trial Chamber shall have recourse to the general practice regarding prison sentences in the Courts of Rwanda. The Trial Chamber notes that the Death sentence which is proscribed by the Statute of the ICTR is mandatory for crimes of this nature in Rwanda. Reference to the Rwandan sentencing practice is intended as a guide to determining an appropriate sentence and does not fetter the discretion of the judges of the Trial Chamber to determine the sentence. In determining the sentence, the Court shall, in accordance with the Rules of Procedure, take into account such factors as the gravity of the crime and the individual circumstances of Jean Kambanda.

### (i) Gravity of the Crime

42. In the brief dated 10 August 1998 and in her closing argument at the hearing, the Prosecutor stressed the gravity of the crimes of genocide, and crimes against humanity. The heinous nature of the crime of

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genocide and its absolute prohibition makes its commission inherently aggravating. The magnitude of the crimes involving the killing of an estimated 500,000 civilians in Rwanda, in a short span of 100 days constitutes an aggravating fact.

43. Crimes against Humanity are as aforementioned conceived as offences of the gravest kind against the life and liberty of the human being.

44. The crimes were committed during the time when Jean Kambanda was Prime Minister and he and his government were responsible for maintenance of peace and security. Jean Kambanda abused his authority and the trust of the civilian population. He personally participated in the genocide by distributing arms, making incendiary speeches and presiding over cabinet and other meetings where the massacres were planned and discussed. He failed to take necessary and reasonable measures to prevent his subordinates from committing crimes against the population. Abuse of positions of authority or trust is generally considered an aggravating factor.

(ii) Individual circumstances of Jean Kambanda

Personal particulars

45. Jean Kambanda was born on 10 October 1955 at Mubumbano in the Prefecture of Butare. He has a wife and two children. He holds a Diploma d=Ingenieur Commercial and from May 1989 to April 1994, he worked in the Union des Banques Populaires du Rwanda rising to the position of Director of the network of those banks. He was Vice President of the Butare Section of the MDR and member of its Political Bureau. On 9 April 1994, he became Prime Minister of the Interim Government. The Prosecutor has not proved previous criminal convictions, if any, of Jean Kambanda.

(iii) Mitigating Factors

46. Defence Counsel has proffered three factors in mitigation:- Plea of guilty; remorse; which he claims is evident from the act of pleading guilty; and co-operation with the Prosecutor=s office.

47. The Prosecutor confirms that Jean Kambanda has extended substantial co-operation and invaluable information to the Prosecutor. The Prosecutor requests the Trial Chamber to regard as a significant mitigating factor, not only the substantial co-operation so far extended, but also the future co-operation when Jean Kambanda testifies for the prosecution in the trials of other accused.

48. The Plea Agreement signed by the parties expressly records that no agreements, understandings or promises have been made between the parties with respect to sentence which, it is acknowledged, is at the discretion of the Trial Chamber.

49. The Prosecutor however disclosed that Jean Kambanda=s co-operation has been recognised by significant protection measures that have been put in place to alleviate any concerns that he may have, about the security of his family.

50. According to the Prosecutor, Jean Kambanda had expressed his intention to plead guilty immediately upon his arrest and transfer to the Tribunal, on 18 July 1997. Jean Kambanda declared in the Plea Agreement that he had resolved to plead guilty even before his arrest in Kenya and that his prime motivation for pleading guilty was the profound desire to tell the truth, as the truth was the only way to restoring national unity and reconciliation in Rwanda. Jean Kambanda condemned the massacres that occurred in Rwanda and considers his confession as a contribution towards the restoration of peace



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in Rwanda.

51. The Chamber notes however that Jean Kambanda has offered no explanation for his voluntary participation in the genocide; nor has he expressed contrition, regret or sympathy for the victims in Rwanda, even when given the opportunity to do so by the Chamber, during the hearing of 3 September 1998.

52. Both Counsel for Prosecution and Defence have urged the Chamber to interpret Jean Kambanda's guilty pleas as a signal of his remorse, repentance and acceptance of responsibility for his actions. The Chamber is mindful that remorse is not the only reasonable inference that can be drawn from a guilty plea; nevertheless it accepts that most national jurisdictions consider admissions of guilt as matters properly to be considered in mitigation of punishment.

"A prompt guilty plea is considered a major mitigating factor."

53. In civil criminal law systems, a guilt plea may be favourably considered as a mitigating factor, subject to the discretionary faculty of a judge.

"An admission of guilt demonstrates honesty and it is important for the International Tribunal to encourage people to come forth, whether already indicted or as unknown perpetrators."

54. The Chamber has furthermore been requested to take into account in favour of Jean Kambanda that his guilty plea has also occasioned judicial economy, saved victims the trauma and emotions of trial and enhanced the administration of justice.

55. The Trial Chamber finds that the gravity of the crime has been established and the mitigatory impact on penalty has been characterised.

56. The Trial Chamber holds the view that a finding of mitigating circumstances relates to assessment of sentence and in no way derogates from the gravity of the crime. It mitigates punishment, not the crime. In this respect the Trial Chamber adopts the reasoning of "Erdemovic" and the "Hostage" case cited therein.

"It must be observed however that mitigation of punishment does not in any sense of the word reduce the degree of the crime. It is more a matter of grace than of defence. In other words, the punishment assessed is not a proper criterion to be considered in evaluating the findings of the court with reference to the degree of magnitude of the crime."

57. The degree of magnitude of the crime is still an essential criterion for evaluation of sentence.

58. A sentence must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender. Just sentences contribute to respect for the law and the maintenance of a just, peaceful and safe society.

59. The Chamber recalls as aforementioned that the Tribunal was established at the request of the government of Rwanda; and the Tribunal was intended to enforce individual criminal accountability on behalf of the international community, contribute in ensuring the effective redress of violence and the culture of impunity, and foster national reconciliation and peace in Rwanda. (Preamble, Security Council resolution 955(1994)).

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60. In her submissions, although the Prosecutor sought a term of life imprisonment for Jean Kambanda, she requested that the Tribunal, in the determination of the sentence, take into consideration the guilty plea and the cooperation of Jean Kambanda with her office. The Defence Counsel in his submissions emphasised that Jean Kambanda was only a puppet controlled by certain military authorities and that his power was consequently limited. He thus submitted that the Tribunal, taking into account the guilty plea, Jean Kambanda's cooperation and willingness to continue cooperating with the Prosecutor, and the role Jean Kambanda could play in the process of national reconciliation in Rwanda, sentence him for a term of imprisonment not exceeding two years.

61. The Chamber has examined all the submissions presented by the Parties pertaining to the determination of sentence, from which it can be inferred:

(A) (i) Jean Kambanda has cooperated and is still willingly cooperating with the Office of the Prosecutor;

(ii) the guilty plea of Jean Kambanda is likely to encourage other individuals to recognize their responsibilities during the tragic events which occurred in Rwanda in 1994;

(iii) a guilty plea is generally considered, in most national jurisdictions, including Rwanda, as a mitigating circumstance;

(B) but that, however:

(v) the crimes for which Jean Kambanda is responsible carry an intrinsic gravity, and their widespread, atrocious and systematic character is particularly shocking to the human conscience;

(vi) Jean Kambanda committed the crimes knowingly and with premeditation;

(vii) and, moreover, Jean Kambanda, as Prime Minister of Rwanda was entrusted with the duty and authority to protect the population and he abused this trust.

62. On the basis of all of the above, the Chamber is of the opinion that the aggravating circumstances surrounding the crimes committed by Jean Kambanda negate the mitigating circumstances, especially since Jean Kambanda occupied a high ministerial post, at the time he committed the said crimes.

#### **IV. VERDICT**

TRIAL CHAMBER I,

FOR THE FOREGOING REASONS,

DELIVERING its decision in public, inter partes and in the first instance;

PURSUANT to Articles 23, 26 and 27 of the Statute and Rules 100, 101, 102, 103 and 104 of the Rules of Procedure and Evidence;

NOTING the general practice of sentencing by the Courts of Rwanda;

NOTING the indictment as confirmed on 16 October 1997;

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NOTING the Plea of guilty of Jean Kambanda on 1 May 1998 on the Counts of:

COUNT 1: Genocide (stipulated in Article 2(3)(a) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal);

COUNT 2: Conspiracy to commit genocide (stipulated in Articles 2(3)(b) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal);

COUNT 3: Direct and public incitement to commit genocide (stipulated in Article 2(3)(c) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal);

COUNT 4: Complicity in genocide (stipulated in Article 2(3)(e) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal);

COUNT 5: Crime against humanity (murder) (stipulated in Article 3(a) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal);

COUNT 6: Crime against humanity (extermination) (stipulated in Article 3(b) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal);

HAVING FOUND Jean Kambanda guilty on all six counts on 1 May 1998;

NOTING the briefs submitted by the parties;

HAVING HEARD the Closing Statements of the Prosecutor and the Defence Counsel;

IN PUNISHMENT OF THE ABOVEMENTIONED CRIMES,

SENTENCES Jean Kambanda

born on 19 October 1955 in Gishamvu Commune, Butare Prefecture, Rwanda

TO LIFE IMPRISONMENT

RULES that imprisonment shall be served in a State designated by the President of the Tribunal, in consultation with the Trial Chamber and the said designation shall be conveyed to the government of Rwanda and the designated State by the Registry;

RULES that this judgement shall be enforced immediately, and that until his transfer to the said place of imprisonment, Jean Kambanda shall be kept in detention under the present conditions.

Arusha, 4 September 1998,

**Laïty Kama (Presiding Judge)**

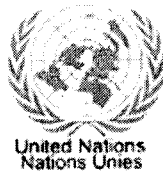
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**Lennart Aspegren- (Judge)**

**Navanethem Pillay- (Judge)**

(Seal of the Tribunal)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

**IN THE APPEALS CHAMBER**

**Before :**

Judge Claude JORDA, Presiding  
Judge Lal Chand VOHRAH  
Judge Mohamed SHAHABUDDEEN  
Judge Rafael NIETO-NAVIA  
Judge Fausto POCAR

**Registrar :**

Mr Agwu U. OKALI

**of : ctober 2000**

**Jean KAMBANDA**

*(Appelant)*

v

**THE PROSECUTOR**

*(Respondent)*

*Case No. ICTR 97-23-A*

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**JUDGEMENT**

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**Counsel for Jean KAMBANDA:**

Mr Tjarda van der SPOEL  
Mr Gerard PMF MOLS

**Counsel for the Prosecutor :**

Ms Carla DEL PONTE  
Mr Solomon LOH  
Mr Norman FARRELL  
Mr Morris ANYAH  
Mr Mathias MARCUSSEN

**I. INTRODUCTION**

**A. Procedural Background**

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1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January and 31 December 1994 ("the Appeals Chamber" and "the Tribunal" respectively) is seized of an appeal lodged by Mr. Jean KAMBANDA ("the Appellant") against the Judgement and Sentence pronounced in his case by Trial Chamber I of the Tribunal ("the Trial Chamber") on 4 September 1998 ("the Judgement").<sup>[1]</sup> The principal steps in the procedure thus far are outlined below.
2. On 1 May 1998 the Appellant pleaded guilty to the six counts contained in the indictment against him, namely, genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, crimes against humanity (murder) and crimes against humanity (extermination). This plea was accepted by the Trial Chamber. A pre-sentencing hearing was held on 3 September 1998 and the Judgement pronounced the following day. The Appellant was sentenced to life imprisonment.
3. On 7 September 1998 the Appellant filed a notice of appeal against sentence<sup>[2]</sup> containing four grounds of appeal. Upon receipt of the certified record of appeal he filed a supplementary notice of appeal seeking to add one ground.<sup>[3]</sup> Following a change of counsel, a second supplementary notice of appeal was filed, seeking to add three new grounds of appeal, which were not directed at the sentence but rather challenged the validity of his guilty plea.<sup>[4]</sup> This document states that the "Appellant now not only seeks revision of the entire sentence but (primarily) asks the Appeal Chamber to quash the guilty verdict and order a new trial".<sup>[5]</sup>
4. By Decision of 8 December 1999, the Appeals Chamber granted the Appellant leave to add to his notice of appeal the four supplementary grounds filed, and ordered him to file one consolidated notice of appeal listing all eight grounds together. This was duly filed on 8 February 2000, but included on its face a request for leave to add a further sub-ground of appeal. This request was granted by decision of 18 May 2000. The consolidated notice of appeal, including the additional sub-ground, henceforth referred to as the Consolidated Notice of Appeal.
5. On 7 March 2000 the President of the Appeals Chamber designated Judge Rafael Nieto-Navia as pre-hearing Judge in this matter, pursuant to Rule 108 *bis* of the Rules of Procedure and Evidence of the Tribunal ("the Rules"). Judge Nieto-Navia thereafter dealt with all procedural issues.
6. On 30 March 2000 the Appellant filed his brief in support of the Consolidated Notice of Appeal ("the Appellant's Brief"), along with a motion for admission of new evidence ("the Motion for admission of new evidence").<sup>[6]</sup> The Motion for admission of new evidence sought to admit a number of documents relating to the three most recently-added grounds of appeal, those seeking to quash the guilty verdict, and to call seven witnesses before the Appeals Chamber. Following a number of submissions by the parties on this question, the Appeals Chamber decided to allow the Appellant to testify on the question of whether his guilty plea was voluntary, informed, unequivocal and based on sufficient facts for the crime and the accused's participation in it, but to dismiss the Motion for admission of new evidence in all other respects.<sup>[7]</sup>
7. The Prosecutor's brief in response was filed on 2 May 2000 ("the Prosecutor's Response")<sup>[8]</sup>, and the Appellant's brief in reply on 16 May 2000 ("the Appellant's Reply")<sup>[9]</sup>. The hearing was scheduled to take place in Arusha from 27 to 30 June 2000.<sup>[10]</sup> On 25 June 2000, the Prosecutor filed a Motion for an order for information from the Registrar of the International Criminal Tribunal for the Former Yugoslavia ("the ICTY")<sup>[11]</sup>, which was withdrawn during the hearing on 28 June 2000. After the close of filing hours on 26 June, the day before the hearing, the Prosecutor filed "The Prosecutor's

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Supplemental Respondent's Brief" running to several hundred pages with annexes. The Appeals Chamber has not made use of this supplementary material in its judgement.

8. The hearing took place from 27 to 28 June 2000 ("the Hearing"). After settling the duration of the hearing in consultation with the parties, the Chamber ruled that, in view of its decision on the Motion for admission of new evidence, only Kambanda's testimony relating to whether his guilty plea was voluntary, informed, unequivocal and based on factual elements likely to establish the crime would be permitted.[12]

9. The Judgement of the Appeals Chamber is hereby delivered.

### **B. The Notice of Appeal**

10. The Consolidated Notice of Appeal lists the following "errors of law" committed by the Trial Chamber as grounds of appeal:

- (1) failure to consider the denial of the right to be defended by a counsel of one's own choice;
- (2) failure to consider the Appellant's unlawful detention outside the Detention Unit of the Tribunal;
- (3) acceptance of the validity of the plea-agreement without a thorough investigation of whether the plea was voluntary and/or informed and/or unequivocal; and failure to satisfy itself that the guilty plea was based on sufficient facts for the crime and the accused's participation in it, either on the basis of independent indicia or of lack of any material disagreement between the parties about the facts of the case;
- (4) failure to apply the general principle of law that a plea of guilty as a mitigating factor carries with it a discount in sentence;
- (5) failure to consider Article 23(1) and (2) of the Statute of the Tribunal and Rule 101(B) (ii) and (iii) of the Rules which require that mitigating circumstances, personal circumstances of the convict, the substantial co-operation of the convict with the Prosecutor and the general practice regarding prison sentence in the courts of Rwanda be taken into account in the determination of the sentence;
- (6) failure to pronounce and impose a separate sentence for each count in the indictment, each count being a separate charge of an offence;
- (7) the sentence is excessive;
- (8) considering the non-explanation of the convict when asked whether he had anything to say before sentence as militating against any discount.

The Appellant also characterised ground (8) as an error of fact.

11. The Appellant's Brief asks the Appeals Chamber to quash the guilty verdict and order a new trial on the basis of grounds (1) to (3). Failing that, the Chamber is asked to revise the sentence on the basis of grounds (4) to (8).

## II. FIRST GROUND OF APPEAL: THE RIGHT TO COUNSEL OF ONE'S OWN CHOOSING

### A. Arguments of the Parties

12. The Appellant argues that the Trial Chamber erred in law by not taking into consideration the denial of Jean Kambanda's right to legal assistance of his own choosing. The Appellant alleges that on several occasions he requested that Mr. Scheers be assigned to represent him, requests which were turned down by the Registry, which instead assigned Mr. Inglis. In the Appellant's view, this refusal, which should have attracted sanctions by the Trial Chamber, violated his right to legal assistance by counsel of his own choosing and thereby constituted a violation of his right to a fair trial[13].

13. The Prosecutor considers that the Appellant waived his right to raise this issue before the Appeals Chamber, firstly because he explicitly accepted the Registry's assignment of Mr. Inglis to represent him and secondly because he did not state his objection to the choice of counsel before the Trial Chamber. Alternatively, the Prosecutor argues that an indigent accused does not in all cases have the right to counsel of his or her own choosing[14].

14. According to the Appellant, the waiver principle and the rule for legal assistance by counsel must be examined in the light of two circumstances peculiar to the instant case: firstly, the Appellant had in his view no real opportunity to raise his complaint before the Trial Chamber and, secondly, he did not receive adequate and effective legal assistance[15].

### B. Discussion

15. The Appeals Chamber begin by recalling the factual and procedural context of Mr. Inglis' assignment to defend the Appellant.

16. Between 18 July 1997, the date of his arrest, and March 1998, the Appellant did not wish to be represented by counsel, reserving his right to such assistance until he expressly said that he felt it necessary[16]. On 11 August 1997, in a letter to the Registry, he declared that he wished to waive his right to be represented by counsel, which waiver he confirmed verbally during the Trial Chamber hearings on 14 August[17] and 16 September 1997[18]. On 18 October 1997, the Appellant submitted a document entitled "*Renonciation temporaire au droit à l'assistance d'un conseil de la défense*" (Temporary Waiver of My Right to Defence Counsel), in which he once again confirmed his waiver in writing[19].

17. On 5 March 1998, three letters were exchanged between the Registry and the Appellant. The Registry first of all proposed to the Appellant that it should appoint counsel to defend his interests[20]. The Appellant immediately replied that he wished to be represented by Mr. Scheers[21]. This request was instantly refused by the Registry in view of the disciplinary sanctions imposed on Mr. Scheers by the Tribunal's Trial Chamber I during 1996[22].

18. After a fresh exchange of letters between the Appellant and the Registry in which clarified and reaffirmed their positions, the Registry received a letter dated 20 March 1998 from the Appellant which stated that:

Having learnt that Mr. Johan SCHEERS, by whom I had expressed my intention of being defended, has not been taken back onto the list of Counsel accredited to the Tribunal and taking into account the *curriculum vitae* of Mr. Oliver Michael INGLIS which has been sent to me, after studying it I have no objections to his representing me.[23]



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19. On 25 March 1998, following a request by the Registry for him to state his position in a more positive manner, the Appellant sent the Registry a letter confirming his wish to receive legal assistance from Mr. Oliver Michael Inglis[24].
20. On 27 March 1998, Mr. Inglis was accordingly assigned as counsel for the Appellant. The hearings on the merits of the case took place on 1 May 1998[25] and on 3 and 4 September 1998[26]. Four months elapsed between the two sets of hearings. On 11 September 1998, a week after Trial Chamber I had pronounced sentence and four days after Notice of Appeal against that sentence had been filed, the Appellant applied to have Mr. Inglis replaced.
21. In his statement to the Appeals Chamber, the Appellant explained that he had accepted Mr. Inglis as defence counsel solely because he had hoped to be defended by Mr. Scheers as co-counsel to Mr. Inglis and that, having realized that his wish to be defended by Mr. Scheers was not to be fulfilled, he had finally accepted Mr. Inglis as defence counsel[27].
22. The Appeals Chamber points out that the Appellant never raised the question of his choice of counsel before the Trial Chamber although he had the opportunity to do so on several occasions. Indeed, after the Plea Agreement had been signed on 29 April 1998 the Appellant appeared before the Trial Chamber on three occasions: firstly on 1 May 1998; secondly on 3 September 1998, four months later; and thirdly on 4 September 1998. At those three hearings on no occasion did the Appellant express dissatisfaction in respect of the counsel assigned to him[28]. Furthermore, he did the President of the Trial Chamber asked him if he was being assisted by counsel[29].
23. According to the Appellant, the Trial Chamber was perfectly aware of his situation inasmuch as it had in its possession two letters, dated 17 March 1998 and 6 April 1998, from Mr. Scheers to the President of the Tribunal[30]. Although no legal argument is given, the Appellant writes that the Trial Chamber should have raised the issue of counsel and therefore condemns alleged laxity on the part of the Judges[31]. The Appeals Chamber cannot accept that argument in that it calls into question the Trial Chamber's exercise of its discretion. Indeed, the Appeals Chamber of the ICTY recalled that discretion in the *Aleksovski* case:
- In the absence of any issue being raised by the Appellant, the Trial Chamber was not required to make further enquiries of the Respondent[32].
- The responsibility for drawing the Trial Chamber's attention to what he considered to be a breach of the Tribunal's Statute and Rules lies with the Appellant, and the Trial Chamber must have the matter put before it, directly and in due form, in accordance with the appropriate procedure[33].
24. prescribed by Article 12 of the Directive on the Assignment of Defence Counsel[34].
25. The fact that the Appellant made no objection before the Trial Chamber to the Registry's decision means that, in the absence of special circumstances, he has waived his right to adduce the issue as a valid ground of appeal.[35] In the instant case, the Appeals Chamber adopts the conclusions of the ICTY Appeals Chamber in the *Tadić* case:
- The obligation is on the complaining party to bring the difficulties to the attention of the Trial Chamber forthwith so that the latter can determine whether any assistance could be provided under the Rules or Statute to relieve the situation. The party cannot remain silent on the matter only to return on appeal to seek a trial *de novo* [...][36].
26. Similarly, in the *Kovačević* case, the ICTY Appeals Chamber responded to the question of

whether the Prosecution had sought during the proceedings before the Trial Chamber to obtain an improper tactical advantage by ruling that

In its Decision, the Trial Chamber did not mention any complaint by the accused that the prosecution was seeking a tactical advantage, and did not found its holding on that point. In the circumstances, this Chamber would not give effect to the allegation of the defence that an improper advantage was being sought by the prosecution[37].

27. The Appeals Chamber agrees with the position of the Human Rights Committee, established under the International Covenant on Civil and Political Rights, which in one of its findings affirms that

[a Party] would not [be] allowed, unless special circumstances could be shown, to raise issues on appeal that had not previously been raised by counsel in the course of the trial[38].

28. In the instant case, the Appellant considers that the waiver principle must be interpreted in the light of a special circumstance: his Counsel's incompetence[39]. The Appeals Chamber emphasizes firstly that in the Appellant's briefs and oral statements the problem of his counsel's inadequacy never figured as an argument, let alone an independent ground of appeal. The Appellant's allegations on this point are at the very least confused. It is true that in his statement the Appellant did cite, for example, the insufficient number of meetings with his counsel and the latter's lack of interest in and knowledge of the case file[40]. The Appeals Chamber nevertheless finds that the Appellant has not succeeded in showing his Counsel to be incompetent on the basis of solid arguments and relevant facts. Rather, the Chamber has before it documents proving that counsel for the Appellant carried out the functions of his office in the normal manner[41]. The Appeals Chamber therefore cannot accept the Appellant's allegations and concludes that he has not been able to demonstrate the existence of special circumstances capable of constituting an exception to the waiver principle.

29. Consequently, in the absence of any convincing explanation, the Appeals Chamber dismisses the first ground of appeal.

30. In any event, assuming that the Appeals Chamber had found this ground of appeal admissible, it is clear from the Appellant's case file that he enjoyed all his rights in respect of his defence.

31. Firstly, he was represented free of charge by assigned counsel when the Registry of the Tribunal assigned Mr. Inglis to represent him on 27 March 1998. On this point, the Appeals Chamber wishes to draw a distinction between two issues which the Appellant has indistinctly raised, to wit, the issue of indigence and the issue of the right to choose one's counsel.

32. With respect to the issue of indigence, during the 27 June 2000 hearing, the Appellant revealed to the Appeals Chamber that he was capable of bearing the financial burden of choosing Mr. Scheers [42], and recalled that the question of whether he lacked means had never really been asked[43]. At this stage, the Appeals Chamber can derive no conclusions from this revelation. The Appeals Chamber accepts that it evidently appeared much too late, and that the question of the Appellant's lack of means could have been raised, well prior to the hearings on appeal, before the Trial Chamber.

33. With respect to the right to choose one's counsel, the Appellant argues that he ought to have had the right to choose his counsel and that the violation of this right was a violation of his right to a fair trial [44]. The Appeals Chamber refers on this point to the reasoning of Trial Chamber I in the *Ntakirutimana* case[45] and concludes, in the light of a textual and systematic interpretation of the provisions of the Statute and the Rules[46], read in conjunction with relevant decisions from the Human Rights Committee[47] and the organs of the European Convention for the Protection of Human Rights and

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Fundamental Freedoms,[48] that the right to free legal assistance by counsel does not confer the right to choose one's counsel.

34. Lastly, the Appellant received effective representation.[49] As the Appeals Chamber has previously stated, incompetence on the part of counsel for the Appellant has not been substantiated.

### III. SECOND GROUND OF APPEAL: UNLAWFUL DETENTION

#### A. Arguments of the Parties

35. with the Prosecutor[50], the Appellant was detained mainly in places other than the Tribunal Detention Unit. The parties agree that following his arrest on 18 July 1997 and his transfer to Arusha, the Appellant was initially held in a "very luxurious villa" for a period of approximately three weeks. [51] From 3 to 27 August 1997 he was detained in the Tribunal Detention Unit.[52] On 27 August 1997, the Appellant was transferred to the town of Dodoma, where he stayed (changing residences at least once) until 1 May 1998.[53] He was then transferred to the ICTY Detention Unit in The Hague.

36. The Appellant submits that the detention in Tanzania outside the Tribunal Detention Unit was unlawful. He argues that the Rules provide for detention in the Tribunal Detention Unit, and that this can only be varied by court order. Upon examination of the orders that have been made for his detention, all of which order his detention in the "detention facility of the Tribunal", he observes that no variation from the Rules was authorised and that his detention outside this facility was therefore unlawful.[54]

37. The Appellant further contends that his detention violated international human rights law, as the relevant places of detention were "unofficial". He cites a report of Amnesty International in support of his contention that according to international standards, detainees must be held in recognised places of detention.[55] The report states that this is "a most basic safeguard against arbitrary detention, 'disappearance', ill-treatment and being compelled to confess." The Appellant considers that this standard was not observed in his case. He concludes that his detention outside the Tribunal Detention Unit violated the Rules of the Tribunal and international human rights law, and that this renders inadmissible his statement and plea agreement.[56]

38. In the Prosecutor's Response, the Prosecutor claims that the Appellant has waived his right to argue this issue on appeal by failing to raise it before the Trial Chamber. She adds that the ground is not supported by facts currently in the record on appeal. Should these two objections fail, she submits that the ground is unfounded in substance. The Prosecutor asserts that the Rules and decisions of the Tribunal do not order detainees to be kept only in the Tribunal Detention Unit, and she further disputes the Appellant's claim that there is a general international law principle whereby detainees should be held only in officially recognised places of detention.[57] Lastly she submits that the Appellant has failed to show that any prejudice has resulted from his place of detention.[58]

39. The Appellant replies in his written submissions that the waiver principle should not apply as he could not have been expected to be aware of his rights with respect to his place of detention, particularly since he was largely without legal assistance.[59] Under cross-examination at the Hearing, he introduced the argument that his place of detention contributed to an oppressive atmosphere which compelled him to sign the plea agreement.[60]

#### B. Discussion

40. The Appellant's argument that he was compelled to sign the plea agreement goes to the issue of

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whether the guilty plea was voluntary, which is disputed by the third ground of appeal, rather than whether his detention was unlawful *per se*, and is therefore addressed in the following section of this Judgement. Indeed, in view of the Chamber's oral ruling on the scope of the oral testimony to be given by the Appellant,[61] it is only in the context of the third ground of appeal that this testimony could be admitted by the Chamber.

41. The Appeals Chamber has set out above the consequences which attend a failure to raise an issue before the Trial Chamber. As a matter of principle, where a party has failed to bring an issue to the attention of the court of first instance it is debarred from raising it on appeal. Exceptions to this rule will only be made where the particular circumstances of the case demand, for example because the matter could not realistically have been raised earlier. It is for the moving party to convince the court that such exceptional circumstances exist.

42. The Appellant appeared five times before the Tribunal in total: on 14 August 1997, 16 September 1997, 1 May 1998, 3 September 1998 and 4 September 1998. He pleaded guilty at the initial appearance on 1 May 1998. At no stage did he raise any objections to his place or conditions of detention.

43. The Appellant accepts the general principle of waiver outlined above. He argues in his written submissions that an exception should be made in this appeal because he was not aware of his rights during the proceedings at first instance, and could not therefore have been expected to complain of their violation. His lack of awareness is attributed to his being without counsel of his choice, and "in an isolated place of detention". [62]

44. When questioned during the Hearing on his failure to raise his concerns with regard to his conditions of detention, the Appellant put forward a different explanation, linking his failure to speak out with the allegedly oppressive situation in which he found himself. However, as the Prosecutor points out, on 1 May 1998 the Appellant knew he was to leave Dodoma, in fact he was already on his way to The Hague. Although knowing that he had left Dodoma and that the situation in consequence had changed, the Appellant still failed to raise the issue with the Trial Chamber on 1 May. When asked why he did not raise the issue, the Appellant replied as follows:

I knew that I was going to be transferred but it had not been effected, I didn't have the freedom to say what I thought otherwise I would have done it even in September because even in September I didn't do so if you recall.[63]

45. The Appeals Chamber is thus presented with two contradictory arguments. Either the Appellant was unaware of his rights and so did not raise the alleged violation of the same with the Trial Chamber, or he was aware of them but did not have "the freedom to say what [he] thought" because of his oppressive situation.

46. Both arguments must fail. The first argument amounts to the claim that the Appellant made no objection to the legality of his detention before the Trial Chamber because he lacked his chosen counsel. The Appellant was assisted by counsel, whose assignment he had accepted, from 27 March 1998. As has been established above in relation to the first ground of appeal, the Appeals Chamber considers that this assignment of counsel to the Appellant satisfied his right to legal assistance under Article 20 of the Statute and international human rights law. The Appellant cannot therefore rely upon inadequacy of legal assistance to explain his failure to raise concerns about the legality of his detention.

47. The second argument, which the Appeals Chamber prefers in the light of the Appellant's testimony, relies upon the oppression allegedly suffered by the Appellant throughout the period leading

to his sentence. The Appeals Chamber takes seriously any allegation of pressure brought to bear upon persons accused before the Tribunal. However, the Appellant has not demonstrated that he suffered any such pressure. Vague suggestions of a lack of "freedom to say what I thought" are inadequate to substantiate a claim that the principle of waiver should not apply. In reaching this conclusion the Appeals Chamber is mindful of the education and professional experience of the Appellant, culminating in his position as Prime Minister of his country.

48. As the Appellant has failed to establish any reason for which he should exceptionally be allowed to raise the question of the legality of his detention for the first time on appeal, this ground of appeal is rejected.

#### **IV. THIRD GROUND OF APPEAL: INVALIDITY OF THE GUILTY PLEA**

##### **A. Summary of the Issues**

49. The issues raised by the Appellant as to the validity of the guilty plea can be divided into two parts. First, the Appellant asserts that the Trial Chamber committed an error of law in accepting the validity of the Plea Agreement, without investigating whether the plea was 1) voluntary, 2) informed and/or 3) unequivocal. Second, the Appellant asserts that the Trial Chamber committed an error of law in failing to ascertain appropriately whether the guilty plea was based on sufficient facts for the crimes alleged and the accused's participation in them.[64]

50. The Appellant cites current Rule 62 of the Rules (Initial Appearance of Accused), which provides in paragraph (B), that if an accused pleads guilty, "the Trial Chamber shall satisfy itself that the guilty plea: (i) is made freely and voluntarily; (ii) is an informed plea; (iii) is unequivocal; and (iv) is based on sufficient facts for the crime and accused's participation in it, either on the basis of independent indicia or of lack of any material disagreement between the parties about the facts of the case." Once the Trial Chamber is satisfied that these conditions are met, it may enter a finding of guilt.

51. The Prosecutor submits that these claims are untenable and that they imply that the Trial Chamber "abused its discretion" in accepting the guilty plea. It suggests that the Appellant misconstrues the appropriate standard of review because there is no abuse of discretion, and thus no error of law, as long as the Trial Chamber acts within the limits of its discretion. The Prosecutor submits that the Appellant failed to identify or describe any acts or decisions that amounted to an abuse of discretion, or to detail legal principles or standards supporting this position and identifying any resulting prejudice. [65]

52. Moreover, the Prosecutor asserts that in failing to raise these issues before the Trial Chamber, "the Appellant has waived any challenge to the validity of his guilty plea because he did not raise any objection, much less a timely one, to the Trial Chamber's acceptance of the guilty plea." [66] The Prosecutor recounts that the Appellant and his counsel entered a Plea Agreement with the Prosecutor on 29 April 1998, and when before the Trial Chamber on 1 May 1998, the Appellant acknowledged that he had signed the Plea Agreement, and further that four months later, at the pre-sentencing hearing on 3 September 1998, the Appellant again failed to challenge the validity of the guilty plea or the Plea Agreement. Consequently, "[f]or him to now allege an error on the Trial Chamber's part of (sic) when the Trial Chamber was never called upon to address this issue, explicates the propriety of applying the waiver principle to this ground of appeal." [67]

53. In his Reply, the Appellant asserts that the general rule of waiver is not applicable to his case and he refers the Appeals Chamber generally to the *Erdemović* case, stating simply that "the waiver principle

was not an issue."[68]

54. The Appeals Chamber notes that waiver was not an issue in *Erdemović* because the Appeals Chamber determined that Appellant's counsel was not adequately informed and therefore he could not have informed properly his client.

55. The Appeals Chamber notes that the Appellant had several opportunities to raise any issues of fact on the basis of which he now alleges that his guilty plea was invalid, but failed to do so until after receiving a life sentence for the guilty plea. In the absence of a satisfactory explanation of his failure to raise the validity of the guilty plea in a timely manner before the Trial Chamber, the Appeals Chamber could find that the Appellant has waived his right to later assert that his guilty plea was invalid. However, as this is the Chamber of last resort for the Appellant facing life imprisonment his plea, and as the issues raised in this case are of general importance to the work of the Tribunal, the Appeals Chamber deems it important to consider the question of the validity of the guilty plea.

## **B. Was the Guilty Plea Voluntary, Informed, and Unequivocal?**

### **1. Was the Guilty Plea Voluntary?**

#### **a) Submissions of the Parties**

56. As to whether the guilty plea was voluntary, the Appellant states: "Voluntariness involves two elements, firstly an accused person must have been mentally competent to understand the consequences of his actions when pleading guilty. Secondly, the plea must not have been the result of any threat or inducement other than the expectation of receiving credit for a guilty plea by way of some reduction for sentence."[69]

57. The Appellant's sole argument that the plea was not voluntary is the following statement:

As described in the facts and in Kambanda's statements, Kambanda was detained and questioned in an unofficial place of detention and during this detention signed the plea agreement while being deprived of chosen counsel. The consequences of this fact have been debated in chapter 4, appeal ground II.

The situation of being deprived by chosen counsel and isolated in an unofficial place of detention means that Kambanda was forced by the circumstances to sign the plea agreement, in other words there was not a situation of "free will" in the sense (sic) that Kambanda could make his own choice.

Seeing the above the Tribunal should have made more investigations.[70]

58. Under cross-examination at the Hearing, the Appellant stated that his place of detention contributed to an oppressive atmosphere that compelled him to sign the Plea Agreement[71] Thus he asserts that his guilty plea was not truly voluntary because he signed the Plea Agreement under conditions he found oppressive.

59. The Prosecutor submits that the three pre-conditions for accepting a guilty plea were articulated in *Erdemović*, in which it was held that such plea, to be valid, must be voluntary, informed, and unequivocal. She agrees with the Appellant that a voluntary plea is one where the appellant is "mentally competent to understand the consequences of his actions when pleading guilty", and adds that the plea "must not have been the result of any threat or inducement other than the expectation of receiving credit for a guilty plea by way of some reduction of sentence."[72]

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60. The Prosecutor states that the competency of Appellant has never been raised, and that transcripts of the 1 May 1998 proceedings demonstrate that the Appellant stated that he pleaded guilty "consciously and voluntarily. No one forced me to do so." [73] She further observes that the Appellant's counsel stated at the 3 September 1998 pre-sentence hearing that the Appellant's guilty plea was "genuine, conscious and voluntary. It was not a tactical move to gain any advantage." [74] Additionally, the Prosecutor notes that the Plea Agreement signed by the Appellant states that he was pleading guilty in order that the truth be told. [75]

## b) Legal Findings

61. The Appeals Chamber holds that the conditions for accepting a plea agreement are firstly that the person pleading guilty must understand the consequence of his or her actions, and secondly that no pressure must have been brought to bear upon that person to sign the plea agreement. This position is reflected in the separate opinion of Judges McDonald and Vohrah in *Erdemović*, which stated that a voluntary plea requires two elements, namely that "an accused person must have been mentally competent to understand the consequences of his actions when pleading guilty" and "the plea must not have been the result of any threat or inducement other than the expectation of receiving credit for a guilty plea by way of some reduction of sentences." [76]

62. Nothing in the Appellant's pleadings indicates that the Appellant raised mental incompetency as an issue or indeed that he was mentally incompetent; there is further no assertion that he failed to understand the consequences of pleading guilty. The Appellant merely implies that he was depressed over being isolated while in detention. The Appeals Chamber considers that the Appellant, having served as Prime Minister of the country, would have been used to stressful situations during which time important decisions would have to be made. The Appeals Chamber finds this contention completely inadequate to support a claim that the Appellant was mentally incompetent and failed to understand the consequences of his actions in pleading guilty.

63. The Appeals Chamber further notes that the Appellant does not claim that he was in any way threatened or induced to plead guilty. If the Appellant pleaded guilty instead of going to trial in the hope of receiving a lighter sentence, he cannot claim that the plea was involuntary merely because he received a life-term after pleading guilty to several counts of genocide and crimes against humanity.

64. The Appeals Chamber finds no merit in the Appellant's claim that his guilty plea was involuntary and thus rejects this issue on appeal.

## 2. Was the Guilty Plea Informed?

### a) Submissions of the Parties

65. As to whether the guilty plea was informed, the Appellant states that all common law jurisdictions require that a person pleading guilty "must understand the nature and consequences of his plea to what precisely he is pleading guilty". [77] He quotes the *Erdemović* case in which the view was expressed that:

essential to the validity of a plea of guilty is that the accused should fully understand what he is pleading to. This means that the appellant must understand:

- (a) The nature of the charges against him and the consequences of pleading guilty generally; [and]
- (b) The nature and distinction between the alternative charges and the consequences of pleading guilty to

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one rather than the other.[78]

66. The Appellant further quotes Judge Cassese's separate and dissenting opinion in *Erdemović*, in which it was said that: "the guilty plea must be entered in full cognisance of its legal implications. To uphold a plea not entered knowingly and understandingly would distort justice; more specifically, it would mean jeopardising or vitiating the fundamental right of the accused in Article 21, paragraph 3 of the Statute to be presumed innocent until proved guilty according to the provisions of the [Tribunal's] Statute." [79]

67. The Appellant reasserts that he had ineffective assistance of counsel. He states that counsel assigned to the Appellant did not take affirmative action on his client's behalf, that in the space of two years counsel and accused "had only one hour's consultation", and that counsel "did not study the case completely nor did he investigations (sic) in order to evaluate the file and to inform Kambanda properly. In doing so, Kambanda did not plea guilty informed (sic), since he himself did not know the ins and outs of the charges brought against him, nor did he know the ins and outs of the guilty plea." [80]

68. The Appellant further asserts that "Kambanda was not only uninformed by counsel, but was also not informed by the Trial Chamber", apparently because the "Tribunal has neglected to warn Kambanda explicitly (sic) what the consequences, in terms of imprisonment, would be by pleading guilty" and "[i]t should have been made clear to the accused that by pleading guilty the only possible sentence would be life imprisonment and that a plea agreement would never mitigate the penalty seeing the gravity of the offences." [81]

69. The Appellant asserts that the Trial Chamber "should have inquired about the legal assistance provided to appellant" as the assistance was inadequate and the Trial Chamber should therefore have taken a more active role in investigating the adequacy of counsel. [82]

70. The Prosecutor agrees with the Appellant that the applicable standard for determining whether a plea is informed is that established in *Erdemović*, such that the accused must understand "the nature of the charges against him and the consequences of pleading guilty generally." [83] In referring to *Erdemović*, the Prosecutor asserts that there were clear indicia that counsel in that case "indicated that he did not understand the substantive law of the charged offences. Those errors indicated to the Appeals Chamber that defence counsel could not have properly explained to the accused, the nature of the charges against him." [84]

71. In distinguishing *Erdemović* from the present case, the Prosecutor asserts that the Appellant fails to point to any specific words or deeds that would demonstrate that his counsel was not properly informed or that he failed to properly inform the Appellant. [85]

72. As to whether the Trial Chamber properly informed the Appellant of the consequences of pleading guilty, the Prosecutor points to transcripts of the hearing in which the President asks the Appellant "Have you clearly understood the nature of the charges which have been brought against you, and have you clearly understood the consequences of your guilty plea?" to which the Appellant responds: "Mr. President, I have clearly understood all of the charges against me and I fully know the consequences of my guilty plea." [86]

73. The Prosecutor also submits that the Appellant's assertions that the Trial Chamber should have explicitly warned him about the imprisonment consequences of pleading guilty and inquired about his satisfaction with the assistance of counsel are "misplaced" and avers that the queries ventured by the Trial Chamber to Appellant as to whether he was adequately informed were sufficient. [87]



74. The Appellant replies by again reasserting that counsel was ineffective and stating that "it is clear that Mr. Inglis did not meet a competency falling within the range of competency demanded of attorneys in criminal cases." [88] He then submits that "[e]ven if there was any flagrant incompetency by defence-counsel in respect to the guilty plea, Kambanda had a defensible case and also for this reason the guilty plea has to be declared invalid." [89] The Appellant fails to provide any support for this assertion that the case was "defensible", which presumably means that he had a legal defence for his acts.

## b) Legal Findings

75. The Appeals Chamber agrees with the parties that the standard for determining whether a guilty plea is informed is that articulated by Judges McDonald and Vohrah in *Erdemović* such that the accused must understand the nature of a guilty plea and the consequences of pleading guilty in general, the nature of the charges against him, and the distinction between any alternative charges and the consequences of pleading guilty to one rather than the other. [90]

76. Although the Appellant claims the Trial Chamber should have made it "clear to the accused that by pleading guilty the only possible sentence would be life imprisonment and that a plea agreement would never mitigate the penalty seeing the gravity of the offences", [91] the Appeals Chamber cannot accept this argument. The duty of a Trial Chamber to inform an accused person of the possible sentence is not to be mechanically discharged. The proceedings have to be read as a whole, inclusive of the submission of the parties. The transcripts show that both parties accepted that the imposition of a sentence of life imprisonment was a possibility. There being no dispute on the point, when the Appellant told the Trial Chamber, "I fully know the consequences of my guilty plea", he fell to be understood as acknowledging that possibility.

77. The Appellant has failed to identify any specific instances that would support a claim that the Appellant's counsel was uninformed about the nature of the charges and the consequences of pleading guilty, and that counsel had failed to inform properly the Appellant. Indeed, in contrast to questioning by the Bench in *Erdemović*, [92] from the answers to which it was clear that Erdemović did not understand the nature of the charges against him and the consequences of pleading guilty, the Appellant in the current case clearly indicated to the Trial Chamber at his hearing that he was fully aware of both.

78. The Appeals Chamber finds no merit in the Appellant's claim that his guilty plea was uninformed.

## 3. Was the Guilty Plea Unequivocal?

### a) Submissions of the Parties

79. As to the question of equivocation, the Appellant relies on the statement in *Erdemović* that this "requirement imposes upon the court in a situation where the accused pleads guilty but persists with an explanation of his actions which in law amounts to a defence, to reject the plea and have the defence tested at trial." [93] He does not go on to explain how, if it does, the quoted passage applies to the present case. In other words, the Appellant does not claim to have raised, much less persisted in, an explanation of his actions that would amount to a legal defence. Therefore the relevance of citing this passage is unclear.

80. The Appellant then quotes the transcript of the hearing of 1 May 1998, where the President is recorded as asking the accused whether his guilty plea was equivocal, and then explaining "and what I mean by that is, are you aware of the fact that you can now (sic) longer raise any means of defence that

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would go against your guilty plea? Are you aware of that fact?"[94] The Appellant then asserts that "the president of the tribunal incorrectly explained the concept of not equivocal (sic). In other words if Kambanda would have raised any means of defence that would have meant that the guilty plea would be equivocal and not the other way around. The tribunal should have investigated the issue more thoroughly asking the accused if he had any defence against the six counts of the indictment." [95]

81. The Prosecutor notes that the Appellant alleges that his guilty plea was not unequivocal because the President erred when explaining the meaning of equivocal to him. The Prosecutor however "submits that a cursory review of the President's remarks confirm that he did explain the meaning of the term 'equivocal' to the Appellant." [96]

82. The Prosecutor further submits that because the "Appellant did not object, after the lapse of four months between his plea on 1 May 1998 and the sentencing hearing on 4 September 1998, [this] illustrates that his guilty plea was unequivocal." [97]

83. In his Reply, the Appellant claims that "he did not object, after the lapse of four months between his plea on 1 May 1998 and the sentencing hearing on 4 September 1998, due to lack of effective defence counsel. Therefore this does not illustrate as the prosecution suggests that his guilty plea was unequivocal." [98]

#### b) Legal Findings

84. The Appeals Chamber notes that, as articulated by Judges McDonald and Vohrah in the *Erdemović* case, "[w]hether a plea of guilty is equivocal must depend on a consideration, *in limine*, of the question whether the plea was accompanied or qualified by words describing facts which establish a defence in law." [99] This Appeals Chamber agrees with this statement.

85. The Appeals Chamber notes that it is not alleged that the Appellant persisted in explaining his actions either during the time of entering his plea or at his sentencing hearing, nor did he raise any defences that would indicate that his plea was equivocal. The Appeals Chamber, in reviewing the transcripts, further notes that the Appellant did not offer any explanation of his actions when asked about his guilty plea and did not raise a defence.

86. The Appeals Chamber further notes that the Judgement then emphasises that despite the guilty plea and the Plea Agreement, the Chamber

nevertheless, sought to verify the validity of the guilty plea. To this end, the Chamber asked the accused:

- i) if his guilty plea was entered voluntarily, in other words, if he did so freely and knowingly, without pressure, threats, or promises;
- ii) if he clearly understood the charges against him as well as the consequences of his guilty plea; and
- iii) if his guilty plea was unequivocal, in other words, if he was aware that the said plea could not be refuted by any line of defence.

The accused replied in the affirmative to all these questions. On the strength of these answers, the Chamber delivered its decision from the bench. [100]

87. The Appeals Chamber considers that the Trial Chamber had several opportunities to question and observe the Appellant, and notes that it was satisfied that the Appellant's guilty plea was voluntary,

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informed, and unequivocal. The Appeals Chamber finds no merit in the Appellant's claim that his guilty plea was not unequivocal or that it was in any other way invalid.

### C. Was There A Sufficient Factual Basis Supporting the Guilty Plea?

#### 1. Submissions of the Parties

88. The Appellant notes that the current Rule 62(B)(iv) provides that the Trial Chamber must satisfy itself that the guilty plea "is based on sufficient facts for the crime and accused's participation in it, either on the basis of independent indicia or of lack of any material disagreement between the parties about the facts of the case." He then quotes from the Federal Rules of Civil Procedure and Criminal Pleadings and Practice in Canada which state, respectively, that "the court should not enter a judgement upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea" and that certain evidence should be available to the court "so that the trial judge may assess whether the plea should be accepted".[101]

89. The Prosecutor "submits that the Appellant's plea of guilty was occasioned by a sufficient factual basis"[102] and asserts that "the transcripts disclose that the Trial Chamber did not abuse its discretion in concluding that there was a sufficient factual basis for the Appellant's guilty plea. According to the Prosecutor, the Trial Chamber placed reliance on the 'factual and legal basis' surrounding the plea, including the Plea Agreement." [103] In particular, the Prosecutor submits that facts contained in the Plea Agreement and Indictment contain a sufficient factual basis for the guilty plea, "there was no disagreement – much less a *material* one – between the parties regarding the facts of the case." [104]

90. The Prosecutor refers to Section III of the Plea Agreement, entitled "Factual Basis", in which "the Appellant acknowledges that were the Prosecution to proceed with evidence, the facts and allegations set out in paragraphs 3.1 to 3.20 of the Indictment would be proven beyond a reasonable doubt. Additionally, the Appellant states that those facts are not disputed by him. A factual basis is then presented in paragraphs 18 through 40 of the Plea Agreement." [105] The Prosecutor then details some of the undisputed facts contained in the Plea Agreement, many of which "involve specific criminal acts that were undertaken by the Appellant as a principal perpetrator". [106]

91. The Prosecutor also refers to the *Jelisić* Judgement, in which an ICTY Trial Chamber observed that a guilty plea alone does not provide a sufficient basis for conviction of an accused for "it is still necessary for the Judges to find something in the elements of the case upon which to base their conviction both in law and in fact that the accused is indeed guilty of the crime." [107] The Prosecutor asserts that in *Jelisić*, in accepting the accused's guilty plea, the Trial Chamber "considered that the Prosecution and Defence did not disagree on any of the facts" and "made frequent reference to a document called 'factual basis' in determining whether elements presented in the guilty plea were sufficient to establish the crimes charged." [108] The Prosecutor asserts that the Plea Agreement and Indictment contain sufficient facts to sustain the validity of the guilty plea. [109]

#### 2. Legal Findings

92. The Appeals Chamber notes that the Indictment charging the Appellant with four counts of genocide and two counts of crimes against humanity was confirmed by Judge Ostrovsky on 16 October 1997, and that on 1 May 1998, during his initial appearance before Trial Chamber I, the Appellant pleaded guilty to the crimes alleged in the Indictment against him. The Appeals Chamber also notes that the Judgement provides: "After verifying the validity of his guilty plea, particularly in light of an

agreement concluded between the Prosecutor, on the one hand, and the accused and his lawyer, on the other, an agreement which was signed by all parties, the Chamber entered a plea of guilty against the accused on all the counts in the indictment."<sup>[110]</sup>

93. The Appeals Chamber notes that there was no disagreement between the parties as to the facts of the case or as to the Appellant's participation in the crimes alleged in the Indictment and agreed to in the Plea Agreement. Thus the Appeals Chamber can not reasonably now find that there was no factual basis for concluding that the Appellant was responsible for the crimes charged in the Indictment and admitted by the Appellant in the Plea Agreement and in entering the guilty plea when both sides explicitly agreed to the facts of the case and the crimes alleged.

94. The Appeals Chamber finds no merit in the Appellant's contention that the Trial Chamber, in accepting his guilty plea, could not have been satisfied that there was sufficient evidence to indicate that the Appellant was guilty.

95. Finding no merit in the arguments set forth by the Appellant, the Appeals Chamber dismisses this ground of appeal.

## **V. FOURTH, FIFTH, sixth, SEVENTH AND EIGHTH Grounds of appeal: ERROR IN SENTENCING**

### **A. Introduction**

96. The Appellant has submitted as an "alternative" that should the Appeals Chamber deny his primary request to quash the guilty verdict and order a new trial, it should "set aside and revise the entire sentence" on five grounds (grounds 4, 5, 6, 7 and 8 of the Consolidated Notice of Appeal).<sup>[111]</sup> The Appellant puts forward no arguments in support of these grounds, in either the Appellant's Brief or the Appellant's Reply.<sup>[112]</sup> When given a further opportunity during the Hearing only one additional point was raised. The Appellant's counsel stated on behalf of the Appellant that, although the Appellant "did not want to make a point on sentencing", an important mitigating factor to be taken into account should be the Appellant's co-operation with the Prosecutor.<sup>[113]</sup> The Prosecutor maintains that in principle, because the Appellant has put forward no arguments in support, these grounds of appeal should be rejected without consideration of the merits.<sup>[114]</sup>

97. The Appeals Chamber notes that Rule 111 expressly states that "[a]n Appellant's brief shall contain all the argument and authorities." Although Rule 114 provides that "the Appeals Chamber may rule on... appeals based solely on the briefs of the parties", it also states that it can decide to hear the appeal in open court. It is intended that each party should advise the Appeals Chamber in full of all the arguments upon which wish to rely in relation to each ground of appeal, through both written filings and orally.

98. However, in the case of errors of law, the arguments of the parties do not exhaust the subject. It is open to the Appeals Chamber, as the final arbiter of the law of the Tribunal, to find in favour of an Appellant on grounds other than those advanced: *jura novit curia*. Since the Appeals Chamber is not dependent on the arguments of the parties, it must be open to the Chamber to consider an issue raised on appeal even in the absence of substantial argument. The principle that an appealing party should advance arguments in support of his or her claim is therefore not absolute: it cannot be said that a claim *automatically* fails if no supporting arguments are presented.

99. In the current matter, the arguments having been raised by the Appellant in the Consolidated

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Notice of Appeal, the Appeals Chamber will exercise its discretion to consider whether the grounds have merit.

### **B. Sixth Ground of Appeal**

100. In the Judgement, the Appellant was convicted of six counts relating to genocide and crimes against humanity, for which he was sentenced to a single sentence of life imprisonment for all of the counts. As set out in his Consolidated Notice of Appeal, the Appellant submits

That the Trial Chamber erred in law in failing to pronounce and impose a separate sentence for each count in the indictment each count being a separate charge of an offence.

The Appellant submits that this ground is "self-explaining", but reserves the right to "add additional facts in support of the appeal grounds concerning sentencing if the primary request is not granted".<sup>[115]</sup> During the Hearing, counsel for the Appellant expressly stated that "Kambanda himself did not want to make a point on sentencing".<sup>[116]</sup>

101. In order to assess the legality of the use of global sentences, reference must be made to the following provisions of the Statute and the Rules:

#### **The Statute**

##### Article 22: Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

...

##### Article 23: Penalties

...

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

...

#### **The Rules**

##### Rule 101: Penalties

...

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

...

102. The Appeals Chamber notes that nothing in the Statute or Rules expressly states that a Chamber must impose a separate sentence for each count on which an accused is convicted. However, in view of the references in Rule 101(C) to "multiple sentences", and to "consecutively or concurrently", it may be argued that the Rules seem to assume that a separate sentence will be imposed for each count.

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103. The Appeals Chamber finds in this regard that the Statute is sufficiently liberally worded to allow for a single sentence to be imposed. Whether or not this practice is adopted is within the discretion of the Chamber. The Appeals Chamber upholds the argument of the Prosecution that a Chamber is not prevented from imposing a global sentence in respect of all counts for which an accused has been found guilty.[117]

104. In support of the view that a Chamber has such discretion, past practice of both this Tribunal and the ICTY may be examined. In *Akayesu*, while pronouncing multiple sentences, Trial Chamber I clearly interpreted the Rules to allow the Tribunal to

impose either a single sentence for all the counts or multiple sentences, with the understanding that in the case of the latter, the Tribunal shall decide whether such sentences should be served consecutively or concurrently.  
[118]

105. In *Rutaganda*, the Prosecutor framed the choice between imposing a single sentence or multiple sentences as a discretionary one, her submissions reading: "with regard to the issue of multiple sentences which *could* be imposed on Rutaganda as envisaged by Rule 101(C) of the Rules...".[119] The Chamber implicitly accepted this submission in exercising its discretion and imposing a single sentence for all the counts on which the accused was found guilty, despite the Prosecutor's request that separate sentences be handed down for each conviction.

106. The practice of imposing a single sentence for convictions on multiple counts was also adopted by Trial Chamber I in *Musema*[120] and *Serushago*[121].

107. Before the ICTY the practice has been less common, restricted to date to global sentences handed down by Trial Chamber I in *Jelisić*[122] and in *Blaškić*. In paragraph 805 of the *Blaškić* judgement[123] it was stated that

The Trial Chamber is of the view that the provisions of Rule 101 of the Rules do not preclude the passing of a single sentence for several crimes.

108. In addition, the Appeals Chamber notes that the practice of handing down a single sentence for multiple convictions was adopted by the International Military Tribunal at Nuremberg.[124]

109. It is thus apparent that it is within the discretion of the Trial Chamber to impose either a single sentence or multiple sentences for convictions on multiple counts. However, the question arises, in what circumstances is it appropriate for a Chamber to exercise its discretion to impose a single sentence.

110. On this point, the Appeals Chamber notes that with respect to the particular circumstances of the *Blaškić* case, ICTY Trial Chamber I stated that

the crimes ascribed to the accused have been characterised in several distinct ways but form part of a single set of crimes committed in a given geographic region during a relatively extended time-span ... In light of this overall consistency, the Trial Chamber finds that there is reason to impose a single sentence for all the crimes of which the accused has been found guilty.

This followed similar reasoning in the *Jelisić* case.[125]

111. The Appeals Chamber agrees with the approach adopted in the *Blaškić* case: where the crimes ascribed to an accused, regardless of their characterisation, form part of a single set of crimes committed in a given geographic region during a specific time period, it is appropriate for a single sentence to be imposed for all convictions, if the Trial Chamber so decides. The issue is whether this case falls within

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such parameters.

112. The Appellant pleaded guilty to six counts under Article 2 (Genocide) and Article 3 (Crimes against humanity) of the Statute, for which he was subsequently convicted. These acts were carried out in Rwanda during a specific time period (1994) and formed part of a single set of crimes related to the widespread and systematic attack against the Tutsi civilian population of Rwanda, the purpose of which was to kill them. The Appeals Chamber finds that this was therefore a case in which it was appropriate to impose a single sentence for the multiple convictions.

113. Finding no merit in the Appellant's arguments, the Appeals Chamber dismisses this ground of appeal.

### C. Fourth, Fifth, Seventh and Eighth Grounds of Appeal

114. The main issue raised by the Appellant in the fourth, fifth, seventh and eighth grounds of appeal is that the Trial Chamber erred in law in failing to properly take certain mitigating circumstances into account. As a result the sentence imposed by the Trial Chamber was excessive. The Appellant submits that the Trial Chamber erred in failing to consider that his plea of guilty as a mitigating factor carries a discount in sentence; failing to take into account both his personal circumstances and his substantial co-operation with the Prosecutor (both in the past and in the future<sup>[126]</sup>); and failing to take into account the general practice regarding prison sentences in the courts of Rwanda in the determination of sentence. In addition, he submits that the Trial Chamber erred in law and on the facts in taking into account the non-explanation of the Appellant when asked if he had anything to say himself in mitigation before sentence.

115. For the Appellant's appeal to succeed on these grounds, he must show that the Trial Chamber abused its discretion, so invalidating the sentence. The sentence must be shown to be outside the discretionary framework provided by the Statute and the Rules.

116. The Appeals Chamber notes that a Trial Chamber is required as a matter of law, under both the Statute and the Rules, to take account of mitigating circumstances and the general practice regarding prison sentences in Rwanda. Therefore if it fails to do so, it commits an error of law. Article 23 provides *inter alia*, that "[i]n determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda"<sup>[127]</sup> and that in imposing sentence it "should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person."<sup>[128]</sup> Rule 101(B) provides:

In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 23(2) of the Statute, as well as such factors as:

- (i) Any aggravating circumstances;
- (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
- (iii) The general practice regarding prison sentences in the courts of Rwanda;
- (iv) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

117. Rule 101(B) is expressed in the imperative in that the Trial Chamber "shall take into account" the

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factors listed and therefore if it does not, it will commit an error of law. Whether or not this would invalidate the decision is of course another question.

118. In the Judgement the Trial Chamber considered both the Appellant's guilty plea on each count on the indictment, together with the Plea Agreement,[129] wherein the Appellant made full admissions of all the relevant facts alleged in the indictment and his involvement as Prime Minister. He "acknowledge[d] that...he as Prime Minister, instigated, aided and abetted the *Prefets, Bourgmestres*, and members of the population to commit massacres and killings of civilians, in particular Tutsi and moderate Hutu." [130] The Trial Chamber noted the gravity of the crimes in question and found as an aggravating factor the fact that the Appellant abused his position of authority and trust of the civilian population when he, as Prime Minister, was responsible for maintaining peace and security.[131] It considered the factors put forward by the Appellant in mitigation: plea of guilty; remorse, which the Appellant claimed was evident from the act of pleading guilty; and cooperation with the Prosecutor. [132] Nevertheless, it found that the Appellant had "offered no explanation for his voluntary participation in the genocide; nor [had] he expressed contrition, regret or sympathy for the victims in Rwanda, even when given the opportunity to do so by the Chamber, during the [pre-sentencing] hearing of 3 September 1998." [133]

119. Weighing up the submissions of both parties, in particular regarding the Appellant's past and future cooperation with the Prosecutor, the fact that the guilty plea would encourage others to come forward and recognize their responsibilities and that it was in itself a mitigating circumstance, the Trial Chamber nevertheless determined that, in view of the "intrinsic gravity" of the crimes and the Appellant's position of authority,[134] "the aggravating circumstances surrounding the crimes...negate the mitigating circumstances, especially since [the Appellant] occupied a high ministerial post, at the time he committed the said crimes." [135] The Appellant was therefore sentenced "*à la peine d'emprisonnement à vie*," (translated in the English text, as "life imprisonment"). [136]

120. The Judgement illustrates that the Trial Chamber clearly considered the mitigating factors put forward by both the Appellant and the Prosecutor, the principle that a guilty plea as part of this mitigation carries with it a reduction in sentence and the general practice regarding prison sentences in the courts of Rwanda. The Trial Chamber acknowledged that the Prosecutor had asked the Trial Chamber "to regard as a significant mitigating factor, not only the substantial co-operation so far extended, but also the future co-operation..." of the Appellant. [137] It noted the early guilty plea of the Appellant and the fact that both the Appellant and the Prosecutor

urged the Chamber to interpret [the Appellant's] guilty pleas as a signal of his remorse, repentance and acceptance of responsibility for his actions. The Chamber is mindful that remorse is not the only reasonable inference that can be drawn from a guilty plea; nevertheless it accepts that most national jurisdictions consider admissions of guilt as matters properly to be considered in mitigation of punishment. [138]

121. In addition, with regard to consideration of the general practice regarding prison sentences in the courts of Rwanda, the Trial Chamber analysed this issue at some length in paragraphs 18-25 and having reviewed the scale of sentences applicable in Rwanda, properly concluded that "the reference to this practice can be used for guidance, but is not binding." [139]

122. The Appeals Chamber therefore finds that the Trial Chamber clearly considered each of the above factors put forward by the Appellant in mitigation in reaching its decision and as required in the Statute and Rules and therefore to this extent did not commit an error of law.

123. However, the second question is whether the Trial Chamber properly took these factors into account. This turns on the question of the weight attached by the Trial Chamber to the mitigating



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factors. As the Prosecutor submits, "the Appellant's Brief does not appear to argue that the Trial Chamber failed to recognize this as a mitigating circumstance, but rather, that the Trial Chamber failed to give this mitigating circumstance sufficient weight."<sup>[140]</sup>

124. The weight to be attached to mitigating circumstances is a matter of discretion for the Trial Chamber and unless the Appellant succeeds in showing that the Trial Chamber abused its discretion, resulting in a sentence outside the discretionary framework provided by the Statute and the Rules, these grounds of appeal will fail.

125. The Appeals Chamber notes that the crimes for which the Appellant was convicted were of the most serious nature. A sentence imposed should reflect the inherent gravity of the criminal conduct. The Appeals Chamber of the ICTY has observed that "[c]onsideration of the gravity of the conduct of the accused is normally the starting point for consideration of an appropriate sentence."<sup>[141]</sup> In sentencing the Appellant, the Trial Chamber found that

- (v) the crimes for which Jean Kambanda is responsible carry an intrinsic gravity, and their widespread, atrocious and systematic character is particularly shocking to the human conscience;
- (vi) Jean Kambanda committed the crimes knowingly and with premeditation;
- (vii) and, moreover, Jean Kambanda, as Prime Minister of Rwanda was entrusted with the duty and authority to protect the population and he abused this trust.<sup>[142]</sup>

126. In this case, the Trial Chamber balanced the mitigating factors against the aggravating factors and concluded that "the aggravating circumstances surrounding the crimes negate the mitigating circumstances<sup>[143][144]</sup> The Appeals Chamber considers that this sentence falls within the discretionary framework provided by the Statute and the Rules, and so sees no reason to disturb the decision of the Trial Chamber.

### **THE APPEALS CHAMBER**

#### **UNANIMOUSLY**

Done in English and French, the French text being authoritative.

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Claude Jorda  
Presiding

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Lal Chand Vohrah

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Mohamed Shahabuddeen

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Rafael Nieto-Navia

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Fausto Pocar

Done this nineteenth day of October 2000  
at The Hague,

**[Seal of the Tribunal]**

- [1] "Sentence", *The Prosecutor v. Jean Kambanda*, Case No. ICTR 97-23-S, Tr. Ch. I, 4 September 1998.
- [2] "Notice of Appeal against Sentence of Trial Chamber I Art. 24 of Statute and Rule 108(A) of the Rules".
- [3] "Supplementary Notice of Appeal against Sentence of Trial Chamber I Art. 24 of Statute and Rule 108(A) of the Rules", filed on 25 September 1998.
- [4] "Second Supplementary Notice of Appeal", filed on 24 November 1999.
- [5] *Ibid.*, page 2.
- [6] "Motion for Admission of New Evidence on Appeal pursuant to Rules 115 of the Rules of Procedure and Evidence".
- [7] "Decision on the Appellant's Motion for Admission of New Evidence", 13 June 2000.
- [8] "Prosecution's Response to Jean Kambanda's Provisional Appellant's Brief of 30 March 2000".
- [9] "Reply to the Prosecutor's Response on the Appellant's Brief of 2 May 2000".
- [10] "Order (date of hearing and Appellant's Appeal Books)", 2 June 2000.
- [11] "Prosecution Motion under Rules 54 and 117 for an Order for Information from the Registrar of the ICTY Concerning the Detention of Kambanda".
- Appellant's Reply, paras 8 to 20.
- [16] On 22 July 1997, he stated in a letter to the Registry that: "When in future I express the desire for counsel, I wish to be defended or represented either by Mr. Johan Scheers or by a criminal lawyer who is a specialist in common law and is French-speaking" [translation from French]
- [17] The hearing of 14 August 1997 involved the Trial Chamber's examination of the Prosecution Motion seeking an Order to extend the suspect Jean Kambanda's provisional detention under Rule 40 bis. Transcript, 14 August 1997, p. 5.
- [18] The hearing of 16 September 1997 concerned the Prosecution Motion seeking an Order for an additional extension of provisional detention under Rule 40 bis. Transcript, 16 September 1997, p. 6.
- [19] Letter dated 18 October 1997 from Jean Kambanda to the Registry, in "Registry's Reply to Appellant's Brief", 29 June 1999, Annex 1.
- [20] Letter dated 5 March 1998 from Jean-Pelé Fomété to Jean Kambanda, in op. cit. *supra*, Annex 2a.
- [21] Letter dated 5 March 1998 from Jean Kambanda to Jean-Pelé Fomété, ., Annex 2b.
- [22] Letter dated 5 March 1998 from Jean-Pelé Fomété to Jean Kambanda, ., Annex 2c.
- [23] "Ayant appris que Maître Johan SCHEERS, par lequel j'avais exprimé mon intention d'être défendu, qu'il n'est pas repris sur la liste des conseils accrédités auprès du Tribunal et compte tenu du curriculum vitae de Maître Olivier Michael INGLIS que m'a été envoyé, après mon analyse, je n'ai pas objection à ce qu'il puisse assurer ma défense". In letter dated 20 March 1998 from Jean Kambanda to Jean-Pelé Fomété, ., Annex 2g.

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[24]

Date of Mr. Kambanda's initial appearance.

[26]The 3 September and 4 September 1998 hearings were the pre-sentencing and sentencing hearings pursuant to Rule 100.

[27] Appellant's Reply, para. 15; Transcript, 27 June 2000, p. 33.

[28] Transcript, 1 May 1998; Transcript, 3 September 1998; Transcript, 4 September 1998.

[29]"[...] I would like to ask the accused: "Do you now have the assistance of a counsel?", and Mr. Kambanda answered "Yes, Mr. President". See Transcript, 1 May 1998, p. 20.

[30]Appellant's Brief, para. 15; Transcript, 27 June 2000, p. 154.

[31]Transcript, 27 June 2000, p. 47.

[32]"Decision on the Prosecutor's Appeal Concerning the Admissibility of Evidence", *The Prosecutor v. Aleksovski*, Case No. IT-94-1-A, App. Ch., 16 February 1999, para. 19.

[33]On this point, see in particular "Judgement", *The Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-IT, Tr. Ch. II, 21 May 1999, para. 64.

[34]"Article 12: Remedy Against a Decision Not to Assign Counsel

(A)The suspect whose request for assignment of Counsel has been denied may seek the President's review of the decision of the Registrar. The President may either confirm the Registrar's decision or decide that a Counsel should be assigned.

(B) The accused whose request for assignment of Counsel for his initial appearance has been denied, may make a motion to the Trial Chamber before which he is due to appear for immediate review of the Registrar's decision. The Trial Chamber may either confirm the Registrar's decision or decide that a Counsel should be assigned.

(C) After the initial appearance of the accused, an objection to the denial of his request for the assignment of Counsel shall take the form of a preliminary motion by him before the Trial Chamber not later than 60 days after his first appearance and, in any event, before the hearing on the merits."

See "Judgement", *The Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, App. Ch.

[36]"Judgement", *The Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, App. Ch., 15 July 1999, para. 55.

[37]"Decision Stating Reasons for Appeals Chamber's Order of 29 May 1998", *The Prosecutor v. Milan Kovačević*, Case No. IT-97-24-AR73, App. Ch., 2 July 1998, para. 33.

[38]*Albert Berry v. Jamaica*, Comm. No. 330/1998, 26 April 1994, UN doc. CCPR/C/50/D/330/1998, para. 11.6. See also *Glenford Campbell v. Jamaica*, Comm. No. 248/1997, 30 March 1992.

[39]Appellant's Reply, para. 12.

[40] Transcript, 27 June 2000, pp. 36 (last line), 37, 38, 39, 43, 94 and 164; Transcript, 28 June 2000, pp. 9, 28 and 29.

[41] The Plea Agreement, signed by the Appellant, states in its paragraph 48 that: "I, Jean Kambanda, have read and carefully reviewed every part of this plea agreement with my Counsel, Oliver Michael Inglis. Mr. Inglis has advised me of my rights, of possible defences, and of the consequences of entering into this agreement [...]" Moreover, the Appellant recognized in his statement that Mr. Inglis had performed his role in respect of transmitting documents addressed to Jean Kambanda (in that instance, two letters relating to his guilty plea). Transcript, 27 June 2000, p. 156.

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[42] Transcript, 28 June 2000, p. 168.

[43] Appellant's Reply, para. 20.

[44] Appellant's Brief, paras. 17-21

[45] "Decision on the Motions of the Accused for Replacement of Assigned Counsel", *The Prosecutor v. Gérard Ntakirutimana*, Case No. ICTR-96-10-T and ICTR-96-17-T, 11 June 1997, p. 2 *et seq.*

[46] Textual analysis of subparagraph (d) of paragraph 4 of Article 20 of the Statute shows that the choice of assigned defence counsel is made, in any event, by an authority, not the accused. This Article must be Rule 45 of the Rules and Article 13 of the Directive on the Assignment of Defence Counsel, whereby the Registrar is the person authorized to make the choice. The Registrar therefore has no other obligation than to assign counsel whose name appears on the list of counsel who may be assigned and is not bound by the wishes of an indigent accused.

[47] According to the Human Rights Committee, "article 14, paragraph 3 (d) [of the International Convention on Civil and Political Rights] does not entitle the accused to choose counsel provided to him free of charge". *Osbourne Wright and Eric Harvey v. Jamaica*, Comm. No. 459/1991, 8 November 1995, UN Doc. CCPR/C/50/D/330/1988, para. 11.6.

[48] Article 6, subparagraph 3. C. of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") guarantees three rights, which may be exercised on mutually exclusive bases: to defend oneself in person or through legal assistance of one's own choosing or, if one has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. Developments in the exercise of these rights in Louis-Edmond Pettiti, Emmanuel Decaux, Pierre-Henri Imbert (eds.) *La Convention Européenne des Droits de l'Homme, Commentaire article par article*, (Economica, Paris, 1999) pp. 274-275. According to the Convention bodies, the right to legal assistance of one's own choosing is not absolute (*X v. United Kingdom*, Eur. Comm. H.R., Judgement of 9 October 1978, Application No. 8295/78; *Croissant v. Germany*, Eur. Ct. H.R., Judgement (Merits) of 25 September 1992, Application No. 13611/88, Series A, no. 237-B, para. 29). It particularly does not apply when legal assistance is free. Indeed, Article 6 (3) (c) does not guarantee the right to choose the defence counsel who will be assigned by the court, nor does it guarantee the right to be consulted on the choice of the defence counsel to be assigned (*X v. Federal Republic of Germany*, Decision of 6 July 1976, Application No. 6946/75 and *F v. Switzerland*, Eur. Comm. H.R., Decision of 9 May 1989, Application No. 12152/86). In any event, the authority responsible for appointing counsel has broad discretionary powers: "[the right to counsel of one's own choosing] is necessarily subject to certain limitations where free legal aid is concerned and also where [...]. However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice." (*Croissant v. Germany*, *op. cit. supra*, para. 29).

[49] The effectiveness of representation by assigned counsel must indeed be ensured. According to the European Commission for Human Rights, it is up to the authorities responsible for providing free legal assistance and assigning defence counsel to make sure that that counsel can defend the accused effectively (*F v. Switzerland*, *op. cit. supra*).

[51] Appellant's Brief, para. 6. Transcript, 27 June 2000, page 24 line 5.

[52] Appellant's Brief, para. 6. Transcript, 27 June 2000, page 24 line 15.

[53] Appellant's Brief, para. 6. Transcript, 27 June 2000, page 25 lines 2-10.

[54] Appellant's Brief, paras. 23-34.

[55] Appellant's Book of Authorities, Document A13.

[56] Appellant's Brief, para. 36.

[57] Prosecutor's Response, para. 4.56 ff.

[58] Prosecutor's Response, para. 4.85.

[59] Appellant's Reply, para. 22.

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[60] Transcript, 27 June 2000, pages 87-89.

[61] Transcript, 27 June 2000, page 12.

[62] Appellant's Reply, para. 22.

[63] Transcript, 27 June 2000, page 136, line 22 – page 137, line 2.

[64] Appellant's Brief, p. 12 ff.

[65] Prosecutor's Response, paras. 4.89-4.91.

[66] Prosecutor's Response, para. 4.92.

[67] Prosecutor's Response, paras. 4.93-4.94.

[68] Appellant's Reply, paras. 16 & 24.

[69] Appellant's Brief, at para. 39.

[70] *Ibid.* at para. 41.

[71] Transcript, 27 June 2000, pp. 87-89.

[72] Prosecutor's Response, at paras. 4.98-4.99, and "Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah", *The Prosecutor v. Dražen Erdemović*, Case No.: IT-96-22-A, App. Ch., 7 October 1997, paras. 8-9.

[73] Prosecutor's Response, paras. 4.100-4.101, Transcript 1 May 1998, p. 26, lines 15-24.

[74] *Ibid.* at para. 4.103, Transcript, 3 September 1998, p. 26, lines 12-19.

[75] *Ibid.* at para. 4.104, Plea Agreement, paras. 2 and 4.

[76] "Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah", *Erdemović*, para. 10.

[77] Appellant's Brief, para. 42, inter alia *Erdemović*, "Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah", para. 14.

[78] *Ibid.* para. 45, generally *Erdemović*, "Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah".

[79] *Erdemović*, "Separate and Dissenting Opinion of Judge Cassese", para. 10.

[80] *Ibid.*, paras. 48-50.

[81] *Ibid.*, para. 51, and quoting passages of the Transcript of 3 September 1998, p. 35.

[82] *Ibid.*, paras. 53-56.

[83] Prosecutor's Response, para. 4.110, citing , "Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah", para. 14, Appellant's Brief, para. 45.

[84] *Ibid.* para. 4.111, citing *Erdemović*, "Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah", paras. 16-19.

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[85] *Ibid.* paras. 4.112-4.113.

[86] *Ibid.*, para. 4.115, quoting transcript of 1 May 1998, pp. 26 & 27.

[87] *Ibid.*, paras. 4.117-4.119.

[88] Appellant's Reply, para. 27.

[89] *Ibid.*, para. 29.

[90] "Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah", *Erdemović*, paras. 14-19.

[91] Appellant's Brief, para. 51, and quoting passages of the Transcript of 3 September 1998, p. 35.

[92] For example, "Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah" *Erdemović*, explicitly notes at para. 16 that the guilty plea may not have been informed because when asked by the Trial Chamber whether he understood the consequences of pleading guilty, the appellant in that case gave an unsatisfactory answer, and further that the trial transcript indicated that defence counsel failed to understand truly the nature of a guilty plea

[93] Appellant's Brief, para. 58, quoting *Erdemović*, para. 29.

[94] *Ibid.*, para. 59, quoting transcript p. 72.

[95] *Ibid.*, para. 59.

[96] Prosecutor's Response, paras. 4.120-4.122.

[97] *Ibid.*, para. 4.123.

[98] Appellant's Reply, para. 31.

[99] *Erdemović*, "Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah", para. 31.

[100] Judgement, paras. 6 and 7.

[101] Appellant's Brief, paras. 60-62.

[102] Prosecutor's Response, para. 4.127.

[103] *Ibid.*, para. 4.133.

[104] *Ibid.*, para. 4.134 (emphasis in original).

[105] *Ibid.*, para. 4.138.

[106] *Ibid.*, paras. 4.139-4.140.

[107] *Ibid.*, para. 4.141, quoting "Judgement", *The Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, Tr. Ch. I, 14 December 1999, at para. 25.

[108] *Ibid.*, para. 4.141, citing *Jelisić* at para. 11 and fn 9.

[109] *Ibid.*, para. 4.142.

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[110] Judgement, para. 4.

[111] Appellant's Brief, p. 22.

[112] In the Appellant's Reply, the Appellant states that he "repeats his remarks as made in the appellant's brief and reserves all rights to add additional facts in support of the appeal grounds concerning sentencing if the primary request concerning appeal grounds 1-3 is not granted" (para. 34).

[113] Transcript, 28 June 2000, p. 41.

[114] Prosecutor's Response, paras. 4.144, 4.161, 4.165, 4.167-4.169, 4.171 and Transcript, 28 June 2000, pp. 149-152.

[115] Appellant's Brief, at para. 63.

[116] Transcript, 28 June 2000, p. 41.

[117] Prosecutor's Response, at para. 4.164.

[118] "Sentence", *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, T. Ch. I, 2 October 1998, para. 41.

[119] "Judgement and Sentence", *The Prosecutor v. Georges Anderson Nderubumve Rutaganda*, Case No. ICTR-96-3-T, T. Ch. I, 6 December 1999 at para. 463 (emphasis added).

[120] "Judgement and Sentence", *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, T. Ch. I, 27 January 2000, p.285.

[121] "Sentence", *The Prosecutor v. Omar Serushago*, Case No. ICTR-98-39-S, T. Ch. I, 5 February 2000, at p.15.

Judgement", *The Prosecutor v.*

[123] "Judgement", *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, T. Ch. I, 3 March 2000.

"Judgement", *The Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, T. Ch. I, 14 December 1999, para. 137.

[126] Transcript, 28 June 2000, p. 41.

[127] Article 23(1).

[128] Article 23(2).

[129] See above for further details regarding the Plea Agreement.

[130] Judgement, para. 39.

[131] Judgement, paras. 42-44.

[132] Judgement, para. 46.

[133] Judgement, para. 51.

[134] Judgement, para. 61.

[135] Judgement, para. 62.

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[136] Judgement, Verdict.

[137] Judgement, para. 47.

[138] Judgement, para. 52.

[139] Judgement, para. 23, referring to a Trial Chamber decision in the case of *Prosecutor v. Dražen Erdemović*, 1 November 1996. See also the Appeals Chamber decision in Judgement in Sentencing Appeals, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A and IT-94-1-*Abis*, A.Ch., 26 January 2000, para. 21 and Reasons for Judgement, *Omar Serushago v. the Prosecutor*, Case No. ICTR-98-39-A, A.Ch., 6 April 2000, para. 30.

[140] Prosecutor's Response, para. 4.152. The Prosecutor makes this submission in relation to the fourth ground of appeal, but the Appeals Chamber finds that this applies in general to this case.

[141] Judgement, *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, A.Ch., 24 March 2000, para.182. Also citing, Judgement, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, T. Ch. II, 16 November 1998, para. 1225 and Judgement, *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, T. Ch. II, 14 January 2000, para. 852.

[142] Judgement, para. 61.

[143] Judgement, para. 62.

Statute). It is also *always* subject to possible reductions if provided under the applicable law in this State and if the President of the Tribunal



**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

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**THE PROSECUTOR OF THE TRIBUNAL**

**AGAINST**

**SLOBODAN MILOSEVIC  
MILAN MILUTINOVIC  
NIKOLA SAINOVIC  
DRAGOLJUB OJDANIC  
VLAJKO STOJILJKOVIC**

**INDICTMENT**

The Prosecutor of the International Criminal Tribunal for the former Yugoslavia, pursuant to her authority under Article 18 of the Statute of the Tribunal, charges:

**SLOBODAN MILOSEVIC  
MILAN MILUTINOVIC  
NIKOLA SAINOVIC  
DRAGOLJUB OJDANIC  
VLAJKO STOJILJKOVIC**

with **CRIMES AGAINST HUMANITY** and **VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR** as set forth below:

**BACKGROUND**

1. The Autonomous Province of Kosovo and Metohija is located in the southern part of the Republic of Serbia, a constituent republic of the Federal Republic of Yugoslavia (hereinafter FRY). The territory now comprising the FRY was part of the former Socialist Federal Republic of Yugoslavia (hereinafter SFRY). The Autonomous Province of Kosovo and Metohija is bordered on the north and north-west by the Republic of Montenegro, another constituent republic of the FRY. On the south-west, the Autonomous Province of Kosovo and Metohija is bordered by the Republic of Albania, and to the south, by the Former Yugoslav Republic of Macedonia. The capital of the Autonomous Province of Kosovo and Metohija is Pristina.

2. In 1990 the Socialist Republic of Serbia promulgated a new Constitution which, among other things, changed the names of the republic and the autonomous provinces. The name of the Socialist Republic of Serbia was changed to the Republic of Serbia (both hereinafter Serbia); the name of the Socialist Autonomous Province of Kosovo was changed to the Autonomous Province of Kosovo and Metohija (both hereinafter Kosovo); and the name of the Socialist Autonomous

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Province of Vojvodina was changed to the Autonomous Province of Vojvodina (hereinafter Vojvodina). During this same period, the Socialist Republic of Montenegro changed its name to the Republic of Montenegro (hereinafter Montenegro).

3. In 1974, a new SFRY Constitution had provided for a devolution of power from the central government to the six constituent republics of the country. Within Serbia, Kosovo and Vojvodina were given considerable autonomy including control of their educational systems, judiciary, and police. They were also given their own provincial assemblies, and were represented in the Assembly, the Constitutional Court, and the Presidency of the SFRY.

4. In 1981, the last census with near universal participation, the total population of Kosovo was approximately 1,585,000 of which 1,227,000 (77%) were Albanians, and 210,000 (13%) were Serbs. Only estimates for the population of Kosovo in 1991 are available because Kosovo Albanians boycotted the census administered that year. General estimates are that the current population of Kosovo is between 1,800,000 and 2,100,000 of which approximately 85-90% are Kosovo Albanians and 5-10% are Serbs.

5. During the 1980s, Serbs voiced concern about discrimination against them by the Kosovo Albanian-led provincial government while Kosovo Albanians voiced concern about economic underdevelopment and called for greater political liberalisation and republican status for Kosovo. From 1981 onwards, Kosovo Albanians staged demonstrations which were suppressed by SFRY military and police forces of Serbia.

6. In April 1987, **Slobodan MILOSEVIC**, who had been elected Chairman of the Presidium of the Central Committee of the League of Communists of Serbia in 1986, travelled to Kosovo. In meetings with local Serb leaders and in a speech before a crowd of Serbs, **Slobodan MILOSEVIC** endorsed a Serbian nationalist agenda. In so doing, he broke with the party and government policy which had restricted nationalist expression in the SFRY since the time of its founding by Josip Broz Tito after the Second World War. Thereafter, **Slobodan MILOSEVIC** exploited a growing wave of Serbian nationalism in order to strengthen centralised rule in the SFRY.

7. In September 1987 **Slobodan MILOSEVIC** and his supporters gained control of the Central Committee of the League of Communists of Serbia. In 1988, **Slobodan MILOSEVIC** was re-elected as Chairman of the Presidium of the Central Committee of the League of Communists of Serbia. From that influential position, **Slobodan MILOSEVIC** was able to further develop his political power.

8. From July 1988 to March 1989, a series of demonstrations and rallies supportive of **Slobodan MILOSEVIC**'s policies -- the so-called "Anti-Bureaucratic Revolution" -- took place in Vojvodina and Montenegro. These protests led to the ouster of the respective provincial and republican governments; the new governments were then supportive of, and indebted to, **Slobodan MILOSEVIC**.

9. Simultaneously, within Serbia, calls for bringing Kosovo under stronger Serbian rule intensified and numerous demonstrations addressing this issue were held. On 17 November 1988, high-ranking Kosovo Albanian political figures were dismissed from their positions within the provincial leadership and were replaced by appointees loyal to **Slobodan MILOSEVIC**. In early 1989, the Serbian Assembly proposed amendments to the Constitution of Serbia which would strip Kosovo of most of its autonomous powers, including control of the police, educational and economic policy, and choice of official language, as well as its veto powers over further changes to the Constitution of Serbia. Kosovo Albanians demonstrated in large numbers against the proposed changes. Beginning in February 1989, a strike by Kosovo Albanian miners further increased tensions.

10. Due to the political unrest, on 3 March 1989, the SFRY Presidency declared that the situation in

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the province had deteriorated and had become a threat to the constitution, integrity, and sovereignty of the country. The government then imposed "special measures" which assigned responsibility for public security to the federal government instead of the government of Serbia.

11. On 23 March 1989, the Assembly of Kosovo met in Pristina and, with the majority of Kosovo Albanian delegates abstaining, voted to accept the proposed amendments to the constitution. Although lacking the required two-thirds majority in the Assembly, the President of the Assembly nonetheless declared that the amendments had passed. On 28 March 1989, the Assembly of Serbia voted to approve the constitutional changes effectively revoking the autonomy granted in the 1974 constitution.

12. At the same time these changes were occurring in Kosovo, **Slobodan MILOSEVIC** further increased his political power when he became the President of Serbia. **Slobodan MILOSEVIC** was elected President of the Presidency of Serbia on 8 May 1989 and his post was formally confirmed on 6 December 1989.

13. In early 1990, Kosovo Albanians held mass demonstrations calling for an end to the "special measures." In April 1990, the SFRY Presidency lifted the "special measures" and removed most of the federal police forces as Serbia took over responsibility for police enforcement in Kosovo.

14. In July 1990, the Assembly of Serbia passed a decision to suspend the Assembly of Kosovo shortly after 114 of the 123 Kosovo Albanian delegates from that Assembly had passed an unofficial resolution declaring Kosovo an equal and independent entity within the SFRY. In September 1990, many of these same Kosovo Albanian delegates proclaimed a constitution for a "Republic of Kosovo." One year later, in September 1991, Kosovo Albanians held an unofficial referendum in which they voted overwhelmingly for independence. On 24 May 1992, Kosovo Albanians held unofficial elections for an assembly and president for the "Republic of Kosovo."

15. On 16 July 1990, the League of Communists of Serbia and the Socialist Alliance of Working People of Serbia joined to form the Socialist Party of Serbia (SPS), and **Slobodan MILOSEVIC** was elected its President. As the successor to the League of Communists, the SPS became the dominant political party in Serbia and **Slobodan MILOSEVIC**, as President of the SPS, was able to wield considerable power and influence over many branches of the government as well as the private sector. **Milan MILUTINOVIC** and **Nikola SAINOVIC** have both held prominent positions within the SPS. **Nikola SAINOVIC** was a member of the Main Committee and the Executive Council as well as a vice-chairman; and **Milan MILUTINOVIC** successfully ran for President of Serbia in 1997 as the SPS candidate.

16. After the adoption of the new Constitution of Serbia on 28 September 1990, **Slobodan MILOSEVIC** was elected President of Serbia in multi-party elections held on 9 and 26 December 1990; he was re-elected on 20 December 1992. In December 1991, **Nikola SAINOVIC** was appointed a Deputy Prime Minister of Serbia.

17. After Kosovo's autonomy was effectively revoked in 1989, the political situation in Kosovo became more and more divisive. Throughout late 1990 and 1991 thousands of Kosovo Albanian doctors, teachers, professors, workers, police and civil servants were dismissed from their positions. The local court in Kosovo was abolished and many judges removed. Police violence against Kosovo Albanians increased.

18. During this period, the unofficial Kosovo Albanian leadership pursued a policy of non-violent civil resistance and began establishing a system of unofficial, parallel institutions in the health care and education sectors.

19. In late June 1991 the SFRY began to disintegrate in a succession of wars fought in the Republic

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of Slovenia (hereinafter Slovenia), the Republic of Croatia (hereinafter Croatia), and the Republic of Bosnia and Herzegovina (hereinafter Bosnia and Herzegovina). On 25 June 1991, Slovenia declared independence from the SFRY, which led to the outbreak of war; a peace agreement was reached on 8 July 1991. Croatia declared its independence on 25 June 1991, leading to fighting between Croatian military forces on the one side and the Yugoslav People's Army (JNA), paramilitary units and the "Army of the Republic of Srpska Krajina" on the other.

20. On 6 March 1992, Bosnia and Herzegovina declared its independence, resulting in wide scale war after 6 April 1992. On 27 April 1992, the SFRY was reconstituted as the FRY. At this time, the JNA was re-formed as the Armed Forces of the FRY (hereinafter VJ). In the war in Bosnia and Herzegovina, the JNA, and later the VJ, fought along with the "Army of Republika Srpska" against military forces of the Government of Bosnia and Herzegovina and the "Croat Defence Council." Active hostilities ceased with the signing of the Dayton peace agreement in December 1995.

21. Although **Slobodan MILOSEVIC** was the President of Serbia during the wars in Slovenia, Croatia and Bosnia and Herzegovina, he was nonetheless the dominant Serbian political figure exercising *de facto* control of the federal government as well as the republican government and was the person with whom the international community negotiated a variety of peace plans and agreements related to these wars.

22. Between 1991 and 1997 **Milan MILUTINOVIC** and **Nikola SAINOVIC** both held a number of high ranking positions within the federal and republican governments and continued to work closely with **Slobodan MILOSEVIC**. During this period, **Milan MILUTINOVIC** worked in the Foreign Ministry of the FRY, and at one time was Ambassador to Greece; in 1995, he was appointed Minister of Foreign Affairs of the FRY, a position he held until 1997. **Nikola SAINOVIC** was Prime Minister of Serbia in 1993 and Deputy Prime Minister of the FRY in 1994.

23. While the wars were being conducted in Slovenia, Croatia and Bosnia and Herzegovina, the situation in Kosovo, while tense, did not erupt into the violence and intense fighting seen in the other countries. In the mid-1990s, however, a faction of the Kosovo Albanians organised a group known as *Ushtria Çlirimtare e Kosovës* (UÇK) or, known in English as the Kosovo Liberation Army (KLA). This group advocated a campaign of armed insurgency and violent resistance to the Serbian authorities. In mid-1996, the KLA began launching attacks primarily targeting FRY and Serbian police forces. Thereafter, and throughout 1997, FRY and Serbian police forces responded with forceful operations against suspected KLA bases and supporters in Kosovo.

24. After concluding his term as President of Serbia, **Slobodan MILOSEVIC** was elected President of the FRY 15 July 1997, and assumed office on 23 July 1997. Thereafter, elections for the office of the President of Serbia were held; **Milan MILUTINOVIC** ran as the SPS candidate and was elected President of Serbia on 21 December 1997. In 1996, 1997 and 1998, **Nikola SAINOVIC** was re-appointed Deputy Prime Minister of the FRY. In part through his close alliance with **Milan MILUTINOVIC**, **Slobodan MILOSEVIC** was able to retain his influence over the Government of Serbia.

25. Beginning in late February 1998, the conflict intensified between the KLA on the one hand and the VJ, the police forces of the FRY, police forces of Serbia, and paramilitary units (all hereinafter forces of the FRY and Serbia), on the other hand. A number of Kosovo Albanians and Kosovo Serbs were killed and wounded during this time. Forces of the FRY and Serbia engaged in a campaign of shelling predominantly Kosovo Albanian towns and villages, widespread destruction of property, and expulsions of the civilian population from areas in which the KLA was active. Many residents fled the territory as a result of the fighting and destruction or were forced to move to other areas within Kosovo. The United Nations estimates that by mid-October 1998, over 298,000 persons, roughly fifteen percent of the population, had been internally displaced within Kosovo or had left the province.

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26. In response to the intensifying conflict, the United Nations Security Council (UNSC) passed Resolution 1160 in March 1998 "condemning the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo," and imposed an arms embargo on the FRY. Six months later the UNSC passed Resolution 1199 (1998) which stated that "the deterioration of the situation in Kosovo, Federal Republic of Yugoslavia, constitutes a threat to peace and security in the region." The Security Council demanded that all parties cease hostilities and that "the security forces used for civilian repression" be withdrawn.
27. In an attempt to diffuse tensions in Kosovo, negotiations between **Slobodan MILOSEVIC**, and representatives of the North Atlantic Treaty Organisation (NATO), and the Organisation for Security and Co-operation in Europe (OSCE) were conducted in October 1998. An "Agreement on the OSCE Kosovo Verification Mission" was signed on 16 October 1998. This agreement and the "Clark-Naumann agreement," which was signed by **Nikola SAINOVIC**, provided for the partial withdrawal of forces of the FRY and Serbia from Kosovo, a limitation on the introduction of additional forces and equipment into the area, and the deployment of unarmed OSCE verifiers.
28. Although scores of OSCE verifiers were deployed throughout Kosovo, hostilities continued. During this period, a number of killings of Kosovo Albanians were documented by the international verifiers and human rights organisations. In one such incident, on 15 January 1999, 45 unarmed Kosovo Albanians were murdered in the village of Racak in the municipality of Stimlje/Shtime.
29. In a further response to the continuing conflict in Kosovo, an international peace conference was organised in Rambouillet, France beginning on 7 February 1999. **Nikola SAINOVIC**, the Deputy Prime Minister of the FRY, was a member of the Serbian delegation at the peace talks and **Milan MILUTINOVIC**, President of Serbia, was also present during the negotiations. The Kosovo Albanians were represented by the KLA and a delegation of Kosovo Albanian political and civic leaders. Despite intensive negotiations over several weeks, the peace talks collapsed in mid-March 1999.
30. During the peace negotiations in France, the violence in Kosovo continued. In late February and early March, forces of the FRY and Serbia launched a series of offensives against dozens of predominantly Kosovo Albanian villages and towns. The FRY military forces were comprised of elements of the 3rd Army, specifically the 52nd Corps, also known as the Pristina Corps, and several brigades and regiments under the command of the Pristina Corps. The Chief of the General Staff of the VJ, with command responsibilities over the 3rd Army and ultimately over the Pristina Corps, is **Colonel General Dragoljub OJDANIC**. The Supreme Commander of the VJ is **Slobodan MILOSEVIC**.
31. The police forces taking part in the actions in Kosovo are members of the Ministry of Internal Affairs of Serbia in addition to some units from the Ministry of Internal Affairs of the FRY. All police forces employed by or working under the authority of the Ministry of Internal Affairs of Serbia are commanded by **Vlajko STOJILJKOVIC**, Minister of Internal Affairs of Serbia. Under the FRY Act on the Armed Forces, those police forces engaged in military operations during a state of war or imminent threat of war are subordinated to the command of the VJ whose commanders are **Colonel General Dragoljub OJDANIC** and **Slobodan MILOSEVIC**.
32. Prior to December 1998, **Slobodan MILOSEVIC** designated **Nikola SAINOVIC** as his representative for the Kosovo situation. A number of diplomats and other international officials who needed to speak with a government official regarding events in Kosovo were directed to **Nikola SAINOVIC**. He took an active role in the negotiations establishing the OSCE verification mission for Kosovo and he participated in numerous other meetings regarding the Kosovo crisis. From January 1999 to the date of this indictment, **Nikola SAINOVIC** has acted as the liaison between **Slobodan MILOSEVIC** and various Kosovo Albanian leaders.
33. **Nikola SAINOVIC** was most recently re-appointed Deputy Prime Minister of the FRY on 20

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May 1998. As such, he is a member of the Government of the FRY, which, among other duties and responsibilities, formulates domestic and foreign policy, enforces federal law, directs and co-ordinates the work of federal ministries, and organises defence preparations.

34. During their offensives, forces of the FRY and Serbia acting in concert have engaged in a well-planned and co-ordinated campaign of destruction of property owned by Kosovo Albanian civilians. Towns and villages have been shelled, homes, farms, and businesses burned, and personal property destroyed. As a result of these orchestrated actions, towns, villages, and entire regions have been made uninhabitable for Kosovo Albanians. Additionally, forces of the FRY and Serbia have harassed, humiliated, and degraded Kosovo Albanian civilians through physical and verbal abuse. The Kosovo Albanians have also been persistently subjected to insults, racial slurs, degrading acts based on ethnicity and religion, beatings, and other forms of physical mistreatment.

35. The unlawful deportation and forcible transfer of thousands of Kosovo Albanians from their homes in Kosovo involved well-planned and co-ordinated efforts by the leaders of the FRY and Serbia, and forces of the FRY and Serbia, all acting in concert. Actions similar in nature took place during the wars in Croatia and Bosnia and Herzegovina between 1991 and 1995. During those wars, Serbian military, paramilitary and police forces forcibly expelled and deported non-Serbs in Croatia and Bosnia and Herzegovina from areas under Serbian control utilising the same method of operations as have been used in Kosovo in 1999: heavy shelling and armed attacks on villages; widespread killings; destruction of non-Serbian residential areas and cultural and religious sites; and forced transfer and deportation of non-Serbian populations.

36. On 24 March 1999, NATO began launching air strikes against targets in the FRY. The FRY issued decrees of an imminent threat of war on 23 March 1999 and a state of war on 24 March 1999. Since the air strikes commenced, forces of the FRY and Serbia have intensified their systematic campaign and have forcibly expelled hundreds of thousands of Kosovo Albanians.

37. In addition to the forced expulsions of Kosovo Albanians, forces of the FRY and Serbia have also engaged in a number of killings of Kosovo Albanians since 24 March 1999. Such killings occurred at numerous locations, including but not limited to, Bela Crkva, Mali Krusa/Krushe e Vogel -- Velika Krusa/Krushe e Mahde, Dakovica/Gjakovë, Crkovez/Padalishte, and Izbica.

38. The planning, preparation and execution of the campaign undertaken by forces of the FRY and Serbia in Kosovo, was planned, instigated, ordered, committed or otherwise aided and abetted by **Slobodan MILOSEVIC**, the President of the FRY; **Milan MILUTINOVIC**, the President of Serbia; **Nikola SAINOVIC**, the Deputy Prime Minister of the FRY; **Colonel General Dragoljub OJDANIC**, the Chief of the General Staff of the VJ; and **Vlajko STOJILJKOVIC**, the Minister of Internal Affairs of Serbia.

39. By 20 May 1999, over 740,000 Kosovo Albanians, approximately one-third of the entire Kosovo Albanian population, were expelled from Kosovo. Thousands more are believed to be internally displaced. An unknown number of Kosovo Albanians have been killed in the operations by forces of the FRY and Serbia.

## THE ACCUSED

40. **Slobodan MILOSEVIC** was born on 20 August 1941 in the town of Pozarevac in present-day Serbia. In 1964 he received a law degree from the University of Belgrade and began a career in management and banking. **Slobodan MILOSEVIC** held the posts of deputy director and later general director at *Tehnogas*, a major gas company until 1978. Thereafter, he became president of *Beogradska banka (Beobanka)*, one of the largest banks in the SFRY and held that post until 1983.

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41. In 1983 **Slobodan MILOSEVIC** began his political career. He became Chairman of the City Committee of the League of Communists of Belgrade in 1984. In 1986 he was elected Chairman of the Presidium of the Central Committee of the League of Communists of Serbia and was re-elected in 1988. On 16 July 1990, the League of Communists of Serbia and the Socialist Alliance of Working People of Serbia were united; the new party was named the Socialist Party of Serbia (SPS), and **Slobodan MILOSEVIC** was elected its President. He holds the post of President of the SPS as of the date of this indictment.

42. **Slobodan MILOSEVIC** was elected President of the Presidency of Serbia on 8 May 1989 and re-elected on 5 December that same year. After the adoption of the new Constitution of Serbia on 28 September 1990, **Slobodan MILOSEVIC** was elected to the newly established office of President of Serbia in multi-party elections held on 9 and 26 December 1990; he was re-elected on 20 December 1992.

43. After serving two terms as President of Serbia, **Slobodan MILOSEVIC** was elected President of the FRY on 15 July 1997 and he began his official duties on 23 July 1997. At all times relevant to this indictment, **Slobodan MILOSEVIC** has held the post of President of the FRY.

44. **Milan MILUTINOVIC** was born on 19 December 1942 in Belgrade in present-day Serbia. **Milan MILUTINOVIC** received a degree in law from Belgrade University.

45. Throughout his political career, **Milan MILUTINOVIC** has held numerous high level governmental posts within Serbia and the FRY. **Milan MILUTINOVIC** was a deputy in the Socio-Political Chamber and a member of the foreign policy committee in the Federal Assembly; he was Serbia's Secretary for Education and Sciences, a member of the Executive Council of the Serbian Assembly, and a director of the Serbian National Library. **Milan MILUTINOVIC** also served as an ambassador in the Federal Ministry of Foreign Affairs and as the FRY Ambassador to Greece. He was appointed the Minister of Foreign Affairs of the FRY on 15 August 1995. **Milan MILUTINOVIC** is a member of the SPS.

46. On 21 December 1997, **Milan MILUTINOVIC** was elected President of Serbia. At all times relevant to this indictment, **Milan MILUTINOVIC** has held the post of President of Serbia.

47. **Nikola SAINOVIC** was born on 7 December 1948 in Bor, Serbia. He graduated from the University of Ljubljana in 1977 and holds a Master of Science degree in Chemical Engineering. He began his political career in the municipality of Bor where he held the position of President of the Municipal Assembly of Bor from 1978 to 1982.

48. Throughout his political career, **Nikola SAINOVIC** has been an active member of both the League of Communists and the Socialist Party of Serbia (SPS). He held the position of Chairman of the Municipal Committee of the League of Communists in Bor. On 28 November 1995, **Nikola SAINOVIC** was elected a member of the SPS's Main Committee and a member of its Executive Council. He was also named president of the Committee to prepare the SPS Third Regular Congress (held in Belgrade on 2-3 March 1996). On 2 March 1996 **Nikola SAINOVIC** was elected one of several vice chairmen of the SPS. He held this position until 24 April 1997.

49. **Nikola SAINOVIC** has held several positions within the governments of Serbia and the FRY. In 1989, he served as a member of the Executive Council of Serbia's Assembly and Secretary for Industry, Energetics and Engineering of Serbia in 1989. He was appointed Minister of Mining and Energy of Serbia on 11 February 1991, and again on 23 December 1991. On 23 December 1991, he was also named Deputy Prime Minister of Serbia. **Nikola SAINOVIC** was appointed Minister of the Economy of the FRY on 14 July 1992, and again on 11 September 1992. He resigned from this post on 29 November 1992. On 10 February 1993, **Nikola SAINOVIC** was elected Prime Minister of Serbia.

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50. On 22 February 1994, **Nikola SAINOVIC** was appointed Deputy Prime Minister of the FRY. He was re-appointed to this position in three subsequent governments: on 12 June 1996, 20 March 1997 and 20 May 1998. **Slobodan MILOSEVIC** designated **Nikola SAINOVIC** as his representative for the Kosovo situation. **Nikola SAINOVIC** chaired the commission for co-operation with the OSCE Verification Mission in Kosovo, and was an official member of the Serbian delegation at the Rambouillet peace talks in February 1999. At all times relevant to this indictment, **Nikola SAINOVIC** has held the post of Deputy Prime Minister of the FRY.

51. **Colonel General Dragoljub OJDANIC** was born on 1 June 1941 in the village of Ravni, near Uzice in what is now Serbia. In 1958, he completed the Infantry School for Non-Commissioned Officers and in 1964, he completed the Military Academy of the Ground Forces. In 1985, **Dragoljub OJDANIC** graduated from the Command Staff Academy and School of National Defence with a Masters Degree in Military Sciences. At one time he served as the Secretary for the League of Communists for the Yugoslav National Army (JNA) 52nd Corps, the precursor of the 52nd Corps of the VJ now operating in Kosovo.

52. In 1992, **Colonel General Dragoljub OJDANIC** was the Deputy Commander of the 37th Corps of the JNA, later the VJ, based in Uzice, Serbia. He was promoted to Major General on 20 April 1992 and became Commander of the Uzice Corps. Under his command, the Uzice Corps was involved in military actions in eastern Bosnia during the war in Bosnia and Herzegovina. In 1993 and 1994 **Dragoljub OJDANIC** served as Chief of the General Staff of the First Army of the FRY. He was Commander of the First Army between 1994 and 1996. In 1996, he became Deputy Chief of the General Staff of the VJ. On 26 November 1998, **Slobodan MILOSEVIC** appointed **Dragoljub OJDANIC** Chief of General Staff of the VJ, replacing General Momcilo Perisic. At all times relevant to this indictment, **Colonel General Dragoljub OJDANIC** has held the post of Chief of the General Staff of the VJ.

53. **Vlajko STOJILJKOVIC** was born in Mala Krsna, in Serbia. He graduated from the University of Belgrade with a law degree, and then was employed at the municipal court. Thereafter, he became head of the Inter-Municipal Secretariat of Internal Affairs in Pozarevac. **Vlajko STOJILJKOVIC** has served as director of the PIK firm in Pozarevac, vice-president and president of the Economic Council of Yugoslavia, and president of the Economic Council of Serbia.

54. By April 1997, **Vlajko STOJILJKOVIC** became Deputy Prime Minister of the Serbian Government and Minister of Internal Affairs of Serbia. On 24 March 1998, the Serbian Assembly elected a new Government, and **Vlajko STOJILJKOVIC** was named Minister of Internal Affairs of Serbia. He is also a member of the main board of the SPS. At all times relevant to this indictment, **Vlajko STOJILJKOVIC**, has held the post of Minister of Internal Affairs.

#### **SUPERIOR AUTHORITY**

55. **Slobodan MILOSEVIC** was elected President of the FRY on 15 July 1997, assumed office on 23 July 1997, and remains President as of the date of this indictment.

56. As President of the FRY, **Slobodan MILOSEVIC** functions as President of the Supreme Defence Council of the FRY. The Supreme Defence Council consists of the President of the FRY and the Presidents of the member republics, Serbia and Montenegro. The Supreme Defence Council decides on the National Defence Plan and issues decisions concerning the VJ. As President of the FRY, **Slobodan MILOSEVIC** has the power to "order implementation of the National Defence Plan" and commands the VJ in war and peace in compliance with decisions made by the Supreme Defence Council. **Slobodan MILOSEVIC**, as Supreme Commander of the VJ, performs these duties through "commands, orders and decisions."



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57. Under the FRY Act on the Armed Forces of Yugoslavia, as Supreme Commander of the VJ, **Slobodan MILOSEVIC** also exercises command authority over republican and federal police units subordinated to the VJ during a state of imminent threat of war or a state of war. A declaration of imminent threat of war was proclaimed on 23 March 1999, and a state of war on 24 March 1999.

58. In addition to his *de jure* powers, **Slobodan MILOSEVIC** exercises extensive *de facto* control over numerous institutions essential to, or involved in, the conduct of the offences alleged herein. **Slobodan MILOSEVIC** exercises extensive *de facto* control over federal institutions nominally under the competence of the Assembly or the Government of the FRY. **Slobodan MILOSEVIC** also exercises *de facto* control over functions and institutions nominally under the competence of Serbia and its autonomous provinces, including the Serbian police force. **Slobodan MILOSEVIC** further exercises *de facto* control over numerous aspects of the FRY's political and economic life, particularly the media. Between 1986 and the early 1990s, **Slobodan MILOSEVIC** progressively acquired *de facto* control over these federal, republican, provincial and other institutions. He continues to exercise this *de facto* control to this day.

59. **Slobodan MILOSEVIC's** *de facto* control over Serbian, SFRY, FRY and other state organs has stemmed, in part, from his leadership of the two principal political parties that have ruled in Serbia since 1986, and in the FRY since 1992. From 1986 until 1990, he was Chairman of the Presidium of the Central Committee of the League of Communists in Serbia, then the ruling party in Serbia. In 1990, he was elected President of the Socialist Party of Serbia, the successor party to the League of Communists of Serbia and the Socialist Alliance of the Working People of Serbia. The SPS has been the principal ruling party in Serbia and the FRY ever since. Throughout the period of his Presidency of Serbia, from 1990 to 1997, and as the President of the FRY, from 1997 to the present, **Slobodan MILOSEVIC** has also been the leader of the SPS.

60. Beginning no later than October 1988, **Slobodan MILOSEVIC** has exercised *de facto* control over the ruling and governing institutions of Serbia, including its police force. Beginning no later than October 1988, he has exercised *de facto* control over Serbia's two autonomous provinces -- Kosovo and Vojvodina -- and their representation in federal organs of the SFRY and the FRY. From no later than October 1988 until mid-1998, **Slobodan MILOSEVIC** also exercised *de facto* control over the ruling and governing institutions of the Montenegro, including its representation in all federal organs of the SFRY and the FRY.

61. In significant international negotiations, meetings and conferences since 1989, **Slobodan MILOSEVIC** has been the primary interlocutor with whom the international community has negotiated. He has negotiated international agreements that have subsequently been implemented within Serbia, the SFRY, the FRY, and elsewhere on the territory of the former SFRY. Among the conferences and international negotiations at which **Slobodan MILOSEVIC** has been the primary representative of the SFRY and FRY are: The Hague Conference in 1991; the Paris negotiations of March 1993; the International Conference on the Former Yugoslavia in January 1993; the Vance-Owen peace plan negotiations between January and May 1993; the Geneva peace talks in the summer of 1993; the Contact Group meeting in June 1994; the negotiations for a cease fire in Bosnia and Herzegovina, 9-14 September 1995; the negotiations to end the NATO bombing in Bosnia and Herzegovina, 14-20 September 1995; and the Dayton peace negotiations in November 1995.

62. As the President of the FRY, the Supreme Commander of the VJ, and the President of the Supreme Defence Council, and pursuant to his *de facto* authority, **Slobodan MILOSEVIC** is responsible for the actions of his subordinates within the VJ and any police forces, both federal and republican, who have committed the crimes alleged in this indictment since January 1999 in the province of Kosovo.

63. **Milan MILUTINOVIC** was elected President of Serbia on 21 December 1997, and remains President as of the date of this indictment. As President of Serbia, **Milan MILUTINOVIC** is the

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head of State. He represents Serbia and conducts its relations with foreign states and international organisations. He organises preparations for the defence of Serbia.

64. As President of Serbia, **Milan MILUTINOVIC** is a member of the Supreme Defence Council of the FRY and participates in decisions regarding the use of the VJ.

65. As President of Serbia, **Milan MILUTINOVIC**, in conjunction with the Assembly, has the authority to request reports both from the Government of Serbia, concerning matters under its jurisdiction, and from the Ministry of the Internal Affairs, concerning its activities and the security situation in Serbia. As President of Serbia, **Milan MILUTINOVIC** has the authority to dissolve the Assembly, and with it the Government, "subject to the proposal of the Government on justified grounds," although this power obtains only in peacetime.

66. During a declared state of war or state of imminent threat of war, **Milan MILUTINOVIC**, as President of Serbia, may enact measures normally under the competence of the Assembly, including the passage of laws; these measures may include the reorganisation of the Government and its ministries, as well as the restriction of certain rights and freedoms.

67. In addition to his *de jure* powers, **Milan MILUTINOVIC** exercises extensive *de facto* influence or control over numerous institutions essential to, or involved in, the conduct of the crimes alleged herein. **Milan MILUTINOVIC** exercises *de facto* influence or control over functions and institutions nominally under the competence of the Government and Assembly of Serbia and its autonomous provinces, including but not limited to the Serbian police force.

68. In significant international negotiations, meetings and conferences since 1995, **Milan MILUTINOVIC** has been a principal interlocutor with whom the international community has negotiated. Among the conferences and international negotiations at which **Milan MILUTINOVIC** has been a primary representative of the FRY are: preliminary negotiations for a cease fire in Bosnia and Herzegovina, 15-21 August 1995; the Geneva meetings regarding the Bosnian cease fire, 7 September 1995; further negotiations for a cease fire in Bosnia and Herzegovina, 9-14 September 1995; the negotiations to end the NATO bombing in Bosnia and Herzegovina, 14-20 September 1995; the meeting of Balkan foreign ministers in New York, 26 September 1995; and the Dayton peace negotiations in November 1995. **Milan MILUTINOVIC** was also present at the negotiations at Rambouillet in February 1999.

69. As the President of Serbia, and a member of the Supreme Defence Council, and pursuant to his *de facto* authority, **Milan MILUTINOVIC** is responsible for the actions of any of his subordinates within the VJ and within any police forces who have committed the crimes alleged in this indictment since January 1999 within the province of Kosovo.

70. **Colonel General Dragoljub OJDANIC** was appointed Chief of the General Staff of the VJ on 26 November 1998. He remains in that position as of the date of this indictment. As Chief of the General Staff of the VJ, **Colonel General Dragoljub OJDANIC** commands, orders, instructs, regulates and otherwise directs the VJ, pursuant to acts issued by the President of the FRY and as required to command the VJ.

71. As Chief of the General Staff of the VJ, **Colonel General Dragoljub OJDANIC** determines the organisation, plan of development and formation of commands, units and institutions of the VJ, in conformity with the nature and needs of the VJ and pursuant to acts rendered by the President of the FRY.

72. In his position of authority, **Colonel General Dragoljub OJDANIC** also determines the plan for recruiting and filling vacancies within the VJ and the distribution of recruits therein; issues regulations concerning training of the VJ; determines the educational plan and advanced training of

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professional and reserve military officers; and performs other tasks stipulated by law.

73. As Chief of the General Staff of the VJ, **Colonel General Dragoljub OJDANIC** -- or other officers empowered by him -- assigns commissioned officers, non-commissioned officers and soldiers, and promotes non-commissioned officers, reserve officers, and officers up to the rank of colonel. In addition, **Colonel General Dragoljub OJDANIC** nominates the president, judges, prosecutors, and their respective deputies and secretaries, to serve on military disciplinary courts.

74. **Colonel General Dragoljub OJDANIC** carries out preparations for the conscription of citizens and mobilisation of the VJ; co-operates with the Ministries of Internal Affairs of the FRY and Serbia and the Ministry of Defence of the FRY in mobilising organs and units of Ministries of Internal Affairs; monitors and, proposes measures to correct problems encountered during, and informs the Government of the FRY and the Supreme Defence Council about the implementation of the aforementioned mobilisation.

75. As the Chief of the General Staff of the VJ, **Colonel General Dragoljub OJDANIC** is responsible for the actions of his subordinates within the VJ and for the actions of any federal and republican police forces, which are subordinated to the VJ, who have committed crimes since January 1999 within the province of Kosovo.

76. **Vlajko STOJILJKOVIC** was named Minister of Internal Affairs of Serbia on 24 March 1998. As head of a Serbian government ministry, **Vlajko STOJILJKOVIC** is responsible for the enforcement of laws, regulations and general acts promulgated by Serbia's Assembly, Government or President.

77. As Minister of Internal Affairs of Serbia, **Vlajko STOJILJKOVIC** directs the work of the Ministry of Internal Affairs and its personnel. He determines the structure, mandate and scope of operations of organisational units within the Ministry of Internal Affairs. He is empowered to call up members of the Ministry of Internal Affairs reserve corps to perform duties during peace time, and to prevent activities threatening Serbia's security. The orders which he and Ministry of Internal Affairs superior officers issue to Ministry of Internal Affairs personnel are binding unless they constitute a criminal act.

78. As Minister of Internal Affairs of Serbia, **Vlajko STOJILJKOVIC** has powers of review over decisions and acts of agents for the Ministry. He considers appeals against decisions made in the first instance by the head of an organisational unit of the Ministry of Internal Affairs. Moreover, he is empowered to decide appeals made by individuals who have been detained by the police.

79. On 8 April 1999, as Minister of Internal Affairs of Serbia, **Vlajko STOJILJKOVIC**'s powers during the state of war were expanded to include transferring Ministry employees to different duties within the Ministry for as long as required.

80. As Minister of Internal Affairs of Serbia, **Vlajko STOJILJKOVIC** is responsible for ensuring the maintenance of law and order in Serbia. As Minister of Internal Affairs, he is responsible for the actions of his subordinates within the police forces of the Ministry of Internal Affairs of Serbia who have committed crimes since January 1999 in the province of Kosovo.

## GENERAL ALLEGATIONS

81. At all times relevant to this indictment, a state of armed conflict existed in Kosovo in the FRY.

82. All acts and omissions charged as crimes against humanity were part of a widespread or systematic attack directed against the Kosovo Albanian civilian population of Kosovo in the FRY.

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83. Each of the accused is individually responsible for the crimes alleged against him in this indictment, pursuant to Article 7(1) of the Tribunal Statute. Individual criminal responsibility includes committing, planning, instigating, ordering or aiding and abetting in the planning, preparation or execution of any crimes referred to in Articles 2 to 5 of the Tribunal Statute.

84. In as much as he has authority or control over the VJ and police units, other units or individuals subordinated to the command of the VJ in Kosovo, **Slobodan MILOSEVIC**, as President of the FRY, Supreme Commander of the VJ and President of the Supreme Defence Council, is also, or alternatively, criminally responsible for the acts of his subordinates, including members of the VJ and aforementioned employees of the Ministries of Internal Affairs of the FRY and Serbia, pursuant to Article 7(3) of the Tribunal Statute.

85. In as much as he has authority or control over police units of the Ministry of Internal Affairs, the VJ, or police units, other units or individuals subordinated to the command of the VJ in Kosovo, **Milan MILUTINOVIC**, as President of Serbia and a member of the Supreme Defence Council, is also, or alternatively, criminally responsible for the acts of his subordinates, including aforementioned employees of the Ministry of Internal Affairs of Serbia, pursuant to Article 7(3) of the Tribunal Statute.

86. In as much as he has authority or control over the VJ and police units, other units or individuals subordinated to the command of the VJ in Kosovo, **Colonel General Dragoljub OJDANIC**, as Chief of the General Staff of the VJ, is also, or alternatively, criminally responsible for the acts of his subordinates, including members of the VJ and aforementioned employees of the Ministries of Internal Affairs of Serbia and the FRY, pursuant to Article 7(3) of the Tribunal Statute.

87. In as much as he has authority or control over employees of the Ministry of Internal Affairs, including any other regular or mobilised police units, **Vlajko STOJILJKOVIC**, as Minister of Internal Affairs of Serbia, is also, or alternatively, criminally responsible for the acts of his subordinates, including employees of the Ministry of Internal Affairs of Serbia, pursuant to Article 7(3) of the Tribunal Statute.

88. A superior is responsible for the acts of his subordinate(s) if he knew or had reason to know that his subordinate(s) was/were about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

89. The general allegations contained in paragraphs 81 through 88 are re-alleged and incorporated into each of the charges set forth below.

## CHARGES

### COUNTS 1 - 4 CRIMES AGAINST HUMANITY VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR

90. Beginning in January 1999 and continuing to the date of this indictment, **Slobodan MILOSEVIC, Milan MILUTINOVIC, Nikola SAINOVIC, Dragoljub OJDANIC, and Vlajko STOJILJKOVIC** planned, instigated, ordered, committed or otherwise aided and abetted in a campaign of terror and violence directed at Kosovo Albanian civilians living in Kosovo in the FRY.

91. The campaign of terror and violence directed at the Kosovo Albanian population was executed by forces of the FRY and Serbia acting at the direction, with the encouragement, or with the

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support of **Slobodan MILOSEVIC, Milan MILUTINOVIC, Nikola SAINOVIC, Dragoljub OJDANIC, and Vljako STOJILJKOVIC**. The operations targeting the Kosovo Albanians were undertaken with the objective of removing a substantial portion of the Kosovo Albanian population from Kosovo in an effort to ensure continued Serbian control over the province. To achieve this objective, the forces of the FRY and Serbia, acting in concert, have engaged in well-planned and co-ordinated operations as described in paragraphs 92 through 98 below.

92. The forces of the FRY and Serbia, have in a systematic manner, forcibly expelled and internally displaced hundreds of thousands of Kosovo Albanians from their homes across the entire province of Kosovo. To facilitate these expulsions and displacements, the forces of the FRY and Serbia have intentionally created an atmosphere of fear and oppression through the use of force, threats of force, and acts of violence.

93. Throughout Kosovo, the forces of the FRY and Serbia have looted and pillaged the personal and commercial property belonging to Kosovo Albanians forced from their homes. Policemen, soldiers, and military officers have used wholesale searches, threats of force, and acts of violence to rob Kosovo Albanians of money and valuables, and in a systematic manner, authorities at FRY border posts have stolen personal vehicles and other property from Kosovo Albanians being deported from the province.

94. Throughout Kosovo, the forces of the FRY and Serbia have engaged in a systematic campaign of destruction of property owned by Kosovo Albanian civilians. This has been accomplished through the widespread shelling of towns and villages; the burning of homes, farms, and businesses; and the destruction of personal property. As a result of these orchestrated actions, villages, towns, and entire regions have been made uninhabitable for Kosovo Albanians.

95. Throughout Kosovo, the forces of the FRY and Serbia have harassed, humiliated, and degraded Kosovo Albanian civilians through physical and verbal abuse. Policemen, soldiers, and military officers have persistently subjected Kosovo Albanians to insults, racial slurs, degrading acts, beatings, and other forms of physical mistreatment based on their racial, religious, and political identification.

96. Throughout Kosovo, the forces of the FRY and Serbia have systematically seized and destroyed the personal identity documents and licenses of vehicles belonging to Kosovo Albanian civilians. As Kosovo Albanians have been forced from their homes and directed towards Kosovo's borders, they have been subjected to demands to surrender identity documents at selected points *en route* to border crossings and at border crossings into Albania and Macedonia. These actions have been undertaken in order to erase any record of the deported Kosovo Albanians' presence in Kosovo and to deny them the right to return to their homes.

97. Beginning on or about 1 January 1999 and continuing until the date of this indictment, the forces of the FRY and Serbia, acting at the direction, with the encouragement, or with the support of **Slobodan MILOSEVIC, Milan MILUTINOVIC, Nikola SAINOVIC, Dragoljub OJDANIC, and Vljako STOJILJKOVIC** have perpetrated the actions set forth in paragraphs 92 through 96, which have resulted in the forced deportation of approximately 740,000 Kosovo Albanian civilians. These actions have been undertaken in all areas of Kosovo, and these means and methods were used throughout the province, including the following municipalities:

a. Dakovica/Gjakovë : On or about 2 April 1999, forces of the FRY and Serbia began forcing residents of the town of Dakovica/Gjakovë to leave. Forces of the FRY and Serbia spread out through the town and went house to house ordering Kosovo Albanians from their homes. In some instances, people were killed, and most persons were threatened with death. Many of the houses and shops belonging to Kosovo Albanians were set on fire, while those belonging to Serbs were protected. During the period from 2 to 4 April 1999, thousands of Kosovo Albanians living in Dakovica/Gjakovë and neighbouring villages joined a large convoy, either

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on foot or driving in cars, trucks and tractors, and moved to the border with Albania. Forces of the FRY and Serbia directed those fleeing along pre-arranged routes, and at police checkpoints along the way most Kosovo Albanians had their identification papers and license plates seized. In some instances, Yugoslav army trucks were used to transport persons to the border with Albania.

b. Gnjilane/Gjilan: Forces of the FRY and Serbia entered the town of Prilepnica/Përlepnicë on or about 6 April 1999, and ordered residents to leave saying that the town would be mined the next day. The townspeople left and tried to go to another village but were turned back by police. On 13 April 1999, residents of Prilepnica/Përlepnicë were again informed that the town had to be evacuated by the following day. The next morning, the Kosovo Albanian residents left in a convoy of approximately 500 vehicles and headed to the Macedonian border. Shortly after the residents left, the houses in Prilepnica/Përlepnicë were set on fire. Kosovo Albanians in other villages in Gnjilane/Gjilan municipality were also forced from their homes, and were made to join another convoy to the Macedonian border. Along the way, some men were taken from the convoy and killed along the road. When the Kosovo Albanians reached the border, their identification papers were confiscated.

c. Kosovska Mitrovica/Mitrovicë : In late March 1999, forces of the FRY and Serbia began moving systematically through the town of Kosovska Mitrovica/Mitrovicë . They entered the homes of Kosovo Albanians and ordered the residents to leave their houses at once and to go to the bus station. Some houses were set on fire forcing the residents to flee to other parts of the town. Over a two week period the forces of the FRY and Serbia continued to expel the Kosovo Albanian residents of the town. During this period, properties belonging to Kosovo Albanians were destroyed and Kosovo Albanians were robbed of money, vehicles, and other valuables. A similar pattern was repeated in other villages in the Kosovska Mitrovica/Mitrovicë municipality, where Kosovo Albanians were forced from their homes, followed by the destruction of their villages by forces of the FRY and Serbia. The Kosovo Albanian residents of the municipality were forced to join convoys going to the Albanian border. *En route* to the border, Serb soldiers, policemen, and military officers robbed them of valuables and seized their identity documents.

d. Orahovac/Rahovec: On the morning of 25 March 1999, forces of the FRY and Serbia surrounded the village of Celine with tanks and armoured vehicles. After shelling the village, troops entered the village and systematically looted and pillaged everything of value from the houses. Most of the Kosovo Albanian villagers had fled to a nearby forest before the army and police arrived. On 28 March, a number of Serb police forced the thousands of people hiding in the forest to come out. After marching the civilians to a nearby village, the men were separated from the women and were beaten, robbed, and had all of their identity documents taken from them. The men were then marched to Prizren and eventually forced to go to the Albanian border.

On 25 March 1999, a large group of Kosovo Albanians went to a mountain near the village of Nagafc, also in Orahovac/Rahovec municipality, seeking safety from attacks on nearby villages. Forces of the FRY and Serbia surrounded them and on the following day, ordered the 8,000 people who had sought shelter on the mountain to leave. The Kosovo Albanians were forced to go to a nearby school and then they were forcibly dispersed into nearby villages. After three or four days, the forces of the FRY and Serbia entered the villages, went house to house and ordered people out. Eventually, they were forced back into houses and told not to leave. Those who could not fit inside the houses were forced to stay in cars and tractors parked nearby. On 2 April 1999, the forces of the FRY and Serbia started shelling the villages, killing a number of people who had been sleeping in tractors and cars. Those who survived headed for the Albanian border. As they passed through other Kosovo Albanian villages, which had been destroyed, they were taunted by Serb soldiers. When the villagers arrived at the border, all their identification papers were taken from them.

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e. Pec/Pejë : On 27 and 28 March 1999, in the city of Pec/Pejë , forces of the FRY and Serbia went from house to house forcing Kosovo Albanians to leave. Some houses were set on fire and a number of people were shot. Soldiers and police were stationed along every street directing the Kosovo Albanians toward the town centre. Once the people reached the centre of town, those without cars or vehicles were forced to get on buses or trucks and were driven to the town of Prizren. Outside Prizren, the Kosovo Albanians were forced to get off the buses and walk approximately 40 kilometres to the Albanian border where they were ordered to turn their identification papers over to Serb policemen.

f. Pristina/Prishtinë : On or about 1 April 1999, Serbian police went to the homes of Kosovo Albanians in the city of Pristina/Prishtinë and forced the residents to leave in a matter of minutes. During the course of these forced expulsions, a number of people were killed. Many of those forced from their homes went directly to the train station, while others sought shelter in nearby neighbourhoods. Hundreds of ethnic Albanians, guided by Serb police at all the intersections, gathered at the train station and then were loaded onto overcrowded trains or buses after a long wait where no food or water was provided. Those on the trains went as far as General Jankovic, a village near the Macedonian border. During the train ride many people had their identification papers taken from them. After getting off the trains, the Kosovo Albanians were told by the Serb police to walk along the tracks into Macedonia since the surrounding land had been mined. Those who tried to hide in Pristina/Prishtinë were expelled a few days later in a similar fashion.

During the same period, forces of the FRY and Serbia entered the villages of Pristina/Prishtinë municipality where they beat and killed many Kosovo Albanians, robbed them of their money, looted their property and burned their homes. Many of the villagers were taken by truck to Glogovac in the municipality of Lipjan/Lipjan. From there, they were transported to General Jankovic by train and walked to the Macedonian border. Others, after making their way to the town of Urosevac/Ferizaj, were ordered by the Serb police to take a train to General Jankovic, from where they walked across the border into Macedonia.

g. Prizren: On 25 March 1999 the village of Pirana was surrounded by forces of the FRY and Serbia, tanks and various military vehicles. The village was shelled and a number of the residents were killed. Thereafter, police entered the village and burned the house of Kosovo Albanians. After the attack, the remaining villagers left Pirana and went to surrounding villages. Some of the Kosovo Albanians fleeing toward Srbica were killed or wounded by snipers. Serb forces then launched an offensive in the area of Srbica and shelled the villages of Reti e Utlet, Reti and Randobrava. Kosovo Albanian villagers were forced from their homes and sent to the Albanian border. From 28 March 1999, in the city of Prizren itself, Serb policemen went from house to house, ordering Kosovo Albanian residents to leave. They were forced to join convoys of vehicles and persons travelling on foot to the Albanian border. At the border all personal documents were taken away by Serb policemen.

h. Srbica/Skenderaj: On or about 25 March 1999, the villages of Vojnik, Lecina, Klladernica, Turiqevc Broje and Izbica were destroyed by shelling and burning. A group of approximately 4,500 Kosovo Albanians from these villages gathered outside the village of Izbica where members of the forces of the FRY and Serbia demanded money from the group and separated the men from the women and children. A large number of the men were then killed. The surviving women and children were moved as a group towards Vojnik and then on to the Albanian border.

i. Suva Reka/Suharekë : On the morning of 25 March 1999, forces of the FRY and Serbia surrounded the town of Suva Reka/Suharekë . During the following days, police officers went from house to house, threatening Kosovo Albanian residents, and removing many of the people from their homes at gunpoint. The women, children and elderly were sent away by the police and then a number of the men were killed by the Forces of the FRY and Serbia.

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The Kosovo Albanians were forced to flee making their way in trucks, tractors and trailers towards the border with Albania. While crossing the border, they had all their documents and money taken.

On 31 March 1999, approximately 80,000 Kosovo Albanians displaced from villages in the Suva Reka/Suharekë municipality gathered near Bellanice. The following day, forces of the FRY and Serbia shelled Bellanice, forcing the displaced persons to flee toward the Albanian border. Prior to crossing the border, they had all their identification documents taken away.

j. Urosevac/Ferizaj: During the period between 4 and 14 April 1999, forces of the FRY and Serbia shelled the villages of Softaj, Rahovica, Zltara, Pojatista, Komoglava and Sojevo, killing a number of residents. After the shelling, police and military vehicles entered the villages and ordered the residents to leave. After the villagers left their houses, the soldiers and policemen burned the houses. The villagers that were displaced joined in a convoy to the Macedonian border. At the border, all of their documents were taken.

98. Beginning on or about 1 January 1999 and continuing until the date of this indictment, forces of the FRY and Serbia, acting at the direction, with the encouragement, or with the support of **Slobodan MILOSEVIC, Milan MILUTINOVIC, Nikola SAINOVIC, Dragoljub OJDANIC, and Vljako STOJILJKOVIC**, have murdered hundreds of Kosovo Albanian civilians. These killings have occurred in a widespread or systematic manner throughout the province of Kosovo and have resulted in the deaths of numerous men, women, and children. Included among the incidents of mass killings are the following:

a. On or about 15 January 1999, in the early morning hours, the village of Racak (Stimlje/Shtime municipality) was attacked by forces of the FRY and Serbia. After shelling by the VJ units, the Serb police entered the village later in the morning and began conducting house-to-house searches. Villagers, who attempted to flee from the Serb police, were shot throughout the village. A group of approximately 25 men attempted to hide in a building, but were discovered by the Serb police. They were beaten and then were removed to a nearby hill, where the policemen shot and killed them. Altogether, the forces of the FRY and Serbia killed approximately 45 Kosovo Albanians in and around Racak. (Those persons killed who are known by name are set forth in Schedule A, which is attached as an appendix to this indictment.)

b. On or about 25 March 1999, forces of the FRY and Serbia attacked the village of Bela Crkva (Orahovac/Rahovec municipality). Many of the residents of Bela Crkva fled into a streambed outside the village and sought shelter under a railroad bridge. As additional villagers approached the bridge, a Serbian police patrol opened fire on them killing 12 persons, including 10 women and children. The police then ordered the remaining villagers out of the streambed, at which time the men were separated from the women and small children. The police ordered the men to strip and then systematically robbed them of all valuables. The women and children were then ordered to leave. The village doctor attempted to speak with the police commander, but he was shot and killed, as was his nephew. The other men were then ordered back into the streambed. After they complied, the police opened fire on the men, killing approximately 65 Kosovo Albanians. (Those persons killed who are known by name are set forth in Schedule B which is attached as an appendix to the indictment.)

c. On or about 25 March 1999, the villages of Velika Krusa and Mali Krusa/Krushe e Mahde and Krushe e Vogel (Orahovac/Rahovec municipality) were attacked by forces of the FRY and Serbia. Village residents took refuge in a forested area outside Velika Krusa/Krushe e Mahde, where they were able to observe the police systematically looting and then burning the villagers' houses. On or about the morning of 26 March 1999, Serb police located the villagers in the forest. The police ordered the women and small children to leave the area and



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to go to Albania. The police then searched the men and boys and took their identity documents, after which they were made to walk to an uninhabited house between the forest and Mali Krusa/Krushe e Vogel. Once the men and boys were assembled inside the house, the Serb police opened fire on the group. After several minutes of gunfire, the police piled hay on the men and boys and set fire to it in order to burn the bodies. As a result of the shootings and the fire, approximately 105 Kosovo Albanian men and boys were killed by the Serb police. (Those persons killed who are known by name are set forth in Schedule C which is attached as an appendix to this indictment.)

d. On or about the evening of 26 March 1999, in the town of Dakovica/Gjakovë, Serb gunmen came to a house on Ymer Grezda Street. The women and children inside the house were separated from the men, and were ordered to go upstairs. The Serb gunmen then shot and killed the 6 Kosovo Albanian men who were in the house. (The names of those killed are set forth in Schedule D which is attached as an appendix to this indictment.)

e. On or about 27 March 1999, in the morning hours, forces of the FRY and Serbia attacked the village of Crkolez/Padalishte (Istok/Istog municipality). As the forces entered the village, they fired on houses and on villagers who attempted to flee. Eight members of the Beke IMERAJ family were forced from their home and were killed in front of their house. Other residents of Crkolez/Padalishte were killed at their homes and in a streambed near the village. Altogether, forces of the FRY and Serbia killed approximately 20 Kosovo Albanians from Crkolez/Padalishte. (Those persons killed who are known by name are set forth in Schedule E which is attached as an appendix to this indictment.)

f. On or about 27 March 1999, FRY and Republic of Serbia forces attacked the village of Izbica (Srbica/Skenderaj municipality). Several thousand village residents took refuge in a meadow outside the village. On or about 28 March 1999, forces of the FRY and Serbia surrounded the villagers and then approached them, demanding money. After valuables were stolen by the soldiers and policemen, the men were separated from the women and small children. The men were then further divided into two groups, one of which was sent to a nearby hill, and the other of which was sent to a nearby streambed. Both groups of men were then fired upon by the forces of the FRY and Serbia, and approximately 130 Kosovo Albanian men were killed. (Those persons killed who are known by name are set forth in Schedule F which is attached as an appendix to this indictment.)

g. On or about the early morning hours of 2 April 1999, Serb police launched an operation against the Qerim district of Dakovica/Gjakovë. Over a period of several hours, Serb police forcibly entered houses of Kosovo Albanians in the Qerim district, killing the occupants, and then setting fire to the buildings. In the basement of a house on Millosh Gilic Street, the Serb police shot the 20 occupants and then set the house on fire. As a result of the shootings and the fires set by the Serb police, 20 Kosovo Albanians were killed, of whom 19 were women and children. (The names of those killed are set forth in Schedule G which is attached as an appendix to this indictment.)

99. Beginning on or about 1 January 1999 and continuing until the date of this indictment, the forces of the FRY and Serbia, acting at the direction, with the encouragement, or with the support of **Slobodan MILOSEVIC, Milan MILUTINOVIC, Nikola SAINOVIC, Dragoljub OJDANIC, and Vljako STOJILJKOVIC**, have utilised the means and methods set forth in paragraphs 92 through 98 to execute a campaign of persecution against the Kosovo Albanian civilian population based on political, racial, or religious grounds.

100. By these actions **Slobodan MILOSEVIC, Milan MILUTINOVIC, Nikola SAINOVIC, Dragoljub OJDANIC, and Vljako STOJILJKOVIC** planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of:

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**COUNT 1**  
(Deportation)

**Count 1:** Deportation, a **CRIME AGAINST HUMANITY**, punishable under Article 5(d) of the Statute of the Tribunal.

**COUNT 2**  
(Murder)

**Count 2:** Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 5 (a) of the Statute of the Tribunal.

**COUNT 3**  
(Murder)

**Count 3:** Murder, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Article 3 of the Statute of the Tribunal and recognised by Article 3(1)(a) (murder) of the Geneva Conventions.

**COUNT 4**  
(Persecutions)

**Count 4:** Persecutions on political, racial and religious grounds, a **CRIME AGAINST HUMANITY**, punishable under Article 5(h) of the Statute of the Tribunal.

Louise Arbour  
Prosecutor

22 May 1999  
The Hague, The Netherlands

Schedule A  
Persons Known by Name Killed at Racak - 15 January 1999

<u>Name</u>	<u>Approximate Age</u>	<u>Sex</u>
ASLLANI, Lute	30	Female
AZEMI, Banush		Male
BAJRAMI, Ragip	34	Male

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BEQIRI, Halim	13	Male
BEQIRI, Rizah	49	Male
BEQIRI, Zenel	20	Male
BILALLI, Lutfi		Male
EMINI, Ajet		Male
HAJRIZI, Bujar		Male
HAJRIZI, Myfail	33	Male
HALILI, Skender		Male
HYSENAJ, Haqif		Male
IBRAHIMI, Hajriz		Male
IMERI, Hakip		Male
IMERI, Murtez		Male
IMERI, Nazmi		Male
ISMALJI, Meha		Male
ISMALJI, Muhamet		Male
JAKUPI, Ahmet		Male
JAKUPI, Esref	40	Male
JAKUPI, Hajriz		Male
JAKUPI, Mehmet		Male
JAKUPI, Xhelal		Male
JASHARI, Jasher	24	Male
JASHARI, Raif	20	Male
JASHARI, Shukri	18	Male
LIMANI, Fatmir	35	Male
LIMANI, Nexhat	19	Male
LIMANI, Salif	23	Male
MEHMETI, Bajram		Male
MEHMETI, Hanumshah		Female

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METUSHI, Arif		Male
METUSHI, Haki	70	Male
MUSTAFA, Ahmet		Male
MUSTAFA, Aslani	34	Male
MUSTAFA, Muhamet	21	Male
OSMANI, Sadik	35	Male
SALIHU, Jashar	25	Male
SALIHU, Shukri	18	Male
SHABANI, Bajrush	22	Male
SMAJLAI, Ahmet	60	Male
SYLA, Sheremet	37	Male
SYLA, Shyqeri		Male
XHELADINI, Bajram		Male
ZYMERI, Njazi		Male

Schedule B  
Persons Known by Name Killed at Bela Crkva - 25 March 1999

<u>Name</u>	<u>Approximate Age</u>	<u>Sex</u>
BEGAJ, Abdullah	25	Male
BERISHA, Murat	60	Male
GASHI, Fadil	46	Male
MORINA, Musa	65	Male
POPAJ, Abdullah	18	Male
POPAJ, Agon	14	Male
POPAJ, Alban	21	Male
POPAJ, Bedrush	47	Male
POPAJ, Belul	14	Male
POPAJ, Ethem	46	Male

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POPAJ, Hazer	77	Male
POPAJ, Hyshi	37	Male
POPAJ, Irfan	41	Male
POPAJ, Isuf	76	Male
POPAJ, Kreshnik	18	Male
POPAJ, Lindrit	18	Male
POPAJ, Mehmet	46	Male
POPAJ, Mersel	53	Male
POPAJ, Nazmi	45	Male
POPAJ, Nisim	35	Male
POPAJ, Rrustem		Male
POPAJ, Sahid	40	Male
POPAJ, Sedat	47	Male
POPAJ, Shendet	17	Male
POPAJ, Vehap	58	Male
POPAJ, Xhavit	32	Male
SPAHIU, FNU (daughter of Xhemal)		Female
SPAHIU, FNU (daughter of Xhemal)		Female
SPAHIU, FNU (daughter of Xhemal)		Female
SPAHIU, FNU (daughter of Xhemal)		Female
SPAHIU, FNU (wife of Xhemal)		Female
SPAHIU, Xhemal		Male
ZHUNIQI, Abein	37	Male
ZHUNIQI, Agim	51	Male
ZHUNIQI, Bajram	51	Male
ZHUNIQI, Biladh	67	Male
ZHUNIQI, Clirim	40	Male

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ZHUNIQUI, Dardan	6	Male
ZHUNIQUI, Dardane	8	Female
ZHUNIQUI, Destan	68	Male
ZHUNIQUI, Eshref	55	Male
ZHUNIQUI, Fatos	42	Male
ZHUNIQUI, FNU	4	Male
ZHUNIQUI, FNU (wife of Clirim)		Female
ZHUNIQUI, FNU (son of Fatos)	16	Male
ZHUNIQUI, Hysni	70	Male
ZHUNIQUI, Ibrahim	68	Male
ZHUNIQUI, Kasim	33	Male
ZHUNIQUI, Medi	55	Male
ZHUNIQUI, Muhammet	70	Male
ZHUNIQUI, Muharrem	30	Male
ZHUNIQUI, Qamil	77	Male
ZHUNIQUI, Qemal	59	Male
ZHUNIQUI, Reshit	32	Male
ZHUNIQUI, Shemsi	52	Male

## Schedule C

Persons Known by Name Killed at Velika Krusa/Krushe e Mahde -- Mali Krusa/Krushe e Vogel - 26  
March 1999

<u>Name</u>	<u>Approximate Age</u>	<u>Sex</u>
ASLLANI, Adem	68	Male
ASLLANI, Asim	34	Male
ASLLANI, Feim	30	Male
ASLLANI, Muharrem	66	Male
ASLLANI, Nexhat	27	Male

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ASLLANI, Nisret	33	Male
ASLLANI, Perparim	26	Male
AVDYLI, Bali	72	Male
AVDYLI, Enver	28	Male
BATUSHA, Ahmet	38	Male
BATUSHA, Amrush	32	Male
BATUSHA, Asllan	46	Male
BATUSHA, Avdi	45	Male
BATUSHA, Bekim	22	Male
BATUSHA, Beqir	68	Male
BATUSHA, Burim	18	Male
BATUSHA, Enver	22	Male
BATUSHA, Feim	23	Male
BATUSHA, FNU (son of Ismail)	19	Male
BATUSHA, FNU (son of Zaim)	20	Male
BATUSHA, Haxhi	28	Male
BATUSHA, Lirim	16	Male
BATUSHA, Milaim	32	Male
BATUSHA, Muharrem	69	Male
BATUSHA, Njazi	39	Male
BATUSHA, Osman	65	Male
BATUSHA, Sefer	19	Male
BATUSHA, Sejdi	68	Male
BATUSHA, Skifer	22	Male
BATUSHA, Sulejman	46	Male
BATUSHA, Zaim	50	Male
HAJDARI, Abaz	40	Male
HAJDARI, Abedin	17	Male
HAJDARI, Halil	42	Male

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HAJDARI, Halim	70	Male
HAJDARI, Hysni	20	Male
HAJDARI, Marsel	17	Male
HAJDARI, Nazim	33	Male
HAJDARI, Qamil	46	Male
HAJDARI, Rasim	25	Male
HAJDARI, Sahit	36	Male
HAJDARI, Selajdin	38	Male
HAJDARI, Shani	40	Male
HAJDARI, Vesel	19	Male
HAJDARI, Zenun	28	Male
LIMONI, Avdyl	45	Male
LIMONI, Limon	69	Male
LIMONI, Luan	22	Male
LIMONI, Nehbi	60	Male
RAMADANI, Afrim	28	Male
RAMADANI, Asllan	34	Male
RAMADANI, Bajram	15	Male
RAMADANI, FNU (son of Hysen)	23	Male
RAMADANI, Hysen	62	Male
RAMADANI, Lufti	58	Male
RAMADANI, Murat	60	Male
RAMADANI, Ramadan	59	Male
RAMADANI, Selajdin	27	Male
RASHKAJ, FNU	16	Male
RASHKAJ, FNU	18	Male
RASHKAJ, Refki	17	Male
SHEHU, Adnan	20	Male
SHEHU, Arben	20	Male



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SHEHU, Arif	36	Male
SHEHU, Bekim	22	Male
SHEHU, Burim	19	Male
SHEHU, Destan	68	Male
SHEHU, Din	68	Male
SHEHU, Dritan	18	Male
SHEHU, Fadil	42	Male
SHEHU, Flamur	15	Male
SHEHU, FNU (son of Haziz)	20	Male
SHEHU, FNU (son of Sinan)	18	Male
SHEHU, Haxhi	25	Male
SHEHU, Haziz	42	Male
SHEHU, Ismail	68	Male
SHEHU, Ismet	40	Male
SHEHU, Mehmet	13	Male
SHEHU, Mentor	18	Male
SHEHU, Myftar	44	Male
SHEHU, Nahit	15	Male
SHEHU, Nehat	22	Male
SHEHU, Nexhat	38	Male
SHEHU, Qamil	50	Male
SHEHU, Sahit	23	Male
SHEHU, Sali	44	Male
SHEHU, Sami	24	Male
SHEHU, Sefer	44	Male
SHEHU, Shani	34	Male
SHEHU, Shefqet	38	Male
SHEHU, Sinan5	0	Male
SHEHU, Veli	28	Male

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SHEHU, Vesel	19	Male
SHEHU, Xhafer	38	Male
SHEHU, Xhavit	20	Male
SHEHU, Xhelal	13	Male
ZYLFIU, Afrim	22	Male
ZYLFIU, FNU (son of Halim)	18	Male
ZYLFIU, Halim	60	Male
ZYLFIU, Hamdi	62	Male
ZYLFIU, Hamit	22	Male
ZYLFIU, Hysen	50	Male
ZYLFIU, Njazim	24	Male

## Schedule D

Persons Killed at Dakovica /Gjakove - 26 March 1999

<u>Name</u>	<u>Approximate Age</u>	<u>Sex</u>
BEGOLLI, Sylejman	48	Male
BYTYQI, Arif	72	Male
BYTYQI, Urim	38	Male
DERVISHDANA, Emin	31	Male
DERVISHDANA, Fahri	37	Male
DERVISHDANA, Zenel	59	Male

## Schedule E

Persons Known by Name Killed at Crkolez/Padalishtë - 27 March 1999

<u>Name</u>	<u>Approximate Age</u>	<u>Sex</u>
IMERAJ, Afrim	2	Male
IMERAJ, Ardiana	13	Female

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IMERAJ, Arijeta	11	Female
IMERAJ, Avdyi	67	Male
IMERAJ, Beke	53	Male
IMERAJ, Feride	21	Female
IMERAJ, Fetije	42	Female
IMERAJ, Florije	19	Female
IMERAJ, Gjylfidan	15	Female
IMERAJ, Hasan	63	Male
IMERAJ, Mihane	72	Female
IMERAJ, Mona	72	Female
IMERAJ, Muhamet	19	Male
IMERAJ, Nexhmedin		Male
IMERAJ, Rab	30	Male
IMERAJ, Rustem	73	Male
IMERAJ, Sabahat	21	Male
IMERAJ, Shehide	70	Female
IMERAJ, Violeta	17	Female
IMERAJ, Xhyfidane	14	Female

## Schedule F

Persons Known by Name Killed at Izbica - 28 March 1999

<u>Name</u>	<u>Approximate Age</u>	<u>Sex</u>
BAJRA, Bajram	62	Male
BAJRA, Brahim		Male
BAJRA, Fazli	60	Male
BAJRA, Ilaz		Male
BAJRA, Sami		Male
BEHRAMAJ, Demush	60	Male
BEHRAMAJ, Muhamed	50	Male

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BEHRAMAJ, Nur	85	Male
BEHRAMI, Ardita		Male
BEHRAMI, Bemush	75	Male
BEHRAMI, Edona		Male
BEHRAMI, Muhamet		Male
BEHRAMI, Nuredin	90	Male
BEQIRI, Ajet		Male
CAKAJ, Demush	65	Male
CAKAJ, Muhamet	60	Male
CAKAJ, Nura	80	Male
CAKAJ, Thair	65	Male
CAKAJ, Zeqir	80	Male
CELI, Metush	62	Male
CELI, Rexhe		Male
CELI, Smajl	67	Male
CUPEVA, Hamz	46	Male
DRAGA, Ali	65	Male
DRAGA, Bahim	72	Male
DRAGA, Cen	68	Male
DRAGA, Hajriz	43	Male
DRAGA, Halit		Male
DRAGA, Hazir		Male
DRAGA, Ismet	28	Male
DRAGA, Jetulla	60	Male
DRAGA, Murat		Male
DRAGA, Rahim	70	Male
DRAGA, Rustem	70	Male
DURAKU, Dibran	65	Male
FEJZA, Zyra		Male
FETAHI, Azem	75	Male

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FETAHI, Hetem	63	Male
FETAHI, Muharem	80	Male
FETAHU, Lah	67	Male
GASHI, Beqe		Male
GASHI, Brahim	70	Male
GASHI, Deli		Male
GASHI, Hajrullah		Male
GASHI, Ram	57	Male
HAJRIZI, Fata		Male
HASANI, Nezir		Male
HAXHA, Bajram	78	Male
HAXHA, Fejz	86	Male
HOTI, Muhamet		Male
JETULLAHU, Beqir		Male
JETULLAHU, Selim		Male
KELMENDI, Bajram		Male
KELMENDI, Beqir		Male
KRASNIQI, Deli	80	Male
KRASNIQI, Mustafe		Male
KRASNIQI, Rahim	62	Male
KRASINIQI, Rrahim		Male
LATIFI, Jetullah		Male
LNU, Qazim	70	Male
MUSLIA, Shaban	75	Male
MUSTAFA, Hasan	70	Male
NEBIHI, Selim	95	Male
OSMANI, Azem	75	Male
OSMANI, Hetem	70	Male
OSMANI, Muharrem	90	Male
RACI, Ramadan	56	Male

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RAMA, Halit	60	Male
REXHEPI, Muji	47	Male
REXHEPI, Zaim	38	Male
RUSTEMI, Halit	60	Male
SALIHU, Zeqir		Male
SEJDIU, Bajram		Male
SEJDIU, Mustafe	41	Male
SHALA, Kujtim	47	Male
SHALA, Isuf		Male
SHALA, Sali	35	Male
SPAHIU, Rizah		Male
TAHAJ, Ethem	65	Male
TAHAJ, Muharem	75	Male
TAHI, Azem	60	Male
TAHI, Hetem	50	Male
TAHI, Muharem	70	Male
TAHIRI, Brahim		Male
TAHIRI, Rrahim		Male
THACI, Hamit	70	Male
THACI, Haxhi		Male
THACI, Jetullah		Male
THACI, Rame		Male
THACI, Sahit		Male
THACI, Salih		Male
THACI, Uke	80	Male
XHEMAJLI, Esat		Male
XHEMALI, Demush	87	Male
XHEMALI, Idriz	67	Male

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Schedule G  
Persons Killed at Dakovica / Gjakovë - 2 April 1999

<u>Name</u>	<u>Approximate Age</u>	<u>Sex</u>
CAKA, Dalina	14	Female
CAKA, Delvina	6	Female
CAKA, Diona	2	Female
CAKA, Valbona	34	Female
GASHI, Hysen	50	
HAXHIAVDIJA, Doruntina	8	Female
HAXHIAVDIJA, Egzon	5	
HAXHIAVDIJA, Rina	4	Female
HAXHIAVDIJA, Valbona	38	Female
HOXHA, Flaka	15	Female
HOXHA, Shahindere	55	Female
NUÇ I, Manushe	50	Female
NUÇ I, Shirine	70	Female
VEJSA, Arlind	5	Male
VEJSA, Dorina	10	Female
VEJSA, Fetije	60	Female
VEJSA, Marigona	8	Female
VEJSA, Rita	2	Female
VEJSA, Sihana	8	Female
VEJSA, Tringa	30	Female

**BEFORE A JUDGE OF A TRIAL CHAMBER**

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**Before: Judge David Hunt**

**Registrar: Mrs Dorothee de Sampayo Garrido-Nijgh**

**Decision of: 24 May 1999**

**PROSECUTOR**

v

**Slobodan MILOSEVIC, Milan MILUTINOVIC, Nikola SAINOVIC,  
Dragoljub OJDANIC & Vljako STOJILJKOVIC**

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**DECISION ON REVIEW OF INDICTMENT  
AND APPLICATION FOR CONSEQUENTIAL ORDERS**

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**The Office of the Prosecutor:**

**Louise Arbour, Prosecutor**

**I Introduction**

1. Pursuant to Article 19 of the International Tribunal's Statute and Rule 47 of the Rules of Procedure and Evidence, the Prosecutor has submitted for review an indictment naming Slobodan Milosevic, Milan Milutinovic, Nikola Sainovic, Dragoljub Ojdanic and Vljako Stojiljkovic. Each of the accused is charged with crimes against humanity, in accordance with Article 5 of the Statute, involving persecution, deportation and murder. Murder is also charged against each accused as a violation of the laws or customs of war, in accordance with Article 3 of the Statute, on the basis that it is recognised as such by common Article 3(1)(a) of the Geneva Conventions of 1949.

**II Review and Confirmation of the Indictment**

2. The indictment comes before me as a judge of a Trial Chamber, in accordance with Articles 18 and 19 of the Statute. Article 19 provides that if, after such review of the indictment, I am satisfied that a *prima facie* case has been established by the Prosecutor, I am to confirm the indictment. Rule 47(E) requires me, for the purpose of confirming the indictment, to examine also any supporting material which the Prosecutor may forward pursuant to Rule 47(B). The purpose of Rule 47(E) is not to permit the



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supporting material to fill in any gaps which may exist in the material facts pleaded in the indictment<sup>1</sup>. It is to ensure that there is evidence to support the material facts so pleaded, so that the confirming judge is acting, in effect, as a grand jury (or a committing magistrate) in the common law system or as a *juge d'instruction* in some civil law systems.<sup>2</sup>

3. The joint operation of Article 19 and Rule 47(E) is, therefore, that I must be satisfied that the material facts pleaded in the indictment establish a *prima facie* case and that there is evidence available which supports those material facts. The structure of the Rules of Procedure and Evidence makes it clear that the confirming judge is concerned only with the substance of the indictment, and not with its form.<sup>3</sup>

4. A *prima facie* case on any particular charge exists in this situation where the material facts pleaded in the indictment constitute a credible case which would (if not contradicted by the accused) be a sufficient basis to convict him of that charge.<sup>4</sup>

5. The events upon which the indictment is based are alleged to have taken place in the Autonomous Province of Kosovo in the southern part of the Republic of Serbia, a constituent republic of the Federal Republic of Yugoslavia, between 1 January and late April 1999. At the commencement of that period, almost 90% of the population of that Province was Albanian, and the remainder were Serbs.

6. The military forces of the Federal Republic of Yugoslavia, the police force of Serbia, some police units from the Federal Republic of Yugoslavia and associated paramilitary units are alleged during that period to have engaged, in concert, in a widespread and systematic series of offensives against many predominately Kosovo Albanian towns and villages. The general pattern of the offensive was that Kosovo Albanian residents of these towns and villages were ordered to leave their homes, upon threats of death. After they left, the property they had left behind was stolen and their homes were destroyed or rendered uninhabitable by fire. They were forced to join convoys of similarly displaced Kosovo Albanians on route to the borders between Kosovo and neighbouring countries. They were physically mistreated. In many instances, the Kosovo Albanian men who had been displaced were separated from the women and children and they were killed. At the border, the property they had with them was stolen, including their identification papers and motor vehicles. In some cases, the villages were initially shelled and Kosovo Albanians were killed in the shelling.

7. These forces from the Federal Republic of Yugoslavia and Serbia are also alleged to have deliberately shot and killed unarmed Kosovo Albanians, including women and children, on a number of occasions during this period. This happened at the villages of Racak (where fortyfive Kosovo Albanians were killed), Velika Krusa (where 105 Kosovo Albanians were killed and their bodies burnt), Izbica (where 130 Kosovo Albanians were killed) and other villages. It is alleged that approximately 740,000 Kosovo Albanian civilians were forcibly deported from Kosovo, and that approximately 385 identified Kosovo Albanians were murdered.

8. The indictment alleges that these operations targeting Kosovo Albanians were undertaken with the objective of removing a substantial portion of the Kosovo Albanian population from Kosovo, in an effort to ensure continued Serbian control over the Province. If these pleaded facts are accepted, they establish that the forces from the Federal Republic of Yugoslavia and Serbia persecuted the Kosovo Albanian civilian population on political, racial or religious grounds, and that there was both deportation and murder, constituting crimes against humanity and violations of the laws or customs of war.

9. The five accused are alleged to be criminally responsible for the actions of those forces upon two bases –

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(a) their individual responsibility, having planned, instigated, ordered or otherwise aided and abetted their planning, preparation or execution (Article 7.1), and

(b) in relation to four of them (the accused Sainovic being excepted), their superior authority, having known or had reason to know that their subordinates were about to commit such acts or had done so but having failed to take the necessary and reasonable measures to prevent such acts or to punish those subordinates who did those acts (Article 7.3).

The subordinates were the members of the military forces of the Federal Republic of Yugoslavia, the police force of Serbia, the police units from the Federal Republic of Yugoslavia and the associated paramilitary units. The case against each of the accused is built upon both their legal and their *de facto* relationship with those forces.

10. During the relevant period, the military forces of the Federal Republic of Yugoslavia were under the control of, *inter alia* –

(1) The accused Milosevic, as the President of the Federal Republic of Yugoslavia and the Supreme Commander of the Armed Forces of the Federal Republic of Yugoslavia (known as the VJ) with the power to implement the National Defence Plan decided by the Supreme Defence Council in compliance with the decisions of that Council (of which he was the President).

(2) The accused Milutinovic, as the President of Serbia and as such a member of the Supreme Defence Council, participating in the decisions concerning the activities of the VJ.

(3) The accused Ojdanic, as Chief of the General Staff of the VJ, with the power to command the VJ as required.

11. During the relevant period (or a substantial part thereof), the police force of Serbia was under the control of, *inter alia* –

(1) The accused Milosevic, as President of the Federal Republic of Yugoslavia, having command authority of republic and federal police units subordinated to the VJ during a declared state of imminent threat of war or a declared state of war. (A declaration of a state of imminent threat of war was proclaimed on 23 March 1999, and of a state of war the next day.)

(2) The accused Milutinovic, as the President of Serbia with power, during a declared state of imminent threat of war or a declared state of war, to enact measures for the governance of the republic.

(3) The accused Stojiljkovic, as Minister of Internal Affairs of Serbia, and responsible for the enforcement of the laws of the republic, including the activities of the police.

12. During the relevant period (or a substantial part thereof), the police units from the Federal Republic of Yugoslavia were under the control of, *inter alia*, the accused Milosevic, for the reasons set out in the last paragraph. He also exercised an extensive *de facto* control over both federal and Serbian institutions (including the police) nominally within the competence of the respective Governments or Assemblies.

13. During the relevant period, the paramilitary units worked in association with, and in concert with, the other forces from the Federal Republic of Yugoslavia and Serbia, and at their direction.

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14. In addition, during the relevant period the accused Milosevic was the primary person on behalf of the Federal Republic of Yugoslavia and Serbia with whom the international community had negotiated in the continuing conflict in the Balkans, as he had been since 1989, including the negotiations with representatives of the North Atlantic Treaty Organisation (NATO) and the Organisation for Security and Co-operation in Europe (OSCE) conducted in October 1998, from which an "Agreement on OSCE Kosovo Verification Mission" was signed on 16 October 1998. The accused Milutinovic was also a significant person with whom the international community had negotiated, as he had been since 1995, and he had been present at the international negotiations for peace in Kosovo held at Rambouillet, France, in February 1999.

15. Although the accused Sainovic has not been charged with superior authority, it is significant that, as Deputy Prime Minister of the Federal Republic of Yugoslavia, he was designated by the accused Milosevic as his representative in relation to the Kosovo situation. Diplomats and other international officials were directed to speak to him concerning that subject. He signed the "Clark-Naumann agreement" in October 1998, which provided for the partial withdrawal of forces of the Federal Republic of Yugoslavia and Serbia from Kosovo, a limitation on the introduction of additional forces and equipment into the area, and the deployment of unarmed OSCE verifiers. He was a member of the Serbian delegation to the negotiations at Rambouillet. As with most cases where an accused is charged with both individual responsibility (not including the actual commission of the crimes himself) and superior authority, the relationship of the accused to those who did commit those crimes is directly relevant to the issue whether he did plan, instigate, order or otherwise aid and abet in the planning, preparation or execution of those crimes. The absence of any legal relationship between the accused Sainovic and those persons in the present case no doubt explains why he has not been charged with superior authority, but it does not detract from the issue of his individual responsibility in the circumstances outlined in this paragraph.

16. This has been a very brief outline of what I understand to be the prosecution case. The supporting material is very much more detailed than may be suggested by that outline.

17. After reviewing and considering the indictment and the supporting material forwarded by the Prosecutor, and after hearing the Prosecutor in person, I am satisfied that the material facts pleaded establish a *prima facie* case in respect of each and every count of the indictment and that there is evidence available which supports those material facts. I am satisfied that the requirements of Article 19 and Rule 47 have been complied with. Accordingly, I confirm the indictment submitted for review.

### III Consequential orders

18. The Prosecutor seeks a number of consequential orders. Article 19 provides that, if requested by the Prosecutor to do so, I may issue such orders and warrants for the arrest, detention, surrender or transfer of persons, or such other orders, as may be required for the conduct of the trial.

#### (a) Execution of arrest warrants

19. Upon confirmation of an indictment, the judge confirming it may issue an arrest warrant,<sup>5</sup> and such warrant must include an order for the prompt transfer of the accused to the Tribunal upon his or their arrest.<sup>6</sup> A certified copy of the arrest warrant is then transmitted by the Registrar to, *inter alia*, the national authorities of the State in whose territory or under whose jurisdiction resides, or was last known to be or is believed by the Registrar to be likely to be found.<sup>7</sup>

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20. In the present case, the Prosecutor seeks an order that the warrants of arrest of the accused be transmitted by the Registrar to the Federal Republic of Yugoslavia, addressed to Mr Zoran Knezevic, Federal Minister of Justice, Belgrade. As the accused Milosevic is the Head of State of the Federal Republic of Yugoslavia, and as the other accused are senior government and military figures of the Federal Republic, the Prosecutor says, the Federal Minister of Justice is the most appropriate person in authority in the Federal Republic to execute those warrants. I agree. I accept that such an order should be made in this case.

21. In the light of the possibility that some or all of the accused may seek refuge outside the territory of the Federal Republic of Yugoslavia, the Prosecutor also seeks an order, pursuant to Rule 55(D), that certified copies of each of the warrants are to be transmitted by the Registrar to all States Members of the United Nations and to the Confederation of Switzerland.

22. Rule 61(D) permits the issue of *international* arrest warrants to be transmitted to all such States, but only where the arrest warrant issued pursuant to Rule 55 has not been executed within a reasonable time, and such international warrants may be issued only by a Trial Chamber. It is nevertheless argued that the power to transmit certified copies of the arrest warrant pursuant to Rule 55(D) is a wide one, and that it is expressly not limited to transmission only to those national authorities of the States or territories where the accused resides or is believed to reside. In any event, it is argued, the procedure permitted by Rule 55(D) of transmitting certified copies of the original arrest warrant is not the same as the issue of international arrest warrants pursuant to Rule 61(D). Rule 54 permits a judge of the Tribunal to issue such orders as may be necessary for the purposes of the preparation or conduct of the trial. There can be no trial until the accused is arrested. The orders sought would assist in ensuring the arrest of the accused.

23. I accept the Prosecutor's argument, and that the order sought pursuant to Rule 55(D) should be made in this case. States Members of the United Nations are bound to comply without undue delay with any order of the Tribunal for the arrest or detention of any person,<sup>8</sup> but it is not suggested that the Confederation of Switzerland is similarly bound. The transmission of the certified copy of the warrants to be sent to the Confederation of Switzerland should therefore be expressed in terms of a request for assistance rather than an order.

24. For the same reason, the Prosecutor seeks a similar order that certified copies of the arrest warrant are to be transmitted by the Registrar to the Prosecutor herself so that she may use those certified copies to seek the assistance of the International Criminal Police Organisation (INTERPOL), pursuant to Rule 39, by circulating those certified copies under its "Red Notice" procedure. Again, I accept that such an order should be made in this case.

25. Because of the sheer bulk involved in transmitting the certified copies of the arrest warrants to all those nominated if, as Rule 55(C) would otherwise require, each arrest warrant must be accompanied by a certified copy of the indictment and the statement of the accused's rights translated into a language understood by the accused, I order pursuant to Rule 55(D) that the arrest warrants need no be so accompanied in this case.

**(b) Freezing the assets of the accused**

26. The Prosecutor seeks orders that each of the States Members of the United Nations –

- (i) make inquiries to discover whether any of the accused have assets located in their territory, and
- (ii) if any such assets are found, adopt provisional measures to freeze those assets, without

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prejudice to the rights of third parties, until the accused are taken into custody.

It is pointed out that the indictment alleges that property was unlawfully taken from the homes of victims and that many victims were robbed of money and other valuables.

27. The application was initially based solely upon Rule 54, which gives power to a judge (as well as to a Trial Chamber) to issue such orders as may be necessary for the preparation or conduct of the trial. As earlier stated, there can be no trial until the accused is arrested – so, the argument went, any order which assists in ensuring the arrest of the accused may be made by a judge pursuant to Rule 54. Freezing the assets of the accused, the Prosecutor submitted, may be done for two distinct purposes – for the purpose of granting restitution of property or payment from its proceeds (which may be ordered by a Trial Chamber pursuant to Rule 105 after conviction, subject to appropriate findings having been made in the judgment pursuant to Rule 98*ter*), and also for the purpose of preventing an accused who is still at large from using those assets to evade arrest and from taking steps to disguise his assets or putting them beyond the reach of the Tribunal.

28. The apparent width of the powers given to a judge by Rule 54, however, may perhaps be somewhat limited by the fact that Rule 61(D) gives power to a Trial Chamber (but not to a judge) to grant such relief for the same reasons at a slightly later stage, where the arrest warrant has not been executed within a reasonable time. But no such limitation can be placed upon the power given to the confirming judge by Article 19.2 of the Statute in much the same terms as Rule 54, and incorporated in Rule 47(H)(i). The application then proceeded upon the basis of Article 19.2.

29. In the situation where the Federal Republic of Yugoslavia has consistently, in breach of its legal obligations, ignored the Tribunal's orders to arrest persons who have been indicted to stand trial before the Tribunal, and who are living within its territory, and where the Tribunal has no police force of its own to execute its warrants, I accept that it is of the utmost importance that every permissible step be taken which will assist in effecting the arrest of those who shelter in the Federal Republic of Yugoslavia or who otherwise seek to evade arrest. I agree that the orders sought should be made in this case.

**(c) A non-disclosure order**

30. Lastly, the Prosecutor has sought orders –

(i) pursuant to Rules 54 and 55(D), that the transmission of the warrants and certified copies thereof be delayed until 12 noon (The Hague time) on Thursday, 27 May 1999;

(ii) pursuant to Rule 53, that there be no disclosure of the indictment, the accompanying material or the confirmation and orders made until the same time, subject to certain nominated exceptions; and

(iii) also pursuant to Rule 53, that there be no disclosure of the supporting material forwarded by her pursuant to Rule 47(B) until the arrest of all the accused.

Rule 55(D) makes the transmission by the Registrar of certified copies of the arrest warrants for execution subject to any order of a judge of a Trial Chamber. Rule 54 gives power to a judge of Trial Chamber to make such orders as may be necessary for the preparation of the trial. Rule 53 limits the power of the Tribunal to make an order for non-disclosure to where there are exceptional circumstances and where it is in the interests of justice that the order be made. Such orders for non-disclosure are usually sought and made where the disclosure of the indictment would enable the accused named in it to

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take steps to evade arrest.

31. The Prosecutor has put forward a number of reasons which are said to justify the first and second orders being made. The availability of both orders may be considered together.

32. I accept that the various accused in this case hold the highest positions of power within the Federal Republic of Yugoslavia and the Republic of Serbia and that, together and individually, they wield enormous power over their territories and their resources, with all the apparatus of State at their disposal. I also accept that their reaction to the indictment is unpredictable. I accept too that a number of the Prosecutor's staff are active in the area over which the accused exert such enormous power and that they would be exposed to the serious risk of reprisals and intimidation if the indictment is disclosed immediately. I consider that the need to give an opportunity to the Office of the Prosecutor to minimise those risks is a legitimate consideration in determining whether it is in the interests of justice to make a non-disclosure order for the short period sought.

33. The same is true of the serious risk of reprisals and intimidation against many other persons within the Federal Republic of Yugoslavia or at or near to its borders – the United Nations Mission presently there on a fact-finding mission and the staffs there of other United Nations and Governmental agencies and of the humanitarian agencies from the international community dealing with refugees and displaced persons – as well as such risk against the personnel of various Governments presently engaged there and elsewhere in seeking a resolution of the current armed conflict. The disclosure of the indictment would have serious security implications for all of them which can be reduced, and hopefully minimised, if there is a short delay in the disclosure of the indictment to enable precautionary measures to be taken.

34. It is clearly in the interests of justice that there be a delay in the disclosure of the indictment and the other documents to enable steps to be taken to protect all of these people from the risk of such reprisals. There could be no doubt that all these circumstances are exceptional.

35. No submission has been made that the impact of such disclosure on the current attempts to resolve the armed conflict in the Kosovo Province is a relevant matter to be considered in determining whether it is in the interests of justice to order non-disclosure. The safety of those personnel involved in the attempts to resolve that armed conflict is a legitimate consideration in relation to the interests of justice, but the possible political and diplomatic consequences of the indictment are not the same thing. There is a clear and substantial distinction to be drawn between what may be relevant to the well known and accepted discretion of prosecuting authorities as to whether an indictment should be presented and what may be relevant to this Tribunal's discretion as to whether an order should be made for the non-disclosure of that indictment once it has been presented and confirmed. In view of the opinion which I have already expressed, that a non-disclosure order for a short period is justified to enable security measures to be taken in relation to those at risk of intimidation or reprisals, it is unnecessary for me to determine whether the impact of the public disclosure of the indictment upon the peace process itself is also a consideration which is relevant to the exercise of my discretion to make a non-disclosure order pursuant to Rule 53. It is sufficient for me to say that such impact is not a matter which I have considered in determining the application made for non-disclosure in this case.

36. The Prosecutor has informed me that the United Nations Mission is presently scheduled to depart from the Federal Republic of Yugoslavia at 8.00 am on Thursday, 27 May. The limit on the public non-disclosure order until 12 noon on that day was suggested as an appropriate one in the light of that fact. I accept that an order for that period of time (just short of seventytwo hours) is reasonable in this case. I also accept that it is reasonable for the Prosecutor herself, in her discretion, to notify the Secretary-General of the United Nations and the Governments whose personnel or staff are at risk of reprisals or intimidation of the presentation and confirmation of the indictment and the issue of the arrest warrants,

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so that precautionary security measures may be taken for the safety of those so at risk (including the staff of the humanitarian agencies earlier referred to). I will make such orders accordingly.

37. As to the third order sought – that there be no disclosure of the accompanying material until the arrest of all the accused, the Prosecutor says that the enormous power which the accused, together and individually, wield over the territories in which many of the witnesses still live puts those witnesses in grave danger of physical harm if they are identified before all of the accused are arrested. I am prepared to make such an order at this stage. It may need to be varied if one or more but not all of the accused are arrested, when steps might be devised at that stage for the protection of the identity of the witnesses so that the accused who have been arrested can be made aware of the case against them.

#### IV Disposition

38. For the foregoing reasons,

1. I confirm each count of the indictment submitted by the Prosecutor against each accused.

2. I make the following orders:

(1) That certified copies of the warrants of arrest for each accused be transmitted by the Registrar to --

(a) the Federal Republic of Yugoslavia, addressed to Mr Zoran Knezevic, Federal Minister of Justice, Belgrade;

(b) all States Members of the United Nations;

(c) the Confederation of Switzerland; and

(d) the Prosecutor,

as soon as practicable after 12 noon (The Hague time) on Thursday, 27 May 1999, but not before, unless otherwise ordered.

(2) That the Registrar is not required to have a copy of the indictment or a statement of the rights of the accused accompany the certified copies of the warrants transmitted in accordance with the previous order.

(3) That, with the exception that the Prosecutor may, in her discretion, notify the Secretary-General of the United Nations and the Governments whose personnel or staff are at risk of reprisals or intimidation, there be no disclosure of the indictment, the review and confirmation of the indictment, the arrest warrants or the Prosecutor's application dated 22 May 1999 during the period ending at 12 noon (The Hague time) on Thursday, 27 May 1999, unless otherwise ordered.

(4) That there be no disclosure of the supporting material forwarded by the Prosecutor pursuant to Rule 47(B) until the arrest of all of the accused.

(5) That all States Members of the United Nations make inquiries to discover whether the accused

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(or any of them) have assets located in their territory and, if so, adopt provisional measures to freeze such assets, without prejudice to the rights of third parties, until the accused are taken into custody.

3. I grant liberty to apply to me without further formal application for any variation of the orders made, at any time prior to 12 noon on Thursday, 27 May 1999.

Done in English and French, the English version being authoritative.

Dated this 24<sup>th</sup> day of May 1999

At The Hague

The Netherlands

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Judge David Hunt

[Seal of the Tribunal]

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1. *Prosecutor v Krnojelac*, Case IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 Feb 1999, at para 15.
  2. *Prosecutor v Kordic*, Case IT-95-14-I, Decision on the Review of the Indictment, 10 Nov 1995 (Judge Gabrielle Kirk McDonald), at p 3.
  3. *Prosecutor v Krnojelac*, Case IT-97-25-PT, Decision on Prosecutor's Response to Decision of 24 February 1999, 20 May 1999, at para 11 footnote 11. Rule 72(A) gives to the Trial Chamber the jurisdiction to deal with the form of the indictment.
  4. *Prosecutor v Kordic*, Case IT-95-14-I, Decision on the Review of the Indictment, 10 Nov 1995 (Judge Gabrielle Kirk McDonald), at p 3, adopting the Report of the International Law Commission, UN Document A/49/10 (1994), at 95.
  5. Rules of Procedure and Evidence, Rule 47(H).
  6. Rule 55(A).
  7. Rule 55(D).
  8. Statute, Article 29.2.