

1325)

SCSL-03-01-A  
(258 - 1214)

258



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

IN THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Presiding  
Justice Emmanuel Ayoola  
Justice George Gelaga King  
Justice Renate Winter  
Justice Jon M. Kamanda  
Justice Philip Nyamu Waki, Alternate Judge

Registrar: Ms. Binta Mansaray

Date filed: 1 October 2012

**THE PROSECUTOR**

**Against**

**CHARLES GHANKAY TAYLOR**  
(Case No. SCSL-03-01-A)

---

**PUBLIC PROSECUTION APPELLANT'S SUBMISSIONS**

**WITH CONFIDENTIAL SECTIONS D & E OF THE BOOK OF AUTHORITIES**

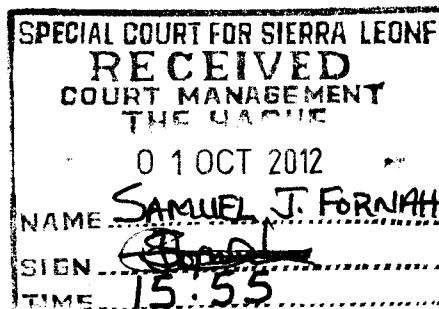
---

Office of the Prosecutor:

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Mr. Mohamed A. Bangura  
Ms. Nina Tavakoli  
Ms. Ruth Mary Hackler  
Ms. Ula Nathai-Lutchman  
Mr. James Pace  
Mr. Corman Kenny  
Ms. Leigh Lawrie  
Mr. Christopher Santora  
Ms. Kathryn Howarth

Counsel for Charles G. Taylor:

Mr. Morris Anyah  
Mr. Eugene O'Sullivan  
Mr. Christopher Gosnell  
Ms. Kate Gibson  
Ms. Magda Karagiannakis



## TABLE OF CONTENTS

### I. OVERVIEW

|                                         |   |
|-----------------------------------------|---|
| Introduction .....                      | 2 |
| Statement of the Issues Presented ..... | 3 |

### II. GROUNDS OF APPEAL

|                                    |   |
|------------------------------------|---|
| Standard of Appellate Review ..... | 4 |
| A. Errors of law .....             | 5 |
| B. Errors of fact .....            | 6 |

**Ground ONE: The Trial Chamber erred in law and in fact when it failed to find Charles Taylor individually criminally responsible for ordering the commission of crimes under Article 6(1) of the Statute** .....

|                                                                                                                                                                                                                             |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| A. Overview .....                                                                                                                                                                                                           | 6  |
| B. The Trial Chamber erred in law by improperly relying on its finding that Mr. Taylor's instructions were "at times" not followed to conclude that he was not criminally responsible for ordering. ....                    | 8  |
| C. The Trial Chamber erred in law and fact in finding that Mr. Taylor's instructions were "generally of an advisory nature" and therefore he "cannot be held responsible for ordering the commission of crimes." .....      | 10 |
| D. The Trial Chamber erred in fact when it failed to draw the only reasonable conclusion that could be drawn from the facts found proven: that Mr. Taylor was responsible for ordering the Instructed Crimes. ....          | 19 |
| 1) Mr. Taylor gave specific instructions which culminated in the commission of the Instructed Crimes .....                                                                                                                  | 20 |
| a) <u>The instruction to "capture Kono"</u> .....                                                                                                                                                                           | 20 |
| b) <u>The instruction to "maintain control of Kono"</u> .....                                                                                                                                                               | 21 |
| c) <u>The instructions to "capture Kono", make the operation "fearful" and to use "all means" to get to Freetown</u> .....                                                                                                  | 24 |
| d) <u>The instruction to open a training base in Kailahun District</u> .....                                                                                                                                                | 28 |
| e) <u>The instruction to "construct an airfield in Buedu"</u> .....                                                                                                                                                         | 29 |
| 2) The Trial Chamber's findings establish the requisite <i>mens rea</i> for ordering, that Mr. Taylor intended or was aware of the substantial likelihood that crimes would be committed pursuant to his instructions. .... | 30 |
| E. Relief Sought .....                                                                                                                                                                                                      | 32 |

**Ground TWO: The Trial Chamber erred in law and fact when it failed to find Charles Taylor individually criminally responsible for instigating the commission of crimes under Article 6(1) of the Statute.** ..... 33

- A. Overview ..... 33
- B. The Trial Chamber erred in law by failing to convict Mr. Taylor on the basis that he instigated the commission of crimes charged in the Indictment ..... 34
- C. The Trial Chamber erred in fact when it failed to draw the only reasonable conclusion that could be drawn from the facts found proven: that Mr. Taylor was also criminally responsible for instigating the crimes charged in the Indictment ..... 38
  - 1) The Trial Chamber’s findings establish that Mr. Taylor instigated the crimes charged in the Indictment committed by the RUF and RUF/AFRC in Kono District in 1998. .... 41
  - 2) The Trial Chamber’s findings establish that Mr. Taylor instigated the crimes charged in the Indictment committed by the RUF and RUF/AFRC in Kailahun District in 1998 ..... 43
  - 3) The Trial Chamber’s findings establish that Mr. Taylor instigated the crimes charged in the Indictment committed by the RUF and RUF/AFRC in Kono, Makeni and Freetown between December 1998 and February 1999 ..... 43
- D. Relief Sought ..... 44

**Ground THREE: The Trial Chamber erred in law and in fact by failing to convict Charles Taylor for crimes committed in certain locations in five districts on the ground that they fell outside the scope of the Indictment.** ..... 45

- A. Overview ..... 45
- B. By pleading the occurrence of crimes “throughout” Kailahun District, the Prosecution charged their location with sufficient specificity ..... 48
- C. By pleading the occurrence of crimes “in various locations, including” the Prosecution charged their location with sufficient specificity ..... 50
- D. In the alternative, timely, clear and consistent notice was given to Mr. Taylor of the locations by pre-trial communications ..... 52
  - 1) Rape in Kailahun District ..... 55
    - a) Prosecution Pre-Trial Brief ..... 56
    - b) Pre-Trial Disclosures ..... 56
      - *Rape in Buedu* ..... 56
      - *Rape in Kailahun Town* ..... 57
      - *Rape in Daru* ..... 57
    - c) Conclusion ..... 58

|                                                                                        |    |
|----------------------------------------------------------------------------------------|----|
| 2) Physical violence in Kailahun District .....                                        | 59 |
| a) <u>Prosecution Opening Statement</u> .....                                          | 60 |
| b) <u>Prosecution Pre-Trial Brief and Summaries of Anticipated Testimony</u><br>.....  | 60 |
| c) <u>Pre-Trial Disclosures</u> .....                                                  | 61 |
| • <i>Beating of civilian recruits at Camp Lion Training Base, Bunumbu</i> .....        | 61 |
| • <i>Training of recruits to commit violence against civilians at Camp Lion</i> .....  | 61 |
| • <i>Marking of recruits at Camp Lion Training Base, Bunumbu</i> .....                 | 62 |
| • <i>Violence towards civilians who resisted crimes against them in Kailahun</i> ..... | 62 |
| d) <u>Conclusion</u> .....                                                             | 62 |
| 3) Killings in Kenema District .....                                                   | 63 |
| <u>Prosecution Pre-Trial Brief and Pre-Trial Disclosures</u> .....                     | 63 |
| 4) Killings in Kono District .....                                                     | 64 |
| a) <u>Prosecution Pre-Trial Brief and Pre-Trial Disclosures</u> .....                  | 65 |
| • <i>Beheading of civilians in April/May 1998 in Foendor</i> .....                     | 65 |
| • <i>Killings in Baima</i> .....                                                       | 66 |
| • <i>Killings in Yekeyor</i> .....                                                     | 66 |
| • <i>Killings on the road between Tombodu and Lebanon</i> .....                        | 67 |
| • <i>Killings in the area between Kania and Koidu Town</i> .....                       | 67 |
| • <i>Killings in Kissy Town</i> .....                                                  | 68 |
| • <i>Killings in Mambona</i> .....                                                     | 68 |
| • <i>Killings in Goldtown</i> .....                                                    | 68 |
| b) <u>Conclusion</u> .....                                                             | 69 |
| 5) Looting in Lunsar, Port Loko District .....                                         | 69 |
| <u>Prosecution Pre-Trial Brief and Pre-Trial Disclosures</u> .....                     | 70 |
| 6) Looting in Karina Town, Bombali District .....                                      | 70 |
| <u>Prosecution Pre-Trial Brief and Pre-Trial Disclosures</u> .....                     | 71 |
| 7) Looting in Kono District .....                                                      | 71 |
| a) <u>Prosecution Pre-Trial Brief and Pre-Trial Disclosures</u> .....                  | 72 |



|                                                                                                                                                                                                                   |     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| • <i>Looting in the Bush Outside Tombodu</i> .....                                                                                                                                                                | 72  |
| • <i>Looting in Fakoyia Bush</i> .....                                                                                                                                                                            | 73  |
| b) <u>Conclusion</u> .....                                                                                                                                                                                        | 73  |
| E. Mr. Taylor suffered no prejudice .....                                                                                                                                                                         | 74  |
| F. Conclusion .....                                                                                                                                                                                               | 78  |
| G. Relief Sought .....                                                                                                                                                                                            | 79  |
| 1) Aiding and abetting sexual and physical violence throughout Kailahun District .....                                                                                                                            | 79  |
| 2) Aiding and abetting killings in Kono and pillage in Kono, Bombali and Port Loko Districts .....                                                                                                                | 80  |
| 3) Aiding and abetting killings in Kenema District .....                                                                                                                                                          | 80  |
| 4) Ordering and instigating physical violence in Kailahun District .....                                                                                                                                          | 81  |
| 5) Ordering and instigating killings and pillage in Kono District .....                                                                                                                                           | 81  |
| <b><u>Ground FOUR: The Trial Chamber erred in law and/or in fact in sentencing Charles Taylor to a single term of 50 years' imprisonment</u></b> .....                                                            | 81  |
| A. Overview .....                                                                                                                                                                                                 | 81  |
| B. Standard of Appellate Review .....                                                                                                                                                                             | 84  |
| C. The Trial Chamber erred by failing to properly assess the totality of Mr. Taylor's criminal conduct .....                                                                                                      | 85  |
| 1) The Trial Chamber's findings demonstrate the key significance and centrality of Mr. Taylor's role in the campaign of atrocities .....                                                                          | 85  |
| 2) The Trial Chamber failed to impose a sentence which adequately reflects the centrality and vital significance of Mr. Taylor's role in the campaign of atrocities .....                                         | 88  |
| D. The Trial Chamber erred by failing to give sufficient weight to Mr. Taylor's conviction for planning the bloodiest chapter of the longstanding campaign of atrocities against the people of Sierra Leone ..... | 90  |
| E. The Trial Chamber erred by giving undue and erroneous consideration to aiding and abetting as a form of liability rather than properly considering the gravity of Mr. Taylor's actual criminal conduct. ....   | 95  |
| F. Relief Sought .....                                                                                                                                                                                            | 99  |
| <b>III. CONCLUSION</b> .....                                                                                                                                                                                      | 100 |
| <b>IV. RELIEF SOUGHT</b> .....                                                                                                                                                                                    | 100 |

**Appendix A: Abbreviations****Appendix B: Book of Authorities**

## I. OVERVIEW

### Introduction

1. Pursuant to Article 20 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 106 and 111 of the Rules of Procedure and Evidence (“Rules”), the Prosecution files this Appellant’s Submission<sup>1</sup> against the Judgement dated 18 May 2012,<sup>2</sup> as revised by the Corrigendum<sup>3</sup> issued on 30 May 2012,<sup>4</sup> and the Sentencing Judgement<sup>5</sup> dated 30 May 2012, in the case of *The Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T. On 19 July 2012, the Prosecutor and Mr. Taylor filed their respective Notices of Appeal.<sup>6</sup> On 21 August 2012, the Appeals Chamber ordered the Parties to file their Appellant’s Submissions on 1 October 2012.<sup>7</sup>
2. In its Judgement, Trial Chamber II found Mr. Taylor guilty pursuant to Article 6(1) of the Statute of: (i) aiding and abetting the commission of the crimes set forth in Counts 1 to 11 of the Indictment,<sup>8</sup> and (ii) planning the commission of crimes set forth in Counts 1 to 11 of the Indictment that were perpetrated during the attacks on Kono and Makeni in December 1998 and in the invasion of and retreat from Freetown between December 1998 and February 1999. Trial Chamber II sentenced Mr. Taylor to a single term of imprisonment of fifty (50) years.
3. Abbreviated terms used in this Appellant’s Submission are defined in Appendix A. All authorities are cited in full the first time they are referenced, then by abbreviated citation thereafter. For ease of reference, abbreviated citations are also included in

<sup>1</sup> The Prosecution wishes to acknowledge the tireless assistance and dedication of the following interns who provided essential assistance in the writing of this Appellant’s Submission: Lena Sokolić, Joshuah Lisk, Rachel Berman-Vaporis, Ann Ellefsen-Tremblay, Caitlin Warner and Morgen Morrisette.

<sup>2</sup> Judgement, SCSL-03-01-T-1281, 18 May 2012.

<sup>3</sup> Corrigendum to Judgement filed on 18 May 2012, SCSL-03-01-T-1284, 30 May 2012.

<sup>4</sup> Judgement, SCSL-03-01-T-1283, 18 May 2012 (Judgement).

<sup>5</sup> Sentencing Judgement, SCSL-03-01-T-1285, 30 May 2012 (Sentencing Judgement).

<sup>6</sup> Prosecution’s Notice of Appeal, SCSL-03-01-A-1300, 19 July 2012; Notice of Appeal of Charles Ghankay Taylor, SCSL-03-01-A-1301, 19 July 2012.

<sup>7</sup> Decision on Defence Motion for Reconsideration or Review of “Decision on Prosecution and Defence Motions for Extension of Time and Page Limits Pursuant to Rules 111, 112 and 113” and Final Order on Extension of Time for Filing Submissions, SCSL-03-01-T-1320, 21 August 2012.

<sup>8</sup> Prosecution’s Second Amended Indictment, SCSL-03-01-PT-263, 29 May 2007 (Indictment).

the Table of Contents for Appendix B, the Book of Authorities. Witness materials referenced in Ground Three which were previously disclosed to the Defence are contained in Confidential Section D of the Book of Authorities. Other confidential materials are contained in Confidential Section E of the Book of Authorities.

4. The remedy requested in each of the Prosecution's Grounds of Appeal is without prejudice to the remedies requested by the Prosecution Appellant ("Prosecution") in respect of each of its other Grounds of Appeal.

#### **Statement of the Issues Presented**

5. The Prosecution presents four grounds of appeal which identify errors of law that invalidate the Trial Chamber's decision and errors of fact that have occasioned a miscarriage of justice:
  - The Trial Chamber erred in law and in fact by failing to convict Mr. Taylor for ordering crimes committed by RUF/AFRC forces who were implementing his instructions. The Trial Chamber erred in law when it characterised Mr. Taylor's "instructions" and "guidance" as "advisory" rather than "orders", and by reasoning that as some of Mr. Taylor's instructions were not followed, no liability for ordering should attach. On the basis of the totality of the facts and evidence accepted by the Trial Chamber, no reasonable trier of fact would have failed to find that Mr. Taylor ordered these crimes (**Ground One**);
  - The Trial Chamber erred in law and in fact by failing to convict Mr. Taylor for instigating the commission of the crimes charged in Counts 1–11 of the Indictment as it is one of the forms of responsibility charged that accurately describes his conduct. On the basis of the totality of the facts and evidence accepted by the Trial Chamber, no reasonable trier of fact would have failed to find Mr. Taylor instigated these crimes (**Ground Two**);
  - The Trial Chamber erred in law and in fact by failing to convict Mr. Taylor for crimes committed in certain locations in five districts, and which the Trial Chamber found proven, on the basis that they fell outside the scope of the

Indictment. These crimes were properly pleaded in the Indictment, and convictions should have been entered (**Ground Three**), and

- The Trial Chamber erred in law and in fact by committing a discernible error in the exercise of its sentencing discretion by imposing a sentence of 50 years on Mr. Taylor, when in the circumstances of the case, the appropriate sentence should have been 80 years in order to reflect the totality of his overall conduct and culpability (**Ground Four**).
6. Accordingly, for Grounds One through Three, the Prosecution seeks the reversal of the Trial Chamber's decisions and the entry by the Appeals Chamber of additional convictions on each ground. In light of these additional convictions, the Prosecution requests Mr. Taylor's sentence be increased accordingly. In respect of Ground Four, the relief sought is for the Appeals Chamber to reverse the decision of the Trial Chamber and increase Mr. Taylor's sentence to 80 years' imprisonment. This sentence should be granted regardless of whether the Appeals Chamber grants the Prosecution's other grounds of appeal.

## II. GROUNDS OF APPEAL

### Standard of Appellate Review

7. Article 20 of the Statute and Rule 106 of the Rules provide for appeals from:
- a) A procedural error;
  - b) An error on a question of law invalidating the decision;
  - c) An error of fact which has occasioned a miscarriage of justice.
8. The Appeals Chamber will not review the entire trial record *de novo*. Rather, it will in principle only take into account evidence referred to by the Trial Chamber in the body of the judgement or in a related footnote, evidence contained in the trial record

and referred to by the parties, and, where applicable, additional evidence admitted on appeal.<sup>9</sup>

9. For Grounds One to Three, the standard of appellate review to be applied by the Appeals Chamber is set out below. For Ground Four, the standard of appellate review is set out in that ground.

#### **A. Errors of law**

10. An error of law must invalidate the decision.<sup>10</sup> The Appellant must state what error has been made in point of law and in what manner the error invalidates the decision.<sup>11</sup> The Appeals Chamber reviews the Trial Chamber's findings of law to determine whether or not they are correct.<sup>12</sup> Where the Appeals Chamber finds an error of law in the Trial Judgement arising from the application of the wrong legal standard by the Trial Chamber, the Appeals Chamber will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly.<sup>13</sup> In so doing, the Appeals Chamber not only corrects the legal error, but applies the correct legal standard to the evidence contained in the trial record, where necessary, and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.<sup>14</sup>

---

<sup>9</sup> *Prosecutor v. Dragomir Milošević*, IT-98-29/1-A, Judgement (AC), 12 November 2009 (*D. Milošević* Appeal Judgement), para. 14; *Prosecutor v. Krajišnik*, IT-00-39-A, Judgement (AC), 17 March 2009 (*Krajišnik* Appeal Judgement), para. 13.

<sup>10</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-A-1321, Judgment (AC), 26 October 2009 (*Sesay et al.* Appeal Judgment), para. 31; *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A-829, Judgment (AC), 28 May 2008 (*Fofana & Kondewa* Appeal Judgment), para. 32.

<sup>11</sup> *Sesay et al.* Appeal Judgment, para. 31. See also *The Prosecutor v. Munyakazi*, ICTR-97-36-A-A, Judgment (AC), 28 September 2011 (*Munyakazi* Appeal Judgement), para. 6.

<sup>12</sup> *Prosecutor v. Mrkšić and Šljivančanin*, IT-95-13/1-A, Judgement (AC), 5 May 2009 (*Mrkšić & Šljivančanin* Appeal Judgement), para. 12; *Krajišnik* Appeal Judgement, para. 13.

<sup>13</sup> *Munyakazi* Appeal Judgement, para. 7. See also *Prosecutor v. Martić*, IT-95-11-A, Judgement (AC), 8 October 2008, para. 10.

<sup>14</sup> *Mrkšić & Šljivančanin* Appeal Judgement, para. 12; *Krajišnik* Appeal Judgement, para. 13.

## **B. Errors of fact**

11. An error of fact must occasion a miscarriage of justice.<sup>15</sup> The Appellant must state in what manner the error of fact has occasioned a miscarriage of justice.<sup>16</sup> For an error to have occasioned a miscarriage of justice it must have been “critical to the verdict reached.”<sup>17</sup>
12. The Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial<sup>18</sup> as it is best placed to assess the evidence, including the demeanour of witnesses.<sup>19</sup> The responsibility for the findings of fact and the evaluation of evidence resides primarily with the Trial Chamber.<sup>20</sup> The Appeals Chamber will substitute its own finding for that of the Trial Chamber when no reasonable trier of fact could have reached the original decision or where the finding is wholly erroneous.<sup>21</sup> The Appeals Chamber applies the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.<sup>22</sup>

### **GROUND ONE: The Trial Chamber erred in law and in fact when it failed to find Charles Taylor individually criminally responsible for ordering the commission of crimes under Article 6(1) of the Statute.**

#### **A. Overview**

13. The Trial Chamber erred in law and in fact by failing to convict Mr. Taylor for ordering crimes committed by RUF/AFRC forces who were implementing his instructions. Regardless of the language used in its findings to characterise Mr. Taylor’s communications, the Trial Chamber’s conclusion that Mr. Taylor was not

<sup>15</sup> *Sesay et al.* Appeal Judgment, para. 32; *Fofana & Kondewa* Appeal Judgment, para. 33.

<sup>16</sup> *Sesay et al.* Appeal Judgment, para. 32. See also *Prosecutor v. Krnojelac*, IT-97-25-A, Judgement (AC), 17 September 2003, para. 11.

<sup>17</sup> *Sesay et al.* Appeal Judgment, para. 32. See also *Prosecutor v. Zoran Kupreškić et al.*, IT-95-16-A, Appeal Judgement, 23 October 2001 (*Kupreškić* Appeal Judgement), para. 29.

<sup>18</sup> *Munyakazi* Appeal Judgement, para. 8. See also *Karera v. The Prosecutor*, ICTR-01-74-A, Judgement (AC), 2 February 2009, para. 10.

<sup>19</sup> *Sesay et al.* Appeal Judgment, para. 32; *Fofana & Kondewa* Appeal Judgment, para. 33.

<sup>20</sup> *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Judgement (AC), 12 June 2002 (*Kunarac* Appeal Judgement), para. 39.

<sup>21</sup> *Sesay et al.* Appeal Judgment, para. 32; *Fofana & Kondewa* Appeal Judgment, para. 33.

<sup>22</sup> *Sesay et al.* Appeal Judgment, para. 32; *Fofana & Kondewa* Appeal Judgment, para. 33. See also *Prosecutor v. Limaj et al.*, IT-03-66-A, Judgement (AC), 27 September 2007, para. 12.

responsible for ordering is contrary to the law and inconsistent with the numerous legal and factual findings the Trial Chamber made throughout the Judgement that establish Mr. Taylor's guilt in relation to this form or mode of liability.

14. Rather than holding Mr. Taylor responsible for the orders he gave that *were* followed, the Trial Chamber erred in law by reasoning that because *some* instructions were not followed, *no* liability should attach.
15. The Trial Chamber erred in law and in fact when it concluded that Mr. Taylor's instructions were "advisory" in nature and thus not "orders". Such a characterisation contravenes the *actus reus* definition of ordering as well as the extensive factual findings regarding Mr. Taylor's authority in relation to the RUF, RUF/AFRC and findings regarding the crimes committed as a result of Mr. Taylor having "told", "instructed", or given an "imperative" to the RUF, RUF/AFRC to act.
16. Finally, the Trial Chamber erred in fact by failing to reach the only conclusion reasonably available to it, that Mr. Taylor was guilty of ordering the Instructed Crimes.<sup>23</sup> The Trial Chamber's conclusion regarding ordering was incompatible with its own findings that Mr. Taylor was in a position of authority with respect to the RUF, RUF/AFRC commanders, he gave them instructions, imperatives, guidance or advice, the commanders implemented or attempted to implement the instructions, imperatives, guidance or advice, and the Instructed Crimes resulted.<sup>24</sup> Further, Mr. Taylor issued these instructions, imperatives, guidance or advice with the intent or awareness of the substantial likelihood that crimes would be committed in their execution. Such findings satisfy all of the legal elements required to prove ordering as a mode of responsibility under Article 6(1) of the Statute.

---

<sup>23</sup> The Instructed Crimes are the crimes charged in the Indictment in : i) Counts 1-11 in Kono between February and December 1998; ii) Counts 1-11 in relation to the Kono-Makeni-Freetown operation from December 1998 to February 1999, and iii) Counts 1, 7-10 in Kailahun District from February to December 1998.

<sup>24</sup> Note that in some cases, the RUF, RUF/AFRC commanders *attempted* to implement Mr. Taylor's instructions but their forces were unable to fully carry them out. For example, the forces tried to maintain control of Kono after capturing Koidu Town in late February/early March 1998 but then lost control of the town in April, necessitating the instruction to "recapture Kono". Nonetheless, the RUF/AFRC troops committed crimes in attempting to implement the instruction to maintain control of Kono as well as in the actual implementation of Mr. Taylor's instructions.



17. The Prosecution requests that the Appeals Chamber reverse the Trial Chamber's finding on ordering and enter a finding of guilt based on ordering for the crimes charged in the Indictment in: i) Counts 1-11 in Kono between February and December 1998; ii) Counts 1-11 in relation to the Kono-Makeni-Freetown operation from December 1998 to February 1999, and iii) Counts 1, 7-10 in Kailahun District from February to December 1998 (the "Instructed Crimes"). The Prosecution also asks the Appeals Chamber to increase Mr. Taylor's sentence to reflect his criminal responsibility for ordering these crimes.

***B. The Trial Chamber erred in law by improperly relying on its finding that Mr. Taylor's instructions were "at times" not followed to conclude that he was not criminally responsible for ordering.***

18. The Trial Chamber concluded that one of the reasons Mr. Taylor could not be held responsible for ordering the commission of crimes was because his instructions and guidance to the RUF and RUF/AFRC "at times were in fact not followed by the RUF/AFRC leadership."<sup>25</sup>

19. However, amongst numerous findings of RUF, RUF/AFRC compliance with Mr. Taylor's instructions as discussed below, the Prosecution could identify only two instances where an instruction given by Mr. Taylor arguably was not followed *in toto* by the RUF, RUF/AFRC leadership. In the first instance, Benjamin Yeaten told Abu Keita that he wanted him to be commander of a standby force, the Scorpion Unit, in Sierra Leone, and that he (Yeaten) had planned this with Mr. Taylor.<sup>26</sup> However, Bockarie "rejected the idea of having a dual command structure on the ground" and sent the men who were intended to serve under Keita to Kenema.<sup>27</sup> The Trial Chamber found that "Daniel Tamba approved Bockarie's decision to integrate the Scorpion Unit" under Bockarie's command<sup>28</sup> and told Keita on behalf of Mr. Taylor to comply with Bockarie's demand.<sup>29</sup> As shown by Exhibit P-28,

---

<sup>25</sup> Judgement, para. 6973.

<sup>26</sup> Judgement, paras. 4406, 4480.

<sup>27</sup> Judgement, para. 4481.

<sup>28</sup> Judgement, para. 4494.

<sup>29</sup> Judgement, paras. 4481, 4618(iv).

which the Trial Chamber found to be authentic,<sup>30</sup> Keita was eventually made commander of the Scorpion Unit, which, in keeping with Yeaten's statement to Keita that it would serve as a standby force, took part in the RUF-AFL invasion of Guinea.<sup>31</sup>

20. The second instance involved Issa Sesay complying for a significant period of time with Mr. Taylor's private advice not to disarm, but then deciding in mid-2001 that he would *no longer* take instructions from Mr. Taylor on the matter.<sup>32</sup> Specifically, TF1-338 testified that in July 2000, Mr. Taylor told Sesay at a meeting in Monrovia to say he would disarm but "not do it in reality", and Sesay complied, delaying RUF disarmament in Sierra Leone.<sup>33</sup> When Mr. Taylor again advised Sesay not to disarm in mid-2001, Sesay complained to the commanders he was traveling with that he would *no longer* take instructions from Mr. Taylor telling him not to disarm.<sup>34</sup>
21. These two instances of non-compliance should not have barred the Trial Chamber from finding Mr. Taylor guilty of ordering. Whether or not Mr. Taylor's instructions were followed all the time, he should have been found responsible for those instructions which *were* followed and which *did result* in crimes. For example, in the ICTY *Brđanin* case, while not all decisions by the ARK Crisis Staff led by Brđanin were implemented,<sup>35</sup> he was nonetheless held criminally responsible for ordering the crimes that resulted from decisions that *were* implemented.<sup>36</sup> Such a finding is appropriate because, in determining if an accused is guilty on the basis

---

<sup>30</sup> Judgement, para. 6710.

<sup>31</sup> See, e.g., Judgement, paras. 6670-6672, 6703-6706, 6726-6728.

<sup>32</sup> Judgement, paras. 6447 (emphasis added), 6448-6450.

<sup>33</sup> Judgement, paras. 6442-6444.

<sup>34</sup> Judgement, paras. 6447 (emphasis added), 6450. Note that the Trial Chamber states in para. 6447 of the Judgement that Sesay said he would no longer take instructions from Taylor telling him to disarm; however, the evidence of TF1-338 cited by the Trial Chamber was that Sesay said he would no longer take instructions from Taylor telling him *not* to disarm, so this appears to be a typographical error by the Trial Chamber. See TF1-338, T. 2 September 2008 pp. 15175-15176.

<sup>35</sup> *Prosecutor v. Brđanin*, IT-99-36-T, Judgement (TC), 1 September 2004 (*Brđanin* Trial Judgement), para. 364.

<sup>36</sup> See, e.g., *Brđanin* Trial Judgement, paras. 1063-1067 (holding Brđanin responsible for ordering persecution of Bosnian Muslims and Croats by denying them the right to employment).

of ordering, the Trial Chamber should examine the *particular event* and determine whether the elements for ordering *were met at the time of the event*.<sup>37</sup>

22. Had the Trial Chamber employed the proper legal analysis, i.e., examined the particular events to determine if the elements of ordering were met at the time of the event, it would have found Mr. Taylor guilty of ordering the Instructed Crimes, as discussed below.

**C. *The Trial Chamber erred in law and fact in finding that Mr. Taylor's instructions were "generally of an advisory nature" and therefore he "cannot be held responsible for ordering the commission of crimes."***

23. The Trial Chamber committed an error of law and fact when it characterised Mr. Taylor's "instructions" and "guidance" to be "generally of an advisory nature"<sup>38</sup> and therefore found he was not responsible for "ordering" crimes under Article 6(1) of the Statute.
24. In relation to the instructions that form the basis of this appeal, the Trial Chamber used authoritative and directive language such as "instructed", "told", and "communicated the imperative" to characterise Mr. Taylor's interactions with Johnny Paul Koroma ("JPK") and Sam Bockarie.<sup>39</sup> This choice of language

<sup>37</sup> See, e.g., *Semanza v. The Prosecutor*, ICTR-97-20-A, Judgement (AC), 20 May 2005 (*Semanza Appeal Judgement*), paras. 363-364 (the Appeals Chamber convicted Semanza for ordering genocide and extermination in a massacre at Musha church, stating "no reasonable trier of fact could hold otherwise" than that the attackers to whom he had given directions regarded him as speaking with authority, even if such authority was informal or temporary. The Trial Chamber had found the Hutu refugees were executed on Semanza's directions but erred in applying the legal standard to the facts); *The Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, Judgment (TC), 17 June 2004 (*Gacumbitsi Trial Judgement*), paras. 162-163 (the Trial Chamber found the Accused had led an attack against Tutsi civilians at Nyarubuye Parish by ordering the attackers to kill refugees).

<sup>38</sup> Judgement, para. 6973.

<sup>39</sup> See, e.g., the Trial Chamber found at paras. 2855, 2863, 3611(ii), 3613 of the Judgement that Mr. Taylor "instructed" JPK to capture Kono; at paras. 2864, 6543 and 3613, that he "told", "instructed" and "communicated the imperative", respectively, to maintain control over Kono; at para. 4109 that Mr. Taylor "instructed" Bockarie to open a training base in Bunumbu, Kailahun District. The Trial Chamber also stated at para. 4107 of the Judgement that TF1-516's evidence was consistent with TF1-362's evidence that the Bunumbu training camp was opened "on the order of" Mr. Taylor.

supports the assertion that the communications at issue were more than advisory in nature and were, in reality, “orders”.<sup>40</sup>

25. Regardless of the ultimate conclusions the Trial Chamber reached, the underlying findings it made were themselves proof that Mr. Taylor was guilty of ordering crimes charged in the Indictment. The findings make clear that Mr. Taylor gave his communications with compelling force by virtue of his unique position of authority over the leaders and members of the RUF, RUF/AFRC. As discussed below, they also clearly show that Mr. Taylor gave these instructions with the intent or awareness of the substantial likelihood that crimes would result in carrying out his instructions.<sup>41</sup>
26. The *actus reus* of ordering set out by the Trial Chamber makes it clear that “instructions” are orders when a person in a position of authority “instructs” another to carry out an act or engage in an omission.<sup>42</sup> The Prosecution must prove that the “position of authority” would be strong enough to imply an element of compulsion.<sup>43</sup> That is, there must be proof of sufficient authority – moral or otherwise – for the person instructing to expect that his instructions will be carried

<sup>40</sup> See, e.g., attacks resulted after Mr. Taylor told JPK to capture Kono. See Judgement, paras. 2863, 3611(ii), 3613, 6942.

<sup>41</sup> See paras. 65-68 of this Appellant’s Submission.

<sup>42</sup> Judgement, para. 474(i), read in conjunction with para. 475. See also *Prosecutor v. Milutinović et al.*, IT-05-87-T, Judgement (TC), Vol. 1 of 4, 26 February 2009 (*Milutinović* Trial Judgement – Vol. 1), paras. 85-86.

<sup>43</sup> See, e.g., Judgement, para. 475; *Gacumbitsi v. The Prosecutor*, ICTR-2001-64-A, Judgement (AC), 7 July 2006 (*Gacumbitsi* Appeal Judgement), para. 182; *Semanza* Appeal Judgement, para. 361. Some jurisprudence has used the terms “persuade” or “convince” rather than “compel”. The “persuade” standard has been used in *The Prosecutor v. Musema*, ICTR-96-13-A, Judgement and Sentence, 27 January 2000, para. 121; *The Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgement and Sentence, 6 December 1999, para. 39; and the “convince” standard has been used in *Prosecutor v. Krstić*, IT-98-33-T, Judgement (TC), 2 August 2001 (*Krstić* Trial Judgement), para. 601; *The Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement (TC), 2 September 1998 (*Akayesu* Trial Judgement), para. 483; *Prosecutor v. Blaskić*, IT-95-14-T, Judgement (TC), 3 March 2000 (*Blaskić* Trial Judgement), para. 281. Note that the accused need not use his position of authority to “convince” the physical perpetrator or intermediary to commit the crime or underlying offence, see *Milutinović* Trial Judgement - Vol. 1, para. 87; Judgement, para. 476.

out. Evidence that those who received the instruction did carry it out or attempted to do so provides proof of such authority.<sup>44</sup>

27. In no instance is a superior-subordinate relationship between the person with authority and the perpetrator necessary.<sup>45</sup> As stated by the ICTR Appeals Chamber, “[o]rdering requires no such [superior-subordinate] relationship -- it requires merely authority to order, a more subjective criterion that depends on the circumstances and the perceptions of the listener.”<sup>46</sup> Authority to order may even be temporary,<sup>47</sup> as during a crisis when “the listener” is especially vulnerable and turns to someone that the listener believes could help because of his position or experience:

When people are confronted with an emergency or danger, they can naturally turn to such influential person, expecting him to provide a solution, assistance or take measures to deal with the crisis. When he speaks, everyone listens to him with keen interest; his advice commands overriding respect over all others...<sup>48</sup>

28. The relevant listeners for the instructions that are the subject of this ground of appeal were JPK and Sam Bockarie. Mr. Taylor’s authority with the RUF/AFRC forces was magnified at times of crisis such as when those forces were in disarray as they fled from the ECOMOG takeover in February of 1998, and when a lack of ammunition precipitated rebel leaders to “turn to” Mr. Taylor.<sup>49</sup> In these precarious circumstances, JPK turned to Mr. Taylor and was in regular contact with him.<sup>50</sup> It was at this time that Mr. Taylor twice instructed JPK to capture Kono and JPK complied, ordering his forces to attack and, after an initial failure, successfully capturing Koidu Town in late February/early March 1998.<sup>51</sup>

<sup>44</sup> See, e.g., *The Prosecutor v. Kamuhanda*, ICTR-95-54A-T, Judgment and Sentence, 22 January 2004 (*Kamuhanda* Trial Judgment), para. 594; *Kamuhanda v. The Prosecutor*, ICTR-99-54A-A, Judgment (AC), 19 September 2005 (*Kamuhanda* Appeal Judgment), para. 76.

<sup>45</sup> *Gacumbitsi* Appeal Judgment, para. 181; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Judgment (AC), 17 December 2004 (*Kordić & Čerkez* Appeal Judgment), para. 28; *Brdanin* Trial Judgment, para. 270; *Semanza* Appeal Judgment, para. 361.

<sup>46</sup> *Gacumbitsi* Appeal Judgment, para. 182.

<sup>47</sup> Judgment, para. 475; *Semanza* Appeal Judgment, para. 363.

<sup>48</sup> *Gacumbitsi* Trial Judgment, para. 282.

<sup>49</sup> Judgment, para. 5829.

<sup>50</sup> Judgment, paras. 2774-2775, 2855.

<sup>51</sup> Judgment, paras. 2863, 3611(ii), 3613.

29. For the other instructions that form the basis of this appeal ground, all were given to Sam Bockarie during the period of RUF leader Foday Sankoh's detention, and after Sankoh had given a specific instruction to Bockarie in March 1997 "to take orders from [Charles Taylor]." <sup>52</sup> While the Trial Chamber found that Sankoh did not intend to turn over his leadership position to Mr. Taylor, <sup>53</sup> this does not alter the fact that this instruction clearly imbued Mr. Taylor with authority *vis-à-vis* Bockarie. Further and as demonstrated by the findings, Bockarie repeatedly complied with Mr. Taylor's "instructions" and "advice" on a wide range of matters.
30. Thus, both JPK and Bockarie found themselves and their forces in positions which manifestly required Mr. Taylor's assistance and support. Such a relationship of reliance increased Mr. Taylor's authority over both of them so as to compel them to follow his instructions - even if they were characterised as "advisory" - as a practical necessity.
31. In a moment of unguarded candor, Mr. Taylor himself revealed the extent of his authority over Bockarie in particular. His counsel read the testimony of a Prosecution witness regarding the RUF's attempt to recover a tank from the Moa River to send to Liberia. Defence counsel then asked Mr. Taylor if he had any knowledge about the tank episode. Mr. Taylor responded, "None whatsoever. If Sam Bockarie had a tank that I wanted, I would have sent for it." <sup>54</sup>
32. An additional example of Mr. Taylor's authority, which was not cited by the Trial Chamber, came through the testimony of Reverend Tamba Teh. When Reverend Teh was put in the dangerous dilemma of being asked by Sam Bockarie to answer his offer to become the pastor for the RUF that day or be killed, Teh cleverly answered that he would only accept if made a field marshal. Bockarie burst out laughing and responded by saying, "*My boss* Ghankay Taylor is not yet a five star general. How can I make you field marshal?" <sup>55</sup>

---

<sup>52</sup> Judgement, para. 6774.

<sup>53</sup> Judgement, para. 6775.

<sup>54</sup> Charles Taylor, T. 28 October 2009 p. 30632.

<sup>55</sup> TF1-015, T. 8 January 2008 pp. 729-730 (emphasis added).

33. Moreover, the leaders of the RUF, AFRC/RUF deferred to Mr. Taylor. The Trial Chamber found that Bockarie was “deferential” to Mr. Taylor and “generally followed his instruction.”<sup>56</sup> JPK turned to Mr. Taylor for “advice and support.”<sup>57</sup> The RUF and AFRC referred to Mr. Taylor by an abundance of names showing deference, including “Chief”, “Pa”, or “Papay”.<sup>58</sup> While “Pa” is a term that is frequently used in Sierra Leone as a sign of respect for an elder or a socially prominent man, other terms that the RUF and AFRC leaders used to refer to Mr. Taylor went far beyond the respect normally shown for someone referred to as “Pa.”
34. The Trial Chamber found that the RUF referred to Mr. Taylor as the “Godfather”<sup>59</sup> and the “father.”<sup>60</sup> When asked about testimony that Issa Sesay and Sam Bockarie viewed him as a father figure, Mr. Taylor acknowledged that this was true and that Sesay and Bockarie trusted him and his honour was important to them.<sup>61</sup> The evidence shows that Sam Bockarie in particular viewed Mr. Taylor as his “father”<sup>62</sup> and Mr. Taylor in his own testimony confirmed this paternal relationship with the military leader of the RUF, saying Bockarie was “like a son”<sup>63</sup> and he “loved that boy.”<sup>64</sup> The only reasonable explanation for Mr. Taylor’s love for the infamously

<sup>56</sup> Judgement, para. 6775.

<sup>57</sup> Judgement, para. 6777.

<sup>58</sup> Judgement, para. 6768.

<sup>59</sup> Judgement, para. 6768; TF1-406, T. 10 January 2008 pp. 925-26; TF1-597, T. 21 May 2008 p. 10452.

<sup>60</sup> Judgement, para. 6768, citing TF1-406, T. 9 January 2008 p. 866 (“the journalists were asking [Bockarie], ‘Who is your father that you are referring to?’ and he said, ‘Charles Taylor’”), T. 10 January 2008 pp. 925-926 (“Mr Taylor is the father and Benjamin Yeaten is the son”); TF1-568, T. 15 September 2008 p. 16175, T. 16 September 2008 p. 16328 (referring to Taylor as “Dad” or the “Papay” or “Father” or “the Old Man” or “the President”); TF1-360, T. 7 February 2008 p. 3317 (“Mr Taylor we knew him as Father”); TF1-577, T. 5 June 2008 pp. 11072, 11083; TF1-532, T. 31 March 2008 p. 6227; TF1-371, T. 29 January 2008 pp. 2457, 2510-2511 (CS); TF1-567, T. 7 July 2008 pp. 13039-13040 (“Issa Sesay he told me Charles Taylor was our big revolutionary father”); TF1-367, T. 21 August 2008 p. 14300. *See also* Judgement, para. 2739: “Exhibit P-063, dated 2 December 1998, is the minutes of a forum with the external delegates led by the RUF Defence Staff, which was held at the RUF Defence Headquarters. According to this document, Eddie Kanneh asked those present at the forum to “remember outstanding external friends of his movement like General Abraham”, and the CDS (Sam Bockarie) congratulated General Abraham for his “sincerity and honesty in delivering the parcels that were given to [him] for our father across”.

<sup>61</sup> Charles Taylor, T. 24 September 2009 pp. 29644-29645 (PS).

<sup>62</sup> TF1-532, T. 31 March 2008 p. 6227; TF1-371, T. 29 January 2008 pp. 2457, 2510-2511 (CS).

<sup>63</sup> Charles Taylor, T. 26 October 2009 pp. 30219-30221; T. 26 November 2009 p. 32541.

<sup>64</sup> Charles Taylor, T. 26 October 2009 p. 30221 (“look, I loved that boy and I am saying – you didn’t ask me this question; I volunteered, I would never have turned him over to Tejan Kabbah, you understand me?”).

ruthless and sadistic Sam Bockarie<sup>65</sup> was the filial obedience Bockarie showed in implementing Mr. Taylor's instructions for the RUF.

35. Mr. Taylor was also referred to as "Chief"<sup>66</sup> and even as the Commander-in-Chief or "C.I.C." by the RUF.<sup>67</sup> When asked what the RUF meant by calling Mr. Taylor commander-in-chief, one of the most senior commanders explained the informal but powerful relationship: "It means he had command over the RUF and we took it that the RUF belonged to him, although he sent somebody to head the RUF but he was the owner of the RUF."<sup>68</sup>
36. The Trial Chamber's characterisation of Mr. Taylor's "instructions" and "guidance" as "generally of an advisory nature"<sup>69</sup> and thus not orders also fails to take into account its numerous findings which clearly establish that the RUF, RUF/AFRC dutifully followed Mr. Taylor's instructions, both before and during the Indictment period.<sup>70</sup> As discussed above, an instance of failure to fully comply with an instruction does not raise reasonable doubt as to ordering as a form of liability.

<sup>65</sup> See, e.g., DCT-146, T. 12 April 2010 p. 38660 (Sam Bockarie was a "bad leader" since 1997 and a "wicked commander"); DCT-172, T. 13 August 2010 p. 46218 (Bockarie was proud of being feared – it made him feel powerful – and he wanted people to know how violent he could be); DCT-306, T. 13 April 2010 pp. 38885-38888 (Sam Bockarie was a "devil"); Exh. P-431 (Bockarie threatened to wage a campaign of genocide and said he would order his troops "to kill every living thing including chickens" if Sankoh was not released); Exh. P-430B (in a November 1998 interview with *For di People* newspaper, Bockarie said he was a ruthless commander and that when he took Freetown, he'd clear every living thing and building; "I'll kill and kill, and the more they tell me to stop, the more I'll kill.").

<sup>66</sup> Judgement, para. 6768 citing, among other evidence, TF1-367, T. 21 August 2008 p. 14300 ("we used to call Charles Taylor "Chief" [...] In Monrovia, Liberia we hadn't anybody whom we called Chief or Pa apart from Charles Taylor"), TF1-274, T. 11 December 2008 p. 22258 ("Taylor was "the commander in chief" of the RUF"); TF1-516, T. 8 April 2008 p. 6883 ("that was common with the senior officers of the RUF referring to Charles Taylor as the chief").

<sup>67</sup> Judgement, para. 6768; TF1-532, T. 31 March 2008 pp. 6228-6229 (when asked how the RUF referred to Taylor: "We called Charles Taylor as the CIC. He was the CIC. He was the commander in chief."); TF1-274, T. 3 December 2008 p. 21543 (the witness said that when he said "the Papay" he referred to "CIC Taylor").

<sup>68</sup> TF1-532, T. 31 March 2008 p. 6229.

<sup>69</sup> Judgement, para. 6973.

<sup>70</sup> Mr. Taylor's continuing authority over the leadership of the RUF, RUF/AFRC, is reflected in findings that earlier instructions were also implemented: (1) in 1993, "Sankoh sent RUF forces to Liberia at the request of [Taylor]" to fight with the NPFL against ULIMO; (2) in 1994, Mr. Taylor "advised Sankoh to attack a major place in Sierra Leone, and that pursuant to this advice Sankoh ordered the RUF to attack Sierra Rutile"; (3) Taylor "advised the RUF leader to send an External Delegation to Côte d'Ivoire", which Sankoh did; and (4) in 1996, Taylor "instructed Foday Sankoh to attend the Abidjan peace negotiations in order to obtain arms and ammunition for the RUF." Sankoh followed Taylor's instruction and went to Abidjan and obtained arms and ammunition. See Judgement, paras. 2480, 2481, 2526, 6191, 6451(i), 6231.



However, compliance with instructions *does* provide strong evidence of Mr. Taylor's authority to give orders which compelled the listeners to comply. In *Kamuhanda*, the ICTR Appeals Chamber held that a reasonable trier of fact could conclude that the Appellant had authority over the attackers because his order "was directly obeyed by the attackers".<sup>71</sup>

37. The manifold examples of compliance with instructions issued by Mr. Taylor, as outlined below, provide additional evidence of Mr. Taylor's position of authority *vis-à-vis* the RUF, RUF/AFRC throughout the conflict:

- After the AFRC coup in May 1997, Mr. Taylor encouraged JPK to work with the RUF<sup>72</sup> and for the RUF and AFRC to work together.<sup>73</sup> The two former enemies joined together to form one government and cooperated in sharing ammunition provided by Mr. Taylor and in fighting against ECOMOG.<sup>74</sup>
- After Koidu Town's recapture shortly after the Intervention, Mr. Taylor instructed Yeaten, who in turn told Bockarie, to bring JPK to Buedu.<sup>75</sup> Bockarie did so.<sup>76</sup>
- During the Freetown invasion, Mr. Taylor "instructed Bockarie to transfer the Pademba Road prisoners to Buedu",<sup>77</sup> Bockarie directed Gullit to transfer the prisoners, and Gullit "complied with that instruction."<sup>78</sup>

<sup>71</sup> *Kamuhanda* Appeal Judgement, para. 76; see also *Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Judgement (AC), 28 November 2007 (*Nahimana* Appeal Judgement), para. 481; *The Prosecutor v. Kalimanzira*, ICTR-05-88-T, Judgement (TC), 22 June 2009 (*Kalimanzira* Trial Judgement), para. 17; *Semanza* Appeal Judgement, para. 363 (where the Appeals Chamber reversed the Trial Chamber's finding that Semanza was not responsible for ordering crimes in relation to the killing of Hutu refugees at the Musha church, holding that the Trial Chamber correctly articulated the legal test for ordering but failed to properly apply the test to the facts. Notably, the Appeals Chamber found that compliance with the instruction may itself be powerful evidence of the authority of the Accused at the time of issuing the order: "In the present case, the evidence is that the Appellant directed attackers, including soldiers and *Interahamwe*, to kill Tutsi refugees who had been separated from the Hutu refugees at Musha church. According to the Trial Chamber, the refugees 'were then executed on the directions' of the Appellant. On these facts, no reasonable trier of fact could hold otherwise than that the attackers to whom the Appellant gave directions regarded him as speaking with authority. That authority created a superior-subordinate relationship which was real, however informal or temporary, and sufficient to find the Appellant responsible for ordering under Article 6(1) of the Statute.").

<sup>72</sup> Judgement, para. 6512.

<sup>73</sup> Judgement, para. 6520.

<sup>74</sup> See, e.g., Judgement, paras 3482-83, 3611(viii)-(x), 5720, 5835(xxxiv), 6749, 6752, 6758, 6765.

<sup>75</sup> Judgement, paras. 2829 quoting Exh. D-9 (a report from Bockarie to Sankoh), 2843, 2845.

<sup>76</sup> Judgement, para. 2844.

<sup>77</sup> Judgement, paras. 3605, 3454, 3591, 3609, 3611(xvii), 3618.

- Mr. Taylor himself testified that during the time of the detention of UNAMSIL peacekeepers by the West Side Boys in 1999, he “spoke to both Sankoh and Bockarie to convince them to release Koroma” (referring to JPK, then detained in a house in Kangama),<sup>79</sup> and they complied.
- In 1999, Mr. Taylor “ordered Bockarie to send AFRC/RUF forces to assist him in his fight against Mosquito Spray and the LURD forces”, which Bockarie did. The forces that Bockarie sent operated under the command of Mr. Taylor’s Liberian subordinates.<sup>80</sup>
- Mr. Taylor summoned Sam Bockarie to leave Sierra Leone and come to Liberia at the end of 1999 due to internal RUF conflicts and Bockarie complied.<sup>81</sup>
- In 2000 and 2001, Mr. Taylor “instructed Issa Sesay to send RUF forces,” and “the RUF forces sent in response to these requests fought alongside AFL forces in Liberia and Guinea under the command of [Taylor’s] subordinates.”<sup>82</sup>
- Mr. Taylor “had significant influence over Issa Sesay’s decision to release the UNAMSIL peacekeepers”.<sup>83</sup> In so finding, the Trial Chamber noted Mr. Taylor’s own testimony that he “had spoken to Sesay by telephone at least once and made it clear to him that the UN personnel had to be released unconditionally.”<sup>84</sup> The Trial Chamber also considered the comments of RUF leader Issa Sesay who stated that he “had to accept” Mr. Taylor’s request to release the peacekeepers.<sup>85</sup>
- In 2001, Mr. Taylor told Issa Sesay that the international community was watching him, so he would set up Alpha Bravo as a middle man to whom

---

<sup>78</sup> Judgement, para. 3457.

<sup>79</sup> Judgement, para. 6316, referring to Charles Taylor, T. 10 September 2009 pp. 28652-28654, T. 2 November 2009 pp. 30844-30845.

<sup>80</sup> Judgement, para. 6663.

<sup>81</sup> Judgement, paras. 6782, 6564, 6565.

<sup>82</sup> Judgement, para. 6728.

<sup>83</sup> Judgement, para. 6414.

<sup>84</sup> Judgement, para. 6366, referring to Charles Taylor, T. 18 August 2009 p. 27047.

<sup>85</sup> Judgement, para. 6404, referring to DCT-172, T. 6 August 2010 p. 45600.

Sesay could bring diamonds.<sup>86</sup> Mr. Taylor then facilitated a relationship between the RUF and Alpha Bravo for the purpose of diamond transactions.<sup>87</sup> Subsequently, Sesay delivered diamonds to Alpha Bravo pursuant to Mr. Taylor's direction.<sup>88</sup>

- Although not mentioned in the Judgement, TF1-338 testified that Mr. Taylor told Sesay the arms he had supplied to the rebels should be returned to Mr. Taylor's forces rather than handed over to the United Nations.<sup>89</sup> TF1-338 also detailed how Sesay's men then moved arms from Sierra Leone to Liberia to comply with this instruction.<sup>90</sup> The Trial Chamber found TF1-338 to be generally credible.<sup>91</sup>

38. However Mr. Taylor's communications are characterised—as instructions, imperatives, guidance or as “advisory” in nature—such communications fulfilled the legal elements for ordering.<sup>92</sup> Mr. Taylor was viewed by the RUF, RUF/AFRC as an authority for a multitude of reasons, including Mr. Taylor's unique role in the history of the rebel army's formation,<sup>93</sup> the invasion of Sierra Leone from Liberia,<sup>94</sup> his success in fighting his own way to power in Liberia,<sup>95</sup> and “as an elder statesman and as President of Liberia”.<sup>96</sup> The RUF, RUF/AFRC's dependence on Mr. Taylor for critical support and his ongoing provision of such support, particularly materiel,<sup>97</sup> reinforced his position of authority and gave compelling force to his “advice” and “instructions”.

---

<sup>86</sup> Judgement, para. 6423.

<sup>87</sup> Judgement, paras. 6092 and 6103.

<sup>88</sup> Judgement, para. 5996. TF1-338 testified on these issues and was found credible by the Trial Chamber in Judgement, para. 6092.

<sup>89</sup> TF1-338, T. 2 September 2008 pp. 15189-15190.

<sup>90</sup> TF1-338, T. 2 September 2008 pp. 15190-15192.

<sup>91</sup> Judgement, para. 329.

<sup>92</sup> Judgement, para. 6973.

<sup>93</sup> Judgement, paras. 2321, 2330-2332, 2337.

<sup>94</sup> Judgement, paras. 2378-2381, 2390-2391.

<sup>95</sup> Judgement, paras. 7-8.

<sup>96</sup> Judgement, para. 6945.

<sup>97</sup> See, e.g., Judgement, paras. 3730, 3914, 3918, 4249, 4254, 4256, 4262, 5031, 5527, 5559, 5829-5831, 5834, 6913-6915, 6931-6937.

39. For all of the above reasons, the Trial Chamber's characterisation of Mr. Taylor's "instructions" and "guidance" as merely "advisory" in nature and thus not ordering is incorrect in law and inconsistent with the numerous findings that demonstrate that Mr. Taylor's position of authority with the RUF/AFRC leaders compelled JPK and Sam Bockarie to act pursuant to his "instructions" and "guidance", thus satisfying the *actus reus* for ordering liability.

***D. The Trial Chamber erred in fact when it failed to draw the only reasonable conclusion that could be drawn from the facts found proven: that Mr. Taylor was responsible for ordering the Instructed Crimes.***

40. Criminal responsibility for ordering attaches if:

- A person in a position of authority intentionally instructed another to carry out an act or engage in an omission,<sup>98</sup> and
- He intended or was aware of the substantial likelihood that a crime or underlying offence would be committed in carrying out his instruction.<sup>99</sup>

41. The Trial Chamber's findings establish these elements:

- Mr. Taylor gave specific instructions at a time when, as discussed above, he was in a position of authority with the RUF/AFRC alliance.<sup>100</sup>
- Specifically, Mr. Taylor:
  - "instructed", "told", "advised" or "communicated the imperative" to JPK to "capture Kono" and to Sam Bockarie to maintain control of Kono;
  - told Bockarie how he wanted the plan to attack Kono, Makeni and Freetown implemented: capture Kono, use "all means" to get to Freetown, and make the operation "fearful";
  - instructed Bockarie to open a training base in Kailahun District and construct an airfield in Buedu.

<sup>98</sup> Judgement, para. 474(i), read in conjunction with para. 475. See also *Milutinović* Trial Judgement – Vol. 1, paras. 85-86.

<sup>99</sup> Judgement, para. 474(ii); *Milutinović* Trial Judgement – Vol. 1, fn. 94. See also *Semanza* Appeal Judgement, paras. 359-364; *Nahimana* Appeal Judgement, para. 481; *Prosecutor v. Galić*, IT-98-29-A, Judgement (AC), 30 November 2006 (*Galić* Appeal Judgement), paras. 152, 157; *Kordić & Čerkez* Appeal Judgement, para. 30; *Prosecutor v. Blaškić*, IT-95-14-A, Judgement (AC), 29 July 2004 (*Blaškić* Appeal Judgement), para. 42.

<sup>100</sup> See paras. 25-39 of this Appellant's Submission.

- The RUF, RUF/AFRC forces complied or attempted to comply with these instructions, and
  - In complying or attempting to comply, they committed crimes against civilians.<sup>101</sup>
  - Mr. Taylor gave all of these instructions with the intent or awareness of the substantial likelihood that crimes would result in carrying out his instructions.<sup>102</sup>
42. Having entered findings that establish all the requisite elements, the Trial Chamber erred in fact in failing to conclude, based on the totality of the evidence, that Mr. Taylor was guilty of ordering the Instructed Crimes.
- 1) Mr. Taylor gave specific instructions which culminated in the commission of the Instructed Crimes.**
- a) The instruction to “capture Kono”<sup>103</sup>
43. When the AFRC/RUF alliance was in crisis and in full retreat after the Intervention, Mr. Taylor twice instructed JPK to capture Kono.<sup>104</sup> Upon receiving these instructions, JPK then ordered his subordinates to advance on Kono.<sup>105</sup> The troops on the ground complied. Their first attempt failed, but the second attempt succeeded: AFRC/RUF forces successfully captured Koidu Town in late February/early March 1998.<sup>106</sup>
44. In the process of capturing Kono, the troops on the ground burned, killed, looted, raped, captured and terrorised civilians. As they advanced to Koidu Town, JPK ordered his forces to burn civilian houses in Sewafe even though no enemy forces were present.<sup>107</sup> At Yardu Road in Koidu Town, RUF/AFRC forces killed civilians

<sup>101</sup> As described below in paras. 43-64 of this Appellant’s Submission.

<sup>102</sup> See paras. 65-68 of this Appellant’s Submission.

<sup>103</sup> The findings establish that crimes charged under Counts 1-6, 10 and 11 of the Indictment were committed during this military operation.

<sup>104</sup> Judgement, para. 2855.

<sup>105</sup> See, e.g., Judgement, paras. 2775, 2838-2839.

<sup>106</sup> Judgement, paras. 2863 (Mr. Taylor’s instructions “led to” the recapture of Koidu Town), 3613.

<sup>107</sup> Judgement, para. 2021. See also Judgement, paras. 646, 657, 2019-2020, and TF1-334, T. 17 April 2008 pp. 7943-7945 (the attack on Sewafe occurred on the advance to capture Kono).

and displayed their bodies at various junctions in the area to frighten off other civilians.<sup>108</sup> After taking control of Koidu Town, the RUF/AFRC forces looted,<sup>109</sup> captured civilians, raped women and girls,<sup>110</sup> and set fire to houses with civilians hiding inside.<sup>111</sup> TF1-375 described hearing people screaming inside the burning houses, and then later seeing skulls and bones in the remnants of the houses they had burnt.<sup>112</sup>

45. The factual findings establish that Mr. Taylor, from a position of influence and authority, instructed JPK to capture Kono, JPK passed the instruction to his subordinates, who committed crimes in carrying it out. In light of Mr. Taylor's awareness of the substantial likelihood that crimes would be committed in following his instruction, the Trial Chamber erred in fact in failing to find Mr. Taylor responsible for ordering the crimes that resulted from this order: namely, the crimes charged in Counts 1-6, 10 and 11 of the Indictment for Kono District in February/early March 1998.

b) The instruction to "maintain control of Kono"<sup>113</sup>

46. From the time of the Intervention, Mr. Taylor and his subordinates "communicated the imperative" to Bockarie to maintain control over Kono.<sup>114</sup> After Koidu Town had been recaptured,<sup>115</sup> Mr. Taylor told Bockarie to keep control over the area to maintain the trade of diamonds for arms and ammunition.<sup>116</sup> According to one witness, Sam Bockarie repeated the message to hold Kono "almost all the time".<sup>117</sup>

<sup>108</sup> Judgement, paras. 649, 650, 659.

<sup>109</sup> Judgement, paras. 1881-1884, 1894, 1900.

<sup>110</sup> Judgement, paras. 655, 889-891, 893-894, 931(i), 1096-1098, 1200(i), 1668, 1675.

<sup>111</sup> Judgement, paras. 662, 655, 1994, 1999, 2005.

<sup>112</sup> Judgement, para. 655.

<sup>113</sup> Crimes charged in Counts 1-11 of the Indictment were committed by the perpetrators complying with this imperative. See Judgement, paras. 2032, 2037-2038, 2041, 2043-2044, 2046, 2048-2049 (Count 1); paras. 748-750 (Counts 2 & 3); 931-932 (Count 4); 1144-1145 (Count 5); 1199-1201 (Count 6); 1231-1232 (Counts 7 & 8); 1416-1419, 1421-1422 (Count 9); 1753-1754 (Count 10); 1900 (Count 11).

<sup>114</sup> Judgement, para. 3613. See also Exh. P-67, p. 00009674; Judgement, paras. 392, 6543.

<sup>115</sup> JPK and his wife left Kono District for Kailahun and the junta forces in Koidu Town reorganised; Superman was the overall commander. See, e.g., Judgement, paras. 647, 2792, 2804; TF1-334, T. 17 April 2008 pp. 7958-7959, 7968, 7972.

<sup>116</sup> Judgement, para. 6942.

<sup>117</sup> Judgement, paras. 2792, 2856. Note that the full quote was "almost all the time but not every day".

47. To comply with Mr. Taylor's instruction, Bockarie and the AFRC/RUF commanders adopted a brutal strategy: to maintain control of Kono, they would make the area "fearful" to discourage civilians and the enemy from staying in or returning to Kono.<sup>118</sup> As a result, the AFRC/RUF forces inflicted a campaign of terror on the civilians in Kono District that became one of the bloodiest chapters in the Sierra Leone conflict.
48. The Judgement is replete with findings of the crimes perpetrated by AFRC/RUF forces after the Intervention in accordance with orders given by Bockarie and other AFRC/RUF commanders to make the area fearful and/or to keep civilians and the enemy away.<sup>119</sup> A reading of the findings and the evidence makes clear that such orders were given by the AFRC/RUF commanders to carry out Mr. Taylor's instruction to maintain control of Kono. For example, the findings establish that junta forces killed civilians at Hill Station,<sup>120</sup> Koidu Town (including 101 men at Igbaleh),<sup>121</sup> Bumpe<sup>122</sup> and Tombodu<sup>123</sup> to prevent civilians and ECOMOG from staying in or returning to the area. The findings also establish that AFRC/RUF perpetrators intentionally targeted civilians in Kono District by: burning homes, killing indiscriminately and amputating in Koidu Geiya;<sup>124</sup> hacking civilians to death in Koidu Buma;<sup>125</sup> burning houses, killing civilians and displaying dead bodies and human heads on sticks in Yengema;<sup>126</sup> killing civilians and looting property in Paema;<sup>127</sup> attacking civilians asleep in their homes, killing and

<sup>118</sup> Note that shortly after JPK recaptured Kono, he left for Kailahun district and Bockarie became the leader of the RUF/AFRC.

<sup>119</sup> See, e.g., Judgement, paras. 646, 2008-2009, 2017.

<sup>120</sup> Judgement, paras. 652 (13 civilians shot by Superman), 658, 660, 663.

<sup>121</sup> Judgement, paras. 661, 670, 672, 2006. See also Judgement, paras. 1993, 1994, 1998.

<sup>122</sup> Judgement, paras. 682-684 (an unknown number of civilians were killed in accordance with orders given by Kallay, Bangura, Superman, Bockarie, Kallon, CO Rocky and others), 2017. See also Judgement, paras. 676, 677, 679, 681, 2008, 2014-16 detailing the burning of houses with civilians inside, amputations and putting heads on sticks.

<sup>123</sup> Judgement, paras. 686-687 (more than 20 civilians were massacred in March or April), 691-692 (Savage's forces, with the approval of Superman and Bomb Blast, killed about 63 civilians around April 1998), 697-698 (on Staff Alhaji's orders, 53 civilians were burned inside a building and 3 died from amputations), 703-704.

<sup>124</sup> Judgement, paras. 709-710.

<sup>125</sup> Judgement, paras. 712-713. See also Judgement, para. 711.

<sup>126</sup> Judgement, paras. 715-16.

<sup>127</sup> Judgement, paras. 729-730.

amputating their limbs in Bomboa Fuidu;<sup>128</sup> killing seven senior citizens and other civilians as well as amputating limbs and destroying civilian property in Njaima Nimikoro;<sup>129</sup> executing civilians in Mortema,<sup>130</sup> and burning properties in Koidu,<sup>131</sup> Tombodu,<sup>132</sup> Wondedu<sup>133</sup> and Bumpe,<sup>134</sup> often with people trapped inside the burning homes. AFRC and RUF fighters also amputated limbs and/or mutilated civilians in Kono District by carving the initials “RUF” or “AFRC” into captured civilians’ skin.<sup>135</sup> All of these acts were perpetrated to terrorise civilians.<sup>136</sup>

49. Another brutal aspect of the attack on the civilian population in Kono District was the rape of civilian women and girls in Koidu Town, Tombodu, Wondedu, and at Superman Ground and PC Ground.<sup>137</sup> The Trial Chamber also found that women and girls were used as sex slaves by RUF/AFRC fighters in Kono District during this time<sup>138</sup> and that all of these acts of sexual violence humiliated, degraded, and violated the victims’ personal dignity.<sup>139</sup>
50. AFRC/RUF forces committed yet other crimes in line with Mr. Taylor’s imperative to maintain control of Kono. Children under the age of 15 were abducted, conscripted, trained and used in hostilities to attack villages, burn houses, kill civilians, amputate limbs, and to capture and detain girls for sexual purposes.<sup>140</sup> Captured civilians were forced to carry loads of looted property, go on food-finding missions, undergo military training, perform domestic chores, and work in the

---

<sup>128</sup> Judgement, paras. 735-736.

<sup>129</sup> Judgement, paras. 739-740.

<sup>130</sup> Judgement, paras. 746-747.

<sup>131</sup> Judgement, paras. 2005-2006.

<sup>132</sup> Judgement, para. 2017. *See also* Judgement, paras. 2008-2012, 2015-2016.

<sup>133</sup> Judgement, paras. 2025-2026.

<sup>134</sup> Judgement, paras. 2028-2031.

<sup>135</sup> Judgement, paras. 1217, 1221-1223, 1226, 1228-1232.

<sup>136</sup> Judgement, paras. 549, 552, 2032, 2039-2046, 2048-2049.

<sup>137</sup> Judgement, paras. 931-932. *See also* Judgement, paras. 898, 904-905, 908, 913-914, 919, 929-930, 1200(ii-viii). These too amounted to acts committed with the primary purpose of spreading terror among the civilian population, as found at paras. 2035-2038.

<sup>138</sup> Judgement, paras. 1144-1146. *See also* Judgement, paras. 1094, 1101-1102, 1108, 1116-1118, 1127, 1132, 1143, 1200(ix-xii).

<sup>139</sup> Judgement, paras. 1199-1201.

<sup>140</sup> Judgement, paras. 1416-1419, 1421-1422, 1489-1490, 1499, 1502-1505, 1596(vi-ix, xxii-xxiii, xxv-xxviii).



diamond mines.<sup>141</sup> The AFRC/RUF forces were looting civilian property on a rampant scale in Koidu Town, Tombodu and Bumpe during this time as well.<sup>142</sup>

51. In April 1998 when the RUF/AFRC lost control of Koidu Town to ECOMOG,<sup>143</sup> Mr. Taylor kept Bockarie's focus on controlling Kono when he "advised" Bockarie to recapture it.<sup>144</sup> The two men discussed plans for the attack, and Mr. Taylor's "advice" was transmitted to RUF commanders through Bockarie, Jungle and/or Ibrahim Bah at a forum convened in Buedu.<sup>145</sup> The Trial Chamber expressly concluded that the "advice" from Mr. Taylor "*resulted in the Fitti-Fatta attack in mid-June 1998.*"<sup>146</sup>

52. Mr. Taylor's imperative to maintain control of Kono resulted in ruthless crimes committed by the RUF/AFRC forces complying with that instruction. The Trial Chamber erred in fact when it failed to find Mr. Taylor criminally responsible for ordering the crimes charged in Counts 1-11 of the Indictment for Kono District from February to December 1998 in light of all its factual findings supporting such a conclusion.

c) The instructions to "capture Kono", make the operation "fearful" and to use "all means" to get to Freetown<sup>147</sup>

53. The Trial Chamber found that Mr. Taylor co-authored a plan with Bockarie which resulted in the December 1998 to February 1999 military attacks on Kono, Makeni and Freetown.<sup>148</sup> Inextricably linked to the plan were Mr. Taylor's three specific and critical communications as to how he wanted the plan implemented. First, he "emphasised" to Bockarie the need to capture Kono, due to its diamond wealth.<sup>149</sup>

<sup>141</sup> Judgement, paras. 1663, 1666, 1669-1670, 1674, 1676-1678, 1681, 1686-1687, 1691, 1705-1710, 1714, 1716-1718, 1738, 1744-1747, 1752-1754.

<sup>142</sup> Judgement, paras. 1882, 1895-1896, 1899, 1900.

<sup>143</sup> Judgement, para. 925 (the Trial Chamber found that AFRC forces lost control of Kono District in April 1998).

<sup>144</sup> Judgement, paras. 2947-2949, 2951, 3614, 6942; Sentencing Judgement, para. 99.

<sup>145</sup> Judgement, paras. 2951, 6942.

<sup>146</sup> Judgement, paras. 2951 (emphasis added), 3614. *See also* Judgement, para. 6942.

<sup>147</sup> The crimes charged in Counts 1-11 of the Indictment were committed during this military operation.

<sup>148</sup> Judgement, paras. 3129, 6961, 6962, 6967-6968.

<sup>149</sup> Judgement, para. 3112.

Second, he told Bockarie “that the operation should be ‘fearful’”.<sup>150</sup> These instructions were passed by Bockarie to commanders of the RUF and AFRC at a meeting convened at Waterworks who “undertook to implement” them.<sup>151</sup> Bockarie briefed Mr. Taylor by satellite phone after conveying his instructions at the Waterworks meeting.<sup>152</sup> Mr. Taylor then issued a third and critical instruction to Bockarie, that the forces use “all means” to get to Freetown and pressure the government into releasing Sankoh.<sup>153</sup> Subsequently, Bockarie named the military operation ‘Operation No Living Thing’, “implying that anything that stood in their way should be eliminated.”<sup>154</sup>

54. As noted in the Judgement, “making an operation fearful means destruction, committing crimes against civilians and the opposing troops.”<sup>155</sup> The instruction to Bockarie to make the operation “fearful” and to use “all means” as an inherent part of the plan was effectively shorthand for telling Bockarie that crimes of a kind designed to terrorise the civilians of Freetown be perpetrated in order to ensure the success of the plan.<sup>156</sup> This amounted to an order that an inherent part of this plan was to launch the campaign of “extreme violence”<sup>157</sup> which ensued against the civilian population of Freetown and during which the crimes charged in Counts 1-11 of the Indictment were committed. Even without these instructions, Mr. Taylor was aware of the substantial likelihood that crimes would be committed in the execution of the plan he and Bockarie had designed.<sup>158</sup> However, by giving instructions as to the exact manner of how the plan was to be executed, Mr. Taylor ensured the viciousness of the ensuing attacks.
55. Having held that Gullit took over leadership of the troops for the Freetown attack, the Trial Chamber found that Bockarie then assumed effective control over Gullit’s

<sup>150</sup> Judgement, para. 3117. *See also* Judgement, paras. 3449 and 3611(vii).

<sup>151</sup> Judgement, para. 3127.

<sup>152</sup> Judgement, para. 3615.

<sup>153</sup> Judgement, paras. 3117, 3130, 3449, 3611(vii), 3615.

<sup>154</sup> Judgement, paras. 3130, 3611(vii), 3615.

<sup>155</sup> Judgement, para. 3063.

<sup>156</sup> In light of his express knowledge as to the *modus operandi* of the rebels in their military operations, *see* para. 66 below.

<sup>157</sup> Judgement, para. 6967.

<sup>158</sup> Judgement, para. 6970.

actions<sup>159</sup> and the “troops commanded by Gullit in Freetown were subordinated to and used by Bockarie.”<sup>160</sup> Gullit and Bockarie closely coordinated and carried out the execution of the plan “with Gullit taking orders from Bockarie.”<sup>161</sup> In particular, the Trial Chamber found that “throughout the Freetown operation, Bockarie issued a number of instructions to Gullit, including an order to use terror tactics against the civilian population on the retreat from Freetown”.<sup>162</sup> The only reasonable conclusion on the facts is that such instructions were a reiteration of the “use all means” and “make it fearful” orders given by Mr. Taylor to Bockarie as an inherent part of the plan, which were passed down to and “implemented by Gullit and his fighters”,<sup>163</sup> unleashing a campaign of exceptionally atrocious crimes in the process.

56. The horror visited upon the civilian inhabitants of Freetown and the surrounding area in compliance with the instructions which were an inherent part of the plan and were passed down from Mr. Taylor, through Bockarie, to Gullit and his fighters was unparalleled in its intensity and ferocity during the years of bloodshed endured by Sierra Leoneans. The Trial Chamber referred to indiscriminate killings, mass abductions and raping of civilians, as well as the burning and destruction of public property in Freetown carried out “in accordance with the orders” of Gullit, as part of the “campaign of terror waged against the civilian population” during the invasion.<sup>164</sup>
57. The killings that occurred included the execution of 17 civilians in a hospital in Kissy by rebels under the command of Captain Blood,<sup>165</sup> and the intentional killing of 60 civilians who had taken refuge in a mosque in Kissy by rebels under Gullit’s command.<sup>166</sup> The Trial Chamber’s findings also refer to the public display of “hundreds of corpses of men, women and children left strewn along the highway” in

---

<sup>159</sup> Judgement, para. 6965.

<sup>160</sup> Judgement, para. 6965.

<sup>161</sup> Judgement, para. 6965.

<sup>162</sup> Judgement, para. 3485.

<sup>163</sup> Judgement, para. 3485.

<sup>164</sup> Judgement, para. 788.

<sup>165</sup> Judgement, para. 805.

<sup>166</sup> Judgement, paras. 806, 807.

Calaba Town,<sup>167</sup> the killing of young girls in a church in Wellington for resisting rape,<sup>168</sup> and the beheading of seven young men in Guard Street who were suspected of collaborating with ECOMOG.<sup>169</sup> Gullit declared areas such as Kingtom, Allen Town and Tower Hill to be a “killing zone wherein anybody who came around that area was considered an enemy and that person should die.”<sup>170</sup> In Waterloo, rebels carried out “massive burnings” and lured back civilians who had fled, pretending to protect them, only to harm or kill them.<sup>171</sup>

58. The Trial Chamber found that an unknown number of women and girls were captured and then raped in public areas once Gullit’s forces had invaded the city.<sup>172</sup> The findings of the Trial Chamber also reveal that an unknown number of women and girls were abducted and repeatedly raped, becoming the victims of sexual slavery at the hands of the invading rebels.<sup>173</sup>
59. Serious physical suffering and injury was inflicted on victims of the “notorious” amputations and mutilations by rebels.<sup>174</sup> Some of the amputations were carried out by children under the age of 15,<sup>175</sup> part of an unknown number of child soldiers that were conscripted to actively participate in the invasion of Freetown.<sup>176</sup> Still other civilians were the victims of involuntary labour,<sup>177</sup> or had their property appropriated<sup>178</sup> or burned.<sup>179</sup>

---

<sup>167</sup> Judgement, para. 831.

<sup>168</sup> Judgement, para. 839.

<sup>169</sup> Judgement, para. 840.

<sup>170</sup> Judgement, para. 841.

<sup>171</sup> Judgement, para. 854.

<sup>172</sup> Judgement, paras. 980, 983-984, 989, 992, 999, 1007, 1015-1016, 1205-1206.

<sup>173</sup> Judgement, para. 1169. *See also* Judgement, paras. 1179, 1187, 1191, 1205-1206.

<sup>174</sup> Judgement, paras. 1272-1273. *See also* Judgement, paras. 1277, 1279, 1284-1285, 1289-1292, 1297, 1301-1302, 1304, 1309, 1314-1315, 1322-1325, 1329-1331, 1334, 1343, 1346-1347, 1351, 1353-1354, 2179-2180, 2185, 2188-2189, 2191-2192.

<sup>175</sup> Judgement, para. 1575.

<sup>176</sup> Judgement, paras. 1582, 1591. *See also* Judgement, paras. 1592-1594, 1596(xli-xliv), 1598-1600, 1603-1604, 1606.

<sup>177</sup> Judgement, paras. 1857-1859, 1874-1876.

<sup>178</sup> Judgement, paras. 1930, 1933, 1937, 1940, 1943, 1946, 1948, 1952, 1954, 1956, 1960, 1963.

<sup>179</sup> Judgement, paras. 2068, 2082, 2088, 2122, 2132, 2138-2139, 2151, 2162.

60. All of these crimes were committed upon the instructions of the main rebel commander on the ground in Freetown, Gullit,<sup>180</sup> who in turn received his instructions from Bockarie.<sup>181</sup> It is clear from the Trial Chamber's findings that Bockarie himself passed on the instructions he received from Mr. Taylor as to how the plan was to be implemented<sup>182</sup>—a “fearful” campaign<sup>183</sup> using “all means” to take over the capital.<sup>184</sup> Given Mr. Taylor's express knowledge of the rebels' *modus operandi* in pursuing their military objectives,<sup>185</sup> the instructions he gave as an inherent part of the implementation of the plan meant waging an even more violent campaign of terror against the civilians, encompassing the most objectionable crimes imaginable: burning homes, arbitrary killings, pillaging property, turning young women into sex slaves and young boys and girls into soldiers who maimed and amputated. These crimes were committed as a result of the plan and the inextricably linked instructions regarding its implementation which were passed down from Mr. Taylor and followed assiduously by the fighters on the ground, to the ruination of Freetown and its occupants.

d) The instruction to open a training base in Kailahun District<sup>186</sup>

61. The Trial Chamber found that Mr. Taylor “instructed Sam Bockarie to open a training base in Bunumbu, Kailahun District.”<sup>187</sup> Bockarie complied with Mr.

<sup>180</sup> Judgement, para. 3485.

<sup>181</sup> Judgement, para. 3464.

<sup>182</sup> Judgement, paras 3452, 3464, 3485, 3611(xii).

<sup>183</sup> Judgement, paras. 3113, 3117, 3449, 3611(vii).

<sup>184</sup> Judgement, paras. 3117, 3130, 3449, 3611(vii), 3615.

<sup>185</sup> Judgement, para. 6886.

<sup>186</sup> The crimes described in paras. 61 and 62 of this Appellant's Submission constituted crimes charged in Counts 1, 7-10 of the Indictment and flowed from the order to open the training base, especially in light of Mr. Taylor's awareness of the RUF/AFRC's war strategy at the time he gave Bockarie the instruction to open the base. The Prosecution notes that the Trial Chamber made no findings of guilt for Counts 7 and 8 in Kailahun District, but asks the Appeals Chamber to consider ordering liability for these counts should it find in favour of the Prosecution on this matter under Ground Three of this Appellant's Submission. As physical violence has been found to constitute acts of terrorism under Count 1 in other districts (*see, e.g.*, Judgement, paras. 2043-2044 where the fighters who carved civilians in Kayima, Kono District were acting with the primary purpose of spreading terror), the Prosecution also asks that individual criminal responsibility for Count 1 be considered for Kailahun District if a finding of guilt is first established under Counts 7 and 8.

<sup>187</sup> Judgement, para. 4109. *See also* Judgement, paras. 4107 (the Trial Chamber found TF1-516's testimony corroborated the evidence that the training camp was opened on the order of the Accused), 4259, 6943 (Bunumbu training base known as “Camp Lion”).

Taylor's instruction and sent an RUF commander to establish a training camp at Bunumbu, which was named Camp Lion.<sup>188</sup> After the camp was opened, Komba Sumana, who was under the age of 15 at the time, was forced by RUF members under Issa Sesay and Sam Bockarie's command to participate in two months of military training there.<sup>189</sup> Other children trained at the camp were sent to the front lines<sup>190</sup> and were "used to actively participate in hostilities."<sup>191</sup>

62. In addition to children, AFRC/RUF members intentionally exercised ownership over an unknown number of captured civilians at Bunumbu, forcing them to undergo military training.<sup>192</sup> These civilians were beaten with canes during training, deprived of food, had "RUF" carved into their chests in order to prevent their escape, and were trained for the front lines.<sup>193</sup> The RUF High Command passed down instructions to "beat, kill or mark recruits," and many civilians suffered injuries or died as a result.<sup>194</sup>

e) The instruction to "construct an airfield in Buedu"<sup>195</sup>

63. The Trial Chamber found that in 1998, Mr. Taylor "told Bockarie that the RUF should construct or re-prepare the airfield in Buedu."<sup>196</sup> Sam Bockarie complied, using at least 200 civilians to do so.<sup>197</sup> These civilians were forced to work both day and night without pay, had "RUF" carved into their chests to prevent escape, and their movements were controlled by security escorts.<sup>198</sup>

<sup>188</sup> Judgement, paras. 1399, 4105, 6943.

<sup>189</sup> Judgement, para. 1390.

<sup>190</sup> Judgement, para. 1473.

<sup>191</sup> Judgement, paras. 1377-78, 1393, 1476. *See also* Judgement, para. 1250 where Komba Sumana testified he was trained to "attack a town and burn houses".

<sup>192</sup> Judgement, para. 1789.

<sup>193</sup> Judgement, para. 1789. *See also* Judgement, para. 1253.

<sup>194</sup> Judgement, paras. 1241-1242. At Judgement, para. 1263, the Trial Chamber stated that it found this evidence credible to support proof of the existence of crimes in relation to the *chapeau* requirements for physical violence.

<sup>195</sup> The enslavement of civilians that occurred as a direct result of Mr. Taylor's order to construct the airfield constitutes the crime charged in Count 10 of the Indictment.

<sup>196</sup> Judgement, paras. 4152. *See also* Judgement, paras. 4259, 6943.

<sup>197</sup> Judgement, paras. 1778-1779.

<sup>198</sup> Judgement, paras. 1778-1779.

64. The Trial Chamber's finding that it was "not satisfied that [Mr. Taylor] told Bockarie to use forced labour for this construction"<sup>199</sup> is not dispositive of Mr. Taylor's guilt of the crimes that were committed in implementing his instruction. As discussed in paragraph 65 below, Mr. Taylor need only have instructed another (Bockarie in this instance) to carry out an act, not necessarily a crime, with the intent or awareness of the substantial likelihood that a crime or underlying offence would be committed.<sup>200</sup> Mr. Taylor was aware of the RUF's *modus operandi* in using civilians as forced labour and was therefore aware of the substantial likelihood that a crime would be committed in carrying out his instruction to construct the airfield.<sup>201</sup>

**2) The Trial Chamber's findings establish the requisite *mens rea* for ordering, that Mr. Taylor intended or was aware of the substantial likelihood that crimes would be committed pursuant to his instructions.**

65. To prove the *mens rea* for ordering, the Prosecution must show that "the Accused either intended to bring about the commission of the crime" or "gave an order with the awareness of the substantial likelihood that a crime would likely be committed as a consequence of the execution or implementation of that order."<sup>202</sup> Thus, an order does not have to be explicit as to the consequences it will have,<sup>203</sup> nor does it have to specifically instruct someone to commit a crime or underlying offence *per se*. As long as the person giving the order was aware of the substantial likelihood that a crime or underlying offence would be committed in carrying out the order,<sup>204</sup> the *mens rea* requirement to establish ordering liability is satisfied.

66. The Trial Chamber's findings demonstrate that at all material times relating to this ground of appeal, Mr. Taylor was, at the very least, aware of the substantial

<sup>199</sup> Judgement, para. 4150.

<sup>200</sup> As set forth in fn. 1116 of the Judgement, citing *Milutinović* Trial Judgement – Vol. 1, fn. 94. See also *Nahimana* Appeal Judgement, para. 481; *Galić* Appeal Judgement, paras. 152, 157; *Kordić & Čerkez* Appeal Judgement, para. 30; *Blaškić* Appeal Judgement, para. 42.

<sup>201</sup> Judgement, paras. 6883, 6885.

<sup>202</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1234, Judgement (TC), 2 March 2009 (*Sesay et al.* Trial Judgement), para. 274.

<sup>203</sup> *D. Milošević* Appeal Judgement, para. 267.

<sup>204</sup> As set forth in fn. 1116 of the Judgement, citing *Milutinović* Trial Judgement – Vol. 1, fn. 94. See also *Nahimana* Appeal Judgement, para. 481; *Galić* Appeal Judgement, paras. 152, 157; *Kordić & Čerkez* Appeal Judgement, para. 30; *Blaškić* Appeal Judgement, para. 42.

likelihood that crimes would be committed in carrying out his instructions. As early as August 1997, as President of Liberia and a member of the ECOWAS Committee of Five, Mr. Taylor was informed “in detail” of the crimes committed by the AFRC/RUF members during the Junta period and “would therefore have been aware of the likelihood that the AFRC/RUF would commit similar crimes in the future.”<sup>205</sup> In the Trial Chamber’s view, “the crimes committed by the AFRC/RUF were inextricably linked to how the RUF and AFRC achieved their political and military objectives” and Mr. Taylor “knew of the AFRC/RUF’s operational strategy and intent to commit crimes from the clear and consistent information he received after his election.”<sup>206</sup>

67. Perhaps even more tellingly, Mr. Taylor himself admitted that by April 1998, anyone providing support to the AFRC/RUF “would be supporting a group engaged in a campaign of atrocities against the civilian population of Sierra Leone”.<sup>207</sup> Nonetheless, Mr. Taylor and his subordinates “communicated the imperative” to maintain control of Kono<sup>208</sup> and Mr. Taylor himself “advised” Bockarie to recapture Kono to get diamonds, resulting in the Fitti-Fatta attack in mid-June 1998.<sup>209</sup> *In public* just a few weeks later, Mr. Taylor “strongly condemned the continuing rebel activities in Sierra Leone, as well as the horrendous atrocities that had been committed there”.<sup>210</sup> But before the end of 1998 *in private*, Mr. Taylor “emphasised” to Bockarie the need to take Kono, telling him to “make it fearful” and to “use all means” to get to Freetown.<sup>211</sup> These findings demonstrate that Mr. Taylor was not only *aware* of the substantial likelihood that crimes would occur in carrying out his instructions, but that he *intended* the crimes the rebel forces committed in complying with his instructions.

---

<sup>205</sup> Judgement, para. 6882.

<sup>206</sup> Judgement, paras. 6885, 6793.

<sup>207</sup> Judgement, para. 6884.

<sup>208</sup> Judgement, para. 3613.

<sup>209</sup> Judgement, paras. 2951, 3611(v), 3614, 6942.

<sup>210</sup> Judgement, para. 6884.

<sup>211</sup> Judgement, paras. 3112, 3117, 3449, 3611(vi & vii), 3615.



68. At all material times for the instructions upon which this appeal is based, the above findings satisfy the *mens rea* requirement for ordering.
69. The Trial Chamber's findings establish beyond reasonable doubt the legal elements required to prove ordering liability for the Instructed Crimes: Mr Taylor issued instructions to the AFRC/RUF at a time when he had authority over them, he issued these instructions with the intent or awareness of the substantial likelihood that crimes would be committed in carrying out those instructions, and crimes did in fact result. A reasonable trier of fact, considering the totality of the evidence, would have reached the only reasonable conclusion available to it, that Mr. Taylor was guilty of the Instructed Crimes on the basis of ordering. The Trial Chamber's error of fact occasioned a miscarriage of justice, as the verdict does not reflect Mr. Taylor's culpability for ordering the Instructed Crimes.

#### ***E. Relief Sought***

70. The Prosecution requests that the Appeals Chamber reverse the Trial Chamber's finding in relation to ordering and find Mr. Taylor individually criminally responsible for ordering the Instructed Crimes, namely, the crimes charged in the Indictment in: i) Counts 1-11 in Kono between February and December 1998; ii) Counts 1-11 in relation to the Kono-Makeni-Freetown operation from December 1998 to February 1999, and iii) Counts 1, 7-10 in Kailahun District from February to December 1998.
71. The Appeals Chamber of the ICTR has held that the modes of liability under the equivalent article are "not mutually exclusive", and it is possible to convict on more than one mode in relation to a crime to reflect the "full characterisation of the accused's conduct".<sup>212</sup> Convictions on the basis of multiple forms of liability have been entered at the *ad hoc* tribunals<sup>213</sup> and have been upheld on appeal.<sup>214</sup> In this

<sup>212</sup> *Nahimana* Appeal Judgement, para. 483; *Ndindabahizi v. The Prosecutor*, ICTR-01-71-A, Judgement (AC), 16 January 2007 (*Ndindabahizi* Appeal Judgement), paras. 122-123. See also *Prosecutor v. Đorđević*, IT-05-87/1-T, Public Judgement with Confidential Annex (TC), 23 February 2011 (*Đorđević* Trial Judgement), para. 2194; *Gacumbitsi* Appeal Judgement, para. 204.

<sup>213</sup> *The Prosecutor v. Gatete*, ICTR-2000-61-T, Judgement and Sentence, 31 March 2011 (*Gatete* Trial Judgement), para. 608; *Gacumbitsi* Trial Judgement, para. 288; *Kamuhanda* Trial Judgement, paras. 648-

regard, the Prosecution also requests that the Appeals Chamber increase the sentence of imprisonment should it enter a conviction for ordering the Instructed Crimes.

72. Entering a conviction for ordering against Mr. Taylor in addition to the convictions for aiding and abetting and planning that he has already received would not only “serve to describe the full culpability”<sup>215</sup> of his conduct but would also ensure that his “sentence corresponds to the totality of guilt incurred”.<sup>216</sup> As discussed in more detail in Ground Four below and as the Trial Chamber rightly noted, the sentence to be served by an accused must be proportionate to his conduct and reflective of the inherent gravity of the totality of that criminal conduct.<sup>217</sup> The form of that conduct, while a lesser factor, must be considered.<sup>218</sup> The increase in sentence would accurately reflect the totality of Mr. Taylor’s criminal conduct, the totality of the forms<sup>219</sup> of that criminal conduct and his overall culpability.

**GROUND TWO: The Trial Chamber erred in law and fact when it failed to find Charles Taylor individually criminally responsible for instigating the commission of crimes under Article 6(1) of the Statute.**

**A. Overview**

73. The Trial Chamber erred in law and in fact by failing to convict Mr. Taylor on the basis that he instigated the commission of crimes in Counts 1-11 of the

---

651; *The Prosecutor v. Kajelijeli*, ICTR-98-44A-T, Judgement and Sentence, 1 December 2003 (*Kajelijeli* Trial Judgement), paras. 836-838, 842; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Judgement (TC), 26 February 2001 (*Kordić & Čerkez* Trial Judgement), para. 834.

<sup>214</sup> *Gacumbitsi* Appeal Judgement, paras. 78 and 98; *Kamuhanda* Appeal Judgement, paras. 72 and 76. Note that the finding of “instigation” was overturned on appeal on the basis of insufficient evidence to support this part of the conviction, para. 66; *Kajelijeli v. The Prosecutor*, ICTR-98-44A-A, Judgement (AC), 23 May 2005 (*Kajelijeli* Appeal Judgement), p. 114; *Kordić & Čerkez* Appeal Judgement, pp. 295-298.

<sup>215</sup> Judgement, para. 6993. See also *Prosecutor v. Brima et al.*, SCSL-04-16-A-674, Judgment (AC), 22 February 2008 (*Brima et al.* Appeal Judgment), para. 215; *Sesay et al.* Trial Judgement, para. 2301; *Kunarac* Appeal Judgement, para. 169; *Kordić & Čerkez* Appeal Judgement, para. 1033.

<sup>216</sup> *Ntabakuze v. The Prosecutor*, ICTR-98-41A-A, Judgement (AC), 8 May 2012 (*Ntabakuze* Appeal Judgement), para. 267.

<sup>217</sup> Sentencing Judgement, para. 9.

<sup>218</sup> Sentencing Judgement, para. 9.

<sup>219</sup> In considering the form of the conduct, ordering is considered to deserve severe punishment, see *The Prosecutor v. Ndindabahizi*, ICTR-2001-71-I, Judgement and Sentence, 15 July 2004 (*Ndindabahizi* Trial Judgement), para. 500; *The Prosecutor v. Ndindiliyimana et al.*, ICTR-00-56-T, Judgement and Sentence, 17 May 2011 (*Ndindiliyimana* Trial Judgement), para. 2174.

Indictment.<sup>220</sup> The Trial Chamber should have found Mr. Taylor instigated “some of the most heinous and brutal crimes recorded in human history”<sup>221</sup> because, based on its findings and the evidence it accepted, all the elements of this mode of liability were proven, and because instigation is one of the forms of responsibility charged in the Indictment that accurately describes Mr. Taylor’s conduct.

74. In order to emphasise the full nature and degree of Mr. Taylor’s participation in the offences for which he was convicted,<sup>222</sup> and to most accurately characterise the full scope of his “critical” and “indispensable” role<sup>223</sup> in offences “of the utmost gravity in terms of [their] scale and brutality”,<sup>224</sup> the Appeals Chamber should enter a finding that he was individually criminally responsible for instigating the commission of the crimes charged in the Indictment.
75. The Prosecution also requests the Appeals Chamber to increase Mr. Taylor’s sentence so as to ensure that it “reflects the totality of the criminal conduct and overall culpability of the offender.”<sup>225</sup>

***B. The Trial Chamber erred in law by failing to convict Mr. Taylor on the basis that he instigated the commission of crimes charged in the Indictment***

76. The Trial Chamber addressed Mr. Taylor’s criminal responsibility for instigation in a single paragraph which states:

The Trial Chamber, having already found that the Accused is criminally responsible for aiding and abetting the commission of the crimes in Counts 1-11 of the Indictment, does not find that the Accused also instigated those crimes.<sup>226</sup>

---

<sup>220</sup> Judgement, para. 6972.

<sup>221</sup> Sentencing Judgement, para. 70.

<sup>222</sup> Sentencing Judgement, para. 21.

<sup>223</sup> See, e.g. Judgement, paras. 5842, 6914.

<sup>224</sup> Sentencing Judgement, para. 70.

<sup>225</sup> *Ntabakuze* Appeal Judgement, para. 267. See also *Fofana & Kondewa* Appeal Judgment, para. 546; *Prosecutor v. Brima et al.*, SCSL-04-16-T-624, Sentencing Judgement, 19 July 2007 (*Brima et al.* Sentencing Judgement), para. 12; *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1251, Sentencing Judgement, 8 April 2009 (*Sesay et al.* Sentencing Judgement), para. 18; Sentencing Judgement, para. 9; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Judgement (TC), 10 July 2008 (*Boškoski and Tarčulovski* Trial Judgement), para. 588.

<sup>226</sup> Judgement, para. 6972.

77. This language may be interpreted to mean that the Trial Chamber concluded that, once it convicted Mr. Taylor as an aider and abettor, *it was legally precluded* from also basing the conviction on instigating, or that *it was not required* to consider his liability for instigating. With respect, neither interpretation is correct in law. As discussed below, the Trial Chamber could have entered convictions on both modes of liability, and was required to consider Mr. Taylor's liability for instigating the crimes charged in the Indictment.
78. The modes of liability set out in Article 6(1) of the Statute serve to describe the different ways in which an accused person can be responsible for crimes charged in an indictment. The ICTR Appeals Chamber has held that where evidence is presented that proves matters in issue to the requisite standard, a Trial Chamber is obliged to draw the necessary legal inferences from that evidence.<sup>227</sup> Moreover, in circumstances where one of the forms of liability charged which accurately describes an accused's conduct is proven, the Trial Chamber is obligated to convict the accused based on that mode of liability.<sup>228</sup> The Appeals Chamber of this Court has held that "Trial Chambers do not have discretion to decline to enter convictions for crimes once they have been proven beyond reasonable doubt and they are not impermissibly cumulative".<sup>229</sup>
79. As the Trial Chamber itself sets out, the reason behind the importance of entering convictions on the basis of more than one form of liability, is that these "serve to describe the full culpability of a particular accused or provide a more complete picture of his criminal conduct".<sup>230</sup> Thus, the forms or modes of liability under

<sup>227</sup> *Rutaganda v. The Prosecutor*, ICTR-96-3-A, Judgement (AC), 26 May 2003, para. 580: "the Trial Chamber failed to discharge its obligation by not deducing all the legal implications from the evidence presented".

<sup>228</sup> *Milutinović* Trial Judgement - Vol. 1, para. 76; *Prosecutor v. Milutinović et al.*, IT-05-87-T, Judgement (TC), Vol. 3 of 4, 26 February 2009 (*Milutinović* Trial Judgement - Vol. 3), paras. 614, 619.

<sup>229</sup> *Brima et al.* Appeal Judgement, para. 215. See also *Setako v. The Prosecutor*, ICTR-04-81-A, Judgement (AC), 28 September 2011, paras. 263-264, 268 ("since the Amended Indictment charged Setako cumulatively under Articles 6(1) and 6(3) of the Statute, the Trial Chamber was required to make a finding as to whether Setako incurred superior responsibility for the purpose of sentencing. The Trial Chamber's failure to make such a finding constituted an error of law.")

<sup>230</sup> Judgement, para. 6993. See also *Ndindabahizi* Appeal Judgement, paras. 122-123, confirmed by *Nahimana* Appeal Judgement, para. 483; see also *The Prosecutor v. Ndahimana*, ICTR-01-68-T,

Article 6(1) of the Statute are not mutually exclusive,<sup>231</sup> and must be individually analysed and set out unambiguously.<sup>232</sup> This ensures that “the sentence corresponds to the totality of guilt incurred by the convicted person”.<sup>233</sup> Only by finding the accused guilty through the various modes of liability which accurately describe his conduct is a full characterisation of the accused’s conduct possible.<sup>234</sup>

80. A conviction based on each mode of liability which is proven, and which accurately reflects the accused’s criminal responsibility, augments each of the other forms that are proven. A conviction for aiding and abetting applies to an accused who provides practical assistance, encouragement, or moral support to the perpetration of a crime. A conviction for planning applies to an accused who, alone or with others, intentionally designed a plan that resulted in the perpetration of a crime upon executing that plan. A conviction for instigation applies to an accused who prompted another to commit a crime. Thus, where, as here, this mode is proven, finding instigation more fully characterises the totality of Mr. Taylor’s criminal conduct because it reflects the fact that he also prompted others to commit the crimes charged in the Indictment. Moreover, there is nothing in the Statute, Rules nor jurisprudence that prevents the finding of Mr. Taylor’s liability as an instigator where proven, in addition to his conviction as an aider and abettor and planner of the crimes charged in the Indictment.
81. There is a wealth of cases from the *ad hoc* tribunals in which accused persons have been convicted, in relation to the same crime, of instigation in addition to aiding and abetting and/or other modes of liability under Article 6(1). An ICTR Trial Chamber found Ndindabahizi guilty of *both* instigating by his words, and aiding and abetting by his acts of material assistance, the crimes of genocide,<sup>235</sup> murder,<sup>236</sup> and

---

Judgement and Sentence (TC), 30 December 2011 (*Ndahimana* Trial Judgement), para. 808; *Dorđević* Trial Judgement, para. 2194; *Gacumbitsi* Appeal Judgement, paras. 59-61.

<sup>231</sup> *Nahimana* Appeal Judgement, para. 483; *Ndahimana* Trial Judgement, para. 808; *Dorđević* Trial Judgement, para. 2194.

<sup>232</sup> *Ndindabahizi* Appeal Judgement, para. 123.

<sup>233</sup> *Ndindabahizi* Appeal Judgement, para. 122.

<sup>234</sup> See *Ndindabahizi* Appeal Judgement, para. 123.

<sup>235</sup> *Ndindabahizi* Trial Judgement, paras. 464, 473.

<sup>236</sup> *Ndindabahizi* Trial Judgement, para. 490.

extermination.<sup>237</sup> Further examples are provided in the cases of *Akayesu*,<sup>238</sup> *Kalimanzira*,<sup>239</sup> *Gatete*,<sup>240</sup> *Gacumbitsi*,<sup>241</sup> *Kamuhanda*,<sup>242</sup> and *Kajelijeli*.<sup>243</sup> The ICTY Appeals Chamber upheld *Tarčulovski*'s conviction for ordering, planning and instigating,<sup>244</sup> and *Brđanin*'s conviction for instigating and aiding and abetting certain incidents of deportation and forcible transfer and persecution.<sup>245</sup> Further, in *Kordić and Čerkez*, Kordić was convicted for planning, ordering and instigating *inter alia*, unlawful attacks, wilful killing, murder, and inhuman treatment.<sup>246</sup>

82. The Trial Chamber therefore erred in law by failing to convict Mr. Taylor for instigating the crimes charged in the Indictment because instigation is one of the forms of responsibility charged in the Indictment that accurately describes and

<sup>237</sup> *Ndindabahizi* Trial Judgement, para. 485. Ndindabahizi's convictions for both aiding and abetting and instigating the crimes of genocide and murder were not appealed and therefore rendered final. A majority of the Appeals Chamber also clarified, *proprio motu*, that the conviction for aiding and abetting and instigating the crime of extermination was not in the alternative, noting that by so convicting the Accused of a single crime through both modes of liability, the Trial Chamber "wanted to emphasize that a full characterisation of the Appellant's conduct had to cumulatively refer to various modes of liability", *Ndindabahizi* Appeal Judgement, para. 123. Notably, the dissent of Judge Güney in this case concerned the issue of direct commission, rather than the permissibility of a finding of instigation and aiding and abetting, *Ndindabahizi* Appeal Judgement, Partially Dissenting Opinion of Judge Güney, para. 5.

<sup>238</sup> The ICTR Appeals Chamber upheld Akayesu's conviction for ordering, instigating, and aiding and abetting acts of sexual violence, *Akayesu* Trial Judgement, para. 692; *The Prosecutor v. Akayesu*, ICTR-96-4-A, Judgment (AC), 1 June 2001, p. 143 (Disposition).

<sup>239</sup> The ICTR Trial Chamber convicted Kalimanzira of instigating in addition to aiding and abetting genocide, *Kalimanzira* Trial Judgement, paras. 474, 745. Note that this conviction was overturned on appeal on the basis of a defect in the indictment and therefore not due to the fact that he was convicted on the basis of both aiding and abetting and instigating, *Kalimanzira v. The Prosecutor*, ICTR-05-88-A, Judgment (AC), 20 October 2010, paras. 149, 150.

<sup>240</sup> Gatete was convicted of participating in a joint criminal enterprise, as well as for planning, instigating, ordering and aiding and abetting the killings at Mukarange parish, *Gatete* Trial Judgement, para. 608.

<sup>241</sup> The ICTR Appeals Chamber upheld Gacumbitsi's convictions for aiding and abetting, planning, instigating and ordering killing of members of the Tutsi ethnic group and extermination, *Gacumbitsi* Appeal Judgement, para. 98, p. 77 (Disposition); *Gacumbitsi* Trial Judgement, paras. 288, 314.

<sup>242</sup> The Accused was found to have instigated, ordered and aided and abetted killings, *Kamuhanda* Trial Judgement, paras. 648, 651. Note that the finding on instigation was overturned on appeal since it was found not to be supported by the evidence and thus the overturning had nothing to do with the fact the Accused was convicted for the same crime based on multiple modes of liability, *Kamuhanda* Appeal Judgement, para. 66.

<sup>243</sup> The Accused was convicted for instigating, ordering and aiding and abetting, *Kajelijeli* Trial Judgement, para. 842. This was upheld on appeal, *Kajelijeli* Appeal Judgement, p. 114 (Disposition).

<sup>244</sup> *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, Judgment (AC), 19 May 2010, paras. 68, 171; *Boškoski & Tarčulovski* Trial Judgement, paras. 585, 607.

<sup>245</sup> *Brđanin* Trial Judgement, paras. 577-580, 582-583, 1052-1054; *Prosecutor v. Brđanin*, IT-99-36-A, Judgment (AC), 3 April 2007 (*Brđanin* Appeal Judgement), paras. 290-291, 303, 320.

<sup>246</sup> *Kordić & Čerkez* Trial Judgement, para. 834; *Kordić & Čerkez* Appeal Judgement, pp. 295-298 (Disposition).

provides a full characterisation of the nature and degree of Mr. Taylor's participation in the crimes for which he was convicted.

***C. The Trial Chamber erred in fact when it failed to draw the only reasonable conclusion that could be drawn from the facts found proven: that Mr. Taylor was also criminally responsible for instigating the crimes charged in the Indictment***

83. If the language of the single paragraph<sup>247</sup> addressing Mr. Taylor's criminal responsibility for instigating is interpreted to mean the Prosecution *did not* prove he instigated the crimes charged in the Indictment, the Trial Chamber erred in fact. As discussed below, the factual findings established that the elements of the offence as correctly set out by the Trial Chamber were proven. Therefore, the Trial Chamber should have entered a finding of guilt based on instigation.
84. The Trial Chamber correctly set out the *actus reus* of instigating: prompting another person to act in a particular way.<sup>248</sup> Previous jurisprudence of this Court establishes that "instigating" a crime means "urging, encouraging or 'prompting another to commit an offence'".<sup>249</sup> Although a position of authority is not a requirement of instigating, an accused's position, viewed in context, is pertinent in assessing his ability to instigate crimes.<sup>250</sup>
85. The Trial Chamber further held that "prompting" must have been a factor substantially contributing to the conduct of another person committing the crime.<sup>251</sup> It is not necessary to prove that the crime would not have been committed but for the accused's instigation.<sup>252</sup> It suffices for the accused to "set in motion a chain of

<sup>247</sup> Judgement, para. 6972.

<sup>248</sup> Judgement, para. 471(i). Instigating can be performed by any means, both by express or implied conduct, as well as by acts or omissions, and does not presuppose or require that the accused is in "effective control" over the perpetrator, Judgement, para. 472.

<sup>249</sup> *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T-785, Judgement (TC), 2 August 2007 (*Fofana & Kondewa* Trial Judgement), para. 223; *Sesay et al.* Trial Judgement, para. 271.

<sup>250</sup> See *Ndindabahizi* Trial Judgement, paras. 463-464.

<sup>251</sup> Judgement, para. 473.

<sup>252</sup> Judgement, para. 473. See also *Fofana & Kondewa* Appeal Judgment, para. 51; *Nahimana* Appeal Judgement, paras. 480, 502, 660; *Gacumbitsi* Appeal Judgement, para. 129; *Nchamihigo v. The Prosecutor*, ICTR-2001-63-A, Judgement (AC), 18 March 2010 (*Nchamihigo* Appeal Judgement), para. 230; *Kordić & Čerkez* Appeal Judgement, para. 27 citing to *Kordić & Čerkez* Trial Judgement, para. 387.

events that were the foreseeable consequence of his instigation of the crime”.<sup>253</sup>

Moreover, this Appeals Chamber has held that:

Both aiding and abetting and instigating require the *actus reus* to have a substantial effect on the perpetration of the crime. A finding that an accused’s conduct had a “substantial effect” for the purpose of aiding and abetting will therefore normally also satisfy the “substantial effect” requirement for the purpose of instigating.<sup>254</sup>

86. The Trial Chamber also correctly set out the *mens rea* for instigating: the intent that a crime or underlying offence be committed as a result of one’s prompting, or the awareness of the substantial likelihood that a crime would be committed as a result of such prompting.<sup>255</sup>
  
87. Notwithstanding that the Trial Chamber correctly set out the requirements for a finding of instigation, it failed to draw the only reasonable conclusion from the facts it found proven: that Mr. Taylor also instigated the commission of the crimes charged in the Indictment.
  
88. The Trial Chamber’s findings establish that the *actus reus* of instigating was proven. The Trial Chamber found Mr. Taylor gave “advice and direction” on matters concerning or directly affecting the RUF and RUF/AFRC military strategy,<sup>256</sup> and “approval...and encouragement” that greatly boosted the RUF and RUF/AFRC confidence and morale when conducting their military operations.<sup>257</sup> The Trial Chamber also found that by giving such advice and direction, and rendering encouragement and moral support, Mr. Taylor substantially contributed to

---

<sup>253</sup> *Gacumbitsi* Appeal Judgement, paras. 127-129. See also *Blaškić* Trial Judgement, para. 280 where the Trial Chamber referred itself to the ordinary meaning of instigating, namely to “bring about” the commission of an act by someone, in relation to the requirement to prove the causal relationship between the act of instigation and the physical perpetration of the crime.

<sup>254</sup> *Fofana & Kondewa* Appeal Judgment, para. 84.

<sup>255</sup> Judgement, para. 471(ii). See also *Nahimana* Appeal Judgement, para. 480; *Nchamihigo* Appeal Judgement, para. 61.

<sup>256</sup> Judgement, paras. 6940, 6944.

<sup>257</sup> Judgement, para. 6945.



the commission of the crimes charged in the Indictment perpetrated by the RUF and RUF/AFRC.<sup>258</sup>

89. Furthermore, in light of the various positions of authority Mr. Taylor held, his instructions, advice and direction “could only be understood by the physical perpetrators as a direct invitation and a prompting to commit” the crimes charged in the Indictment.<sup>259</sup> In this regard, the Trial Chamber found that: i) his “advice” was generally heeded by the RUF and RUF/AFRC;<sup>260</sup> ii) he was respected by the RUF,<sup>261</sup> and had “significant influence” over both groups,<sup>262</sup> and iii) Bockarie was “deferential” to him, “generally following his instruction”,<sup>263</sup> while JPK consulted and turned to him for “advice and support”.<sup>264</sup>
90. The Trial Chamber’s findings *also* establish that the *mens rea* of instigating was proven. The Trial Chamber found that Mr. Taylor knew his encouragement to the RUF and RUF/AFRC would support them in the commission of the crimes charged in the Indictment, but “[n]evertheless, he provided these groups with...encouragement and moral support”.<sup>265</sup> The Trial Chamber further found that: i) Mr. Taylor “knew of the AFRC/RUF’s operational strategy and intent to commit crimes from the clear and consistent information he received after his election”;<sup>266</sup> ii) Mr. Taylor’s assertion he did not know precisely who was committing the crimes in Sierra Leone was “unbelievable”;<sup>267</sup> iii) Mr. Taylor was “aware of the ‘essential elements’ of the crimes he was contributing to”;<sup>268</sup> iv) Mr. Taylor knew about Operation Fitti-Fatta,<sup>269</sup> and v) Mr. Taylor intended or was aware of the substantial likelihood that the RUF/AFRC forces would commit the crimes charged in the

<sup>258</sup> Judgement, paras. 6944, 6946. *See also Fofana & Kondewa Appeal Judgment*, para. 84 stating that a finding that an accused’s conduct had a “substantial effect” for the purpose of aiding and abetting will normally also satisfy the “substantial effect” requirement for the purpose of instigating.

<sup>259</sup> *Brđanin Trial Judgment*, para. 360. *See also Brđanin Appeal Judgment*, paras. 307-320.

<sup>260</sup> Judgement, para. 6945.

<sup>261</sup> Judgement, para. 6768.

<sup>262</sup> Judgement, para. 6787.

<sup>263</sup> Judgement, paras. 6775, 6981.

<sup>264</sup> Judgement, para. 6777.

<sup>265</sup> Judgement, para. 6949.

<sup>266</sup> Judgement, para. 6885.

<sup>267</sup> Judgement, para. 6882.

<sup>268</sup> Judgement, para. 6950.

<sup>269</sup> Judgement, para. 2946.

Indictment as a result of executing the plan for the RUF/AFRC Freetown Invasion which he and Bockarie had designed.<sup>270</sup> The Judgement is replete with findings that the crimes charged in the Indictment were perpetrated by the RUF and RUF/AFRC following Mr. Taylor's instigation.

91. In this regard, it is helpful to recall that, on his first day of testimony, when asked if he was aware of the atrocities in Sierra Leone, Mr. Taylor responded by stating: "Well, I put it this way: There is no one on this planet that would not have heard through international broadcasts or probably discussions about what was going on in Sierra Leone."<sup>271</sup>
92. The foregoing findings establish beyond reasonable doubt that Mr. Taylor's conduct satisfied the *actus reus* and *mens rea* requirements for instigating *all* the crimes charged in the Indictment.<sup>272</sup> In particular, the Trial Chamber made specific findings on Mr. Taylor prompting the commission of crimes as discussed below.

**1) The Trial Chamber's findings establish that Mr. Taylor instigated the crimes charged in the Indictment committed by the RUF and RUF/AFRC in Kono District in 1998.**

93. The Trial Chamber's findings establish that in the immediate post-Intervention period, Mr. Taylor instigated attacks on Kono by instructing JPK to capture Kono, and telling Bockarie to maintain control over it. In several satellite phone conversations with JPK, Mr. Taylor instructed JPK to capture Kono.<sup>273</sup> These instructions prompted JPK to call a meeting where he ordered his fighters to advance on Kono.<sup>274</sup> The forces complied. Their first attempt failed, but the second attempt succeeded with AFRC/RUF forces successfully recapturing Koidu Town in late February/early March 1998.<sup>275</sup> Mr. Taylor's instructions to JPK "led to" the recapture of Koidu Town.<sup>276</sup> The Trial Chamber found that in capturing Kono, the

<sup>270</sup> Judgement, paras. 6969-6970.

<sup>271</sup> Charles Taylor, T. 14 July 2009 p. 24329.

<sup>272</sup> See Judgement, paras. 6944, 6946.

<sup>273</sup> Judgement, paras. 2855, 2863, 3613, 6942; Sentencing Judgement, para. 99.

<sup>274</sup> Judgement, paras. 2775, 2776, 2798, 2805, 2837, 2839

<sup>275</sup> Judgement, paras. 2863, 3613.

<sup>276</sup> Judgement, paras. 3611(ii), 3613.

RUF and RUF/AFRC forces committed crimes as charged in the Indictment. These crimes that the Trial Chamber found proven<sup>277</sup> followed Mr. Taylor's instigation.

94. The Trial Chamber found "that from the time of the Intervention, [Mr. Taylor] and his subordinates communicated the imperative to maintain control over Kono".<sup>278</sup> Once Koidu Town had been recaptured by JPK, Mr. Taylor told Bockarie to be sure to maintain control of Kono.<sup>279</sup> Indeed, the Trial Chamber found that Bockarie met with Mr. Taylor in Monrovia in February/March 1998 during which Mr. Taylor instructed Bockarie "to be sure to maintain control over Kono for the purpose of trading diamonds with him for arms and ammunition".<sup>280</sup> Bockarie repeated this instruction frequently via radio message to RUF commanders to maintain control of Kono.<sup>281</sup> These instructions from Mr. Taylor prompted Bockarie and his RUF/AFRC commanders to adopt their brutal strategy: to maintain control of Kono, they would "make the area fearful" to discourage civilians and the enemy from staying in or returning to Kono.<sup>282</sup>
95. In April 1998 when ECOMOG forces regained Koidu Town,<sup>283</sup> Mr. Taylor emphasised that Bockarie maintained control of Kono by "advising" him to recapture Kono. This prompted Bockarie to carry out the Fitti-Fatta attack on Koidu Town in mid-June 1998.<sup>284</sup> Indeed, the Trial Chamber found Mr. Taylor had discussed the Fitti-Fatta attack with Bockarie.<sup>285</sup> This advice was transmitted to RUF commanders through Bockarie himself and Liberian emissaries, Daniel Tamba and/or Ibrahim Bah.<sup>286</sup> Mr. Taylor's imperative to maintain control of Kono resulted in the RUF and RUF/AFRC forces committing crimes as charged in the

<sup>277</sup> The Trial Chamber's findings regarding these crimes are detailed in para. 44 of Ground One in this Appellant's Submission.

<sup>278</sup> Judgement, para. 3613.

<sup>279</sup> Judgement, paras. 3613, 6942; Sentencing Judgement, para. 99.

<sup>280</sup> Judgement, paras. 2864, 3611(iii), 3613, 6543, 6942.

<sup>281</sup> Judgement, paras. 2792, 2856, 2861.

<sup>282</sup> Judgement, paras. 646, 2017, 2008-2009, 2017, 6792.

<sup>283</sup> Judgement, para. 925.

<sup>284</sup> Judgement, paras. 2951, 3614, 6942.

<sup>285</sup> Judgement, paras. 2946-2947. *See also* Judgement, para. 4094 (finding that Mr. Taylor sent 'herbalists' who marked fighters in Buedu and in Kono in preparation for the Fitti-Fatta in mid-1998).

<sup>286</sup> Judgement, paras. 2951, 6942.

Indictment. These crimes that the Trial Chamber found proven<sup>287</sup> followed Mr. Taylor's instigation.

**2) The Trial Chamber's findings establish that Mr. Taylor instigated the crimes charged in the Indictment committed by the RUF and RUF/AFRC in Kailahun District in 1998.**

96. The Trial Chamber findings establish that in the immediate post-Intervention period, Mr. Taylor instigated the crimes charged in the Indictment in Kailahun District by instructing Bockarie to open an RUF training base<sup>288</sup> and telling him to construct or re-prepare an airfield in Buedu.<sup>289</sup>
97. These instructions prompted Bockarie to open "Camp Lion", a training base in Bunumbu that operated until the end of 1998/1999,<sup>290</sup> and to construct the RUF airfield outside Buedu at some point in 1998.<sup>291</sup> At a meeting, Daniel Tamba spoke on behalf of Mr. Taylor, and Bockarie discussed the construction of the airfield. Prior to this, Bockarie was at Mr. Taylor's farm to discuss the construction of an airfield.<sup>292</sup> The Trial Chamber found that in opening Camp Lion base and constructing the airfield, the RUF and RUF/AFRC forces committed crimes in Kailahun District as charged the Indictment. These crimes that the Trial Chamber found proven<sup>293</sup> followed Mr. Taylor's instigation.

**3) The Trial Chamber's findings establish that Mr. Taylor instigated the crimes charged in the Indictment committed by the RUF and RUF/AFRC in Kono, Makeni and Freetown between December 1998 and February 1999.**

98. The Trial Chamber's findings establish that in November 1998, Mr. Taylor instigated the operation to attack Kono, Makeni and Freetown.<sup>294</sup> Mr. Taylor told

<sup>287</sup> The Trial Chamber's findings regarding these crimes are detailed in paras. 48-50 of Ground One in this Appellant's Submission.

<sup>288</sup> Judgement, paras. 4109, 4259, 6943.

<sup>289</sup> Judgement, paras. 4152, 4259, 6943.

<sup>290</sup> Judgement, paras. 1238, 1399, 4103, 4105.

<sup>291</sup> Judgement, para. 1778.

<sup>292</sup> Judgement, paras. 4148-4150, 4152.

<sup>293</sup> The Trial Chamber's findings regarding these crimes are detailed in paras. 61-63 of Ground One in this Appellant's Submission.

<sup>294</sup> Judgement, paras. 3129, 3611(vi), 3615, 6958-6962.

Bockarie to make this operation “fearful”.<sup>295</sup> Bockarie conveyed this instruction to the RUF and AFRC commanders at a meeting convened at Waterworks.<sup>296</sup> Furthermore, in a satellite phone conversation after this meeting, Mr. Taylor told Bockarie to use “all means” to get to Freetown.<sup>297</sup> This prompted Bockarie to carry out Operation No Living Thing to advance and capture Freetown,<sup>298</sup> during which the crimes as charged in the Indictment were committed by the RUF/AFRC forces. These crimes that the Trial Chamber found proven<sup>299</sup> followed Mr. Taylor’s instigation.

#### ***D. Relief Sought***

99. For the foregoing reasons, the Appeals Chamber should enter a finding that Mr. Taylor was individually criminally responsible for instigating the commission of all crimes charged in Counts 1-11 of the Indictment, but in particular: i) Counts 1-11 in Kono between February and December 1998; ii) Counts 1-11 in relation to the Kono-Makeni-Freetown operation from December 1998 to February 1999, and iii) Counts 1, 7-10 in Kailahun District from February to December 1998.
100. The Appeals Chamber should also increase Mr. Taylor’s sentence. As observed by the Appeals Chamber, “[t]he totality principle requires that a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused.”<sup>300</sup> In its Sentencing Judgement, the Trial Chamber endorsed this view, adding that the sentence should also be “proportionate to the conduct of the Accused”.<sup>301</sup> The jurisprudence of the *ad hoc* tribunals also

<sup>295</sup> Judgement, paras. 3130, 3615, 6958.

<sup>296</sup> Judgement, paras. 3091, 3127.

<sup>297</sup> Judgement, paras. 3112, 3117, 3130, 3449, 3615, 6958.

<sup>298</sup> Judgement, paras. 3130, 3615.

<sup>299</sup> The Trial Chamber’s findings regarding these crimes are detailed in paras. 56-59 of Ground One in this Appellant’s Submission.

<sup>300</sup> *Fofana & Kondewa* Appeal Judgment, para. 546. See also *Brima et al.* Sentencing Judgement, para. 12; *Sesay et al.* Sentencing Judgement, para. 18.

<sup>301</sup> Sentencing Judgement, para. 9 (footnotes omitted).

supports this view.<sup>302</sup> Therefore, should the Appeals Chamber convict Mr. Taylor of instigating the crimes charged in the Indictment, it should increase his sentence to adequately reflect the totality of his criminal conduct and overall culpability for “some of the most heinous and brutal crimes recorded in human history”.<sup>303</sup>

**GROUND THREE: The Trial Chamber erred in law and in fact by failing to convict Charles Taylor for crimes committed in certain locations in five districts on the ground that they fell outside the scope of the Indictment.**

**A. Overview**

101. The Trial Chamber erred in law and in fact by failing to convict Mr. Taylor of the crimes detailed below, and which the Trial Chamber found proven, on the basis that they fell outside the scope of the Indictment and could only be taken into account in relation to the *chapeau* requirements and not as proof of guilt.<sup>304</sup>

102. The specific crimes in question under the relevant counts of the Indictment are:

*Count 4 (rape) and Count 6 (outrages upon personal dignity) in Kailahun District*

- Detention and rape of an unknown number of women by AFRC and RUF fighters in Buedu and Kailahun Town ‘beginning in February 1998’.<sup>305</sup>
- Detention and rape of women in Buedu from March 1998 to December 1999 by RUF/AFRC.<sup>306</sup>
- Rape of TF1-189 by an RUF rebel in Kailahun Town between August and September 1998.<sup>307</sup>

*Count 7 (violence to life, health and physical or mental well-being of persons, in particular cruel treatment) and Count 8 (other inhumane acts) in Kailahun District*

- Beating of recruits at Camp Lion Training Base.<sup>308</sup>

<sup>302</sup> *Boškoski & Tarčulovski* Trial Judgement, para. 588; *Kamuhanda* Trial Judgement, para. 760; *Kajelijeli* Trial Judgement, para. 953; *The Prosecutor v. Semanza*, ICTR-97-20-T, Judgement and Sentence, 15 May 2003, para. 555; *Ntabakuze* Appeal Judgement, para. 267.

<sup>303</sup> Sentencing Judgement, para. 70.

<sup>304</sup> Judgement, paras. 114-116, 631, 642-644, 702, 704, 748-750, 933-934, 971-972, 1202-1204, 1233-1235, 1263, 1880, 1911, 1918, 1962-1963, 2054.

<sup>305</sup> Judgement, paras. 957-961, 971-972; *see also* paras. 1202-1204 in respect of Count 6.

<sup>306</sup> Judgement, paras. 963-966, 971-972; *see also* paras. 1202-1204 in respect of Count 6.

<sup>307</sup> Judgement, paras. 967-972; *see also* paras. 1202-1204 in respect of Count 6.

<sup>308</sup> Judgement, paras. 1238-1245, 1263.

- Attacks against civilians in the area surrounding Bunumbu.<sup>309</sup>
- Marking "RUF" letters on recruits at Bunumbu Training Base.<sup>310</sup>
- Violence towards civilians who resist crimes committed against them.<sup>311</sup>

*Count 2 (murder) and Count 3 (violence to life, health and physical or mental well-being of persons, in particular murder) in Kenema District*

- Killing of Pa Vandi Sei and John Dakowah in Panguma around September 1997.<sup>312</sup>

*Count 2 (murder) and Count 3 (violence to life, health and physical or mental well-being of persons, in particular murder) in Kono District*

- Beheading of civilians between April and May 1998 in Foendor, near Tombodu, by AFRC/RUF pretending to be ECOMOG.<sup>313</sup>
- Unlawful killings in: Baima after the AFRC attack there in 1998 and after the ECOMOG intervention;<sup>314</sup> Goldtown;<sup>315</sup> Yekeyor;<sup>316</sup> Kondeya on 9 April 1998 and at a later unspecified date;<sup>317</sup> Mambona in April 1998;<sup>318</sup> road between Tombodu and Lebanon;<sup>319</sup> between Kania and Koidu Town,<sup>320</sup> and Kissy Town.<sup>321</sup>

*Count 11 (looting) in Port Loko, Bombali and Kono Districts*

- Looting in Lunsar, Port Loko District.<sup>322</sup>
- Looting in Karina Town, Bombali District.<sup>323</sup>
- Looting in the following locations in Kono District: Gaya; Wordu; Mambona; on a footpath near Motema; Fakoyia bush; Baima Town, and the bush two miles outside of Tombodu.<sup>324</sup>

<sup>309</sup> Judgement, paras. 1248-1250, 1263.

<sup>310</sup> Judgement, paras. 1253-1255, 1263.

<sup>311</sup> Judgement, paras. 1258-1263.

<sup>312</sup> Judgement, paras. 631, 643-644.

<sup>313</sup> Judgement, paras. 702, 704, 749-750.

<sup>314</sup> Judgement, para. 748, fn. 1864, paras. 749-750.

<sup>315</sup> Judgement, para. 748, fn. 1865, paras. 749-750.

<sup>316</sup> Judgement, para. 748, fn. 1866, paras. 749-750.

<sup>317</sup> Judgement, para. 748, fn. 1867, paras. 749-750.

<sup>318</sup> Judgement, para. 748, fn. 1868, paras. 749-750.

<sup>319</sup> Judgement, para. 748, fn. 1869, paras. 749-750.

<sup>320</sup> Judgement, para. 748, fn. 1869, paras. 749-750.

<sup>321</sup> Judgement, para. 748, fn. 1869, paras. 749-750.

<sup>322</sup> Judgement, paras. 1918, 1962-1963.

<sup>323</sup> Judgement, paras. 1911, 1962-1963.

*Count 1 (terrorising the civilian population)*

- The Trial Chamber also erred in law and in fact by failing to find that Mr. Taylor was responsible for these crimes listed above, with the exception of pillage, as part of a campaign to terrorise the civilian population of Sierra Leone.<sup>325</sup>
103. The Trial Chamber based its decision not to enter convictions for these crimes on the legally erroneous premise that pleading that they occurred “throughout” and “in various locations, including” amounted to not pleading any location. As shown below, the Indictment’s pleading that crimes occurred in locations “throughout” the specified district created no ambiguity and adequately informed Mr. Taylor that every location in the specified district was in issue. Moreover, the Indictment’s pleading that crimes occurred in “various [district] locations including” clearly informed Mr. Taylor that the crime locations specified in each district were not exhaustive. In accordance with the *Sesay et al.* Appeal Judgment, in light of the sheer scale of the alleged crimes and the fact that Mr. Taylor was not charged with personal commission, this non-exhaustive pleading of locations was sufficient.
104. Significantly, Mr. Taylor never challenged the specificity of the pleading of the location of these crimes at any stage of the proceedings nor alleged any prejudice to his ability to defend himself. Indeed, Mr. Taylor never disputed that these crimes occurred.<sup>326</sup> Consequently, even assuming there were any defects in the pleading, as Mr. Taylor suffered no prejudice in his ability to defend himself against these allegations, any such defects should have been deemed harmless and convictions entered.

---

<sup>324</sup> Judgement, para. 1880, fn. 4165-4166, paras. 1962-1963.

<sup>325</sup> In respect of Count 4 (rape) and Count 6 (outrages upon personal dignity) in Kailahun District, *see* Judgement, paras. 2051-2053, 2055-2056; Count 7 (violence to life, health and physical or mental well-being of persons, in particular cruel treatment) and Count 8 (other inhumane acts) in Kailahun District, *see* Judgement, paras. 2054-2056. In respect of Counts 2 (murder) and 3 (violence to life, health and physical or mental well-being of persons, in particular murder) in respect of Kenema District *see* Judgement, para. 1979 and in respect of Kono District *see* Judgement, para. 2032.

<sup>326</sup> Defence Corrected and Amended Final Trial Brief, SCSL-03-01-T-1229, 9 March 2011 (Defence Closing Brief), para. 1557.



105. In the alternative, assuming that there were any defects in the pleading, the Trial Chamber erred in law by failing to consider whether timely, clear and consistent notice of these locations was given to Mr. Taylor by other pre-trial communications so as to cure those defects. Had it done so, the Trial Chamber would have found that the location information was conveyed to Mr. Taylor by pre-trial communications, namely, the Prosecution's Pre-Trial Brief and annexed summaries of anticipated testimony, pre-trial disclosures and in some cases by explicit reference in the Prosecution Opening Statement.
106. In light of the above, the Prosecution requests the Appeals Chamber to reverse the Trial Chamber's decision and find Mr. Taylor individually criminally responsible on the basis of Article 6(1) of the Statute for these crimes. The Prosecution further requests the Appeals Chamber to correct the Trial Chamber's error and enter convictions for acts of terrorism in respect of each of these crimes with the exception of pillage (Count 11), by finding that these crimes were part of a campaign to terrorise the civilian population of Sierra Leone for which Mr. Taylor is responsible on the basis of Article 6(1) individual criminal responsibility. In light of these additional convictions, the Prosecution requests that Mr. Taylor's sentence be increased accordingly.

***B. By pleading the occurrence of crimes "throughout" Kailahun District, the Prosecution charged their location with sufficient specificity***

107. At the outset, the Prosecution recalls that as established by the *Sesay et al.* and *Brima et al.* Appeal Judgments, the charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in the indictment so as to provide notice to the accused.<sup>327</sup> The fundamental question in determining whether an indictment was pleaded with sufficient particularity is whether an accused had enough detail to prepare his defence.<sup>328</sup>

<sup>327</sup> *Sesay et al.* Appeal Judgment, paras. 47-48; *Brima et al.* Appeal Judgment, para. 37.

<sup>328</sup> *Prosecutor v. Sesay*, SCSL-03-05-PT-080, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 13 October 2003 (*Sesay* Decision on Form of Indictment), para. 7(ii) citing *Kupreškić* Appeal Judgement, para. 88.

108. Turning to this case, there is no ambiguity in the pleading at paragraphs 16 and 20 of the Indictment that the crimes of rape (Count 4); outrages upon personal dignity (Count 6); violence to life, health and physical or mental well-being of persons, in particular cruel treatment (Count 7), and other inhumane acts (Count 8), occurred “in locations throughout” Kailahun District. To the contrary, by using the word “throughout”, the Prosecution clearly and adequately informed Mr. Taylor that *every* location in Kailahun was in issue in respect of these crimes. These crimes happened *all over* the district rather than being limited to a couple of locations within that district. The Prosecution intended the word “throughout” to take its ordinary meaning to capture the pervasive and widespread nature of these crimes which were committed systematically *within* the location pleaded at paragraphs 16 and 20 of the Indictment. Therefore, the use of the word “throughout” was in fact the most accurate the Prosecution could have chosen in the circumstances of this case. The Trial Chamber therefore erred in law and in fact in paragraphs 934, 1202 and 1234 of its Judgement when it found that no locations were pleaded in the Indictment for these crimes.
109. Moreover, as held by the Appeals Chamber, the degree of specificity required for the pleading of locations depends on the nature of the Prosecution’s case. Relevant factors include the form of the accused’s participation in the crime, his or her proximity to the events at the location for which they are alleged to be criminally responsible and whether the crime was committed at numerous locations within a defined geographic area that was pleaded.<sup>329</sup>
110. Mr. Taylor was not charged with personal commission. Had he been, the Appeals Chamber has held that the Prosecution’s “obligation to provide particulars in an indictment must be adhered to fully.” This would include setting forth in the indictment, if feasible, the place of the events. However, as he was not, the degree of specificity required for pleading locations is different.<sup>330</sup> In addition, Mr. Taylor

<sup>329</sup> *Sesay et al.* Appeal Judgment, para. 830.

<sup>330</sup> *Sesay et al.* Appeal Judgment, paras. 48, 831; *Brima et al.* Appeal Judgment, para. 38; *Gacumbitsi* Appeal Judgment, para. 49; *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, ICTR-96-10-A & ICTR-96-17-A, Judgement (AC), 13 December 2004, para. 32; *Kupreškić* Appeal Judgement, para. 89.

was not proximate to these crimes having made all of his contributions to the crimes from outside of Sierra Leone. As the Appeals Chamber has held, as the proximity of the accused person to the events becomes more distant, less precision is required in relation to these details. Greater emphasis is placed on the conduct of the Accused to establish his responsibility as an accessory or a superior to the persons who actually committed the acts giving rise to the charges against him.<sup>331</sup>

111. In light of all these factors, the use of the phrase “throughout” was sufficiently specific.

**C. *By pleading the occurrence of crimes “in various locations, including” the Prosecution charged their location with sufficient specificity***

112. By pleading at paragraphs 10 and 11 of the Indictment that the crimes of murder (Count 2) and violence to life, health and physical or mental well-being of persons, in particular murder (Count 3) occurred in Kenema and Kono Districts “in various [district] locations, including”, and at paragraphs 29, 30 and 30A of the Indictment that the crime of looting (Count 11) occurred in Kono, Bombali and Port Loko Districts “in various [district] locations, including”, the Prosecution, while giving examples of some locations, made it amply clear that the list of locations where these crimes occurred was not meant to be exhaustive. In accordance with the *Sesay et al.* Appeal Judgment, in light of the widespread nature and sheer scale of the alleged crimes, this non-exhaustive pleading of locations was sufficient.<sup>332</sup>

113. Specifically, the Appeals Chamber has recognised the inherent difficulty in gathering information regarding the location of crimes in cases where the sheer scale of the crimes makes it impracticable to do so and has held that in such cases the non-exhaustive pleading of locations may be adequate. In *Sesay et al.*, the Appeals Chamber found that the Trial Chamber had not erred in applying the “sheer scale” exception to specificity and upheld Kallon’s convictions for physical

<sup>331</sup> *Sesay et al.* Appeal Judgment, para. 830 citing *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Judgement (AC), 28 February 2005, para. 65; see also *Sesay et al.* Appeal Judgment, paras. 833-835.

<sup>332</sup> *Sesay et al.* Appeal Judgment, paras. 52, 904; *Sesay* Decision on Form of Indictment, para. 7(xi); *Brima et al.* Appeal Judgment, para. 41; *The Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 23.

violence at Penduma and Yardu in Kono District, and burning as acts of terrorism and pillage in Koidu Town, none of which locations were specifically pleaded in the indictment. In reaching this conclusion, the Appeals Chamber noted that Kallon's liability was pursuant to his participation in a JCE and derived from his conduct in relation to other events and crimes which were committed at locations that were named in the indictment.<sup>333</sup> The relevant indictment paragraphs read:

Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians *in various locations in the [Kono] District, including* Tombodu, Kaima (or Kayima) and Wondedu.<sup>334</sup>

Between about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning *in various locations in the District [Kono], including* Tombodu, Foindu and Yardu Sando, where virtually every home in the village was looted and burned.<sup>335</sup>

114. The Trial Chamber in the instant case erred in law by failing to follow this jurisprudence in the *Sesay et al.* Appeal Judgment, which, as the most recent appellate statement on this issue, was binding on it.<sup>336</sup> While correctly noting at paragraph 115 of its Judgement that the *Sesay et al.* Appeal Judgment held that locations must be pleaded with specificity if the accused is charged with having “personally committed” such crimes, the Trial Chamber then went on to state that *in its view*, whether or not the accused was charged with having personally committed the crimes, he is entitled to assume that any list of alleged acts in the indictment is exhaustive, regardless of the use of words such as “including”. This is directly contrary to the *ratio decidendi* of the *Sesay et al.* Appeal Judgment, which expressly held that in light of the sheer scale of the crimes and the fact that the accused was not charged with personal commission but JCE, a non-exhaustive list of locations was sufficient.
115. In relation to murder in Kono and Kenema Districts, it was the Prosecution case that murders were occurring on a widespread and systematic basis in these districts

<sup>333</sup> *Sesay et al.* Appeal Judgment, paras. 901-904, 883-887, 938-939. *But see Brima et al.* Appeal Judgment, para. 64 and *see also Sesay et al.* Appeal Judgment, para. 832.

<sup>334</sup> *Sesay et al.* Appeal Judgment, para. 901.

<sup>335</sup> *Sesay et al.* Appeal Judgment, para. 884.

<sup>336</sup> *See Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement (AC), 24 March 2000, para. 113.

during the pleaded time period. Therefore in light of the sheer scale of these crimes and the fact that Mr. Taylor was not charged with personal commission, it was sufficient to plead a non-exhaustive list of locations.

116. In respect of looting, Mr. Taylor was charged with, and the Trial Chamber found him guilty of, looting in Kono, Bombali and Port Loko Districts as part of a widespread, extensive and systematic campaign called “Operation Pay Yourself” which was declared in Masiaka and spread throughout multiple districts.<sup>337</sup> Consequently, as Mr. Taylor was not charged with personal commission, and in light of the scale of the looting, it was sufficient and indeed more accurate to plead a non-exhaustive list of locations as it would have been impracticable to plead all the locations at which this crime took place. The fact that the Trial Chamber found that many of these locations were “in the bush” underscores the impracticality of pleading the locations with greater specificity.<sup>338</sup>

117. Moreover, as stated above, it is also critical to consider that Mr. Taylor was not proximate to the crimes, having never set foot in Sierra Leone during the Indictment period.<sup>339</sup> In light of all these factors, the use of the phrase “in various [district] locations, including” was sufficiently specific.

118. Consequently, the Trial Chamber erred in law and in fact at paragraphs 631, 702, 748, 1880, 1911 and 1918 of its Judgement when it found that as the Prosecution did not specifically plead the locations concerned, such evidence was only relevant in so far as it assists in establishing the *chapeau* requirements of the various crimes.

***D. In the alternative, timely, clear and consistent notice was given to Mr. Taylor of the locations by pre-trial communications***

119. In the alternative, should the Trial Chamber have been correct in finding that the Indictment lacked specificity regarding locations, the pre-trial communications further informed Mr. Taylor of the locations of the crimes listed above at paragraph

<sup>337</sup> Judgement, paras. 1977, 5551-5552, 6791.

<sup>338</sup> Judgement, para. 1880, fn. 4165.

<sup>339</sup> See fn. 331 above.

102. The Trial Chamber erred in law by failing to consider whether these communications cured any defects.
120. The Indictment is the primary accusatory instrument, but it is not the only instrument that provides notice to the accused. The Appeals Chamber has held that clear, timely and consistent pre-trial communications, such as the Prosecution Pre-Trial Brief, including the annexed summary of anticipated testimony, pre-trial disclosures of Prosecution witness evidence and the Prosecution Opening Statement may, in certain circumstances, cure a defective indictment. The rationale for allowing a defective indictment to be cured by pre-trial disclosures is that if made in a clear, timely and consistent manner, the accused will have received adequate notice of the case to meet and enough time to prepare for his defence and thus suffers no prejudice.<sup>340</sup>
121. None of the allegations listed above at paragraph 102 constituted new charges, but were material allegations that supported existing charges pleaded in Counts 2, 3, 4, 6, 7, 8 and 11 and in paragraphs 10, 11, 16, 20, 29, 30 and 30A of the Indictment. Specifically, the sexual and physical violence carried out at Buedu, Kailahun Town and Bunumbu and its environs constitute crimes committed *within* the location pleaded at paragraphs 16 and 20 of the Indictment and fell within the broader allegations relating to sexual and physical violence in Kailahun District charged in Counts 4, 6, 7 and 8. Similarly, the killings carried out in Panguma were crimes committed *within* the location pleaded at paragraph 10 of the Indictment and fell within the wider allegation of killings in Kenema District charged in Counts 2 and 3. The killings committed at Foendor, Baima, Goldtown, Yekeyor, Kondeya, Mambona, the road between Tombodu and Lebanon, between Kania and Koidu Town and Kissy Town were crimes committed *within* the location pleaded at paragraph 11 of the Indictment and fell within the broader allegation of killings in Kono District charged in Counts 2 and 3. The looting that occurred in Lunsar and

<sup>340</sup> *Sesay et al.* Appeal Judgment, paras. 167-168; *Fofana & Kondewa* Appeal Judgment, para. 443; *Brima et al.* Appeal Judgment, para. 44; see also *Prosecutor v. Brima et al.*, SCSL-04-16-T-613, Judgement (TC), 20 June 2007 (*Brima et al.* Trial Judgement), paras. 1706-1709, 1761-1764; *Ntabakuze* Appeal Judgement, para. 30.

Karina Town occurred *within* the locations pleaded at paragraphs 30A and 30 of the Indictment respectively and within the broader allegation related to pillage in Port Loko and Bombali Districts charged in Count 11. Finally, the looting that occurred in Gaya, Wordu, Mambona, near Motema, Fakoyia Bush, Baima Town and the bush outside Tombodu were similarly committed *within* the location pleaded at paragraph 29 of the Indictment and within the broader allegation regarding pillage in Kono District charged in Count 11. As a result, the additional locations would not have led to a radical transformation of the case against Mr. Taylor, nor could they on their own have supported new charges. Accordingly, if the Trial Chamber was correct in finding the Indictment defective, it should have considered whether any such defects were cured.<sup>341</sup>

122. In this case, as set out below, the descriptions of many of the crimes listed above at paragraph 102 were remedied by the provision of clear, timely and consistent information.
123. Prior to demonstrating how any defects were cured, the Prosecution recalls that the operative Indictment was filed on 29 May 2007<sup>342</sup> and the Prosecution Pre-Trial Brief and annexed witness summaries on 4 April 2007.<sup>343</sup> Technically, therefore, the Pre-Trial Brief refers to the previous indictment dated 17 March 2006.<sup>344</sup> However, the timing of these filings is not significant as the amendments to the indictment, which were limited to Counts 5 and 11 were minor.<sup>345</sup> The amendments to Count 5 provided greater precision to the charge and are not in issue in this

<sup>341</sup> See *Ntabakuze* Appeal Judgement, paras. 39-45.

<sup>342</sup> The operative Indictment was filed on 29 May 2007 pursuant to the Trial Chamber's Decision of 25 May 2007 granting the Prosecution motion for leave to amend the indictment. See Decision on the Prosecution Motion Requesting Leave to Amend Indictment, SCSL-03-01-PT-255, 25 May 2007.

<sup>343</sup> Rule 73bis Pre-Trial Conference Materials Pre-Trial Brief, SCSL-03-01-PT-218, 4 April 2007 (Prosecution Pre-Trial Brief).

<sup>344</sup> The original indictment filed by the Prosecutor on 3 March 2003 was approved by Honourable Justice Bankole Thompson on 7 March 2003, see Decision Approving the Indictment and Order for Non-Disclosure, SCSL-03-01-I-003, 7 March 2003; and was first amended on 17 March 2006 (First Amended Indictment), see Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment, SCSL-03-01-I-74, 16 March 2006.

<sup>345</sup> While it is unusual, an Appeals Chamber can conduct a curing analysis by reference to pre-indictment submissions depending on the circumstances of the case, see *Nchamihigo* Appeal Judgement, paras. 13, 340 where the Appeals Chamber looked at a Pre-Trial Brief and opening statement submitted prior to the operative Indictment to determine if the accused's role in an attack had been cured.

appeal. The amendments to Count 11 were only to correct the mistaken listing of Masiaka as being in Bombali and not in Port Loko District, rather than to provide greater detail regarding looting in Port Loko. Indeed, in its motion to amend the indictment, the Prosecution highlighted that this amendment did not allege a new crime, incident or location, and the evidence that the Prosecution intended to rely on in relation to looting in Port Loko had been disclosed to the Defence for some time. The witnesses and exhibits cited by the Prosecution in its motion were identical to those listed at paragraph 83 of the Prosecution Pre-Trial Brief.<sup>346</sup> Consequently, there was no need for the Prosecution to re-file its Pre-Trial Brief which remained relevant. In light of the particular circumstances of this case, the Trial Chamber was not prevented from curing any defects in the Indictment by the Prosecution Pre-Trial Brief and annexed witness summaries even though they were filed shortly before the Indictment.

#### 1) Rape in Kailahun District

124. The Trial Chamber found that the evidence of Augustine Mallah and Aruna Gbonda proved that from February 1998, AFRC and RUF fighters held an unknown number of women captive and raped them in Buedu and Kailahun Town.<sup>347</sup> It found that Dennis Koker's evidence proved beyond reasonable doubt that AFRC/RUF members detained and raped women in Buedu from March 1998 to December 1999.<sup>348</sup> The Trial Chamber also held that TF1-189 was raped in Kailahun Town between August and September 1998 by an RUF rebel.<sup>349</sup> Notwithstanding, the Trial Chamber held that it could not enter convictions for these rapes under either Counts 4 or 6 as no locations were charged in paragraph 16 of the Indictment relating to Kailahun District. However, it would take them into account in relation to the *chapeau* requirements<sup>350</sup> which must be proved beyond a reasonable doubt.

<sup>346</sup> Motion Requesting Leave to Amend Indictment, SCSL-03-01-PT-235, 14 May 2007, paras. 5, 13.

<sup>347</sup> Judgement, paras. 961, 971-972. *See also* Judgement, paras. 957-960.

<sup>348</sup> Judgement, paras. 963-966, 971-972.

<sup>349</sup> Judgement, paras. 967-972.

<sup>350</sup> Judgement, paras. 933-934, 971-972, 1202-1204.



125. Clearly, Buedu and Kailahun Town, which are in Kailahun District, fell within the location charged at paragraph 16 of the Indictment and therefore within its parameters as argued above. Further and sufficient notice was provided to Mr. Taylor of these rapes through clear, consistent and timely pre-trial communications detailed below.

a) Prosecution Pre-Trial Brief

126. In relation to paragraph 16 of the Indictment, the Prosecution specifically identified at paragraphs 75 and 76 of its Pre-Trial Brief witnesses who would testify that throughout the armed conflict and between 30 November 1996 and 18 January 2002, the RUF, the Junta and in particular the RUF component, the AFRC/RUF, and Liberian fighters subordinate to the Accused raped and subjected an unknown number of women and girls throughout Kailahun District to sexual violence. These witnesses included Dennis Koker (TF1-114), TF1-189, Edna Bangura (TF1-314), Aruna Gbonda (TF1-330) and Augustine Mallah (TF1-045).

b) Pre-Trial Disclosures

- *Rape in Buedu*

127. The pre-trial disclosures relating to the evidence of Dennis Koker and Edna Bangura gave further information regarding the location of Buedu where the Trial Chamber found detained women were raped by the AFRC/RUF at paragraphs 961 and 963 to 966 of its Judgement.

128. The summary of Dennis Koker's (TF1-114) anticipated testimony annexed to the Prosecution Pre-Trial Brief indicated that he would testify on the crimes charged under paragraph 16 of the Indictment. A statement and other pre-trial disclosures relating to his evidence, which were disclosed in a timely manner, contained further

details about the rape and forced marriage of women held captive in Buedu by the AFRC/RUF.<sup>351</sup>

129. The summary of Edna Bangura's (TF1-314) anticipated testimony annexed to the Prosecution Pre-Trial Brief indicated that she would testify on sexual violence in Kailahun and in particular in Buedu between 1996 and 1998 pursuant to paragraph 16 of the Indictment. It is irrelevant for the purpose of giving further detail regarding the location of Buedu for notice purposes that this witness was not found credible by the Trial Chamber. Should the Indictment have been defective, these disclosures cured any such defects and put Mr. Taylor on notice of these crimes.

- *Rape in Kailahun Town*

130. The pre-trial disclosures relating to the evidence of TF1-189 gave further information regarding the location of Kailahun Town in the context of rape sufficient to put Mr. Taylor on notice of these crimes should the Indictment have been defective. The summary of Witness TF1-189's anticipated testimony annexed to the Prosecution Pre-Trial Brief indicated that she would testify on rape in Kailahun District as charged in paragraph 16 of the Indictment. A pre-trial disclosure relating to her evidence, which was disclosed in a timely manner, contained further details of her rape in Kailahun Town in 1998, a location where the Trial Chamber found proven that she and other women were raped at paragraphs 967 to 970 of its Judgement.<sup>352</sup>

- *Rape in Daru*

131. Although the Trial Chamber did not specifically note Daru in its findings at paragraph 961 of the Judgement, it did find all the evidence of Witness Augustine

---

<sup>351</sup> Witness Statement dated 26 March 2003 (ERN 00003594-3603), pp. 00003596-97, disclosed on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy); *Sesay et al.* T. 28 April 2005 pp. 61-64, disclosed on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy); *Brima et al.* T. 14 July 2005 p. 131, disclosed on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy). All of this witness' disclosures were unredacted.

<sup>352</sup> Interview transcript dated 18 February 2003, pp. 87-88, 100-101, disclosed redacted on 22 September 2006 (hard copy & electronic).

Mallah credible<sup>353</sup> and summarised his evidence regarding Daru in paragraph 958 of the Judgement. The Trial Chamber therefore arguably found this rape proven.

132. The pre-trial disclosures relating to the evidence of Augustine Mallah (TF1-045) were sufficient to put Mr. Taylor on notice of this crime should the Trial Chamber have been correct in finding the Indictment defective. Specifically, his summary of anticipated testimony annexed to the Prosecution Pre-Trial Brief indicated that he would testify on the crimes charged under paragraph 16 of the Indictment. A statement and another pre-trial disclosure related to Mallah's evidence, which were disclosed in a timely manner, gave notice of the rape of his niece in Daru, Kailahun, by an RUF rebel and more generally throughout Kailahun District including Daru.<sup>354</sup>

c) Conclusion

133. The pre-trial disclosures relating to the evidence of the other witnesses cited in paragraphs 75 and 76 of the Prosecution Pre-Trial Brief as those who would testify about sexual violence in Kailahun District charged under paragraph 16 of the Indictment do not contradict these witnesses (i.e. Augustine Mallah, Aruna Gbonda, Dennis Koker, TF1-189 and Edna Bangura) and therefore, Mr. Taylor did not receive conflicting notices. Pre-trial communications need to be read holistically and in context. In this instance, paragraph 16 of the Indictment was clear that Mr. Taylor was being charged with rape and outrages against personal dignity perpetrated in many locations "throughout" Kailahun. It therefore follows that there is no contradiction where some witnesses specifically identified Buedu, Daru and Kailahun Town in their witness statements and other disclosures while others identified additional locations. Consequently, the pre-trial communications detailed above in no way radically transformed the Prosecution's case against Mr. Taylor and put him on notice that he was being charged with rapes throughout Kailahun including in Buedu, Kailahun Town and Daru.

<sup>353</sup> Judgement, para. 961.

<sup>354</sup> *Brima et al.* T. 22 July 2005 pp. 14-16, 22-25, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy); Additional Information dated 16, 20, 23 June 2005 (ERN 00017454-56), p. 2, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy).

## 2) Physical violence in Kailahun District

134. The Trial Chamber found that the evidence of TF1-362, TF1-189 and Komba Sumana established that captured civilian recruits were subject to physical violence at Camp Lion Training Base, Bunumbu.<sup>355</sup> It held that the evidence of TF1-362 and Komba Sumana proved that recruits at this training base were taught to and did commit acts of physical violence against civilians.<sup>356</sup> The Trial Chamber further found the testimony of TF1-362, TF1-026 and TF1-189 established that instructors at the base used knives or razors to mark the foreheads, chest, backs or arms of recruits at the base with the letters RUF.<sup>357</sup> Finally, the Trial Chamber held that the evidence of Aruna Gbonda, Augustine Mallah, Dennis Koker and Mustapha Mansaray proved that civilians who resisted the crimes against them in the area (including Talia, River Keyah and Buedu) were met with violence.<sup>358</sup>
135. Despite this, the Trial Chamber held that it could not enter convictions for these crimes under either Counts 7 or 8 as no locations were charged in relation to Kailahun District under paragraph 20 of the Indictment.<sup>359</sup> However, it would take them into account in relation to the *chapeau* requirements<sup>360</sup> which the Prosecution recalls must be proved beyond a reasonable doubt.
136. As Camp Lion Training Base, Bunumbu and its environs are located within Kailahun District, they clearly fell within the parameters of the location charged at paragraph 20 of the Indictment as argued above. Further notice was provided to Mr. Taylor of the specific location of Bunumbu and the training of abducted civilians there in the Prosecution Opening Statement and Pre-Trial Brief. Other pre-trial communications, disclosed in a timely matter as detailed below, gave further notice to Mr. Taylor of these crimes.

<sup>355</sup> Judgement, paras. 1238-1245, 1263.

<sup>356</sup> Judgement, paras. 1248-1250, 1263.

<sup>357</sup> Judgement, paras. 1253-1255, 1263.

<sup>358</sup> Judgement, paras. 1258-1263.

<sup>359</sup> The Trial Chamber mistakenly cites to Indictment para. 19 which relates to Kono rather than Kailahun District, *see* Judgement, para. 1233, fn. 3015.

<sup>360</sup> Judgement, paras. 114-116, 1233-1235, 1263.

a) Prosecution Opening Statement

137. In its Opening Statement, the Prosecution stated that “In Kailahun ... abducted civilians were trained at ... *Bunumbu*. The training often involved the severe beatings of those who were uncooperative and sometimes resulted in the deaths of the trainees.”<sup>361</sup>

b) Prosecution Pre-Trial Brief and Summaries of Anticipated Testimony

138. At paragraphs 75, 77 and 80 of the Pre-Trial Brief, the Prosecution stated that during the armed conflict the RUF, the Junta and in particular the RUF component, and the AFRC/RUF, assisted by Liberian fighters subordinate to the accused, routinely abducted civilians and used them for forced labour or conscripted them into these armed groups in Kailahun District. These groups also beat an unknown number of civilians in locations throughout Kailahun. Further, the military training of forcibly conscripted civilians at *Bunumbu* involved severe beatings and sometimes resulted in the deaths of the trainees. The witnesses cited by the Prosecution in its Pre-Trial Brief as those who would testify in relation to these allegations included Augustine Mallah (TF1-045), Aruna Gbonda (TF1-330), TF1-189, Dennis Koker (TF1-114) and TF1-141.

139. The summary of Witness TF1-141’s anticipated testimony annexed to the Prosecution Pre-Trial Brief indicated that he would testify regarding Counts 7 and 8 and paragraph 20 of the Indictment, and specifically the training of conscripts at Camp Lion Training Base. The summary of Witness TF1-189’s anticipated testimony annexed to the Prosecution Pre-Trial Brief indicated that she would testify regarding Count 7, paragraph 20 of the Indictment, and specifically about the beating and physical marking of trainees at the training base near Buedu in the post-Junta period. The summary of Augustine Mallah’s (TF1-045) anticipated testimony attached to the Prosecution Pre-Trial Brief indicated that he would testify about Counts 7 and 8, paragraph 20 of the Indictment and specifically the beating of civilians in Kailahun District. In the summary of his anticipated testimony, it was

<sup>361</sup> T. 4 June 2007 (Prosecution Opening Statement) p. 305 (emphasis added).

indicated that Witness Arunda Gbonda (TF1-330) would testify about Counts 7 and 8 in relation to Kailahun District.

c) Pre-Trial Disclosures

- *Beating of civilian recruits at Camp Lion Training Base, Bunumbu*

140. In addition to the summaries of their anticipated testimony detailed above, statements and other pre-trial disclosures relating to the evidence of Witnesses TF1-189<sup>362</sup> and TF1-141<sup>363</sup> which were disclosed in a timely manner, contained further details about the location of Camp Lion Training Base, Bunumbu and the physical violence inflicted on recruits at the base, which the Trial Chamber found proven at paragraphs 1238 to 1245 and 1263 of its Judgement.

- *Training of recruits to commit violence against civilians at Camp Lion*

141. Pre-trial disclosures relating to the evidence of Witness TF1-141 also give further detail regarding the fact that the recruits at Bunumbu Training Base were trained to attack civilians in the surrounding area, which the Trial Chamber also found proven at paragraphs 1248 to 1250 and 1263 of its Judgement.<sup>364</sup> It is irrelevant for the purposes of giving further detail regarding the location of Bunumbu Training Base (also known as Camp Lion) that Witness TF1-141 was not called by the Prosecution.

<sup>362</sup> Interview transcript dated 7 March 2003, pp. 17-19, disclosed redacted on 22 September 2006 (hard copy & electronic); Interview Notes dated 26 March – 1 April 2008 (ERN 00047406-22), pp. 10, 12, disclosed unredacted on 22 April 2008.

<sup>363</sup> Handwritten Witness Statement dated 23 February 2003, pp. 1, 8 disclosed redacted on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy); Supplemental Statement dated 9 October 2004, p. 3, disclosed redacted on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy); *Sesay et al.* T. 12 April 2005 pp. 22-28, disclosed redacted on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy).

<sup>364</sup> Handwritten Witness Statement dated 23 February 2003, pp. 1, 8-9 disclosed redacted on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy); Supplemental Statement dated 9 October 2004, p. 3, disclosed redacted on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy).

- *Marking of recruits at Camp Lion Training Base, Bunumbu*

142. In addition to the information in the summary of TF1-189's anticipated testimony detailed at paragraph 139 above, a pre-trial disclosure relating to her evidence<sup>365</sup> which was disclosed in a timely manner contained further details about the fact that RUF recruits were carved with a razor blade at Bunumbu Training Base, Kailahun District, which the Trial Chamber found proven at paragraphs 1253 to 1255 and 1263 of its Judgement.

- *Violence towards civilians who resisted crimes against them in Kailahun*

143. In addition to the information in their summaries of anticipated testimony detailed at paragraph 139 above, statements and other pre-trial disclosures relating to the evidence of Augustine Mallah,<sup>366</sup> Arunda Gbonda<sup>367</sup> and TF1-141<sup>368</sup> were disclosed in a timely manner and contained further details about violence towards civilians who resisted crimes against them at RUF government farms throughout Kailahun including in Talia and Buedu, which the Trial Chamber found proven at paragraphs 1258 to 1263 of its Judgement. It is irrelevant for notice purposes that Witness TF1-141 was not called by the Prosecution.

d) Conclusion

144. The pre-trial disclosures relating to the evidence of the other witnesses cited in paragraphs 75, 77 and 80 of the Prosecution Pre-Trial Brief as those who would testify about physical violence in Kailahun District charged under paragraph 20 of the Indictment do not contradict these witnesses (i.e. TF1-362, Komba Sumana, TF1-026, Augustine Mallah, Aruna Gbonda, TF1-189, Dennis Koker, Mustapha Mansaray and TF1-141) and, therefore, Mr. Taylor did not receive conflicting

<sup>365</sup> Interview Notes dated 26 March – 1 April 2008 (ERN 00047406-22), pp. 10-11, disclosed on 22 April 2008.

<sup>366</sup> *Sesay et al.* T. 21 November 2005 pp. 64-66, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy).

<sup>367</sup> Witness Statement dated 27 March 2003 (5 pages – ERN 00003854-58), pp. 1-2, disclosed unredacted on 14 January 2008 (hard copy) and 4 February 2008 (electronic copy).

<sup>368</sup> *Sesay et al.* T. 12 April 2005 pp. 15-18, disclosed unredacted on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy).

notices. Pre-trial communications need to be read holistically and in context. In this instance, paragraph 20 of the Indictment was clear that Mr. Taylor was being charged with physical violence perpetrated in many locations throughout Kailahun. It therefore follows that there is no contradiction where some witnesses specifically identified Camp Lion Training Base, Bunumbu and its environs in their witness statements and other disclosures while others identified additional locations. Consequently, the pre-trial communications in no way radically transformed the Prosecution's case against Mr. Taylor and put him on notice that he was being charged with physical violence throughout Kailahun, including at Bunumbu Training Base and its environs.

### 3) Killings in Kenema District

145. The Trial Chamber found that the evidence of Abdul Otonjo Conteh (TF1-060) proved beyond reasonable doubt that AFRC/RUF fighters killed Pa Vandj Sei and John Dakowah in Panguma around September 1997.<sup>369</sup> However, as Panguma was not pleaded as a crime base in the Indictment, the deaths only served to prove the *chapeau* requirements of murder in Kenema.<sup>370</sup>
146. As argued above, the non-exhaustive list of pleadings in relation to Counts 2 and 3 in Kenema District was sufficient in the circumstances of this case. In the alternative, further and sufficient notice was provided to Mr. Taylor of these killings in Panguma through pre-trial communications which were disclosed in a timely manner detailed below.

#### Prosecution Pre-Trial Brief and Pre-Trial Disclosures

147. In relation to paragraph 10 of the Indictment, the Prosecution specifically identified at paragraph 89 of its Pre-Trial Brief witnesses who would testify that between 25 May 1997 and 31 March 1998, the Junta and the AFRC/RUF killed civilians

---

<sup>369</sup> Judgement, para. 631.

<sup>370</sup> Judgement, paras. 114-116, 631, 643-644.



throughout Kenema District.<sup>371</sup> These witnesses included TF1-060, whose summary of anticipated testimony noted that he would testify about killings in Kenema. Other timely pre-trial disclosures relating to his evidence contained further details about the location of Panguma and the murders of Pa Vandí Sei and John Dakowa, which the Trial Chamber found proven at paragraph 631 of the Judgement.<sup>372</sup>

148. The pre-trial disclosures relating to the evidence of the other witnesses cited in paragraph 89 of the Prosecution Pre-Trial Brief as those who would testify about killings in Kenema District, charged under paragraph 10 of the Indictment, do not contradict TF1-060 and therefore, Mr. Taylor did not receive conflicting notices. Pre-trial communications need to be read holistically and in context. In this instance, paragraph 10 of the Indictment was clear that Mr. Taylor was being charged for killings perpetrated in many locations throughout Kenema. It therefore follows that there is no contradiction where TF1-060 specifically identified Panguma, while others identified additional locations. Given that the Indictment clearly informed Mr. Taylor that the RUF/AFRC's involvement in killings extended throughout Sierra Leone, including various locations in Kenema, and that the examples given were not exhaustive, the pre-trial communications in no way radically transformed the Prosecution's case against him and put him on notice that he was being charged with killings in many locations throughout Kenema including Panguma.

#### **4) Killings in Kono District**

149. The Trial Chamber found that the evidence of TF1-064 established that between April and May 1998 in Foendor, AFRC/RUF fighters beheaded an unknown number of civilians. However, as Foendor is not pleaded as a location in the

<sup>371</sup> Paragraph 85 of the Prosecution Pre-Trial Brief should be read together with paragraph 89 of the Prosecution Pre-Trial Brief as it provides the relevant date range.

<sup>372</sup> *Sesay et al.* T. 29 April 2005 pp. 66, 93-94 (CS), disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy); Additional Information from proofing, 13 April 2005, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy).

Indictment, this evidence could only be used to prove the *chapeau* requirement of murder.<sup>373</sup>

150. The Trial Chamber further found that the following witnesses gave credible evidence about the murder of civilians in a number of locations within Kono District, which the Trial Chamber indicated would only be taken into account for the purposes of the *chapeau*: Baima: Sahr Bindi (TF1-197) and Finda Gbamanja (TF1-303);<sup>374</sup> Goldtown: Perry Kamara (TF1-360);<sup>375</sup> Yekeyor: Komba Sumana (TF1-263);<sup>376</sup> Kondeya: Exhibit P-078;<sup>377</sup> Mambona: Samuel Bull (TF1-065);<sup>378</sup> Road between Tombodu and Lebanon: Mustapha Mansaray (TF1-210); Area between Kania and Koidu Town: Alex Tamba Teh (TF1-015), and Kissy Town: TF1-532 (Isaac Mongor).<sup>379</sup>
151. As argued above, the non-exhaustive list of pleadings in relation to Counts 2 and 3 in Kono District was sufficient in the circumstances of this case. In the alternative, further and sufficient notice was provided to Mr. Taylor of some of these killings, specifically those in Foendor, Baima, Yekeyor, on the road between Tombodu and Lebanon, in the area between Kania and Koidu Town, Mambona, Goldtown, and in Kissy Town through pre-trial communications which were disclosed in a timely manner as detailed below.

a) Prosecution Pre-Trial Brief and Pre-Trial Disclosures

- *Beheading of civilians in April/May 1998 in Foendor*

152. At paragraph 98 of its Pre-Trial Brief, the Prosecution identified that Witness TF1-072 (Samuel Komba) would testify about killings in Kono by the AFRC/RUF from 1 February 1998 as charged in paragraph 11 of the Indictment. The summary of TF1-072's anticipated testimony annexed to the Prosecution Pre-Trial Brief stated

<sup>373</sup> Judgement, paras. 702, 704, 749-750. *See also* Judgement, paras. 114-116.

<sup>374</sup> Judgement, para. 748, fn. 1864, paras. 749-750. *See also* Judgement, paras. 114-116.

<sup>375</sup> Judgement, para. 748, fn. 1865, paras. 749-750. *See also* Judgement, paras. 114-116.

<sup>376</sup> Judgement, para. 748, fn. 1866, paras. 749-750. *See also* Judgement, paras. 114-116.

<sup>377</sup> Judgement, para. 748, fn. 1867, paras. 749-750. *See also* Judgement, paras. 114-116.

<sup>378</sup> Judgement, para. 748, fn. 1868, paras. 749-750. *See also* Judgement, paras. 114-116.

<sup>379</sup> Judgement, para. 748, fn. 1869, paras. 749-750. *See also* Judgement, paras. 114-116.

that this witness would testify about crimes charged in paragraph 11 of the Indictment and specifically the killing of 17 civilians in Foindu.<sup>380</sup> A witness statement and another pre-trial disclosure related to this witness' evidence, which were disclosed in a timely manner, contained further details about beheading of civilians in Foender which the Trial Chamber found proven at paragraphs 702 and 704 of its Judgement.<sup>381</sup> It is irrelevant for the purposes of notice that this witness was not cited by the Trial Chamber in its findings.

- *Killings in Baima*

153. At paragraph 98 of its Pre-Trial Brief, the Prosecution identified that TF1-197 (Sahr Bindi) would testify about killings in Kono by the AFRC/RUF from 1 February 1998. The summary of this witness' anticipated testimony annexed to the Prosecution Pre-Trial Brief stated that he would give evidence about crimes charged in paragraph 11 of the Indictment. A pre-trial statement related to the evidence of this witness, which was disclosed in a timely manner, contained further details about the killing of civilians in Baima, which the Trial Chamber found proven at paragraph 748, footnote 1864 of its Judgement.<sup>382</sup>

- *Killings in Yekeyor*

154. At paragraph 98 of its Pre-Trial Brief, the Prosecution noted that TF1-263 (Komba Sumana) would testify about killings in Kono by the AFRC/RUF from 1 February 1998 charged in paragraph 11 of the Indictment. The summary of Witness TF1-263's anticipated testimony annexed to the Prosecution Pre-Trial Brief stated that he would testify about Counts 2 and 3 and paragraph 11 of the Indictment. Witness statements and other pre-trial disclosures related to the evidence of this witness, which were disclosed in a timely manner, contained further details about the

<sup>380</sup> This is a typographical error. It should read Foender.

<sup>381</sup> Undated Witness statement, pp. 3-5, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy); Additional Information dated 9, 12, 13 April 2005, p. 2, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy).

<sup>382</sup> Witness Statement dated 23 September 2003 (ERN 00003282-86), p. 3, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy).

civilian deaths in Yekeyor, which the Trial Chamber found proven at paragraph 748, footnote 1866 of its Judgement.<sup>383</sup>

- *Killings on the road between Tombodu and Lebanon*

155. At paragraph 98 of its Pre-Trial Brief, the Prosecution noted that Witness TF1-210 (Mustapha Mansaray) would testify about killings in Kono by the AFRC/RUF from 1 February 1998 charged in paragraph 11 of the Indictment. The summary of Witness TF1-210's anticipated testimony annexed to the Prosecution Pre-Trial Brief indicated that he would testify about Counts 2 and 3 in Kono District. A pre-trial witness statement regarding the evidence of this witness which was disclosed in a timely manner contained further details about the killings on the road between Tombodu and Lebanon, which the Trial Chamber found proven at paragraph 748, footnote 1869 of its Judgement.<sup>384</sup>

- *Killings in the area between Kania and Koidu Town*

156. At paragraphs 96 and 98 of its Pre-Trial Brief, the Prosecution indicated that Alex Tamba Teh (TF1-015) would testify about killings in Kono in the relevant time period. The summary of his anticipated testimony annexed to the Prosecution Pre-Trial Brief indicated that he would testify about Counts 2 and 3 in Kono District. A witness statement and another pre-trial disclosure related to the evidence of this witness were disclosed in a timely manner and contained further details about the killing in the area between Kania and Koidu Town which the Trial Chamber found proven at paragraph 748, footnote 1869 of its Judgement.<sup>385</sup>

<sup>383</sup> Witness Statement dated 21-22 September 2003 (ERN 00000979-988), p. 1, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy); Additional Information – proofing from 23 September 2004 (ERN 00035346-47), p. 2, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy); Additional Information – proofing from 5 October 2004 (ERN 00035347-50), p. 3, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy); Additional Information – proofing from 23 October 2004 (ERN 00035355-57), pp. 11-12, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy).

<sup>384</sup> Witness Statement dated 15 September 2003 (ERN 00001023-26), pp. 2-4, disclosed on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy).

<sup>385</sup> Witness Statement dated 15 November 2002, pp. 3-4, disclosed redacted on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy); *Sesay et al.* T. 27 January 2005 pp. 107-113, disclosed redacted on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy).

- *Killings in Kissy Town*

157. At paragraph 98 of its Pre-Trial Brief, the Prosecution noted that Isaac Mongor (TF1-532) would testify about killings in Kono by RUF/AFRC from 1 February 1998. The summary of his anticipated testimony annexed to the Prosecution Pre-Trial Brief noted that he would testify about killings in Kono in the relevant time period. Pre-trial disclosures related to the evidence of this witness were disclosed in a timely manner and contained further details about the killings that took place in Kissy Town, which the Trial Chamber found proven at paragraph 748, footnote 1869 of its Judgement.<sup>386</sup>

- *Killings in Mambona*

158. The summary of Witness TF1-065's (Samuel Bull) anticipated testimony annexed to the Prosecution Pre-Trial Brief indicated that this witness would testify to paragraph 11 of the Indictment and specifically to the killing of civilians by the AFRC/RUF during attacks on Mambona in post-Intervention fighting in Kono District. The Trial Chamber found this witness' evidence credible and this allegation proven at paragraph 748, footnote 1868 of its Judgement.

- *Killings in Goldtown*

159. The summary of Witness TF1-360's (Perry Kamara) anticipated testimony annexed to the Prosecution Pre-Trial Brief noted that this witness would testify about killings in Kono charged in paragraph 11 of the Indictment. A timely pre-trial disclosure related to the evidence of this witness contains further details regarding the killings at Goldtown that the Trial Chamber found proven at paragraph 748, footnote 1865 of its Judgement.<sup>387</sup>

---

<sup>386</sup> Interview Notes dated 30 August 2006 (ERN 00023018-38), pp. 00023027-28, disclosed redacted on 21 February 2007 (hard & electronic copy); Interview Notes dated 28 January 2007 (ERN 00026278-82), p. 4, disclosed redacted on 21 February 2007 (hard & electronic copy).

<sup>387</sup> Interview Notes dated 17, 20 November, 6-9 December 2006 (ERN 00026464-00026487), pp. 18-19, disclosed redacted on 2 March 2007 (hard & electronic copy).

b) Conclusion

160. The pre-trial disclosures relating to the evidence of the other witnesses cited in paragraphs 96 and 98 of the Prosecution Pre-Trial Brief as those who would testify about killings in Kono District charged under paragraph 11 of the Indictment do not contradict these witnesses (i.e. TF1-064, Samuel Komba, Sahr Bindi, Finda Gbamanja, Perry Kamara, Samuel Bull, Mustapha Mansaray, Alex Tamba Teh, Komba Sumana and Isaac Mongor) and therefore, Mr. Taylor did not receive conflicting notices. Pre-trial communications need to be read holistically and in context. Given that the Indictment clearly informed Mr. Taylor that the involvement of RUF/AFRC in killings extended throughout Sierra Leone, including locations throughout Kono, there is no contradiction where some witnesses specifically identified Foendor, Baima, Yekeyor, the road between Tombodu and Lebanon, the area between Kania and Koidu Town, Kissy Town, Goldtown and Mambona in their witness statements and other disclosures while others identified additional locations. Consequently, the pre-trial communications in no way radically transformed the Prosecution's case against Mr. Taylor and put him on adequate notice that he was being charged with killings in these locations.

**5) Looting in Lunsar, Port Loko District**

161. The Trial Chamber found that the evidence of Alimamy Bobson Sesay (TF1-334) regarding pillage in Lunsar, Port Loko was only relevant to proof of the *chapeau* as the location was not pleaded in the Indictment.<sup>388</sup> As argued above, the non-exhaustive list of pleadings in relation to Count 11 in Port Loko District was sufficient in the circumstances of this case. In the alternative, sufficient and further notice was provided to Mr. Taylor of this pillage in Port Loko through timely pre-trial communications.

---

<sup>388</sup> Judgement, paras. 1918, 1962-1963; *see also* paras. 114-116.

Prosecution Pre-Trial Brief and Pre-Trial Disclosures

162. At paragraph 83 of its Pre-Trial Brief, the Prosecution identified witnesses who would testify about events in Port Loko District, as well as a number of potential exhibits. These included Alimamy Bobson Sesay (TF1-334) and Documents 1.073 and 1.277.
163. The summary of the anticipated testimony of Alimamy Bobson Sesay noted that he would testify that there was large scale looting by RUF/AFRC in Lunsar as part of Operation Pay Yourself. Documents 1.073<sup>389</sup> and 1.277<sup>390</sup> contained further details about looting in Lunsar, which the Trial Chamber found proven at paragraph 1918 of its Judgement.
164. The pre-trial disclosures related to the evidence of the other witnesses cited in paragraph 83 of the Pre-Trial Brief as those who would testify about events in Port Loko District do not contradict Alimamy Bobson Sesay and, therefore, Mr. Taylor did not receive conflicting notices. Pre-trial communications need to be read holistically and in context. Given that the Indictment clearly informed Mr. Taylor that the involvement of RUF/AFRC in looting extended throughout Sierra Leone, including locations throughout Port Loko, there is no contradiction where some witnesses specifically identified Lunsar in their witness statements and other disclosures while others identified additional locations. Consequently, the pre-trial communications in no way radically transformed the Prosecution's case against him.

**6) Looting in Karina Town, Bombali District**

165. The Trial Chamber found the evidence of TF1-028 about pillage in Karina Town, Bombali, relevant only to proof of the *chapeau* as it was a location that was not pleaded in the Indictment.<sup>391</sup> As argued above, the non-exhaustive list of pleadings

<sup>389</sup> Prosecution Pre-Trial Brief, Document 1.073 (HRW Report "Sowing Terror, Atrocities against civilians in Sierra Leone," Vol. 10, No. 3 (A) July 1998), p. 23, disclosed on 11 August 2006 and 25 May 2007.

<sup>390</sup> Prosecution Pre-Trial Brief, Document 1.277 (No Peace Without Justice Conflict Mapping Report (Preliminary Report, March 2004), p. 00011936, disclosed on 10 November 2006.

<sup>391</sup> Judgement, paras. 1911, 1962-1963; *see also* paras. 114-116.

in relation to Count 11 in Bombali District was sufficient in the circumstances of this case. In the alternative, further and sufficient notice was provided to Mr. Taylor of this pillage in Karina Town through timely pre-trial communications.

#### Prosecution Pre-Trial Brief and Pre-Trial Disclosures

166. In relation to paragraph 30 of the Indictment, the Prosecution specifically identified at paragraph 81 of its Pre-Trial Brief witnesses who would testify to unlawful looting of civilian property in Bombali District between 1 February and 30 April 1998. These included TF1-028. The summary of anticipated testimony of Witness TF1-028 noted that she would testify about Count 11, paragraph 30 of the Indictment. A pre-trial disclosure related to the testimony of this witness, which was disclosed in a timely manner, specified that looting occurred in Karina Town, Bombali, which the Trial Chamber found proven at paragraph 1911 of its Judgement.<sup>392</sup>
167. The pre-trial disclosures related to the evidence of the other witnesses cited in paragraph 81 of the Pre-Trial Brief as those who would testify about looting in Bombali District do not contradict TF1-028 and, therefore, Mr. Taylor did not receive conflicting notices. Pre-trial communications need to be read holistically and in context. Given that the Indictment clearly informed Mr. Taylor that the involvement of the RUF/AFRC in pillage extended throughout Sierra Leone, including locations throughout Bombali District, there is no contradiction where Witness TF1-028 specifically identified Karina Town in a pre-trial disclosure while others identified additional locations. Consequently, the pre-trial communications in no way radically transformed the Prosecution's case against Mr. Taylor.

#### **7) Looting in Kono District**

168. The Trial Chamber found the following evidence about looting in Kono District relevant to proof of the *chapeau* as they concerned locations that were not pleaded in the Indictment, specifically, looting in: Gaya: Alice Pyne (TF1-584); Wordu:

<sup>392</sup> *Sesay et al.* T. 17 March 2006 p. 109, disclosed redacted on 17 May 2006 (hard copy) and 19 May 2006 (electronic copy).



Mustapha Mansaray (TF1-210); Mambona: Emmanuel Bull (TF1-459), Samuel Bull (TF1-065); on a footpath near Motema: Emmanuel Bull (TF1-459), Samuel Bull (TF1-065); in Fakoyia bush: Samuel Bull (TF1-065); Baima Town: Finda Gbamanja (TF1-303), and the bush two miles outside of Tombodu: Exhibit P-199A.<sup>393</sup>

169. As argued above, the non-exhaustive list of pleadings in relation to Count 11 in Kono District was sufficient in the circumstances of this case. In the alternative, further and sufficient notice was provided to Mr. Taylor of some of these crimes, specifically pillage in Fakoyia bush and the bush outside of Tombodu, through timely pre-trial communications.

a) Prosecution Pre-Trial Brief and Pre-Trial Disclosures

• *Looting in the Bush Outside Tombodu*

170. At paragraph 101 of the Prosecution's Pre-Trial Brief, the Prosecution noted that Witness TF1-197 would testify that from 1 February 1998,<sup>394</sup> AFRC/RUF forces carried out widespread looting in Kono District as part of Operation Pay Yourself. The summary of TF1-197's anticipated testimony noted that he would testify about events charged in paragraph 29 of the Indictment. Statements and other pre-trial disclosures related to his evidence,<sup>395</sup> which were disclosed in a timely manner, specified that looting occurred in the bush outside Tombodu, which the Trial Chamber found proven at paragraph 1880, footnote 4165 of its Judgement. It is irrelevant for notice purposes that TF1-197 was not cited by the Trial Chamber in its findings in relation to this crime.

<sup>393</sup> Judgement, para. 1880, fn. 4165, paras. 1962-1963.

<sup>394</sup> The date must be read from paragraph 99 of the Prosecution Pre-Trial Brief which should be read in conjunction with paragraph 101 of the Brief.

<sup>395</sup> Witness Statement dated 23 September 2003 (ERN 00003282-86), pp. 1-2, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy); Interview Notes dated 27 January 2004 (ERN 00012486), p. 1, disclosed redacted on 17 May 2006 (hard copy) and 22 May 2006 (electronic copy); *Sesay et al.* T. 21 October 2004 pp. 72-79, disclosed unredacted on 2 July 2008.

- *Looting in Fakoyia Bush*

171. The summary of Witness TF1-065's (Samuel Bull) anticipated testimony noted that he would testify about looting by the RUF/AFRC against civilians in Fakoyia during post-Intervention fighting in Kono District which the Trial Chamber found proven at paragraph 1880, footnote 4165 of its Judgement.

b) Conclusion

172. The pre-trial disclosures related to the evidence of the other witnesses cited in paragraph 101 of the Pre-Trial Brief as those who would testify about looting in Kono District do not contradict these witnesses (i.e. Samuel Bull and TF1-197) and, therefore, Mr. Taylor did not receive conflicting notices. Pre-trial communications need to be read holistically and in context. Given that the Indictment clearly informed Mr. Taylor that the involvement of RUF/AFRC in looting extended throughout Sierra Leone, including locations throughout Kono, there is no contradiction where some witnesses specifically identified Fakoyia bush and the bush two miles outside of Tombodu in their witness statements and other disclosures while others identified additional locations. Consequently, the pre-trial communications in no way radically transformed the Prosecution's case against him.

173. To facilitate the work of the Appeals Chamber in assessing this Prosecution alternative argument that pre-trial disclosures cured any defects in the Indictment, the Prosecution has included a confidential section in its Book of Authorities (Appendix B). Confidential Section D contains the extracts of the pre-trial disclosures cited above, as they were served on the Defence but not ordered to be filed or filed with the Court.<sup>396</sup> The relevant portions are underlined. Should the Appeals Chamber wish to have copies of the entire referenced statements, rather

---

<sup>396</sup> In contrast, the Prosecution was ordered to provide witness statements to the Trial Chamber in the three previous SCSL trials. See *Prosecutor v. Norman et al.*, SCSL-04-14-PT-109, Order to Prosecution to Provide Order of Witnesses and Witness Statements, 28 May 2004; *Prosecutor v. Sesay et al.*, SCSL-04-15-T-185, Order to Prosecution to Provide Order of Witnesses and Witness Statements, 9 February 2005; *Prosecutor v. Brima et al.*, SCSL-04-16-PT-130, Order to Prosecution to Provide Witness List and Witness Summaries, 7 July 2004.

than, or in addition to the extracts, the Prosecution will, of course, provide them. The Prosecution underscores that it is not adding or supplementing any argument in its Appellant's Submission with these disclosures, but is simply providing the referenced documents to assist the Appeals Chamber. As the purpose of Confidential Section D is solely for reference, the Prosecution understands that the underlined extracts filed should not count towards the page or word limit for appellate submissions set by the Pre-Hearing Judge. However, should the Appeals Chamber disagree and consider that the extracts do count towards the page or word limit, the relevant underlined sentences total 546 lines, which is equivalent to 18 pages and 24 lines.<sup>397</sup>

*E. Mr. Taylor suffered no prejudice*

174. Mr. Taylor did not challenge the specificity of the pleading of the crimes listed above at paragraph 102, or the admissibility of evidence of material facts regarding these crimes at any stage of the proceedings. The Defence also often cross-examined the relevant witnesses on their testimony about the events in issue or about the location of the crime.<sup>398</sup> Indeed, Mr. Taylor has never alleged any prejudice to his ability to defend himself against these crimes and, in fact, the Defence stated that they never challenged the fact that these crimes occurred.<sup>399</sup> Consequently, any defects found by the Trial Chamber should have been deemed harmless and convictions entered for the relevant crimes as Mr. Taylor cannot establish any prejudice.
175. The Appeals Chamber has held that while a vague indictment not cured by timely, clear and consistent notice causes prejudice to the accused, the defect may be

<sup>397</sup> The Prosecution calculated this page total by dividing the total number of underlined lines by the number of lines found on a trial transcript page, which is 29 lines (546 / 29 = 18 pages, 24 lines).

<sup>398</sup> See, e.g., TF1-060, T. 30 September 2008 pp. 17586-17587 regarding killings in Panguma, Kenema; TF1-303, T. 29 January 2009 pp. 23910-23920 regarding her capture and the killing of her father in Baima, Kono; TF1-065, T. 24 September 2008 pp. 17149-17150, 17153-17154, 17160-17161 regarding the timing of his stay in Fakoyia Bush and Motema where looting occurred and his experience in Mambona where the Trial Chamber found killing happened; TF1-334, T. 29 April 2008 p. 8869, regarding looting in Lunsar; TF1-263, T. 7 October 2008, pp. 18006, 18016-18017, 18027-18030 on physical violence by Monica at a training camp in Buedu; TF1-362, T. 28 February 2008, pp. 4995-4997 (CS), T. 3 March 2008, pp. 5015, 5078-5079 (CS) on physical violence at Bunumbu Training Base, Kailahun.

<sup>399</sup> Defence Closing Brief, para. 1557.

deemed harmless if the Prosecution can show that the accused's ability to defend himself was not materially impaired.<sup>400</sup> In assessing whether or not an appellant was prejudiced by a defective indictment, the Appeals Chamber has held that regard must be had to whether or not they raised a timely objection at trial. Challenges to the form of the Indictment should be brought at a relatively early stage of the proceedings, usually at the pre-trial stage by preliminary motion pursuant to Rules 72(A) and (B)(ii). An accused is expected to challenge the form of an indictment prior to the rendering of the judgement, or, at the very least, challenge the admissibility of evidence of material facts not pleaded in an indictment by raising a specific objection at the time the evidence is introduced.<sup>401</sup> Defence submissions throughout the trial, including final trial briefs and closing arguments, may assist in assessing whether the accused was sufficiently put on notice to respond to charges alleged.<sup>402</sup>

176. For example, the *Brima et al.* Trial Chamber found Kanu individually criminally responsible under Article 6(1) of the Statute for personally committing amputations on civilians and pillage in Freetown and other parts of the Western Area. As the Prosecution failed to plead material facts with the required degree of specificity, the Trial Chamber found the indictment defective. Notwithstanding, it concluded that Kanu's ability to prepare his defence was not materially impaired considering his failure to object to evidence when led in respect of these crimes and his cross-examination of witnesses in respect of the same.<sup>403</sup> These convictions were upheld by the Appeals Chamber on the basis that Kanu had never previously complained that the indictment was defective in respect of these crimes and therefore he must

<sup>400</sup> *Fofana & Kondewa* Appeal Judgment, para. 443.

<sup>401</sup> *Sesay et al.* Appeal Judgment, para. 53; *Brima et al.* Appeal Judgment, paras. 42, 100, 114; *Hategekimana v. The Prosecutor*, ICTR-00-55B-A, Judgement (AC), 8 May 2012 (*Hategekimana* Appeal Judgement), para. 125. Rules 72 (A) and B(ii) provide that objections based on defects in the form of the Indictment are to be "brought within 21 days following disclosure by the Prosecutor to the Defence of all the material envisaged in Rule 66 (A)(i)".

<sup>402</sup> *Brima et al.* Trial Judgement, para. 49.

<sup>403</sup> *Brima et al.* Trial Judgement, paras. 2050-2057. With respect to the crime of looting vehicles at State House, Freetown, the Appeals Chamber concluded that although the Trial Chamber did not explicitly find the Indictment defective, it appears it adopted a similar approach, see *Brima et al.* Trial Judgement, para. 2057; *Brima et al.* Appeal Judgment, para. 111.

show he was prejudiced, which he failed to do. On the contrary, his defence counsel cross-examined witnesses as to the specific incidents.<sup>404</sup>

177. In the instant case, at paragraph 113 of its Judgement, the Trial Chamber prefaces its failure to convict the Accused of the crimes listed above at paragraph 102 by noting that the Defence objected in its Closing Brief to “Prosecution evidence relating to crimes committed in locations in Sierra Leone that were not pleaded in the Indictment.” Implicit in this is the idea that the Defence objected to the specificity of the pleading of the crimes listed above at paragraph 102. This is incorrect. What the Defence actually objected to, detailed further below, was the fact the Prosecution produced evidence of crimes in districts which were not pleaded in the Indictment or which fell outside of the Indictment time frame. This is entirely different to the issue at hand which concerns evidence led on specific locations not named but within districts pleaded in the Indictment. The objections of the Defence in its Closing Brief, analysed below, are, by its own admission, restatements of those contained in its motion filed on 24 September 2010 seeking to exclude evidence falling outside the geographic and temporal scope of the Indictment, and therefore will not be separately analysed here.<sup>405</sup>

178. At footnote 76 of paragraph 33 of its Closing Brief, the Defence cites three examples of evidence falling outside the temporal and geographical scope of the Indictment, which it notes it had previously objected to on this basis. The first is Witness TF1-334’s testimony regarding events in Koinadugu District. A review of the relevant trial transcript indicates that the Defence objected to TF1-334’s evidence concerning crimes in Koinadugu District which was a district that was not charged in the Indictment, rather than an objection to a location within a district that

<sup>404</sup> *Brima et al.* Appeal Judgment, paras. 111-116.

<sup>405</sup> Defence Closing Brief, para. 28; Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone, SCSL-03-01-T-1086, 24 September 2010, paras. 3, 6, 18, 19. *See also* Defence Reply to Prosecution Response to Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone, SCSL-03-01-T-1100, 5 October 2010; Prosecution Response to Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone, SCSL-03-01-T-1093, 29 September 2010; Decision on Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone, SCSL-03-01-T-1101, 6 October 2010.

was charged.<sup>406</sup> The second citation is to TF1-028's testimony regarding rape and burning in Karina, Bombali District. The Defence noted that only looting was charged for Bombali and objected to the Prosecution evidence on rape and burning that were not charged in relation to this district.<sup>407</sup> Thirdly, the Defence objected to TF1-579's testimony concerning events in Liberia.<sup>408</sup> The Defence also cross refers at footnote 77 to paragraphs 9 to 23 of its Pre-Trial Brief, which are also limited to an objection to evidence on crimes committed outside Sierra Leone and pre-dating the Indictment period.<sup>409</sup>

179. In paragraph 42, footnote 88 of its Closing Brief, the Defence cites two examples of locations which it argues the Prosecution led evidence on but which were not, but should have been, charged in the Indictment. The Defence submits that the evidence relating to these crimes should therefore be excluded by the Trial Chamber or strict limits imposed on the degree to which it can be taken into account. The first is Witness TF1-334's testimony regarding events in Koinadugu, detailed at paragraph 178 above. The second is Witness TF1-150's evidence regarding atrocities in and around Kabala, which is also in Koinadugu District.
180. The Defence further objects at paragraphs 1559 to 1566 of its Closing Brief to evidence led on counts which were not charged for a particular district, for example, killings in Bombali District, and those outside the temporal jurisdiction.<sup>410</sup>
181. Turning to the Defence Opening Statement, the only concern raised was regarding evidence of events pre-dating the Indictment period and also those in Liberia.<sup>411</sup> The Defence made no reference in its Closing Statement to this pleading issue other

<sup>406</sup> TF1-334, T. 18 April 2008 pp. 8054-8055; T. 21 April 2008 p. 8077.

<sup>407</sup> TF1-028, T. 7 May 2008 pp. 9146-9148.

<sup>408</sup> TF1-579, T. 5 November 2008 pp. 19798-19799.

<sup>409</sup> Rule 73bis Taylor Defence Pre-Trial Brief, SCSL-2003-01-PT-229, 26 April 2007 (Defence Pre-Trial Brief).

<sup>410</sup> Defence Closing Brief, para. 1559.

<sup>411</sup> T. 13 July 2009 (Defence Opening Statement) p. 24306.

than to submit that the Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment referred to above at paragraph 177 had been filed timely.<sup>412</sup>

182. It is therefore clear that the Defence never objected to evidence led on locations that were not specifically listed in the Indictment but were *within* pleaded districts, but rather only to the leading of evidence on areas within districts that were not pleaded. These are quite different issues. This is reinforced by the opening sentence of paragraph 42 of the Defence Closing Brief when it frames the general objection as being to crimes committed “in certain *districts* of Sierra Leone which form no part of the Indictment” (emphasis added). The Defence then develops this idea in paragraphs 43 to 46 of its Closing Brief. The Trial Chamber therefore erred in fact and law by fundamentally mischaracterising the nature of the Defence objection in respect of notice.<sup>413</sup> Consequently, any defects found by the Trial Chamber should have been deemed harmless and convictions entered for the relevant crimes as Mr. Taylor never alleged and cannot establish that he suffered any prejudice from the manner the crimes were pleaded.

#### ***F. Conclusion***

183. The Trial Chamber therefore erred in law and in fact by failing to convict Mr. Taylor of the crimes listed at paragraph 102 above that it found to have been proven. These crimes were properly pleaded in the Indictment or, in the alternative, if the Indictment was defective, any such defects were cured by timely pre-trial communications. Moreover, Mr. Taylor never suffered any prejudice to his ability to make full answer and defence to these allegations. Consequently, any defects found by the Trial Chamber should have been deemed harmless and convictions entered for the relevant crimes.

<sup>412</sup> T. 11 March 2011 (Defence Closing Arguments) p. 49614.

<sup>413</sup> The Prosecution recalls that the Defence also objected to the pleading of the JCE but this is not in issue in this appeal and therefore has not been detailed here.

### **G. Relief Sought**

184. For these reasons, the Prosecution requests the Appeals Chamber to reverse the findings of the Trial Chamber and find Mr. Taylor individually criminally responsible for aiding and abetting these crimes pursuant to Article 6(1) of the Statute. In respect of killings and pillage in Kono District and physical violence in Kailahun District, the Prosecution seeks additional convictions as argued in Grounds One and Two of this Appeal for ordering and instigating these crimes. Further, Mr. Taylor should also be found criminally responsible for these crimes, with the exception of pillage, as part of a campaign to terrorise the civilian population of Sierra Leone. The Prosecution has set out below the basis under which Mr. Taylor is responsible for these crimes. In light of these additional convictions, the Prosecution requests Mr. Taylor's sentence be increased accordingly.

#### **1) Aiding and abetting sexual and physical violence throughout Kailahun District**

185. The Trial Chamber found that Mr. Taylor was aware of the RUF/AFRC's war strategy, which was characterised by a campaign of crimes against Sierra Leonean civilians, including physical and sexual violence.<sup>414</sup> Subordinates such as Daniel Tamba made numerous trips to Sierra Leone and reported back to Mr. Taylor in Liberia.<sup>415</sup> Despite Mr. Taylor's awareness of the atrocities being perpetrated by the RUF/AFRC, he provided materiel critical to the conflict as well as personnel, operational support, encouragement and moral support.<sup>416</sup> Mr. Taylor should therefore be held responsible for aiding and abetting the physical and sexual violence and outrages on personal dignity in Kailahun District described at paragraph 102 above, which were committed pursuant to this RUF/AFRC war strategy.

<sup>414</sup> Judgement, paras. 6882-6886, 6905, 6947-6953.

<sup>415</sup> See, e.g., Judgement, paras. 2718, 4256, 4965, 5561, 5837, 5948, 6142.

<sup>416</sup> See, e.g., Judgement, paras. 2718, 5744-5745, 6914-6915, 6924, 6936-6937, 6944-6953.



## 2) Aiding and abetting killings in Kono and pillage in Kono, Bombali and Port Loko Districts

186. The Trial Chamber found Mr. Taylor guilty of aiding and abetting the commission of crimes charged in Counts 1 to 11 of the Indictment<sup>417</sup> for, *inter alia*, providing arms and ammunition which were used by the RUF/AFRC fighters during Operation Pay Yourself and subsequent offensives in Kono District in 1998. During these attacks, the RUF/AFRC forces committed crimes against civilians which included pillage in Kono, Bombali and Port Loko Districts and killings in Kono District.<sup>418</sup> The incidents of looting described in paragraph 102 above took place in these three districts, during these campaigns. The killings in Kono District described in paragraph 102 above were committed during the 1998 Kono District offensive. Consequently, Mr. Taylor should be held criminally responsible for these crimes as an aider and abettor.

## 3) Aiding and abetting killings in Kenema District

187. Mr. Taylor was also found to have supplied the ammunition delivered by Daniel Tamba (a.k.a. Jungle) during the Junta period which was kept by Sam Bockarie in Kenema District and used in the commission of crimes there.<sup>419</sup> The September 1997 killings of Pa Vandi Sei and John Dakowah in Panguma, Kenema District described above in paragraph 102 above falls under this finding and, consequently, Mr. Taylor should be held criminally responsible for aiding and abetting these killings.

<sup>417</sup> Judgement, paras. 6953, 6994.

<sup>418</sup> Specifically, Mr. Taylor was found to have sent Ibrahim Bah to meet with Bockarie and JPK to arrange procurement of arms and ammunition. This resulted in the Magburaka shipment of arms and ammunition in late 1997 which was then used in Operation Pay Yourself and the attacks in Kono after the Intervention. See Judgement, paras. 5406, 5408-5409, 5593, 5551, 5552, 5559, 5829, 5834, 5840, 6791, 6905, 6911-6915, 6936-6937, 6947-6953.

<sup>419</sup> Judgement, paras. 4845, 5557-5558, 5560, 5837. Mr. Taylor's provision of arms and ammunition, including the ammunition delivered by Jungle, formed the basis, in part, of his conviction for aiding and abetting. See Judgement, paras. 5842, 6905, 6912, 6914-6915, 6947-6953. See also Judgement, paras. 6879-6883, 6885-6886 finding that Mr. Taylor was aware of the AFRC/RUF's operational strategy and the crimes they committed as part of that strategy, as early as August 1997.

#### 4) Ordering and instigating physical violence in Kailahun District

188. As pleaded in Grounds One and Two of this Appellant's Submission, the Trial Chamber found that Mr. Taylor instructed Sam Bockarie to open a training base in Kailahun District. Bockarie complied with the instruction and it prompted him to open Bunumbu Training Base, commonly known as "Camp Lion".<sup>420</sup> At the time he gave the instruction, Mr. Taylor intended or, at the very least, was fully aware of the substantial likelihood that crimes against civilians would be committed by the RUF/AFRC forces at the Bunumbu Training Base in carrying out his instruction and in keeping with the AFRC/RUF's operational strategy.<sup>421</sup> The beatings and mutilations of the recruits at the base and the attacks against civilians in the area around the base, as described at paragraph 102 above, were a direct consequence of Mr. Taylor's instruction. Therefore, Mr. Taylor should be convicted for ordering and/or instigating these crimes as charged in Counts 7 and 8 of the Indictment.

#### 5) Ordering and instigating killings and pillage in Kono District

189. The killings and looting carried out in Kono District described at paragraph 102 above resulted from the RUF and AFRC complying with Mr. Taylor's imperative to "maintain control" of Kono as pleaded in Grounds One and Two of this appeal.<sup>422</sup> Consequently, Mr. Taylor should be convicted for ordering and instigating these crimes.

### **GROUND FOUR: The Trial Chamber erred in law and/or in fact in sentencing Charles Taylor to a single term of 50 years' imprisonment.**

#### ***A. Overview***

190. The 50-year sentence imposed on Mr. Taylor by the Trial Chamber for "aiding and abetting as well as planning some of the most heinous and brutal crimes recorded in

<sup>420</sup> Judgement, paras. 4105, 4109, 4259, 6943. *See also* the discussion above at paras. 61-62, 65-68 (Ground One) and 90-92, 96-97 (Ground Two) of this Appellant's Submission.

<sup>421</sup> Judgement, paras. 6882-6886.

<sup>422</sup> *See* discussion above at paras. 46-52, 65-68 (Ground One) and 90-92, 94-95 (Ground Two) of this Appellant's Submission. *See also* Judgement, paras. 2863, 3613, 2864, 3611(iii), 6543, 6942.

human history”<sup>423</sup> fails to adequately reflect the totality of his criminal conduct and overall culpability.<sup>424</sup> Mr. Taylor was convicted of planning a military campaign marked by “extreme violence”<sup>425</sup> and of aiding and abetting offences “of the utmost gravity in terms of...scale and brutality”<sup>426</sup> through the provision of “critical” and “indispensable” assistance.<sup>427</sup> Mr. Taylor’s crimes resulted in the loss of countless lives and damage to a country and its people, the effects of which continue to cast a long shadow over Sierra Leone.<sup>428</sup>

191. In sentencing Mr. Taylor to a single term of 50 years,<sup>429</sup> the Trial Chamber erred in law and in fact by committing a discernible error in the exercise of its sentencing discretion. The Trial Chamber was obliged to consider both the inherent gravity of the crimes and the criminal conduct of the accused.<sup>430</sup> However, the Trial Chamber committed a discernible error in its assessment of the latter by failing to give due weight to Mr. Taylor’s criminal conduct and role in the overall context of the criminal campaign. Mr. Taylor played a uniquely significant role as the central figure amongst those with authority over the RUF, AFRC/RUF alliance,<sup>431</sup> and a more critical, enduring role in causing the suffering of more victims than any other person convicted before the Special Court. The sentence imposed by the Trial Chamber fails to reflect the reality that Mr. Taylor was the constant, indispensable and critical presence that enabled the RUF, AFRC/RUF alliance to continue its campaign of atrocities against the civilian population of Sierra Leone throughout the Indictment period.<sup>432</sup> While others in positions of authority came and went

<sup>423</sup> Sentencing Judgement, para. 70.

<sup>424</sup> Sentencing Judgement, para. 9; *Fofana & Kondewa* Appeal Judgment, para. 546; *Sesay et al.* Appeal Judgment, para. 1229; *Brima et al.* Appeal Judgment, para. 322.

<sup>425</sup> Judgement, para. 6967.

<sup>426</sup> Sentencing Judgement, para. 70.

<sup>427</sup> Judgement, paras. 5842, 6914.

<sup>428</sup> See, e.g., Sentencing Judgement, paras. 71, 74, 75.

<sup>429</sup> Sentencing Judgement, p. 40 (Disposition).

<sup>430</sup> Sentencing Judgement, paras. 9, 19-20; *Fofana & Kondewa* Appeal Judgment, para. 546; *Sesay et al.* Appeal Judgment, para. 1229; *Brima et al.* Appeal Judgment, para. 322.

<sup>431</sup> Judgement, para. 6973. See also Judgement, paras. 6768, 6775, 6945.

<sup>432</sup> Judgement, paras. 5842, 6914; Sentencing Judgement, paras. 78, 97.

- within these groups,<sup>433</sup> Mr. Taylor remained at the heart of the alliance as the heinous crimes continued.
192. By erroneously considering Mr. Taylor's conviction for planning Operation No Living Thing as "limited in scope", the Trial Chamber failed to give due weight to the centrality and extent of Mr. Taylor's criminal involvement in this operation, the bloodiest chapter of the conflict in Sierra Leone.<sup>434</sup> In its consideration of this form or mode of liability, the Trial Chamber also erred by failing to give it the significance that should have been afforded a conviction for planning.
193. Further, the Trial Chamber committed a discernible error by giving insufficient weight to the inherent gravity of Mr. Taylor's total conduct in relation to the extensive findings on his role in aiding and abetting the crimes. The Trial Chamber erred by discounting the sentence based solely on the form of liability, by considering that any conviction based on aiding and abetting automatically deserves a lower sentence than convictions under joint criminal enterprise (JCE) or superior responsibility.
194. These errors in the exercise of the Trial Chamber's discretion led to a sentence which does not reflect the Trial Chamber's own findings regarding the inherent gravity of Mr. Taylor's criminal conduct; a sentence which is not individualised, is not proportionate to his criminal conduct, and is not reflective of his unique, "critical"<sup>435</sup> and "indispensable"<sup>436</sup> role in the campaign of atrocities against the people of Sierra Leone.<sup>437</sup>

<sup>433</sup> See Judgement, paras. 6750, 6753-54, 6758, 6765. See also Judgement, paras. 6475-6477, 6480, 6608, 3486, 6764, 6766.

<sup>434</sup> Judgement, paras. 3130, 3611(vii), 3615, 6967; the Trial Chamber's findings on the planning conviction are consolidated at para. 6994(b) (Disposition); Sentencing Judgement, paras 70, 71, 73.

<sup>435</sup> Judgement, paras. 5842, 6914.

<sup>436</sup> Judgement, paras. 5842, 6914.

<sup>437</sup> See Sentencing Judgement, paras. 9, 19, 20; *Fofana & Kondewa* Appeal Judgment, para. 546; *Sesay et al.* Appeal Judgment, paras. 1229, 1317; *Brima et al.* Appeal Judgment, para. 322.

195. The Prosecution requests the Appeals Chamber to reverse the decision of the Trial Chamber and revise Mr. Taylor's sentence upwards to eighty (80) years in order to properly and accurately reflect the totality of his criminal conduct.<sup>438</sup>

***B. Standard of Appellate Review***

196. Appeals against sentence, as appeals from a judgement of a Trial Chamber, are appeals *stricto sensu*. They are not trials *de novo*.<sup>439</sup> While Trial Chambers are vested with broad discretion in determining an appropriate sentence,<sup>440</sup> the Appeals Chamber will revise a sentence where it is demonstrated that the Trial Chamber committed a 'discernible error' in exercising its discretion or failed to follow the applicable law.<sup>441</sup>
197. A discernible error in the sentence imposed exists where it is established that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or where the Trial Chamber's decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly.<sup>442</sup>

<sup>438</sup> Any increase in sentence arising from the successful appeal of any other ground of appeal will relate to the remedy to be granted in respect of that ground of appeal, and is separate and distinct from this ground of appeal against the sentence imposed at trial based on individual criminal responsibility for planning and aiding and abetting.

<sup>439</sup> *Fofana & Kondewa* Appeal Judgment, para. 466; *Sesay et al.* Appeal Judgment, para. 1202.

<sup>440</sup> *Sesay et al.* Appeal Judgment, para. 1202; *Fofana & Kondewa* Appeal Judgment, para. 466; *Kanyarukiga v. Prosecutor*, ICTR-02-78-A, Judgment, 8 May 2012, (*Kanyarukiga* Appeal Judgment), para. 270; *Hategekimana* Appeal Judgment, para. 288; *Ntabakuze* Appeal Judgment, para. 264.

<sup>441</sup> *Sesay et al.* Appeal Judgment, para. 1202; *Brima et al.* Appeal Judgment, para. 309; *Fofana & Kondewa* Appeal Judgment, para. 466; *Kanyarukiga* Appeal Judgment, para. 270; *Hategekimana* Appeal Judgment, para. 288; *Ntabakuze* Appeal Judgment, para. 264. Note also the ECCC's Supreme Court Chamber's recent statement that "[w]hile trial chambers enjoy an ample margin of appreciation when it comes to sentencing, an appeals chamber is under a duty to substitute a new penalty where... 'the one given by the Trial Chamber simply cannot be reconciled with the principles governing sentencing,' duly considering the gravity of the crimes and particular circumstances of the case", ECCC Supreme Court Chamber, *KAING Guek Eav alias Duch*, 001/18-07-2007/ECCC/SC, Appeal Judgment, 3 February 2012, (*Duch* Appeal Judgment), para. 379 (footnote omitted) citing *Gacumbitsi* Appeal Judgment, para. 205.

<sup>442</sup> *Fofana & Kondewa* Appeal Judgment, para. 467; *Brima et al.* Appeal Judgment, para. 309; *Sesay et al.* Appeal Judgment, para. 1203. See also *Prosecutor v. Milan Babić*, IT-03-72-A, Judgment on Sentencing Appeal, 18 July 2005, para. 44; *Semanza* Appeal Judgment, paras. 312, 374; *Galić* Appeal Judgment, para. 455.

**C. *The Trial Chamber erred by failing to properly assess the totality of Mr. Taylor's criminal conduct***

198. The Trial Chamber improperly applied the test for establishing gravity, the “litmus test” or “primary consideration” in the imposition of sentence.<sup>443</sup> As the Trial Chamber recognised, this test includes assessment of *both* the inherent gravity of the crimes themselves and of the criminal conduct of the accused.<sup>444</sup> Specifically, the Trial Chamber failed to properly assess the second limb of that test.
199. The Trial Chamber correctly noted various factors recognised in the jurisprudence as requiring consideration in relation to the second limb of the test, including Mr. Taylor's role in the commission of the crimes and the degree of his participation in the crimes. The Trial Chamber also properly noted that the form of Mr. Taylor's liability is another recognised factor to consider.<sup>445</sup> However, as the sentence imposed must always be individualised,<sup>446</sup> proportionate, and reflective of the inherent gravity of the totality of the accused's criminal conduct,<sup>447</sup> there must not be undue focus on the form of liability.
200. Despite correctly outlining the proper sentencing considerations, the Trial Chamber failed to give sufficient weight to those most relevant to fashioning a sentence that was individualised, proportionate and reflective of the totality of Mr. Taylor's criminal conduct. The Trial Chamber failed to give sufficient weight to its own findings of Mr. Taylor's continuing critical role in the broader, ongoing campaign of atrocities against the people of Sierra Leone. This discernible error requires an upward revision of the sentence imposed.

**1) *The Trial Chamber's findings demonstrate the key significance and centrality of Mr. Taylor's role in the campaign of atrocities***

<sup>443</sup> *Brima et al.* Sentencing Judgement, para. 19; *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T-796, Judgement on the Sentencing of Moinina Fofana and Allieu Kondewa, 9 October 2007 (*Fofana & Kondewa* Sentencing Judgement), para. 33; *Sesay et al.* Sentencing Judgement, para. 19.

<sup>444</sup> Sentencing Judgement, para. 19.

<sup>445</sup> Sentencing Judgement, paras. 9, 19, 21.

<sup>446</sup> Sentencing Judgement, para. 9. *See also Fofana & Kondewa* Sentencing Judgement, para. 31.

<sup>447</sup> Sentencing Judgement, para. 9 (footnotes omitted), *Prosecutor v. Furundžija*, IT-95-17/1-A, Judgement (AC), 21 July 2000, para. 249.

201. The litany of findings contained in the Judgement establish the significance and extent of the sustained and continuous operational support provided by Mr. Taylor to the AFRC/RUF.<sup>448</sup> The significance of Mr. Taylor's support and his critical role is underlined by the Trial Chamber's findings that: i) the arms and ammunition supplied or facilitated by Mr. Taylor were "*indispensable* for the RUF/AFRC military offensives" and "*critical* in enabling the operational strategy [based on terror] of the RUF and AFRC during the indictment period";<sup>449</sup> ii) the AFRC/RUF "*heavily and frequently* relied on the materiel supplied and facilitated by" Mr. Taylor,<sup>450</sup> and iii) the "RUF, AFRC, AFRC/RUF Junta or alliance, and Liberian fighters" used materiel provided by Mr. Taylor in criminal operations throughout the Indictment period.<sup>451</sup>
202. The most striking examples of the unprecedented support which Mr. Taylor provided the AFRC/RUF are the Magburaka weapons shipment of late 1997 and the Burkina Faso weapons shipment of late 1998. The "very large" Magburaka shipment, comprising arms and ammunition, was delivered to the internationally ostracised and weapons-starved AFRC/RUF Junta between September and December 1997.<sup>452</sup> The Trial Chamber found that this shipment was the beginning of the materiel provided or facilitated by Mr. Taylor which "was critical in enabling the RUF and the AFRC to carry out offensives and maintain territories until the end of the Indictment period."<sup>453</sup> Weapons from the Magburaka shipment were used by the AFRC/RUF in Junta mining operations at Tongo Fields prior to the

<sup>448</sup> Judgement, paras. 4958, 4964-4965, 5409, 5561, 5835(v), 5835(xxv), 5837.

<sup>449</sup> Judgement, paras. 6914, 5842 (emphasis added).

<sup>450</sup> Judgement, paras. 6914, 5812 (emphasis added).

<sup>451</sup> Judgement, para. 6911. These military offensives included the Junta operations at Tongo Fields prior to the ECOMOG Intervention, Operation Pay Yourself and subsequent offensives in Kono District in 1998, the Freetown invasion in January 1999, the attacks on the outskirts of Freetown and the Western Area in late January to early February 1999, the attacks on Mongor Bendugu and Kabala shortly after operation Fitti-Fatta in mid-1998, and the activities of the AFRC group led by Brima Koinadugu and Bombali Districts from June to October 1998. All these operations involved widespread or systematic attacks on the civilian population and the commission of all of the crimes in the Indictment.

<sup>452</sup> The Trial Chamber found that the Magburaka arms shipment was negotiated by Ibrahim Bah, on behalf of Taylor, with Sam Bockarie and JPK. Koroma and Bockarie paid Bah \$90,000 plus 90 carats of diamonds for the shipment. Members of the AFRC and the RUF were present at Magburaka to take delivery of the shipment. See Judgement, paras. 5388, 5389, 5394, 5396, 5399, 5401, 5406, 5408, 5409, 5835(xxii), 5835(xxiv), 5835(xxv), 5840, 6519.

<sup>453</sup> Judgement, para. 5834. See also Judgement, para. 5835(xl).

- Intervention,<sup>454</sup> in fighting in Freetown in February 1998,<sup>455</sup> in Operation Pay Yourself, and in offensives in Kono following the Intervention.<sup>456</sup>
203. The Burkina Faso shipment, which Mr. Taylor was “instrumental” in procuring,<sup>457</sup> contained arms and ammunitions “unprecedented in volume”,<sup>458</sup> and arrived at a time when the RUF and AFRC were short of materiel.<sup>459</sup> It was flown into Liberia and transported by trucks provided by Mr. Taylor to RUF and AFRC commanders in Buedu.<sup>460</sup> The materiel was used in attacks in Kono, Kenema, Makeni,<sup>461</sup> Freetown and the Western Area,<sup>462</sup> and was referred to by the Trial Chamber as “critical to the December 1998 and January 1999 offensives”.<sup>463</sup>
204. The Trial Chamber found that the Magburaka and Burkina Faso shipments were two of the three main sources of the AFRC/RUF’s arms and ammunition during the Indictment period.<sup>464</sup> Alternative sources of materiel paled in comparison to that made available to the rebels by Mr. Taylor.<sup>465</sup>
205. The Trial Chamber also found that Mr. Taylor provided,<sup>466</sup> funded<sup>467</sup> and facilitated the transportation of other materiel;<sup>468</sup> sent personnel;<sup>469</sup> provided radio operators and equipment such as satellite phones;<sup>470</sup> sent “herbalists” to bolster the confidence

---

<sup>454</sup> Judgement, paras. 5549, 5559, 5835(xxvii), 5840.

<sup>455</sup> Judgement, paras. 5550, 5559, 5835(xxvii), 5840.

<sup>456</sup> Judgement, paras. 5559, 5835(xxvii), 5840.

<sup>457</sup> Judgement, para. 5527.

<sup>458</sup> Judgement, paras. 5525, 5527.

<sup>459</sup> Judgement, para. 5702.

<sup>460</sup> Judgement, paras. 5515, 5527.

<sup>461</sup> Judgement, para. 5719.

<sup>462</sup> Judgement, paras. 5720-5721.

<sup>463</sup> Judgement, para. 5841.

<sup>464</sup> Judgement, para. 5809.

<sup>465</sup> Judgement, paras. 5833, 5835 (xxxix)

<sup>466</sup> Judgement, paras. 4844-4845, 4958, 4964-4965, 5026, 5029-5031, 5318-5319, 5560-5561, 5829, 5835(iii), 5835(v-vi), 5835(ix), 5835(xxviii), 5837, 6519.

<sup>467</sup> Judgement, paras. 3937, 4023(iii), 5330, 5835(xx).

<sup>468</sup> Judgement, paras. 3915-3916, 3918, 4248(xvi), 4256, 4262, 5318.

<sup>469</sup> Judgement, paras. 4452, 4491, 4618(i), 4618(iii), 4619.

<sup>470</sup> Judgement, paras. 3658-3659, 3663-3666, 3722, 3726-3727, 3729-3730, 4194, 4238-4239, 4248(iii-iv), 4248(xi), 4252, 4261-4262.



of fighters,<sup>471</sup> and provided goods such as food, clothing, cigarettes and alcohol to the RUF and AFRC.<sup>472</sup>

206. Set against this background, the Trial Chamber determined that the support provided by Mr. Taylor, specifically the arms and ammunition, “extended the duration of the ... conflict, and the commission of crimes it entailed”.<sup>473</sup> The Trial Chamber expressly held that “[h]ad the RUF/AFRC not had this support from Mr. Taylor, the conflict and the commission of crimes might have ended much earlier,”<sup>474</sup> and “[t]he lives of many more innocent civilians in Sierra Leone were lost or destroyed as a direct result of [Mr. Taylor’s] actions.”<sup>475</sup> Thus, Mr. Taylor’s assistance “*supported, sustained and enhanced* the functioning of the RUF and its capacity to undertake military operations in the course of which crimes were committed”.<sup>476</sup>

207. The Trial Chamber’s findings further establish Mr. Taylor’s key role in the planning and implementation of the bloodiest chapter of the ongoing campaign of atrocities carried out by the RUF, AFRC/RUF, an operation that commenced in December 1998 in Kono, moved through Makeni and to Freetown until some time in February 1999.<sup>477</sup>

**2) The Trial Chamber failed to impose a sentence which adequately reflects the centrality and vital significance of Mr. Taylor’s role in the campaign of atrocities**

208. The Trial Chamber’s findings place Mr. Taylor at the centre of the campaign of atrocities carried out by the RUF, AFRC/RUF alliance. More than any other accused who has appeared before the Special Court, Mr. Taylor’s individual contributions to the overall criminal campaign were essential and he was irreplaceable. In contrast, others were not indispensable in the way Mr. Taylor was.

<sup>471</sup> Judgement, paras. 2496, 4094, 4248(xxxii), 4258.

<sup>472</sup> Judgement, para. 4258.

<sup>473</sup> Sentencing Judgement, para. 76.

<sup>474</sup> Sentencing Judgement, para. 76.

<sup>475</sup> Sentencing Judgement, para. 97.

<sup>476</sup> Judgement, para. 6936 (emphasis added).

<sup>477</sup> See paras. 214-224 in this Appellant’s Submission.

While other leaders played their key roles and left the arena, Mr. Taylor remained. The record shows that when Foday Sankoh was arrested and replaced by Sam Bockarie, when Bockarie was replaced by Issa Sesay, and when SAJ Musa was replaced by Alex Tamba Brima, the criminal campaign continued. Mr. Taylor, however, played a constant and essential role throughout the criminal campaign.

209. Mr. Taylor's role in the offences was unique. The RUF, AFRC/RUF depended on him for their ability to continue the campaign of atrocities against the civilian population of Sierra Leone. He was the main supplier of arms and ammunition to the RUF and AFRC/RUF alliance, and his provision of this materiel was critical to the ability of the RUF, AFRC/RUF to carry out its campaign of atrocities in Sierra Leone.<sup>478</sup>
210. The failure to properly assess the significance of Mr. Taylor's role is contrary to the jurisprudence of the international tribunals. That jurisprudence indicates that those who were the most senior leaders, who had more significant roles in the overall campaign of atrocities or the conflict, should receive higher sentences than those who, while closer to the physical perpetration of the crimes, played a comparatively lesser role in the broader campaign, subject always to the overriding consideration that the gravity of the offence is the primary consideration.<sup>479</sup> As the ICTR Appeals Chamber made clear in the *Musema* case, this principle applies equally to those who may not have held a high position of *formal* command but were nonetheless perceived to be an authority figure or someone who wields considerable power in the region, or was an influential person of considerable importance.<sup>480</sup>
211. The Trial Chamber's findings unambiguously show Mr. Taylor to be such a person, since he played the central and continuing role in the campaign of atrocities in Sierra Leone. Of all those who bore greatest responsibility for the crimes committed

<sup>478</sup> Judgement, para. 5834. See also Judgement, paras. 5830-5831, 5835(xl), 5841-5842.

<sup>479</sup> See *Musema v. The Prosecutor*, ICTR-96-13-A, Judgement (AC), 16 November 2001 (*Musema* Appeal Judgement), para. 384 and *Prosecutor v. Duško Tadić*, IT-94-1-A & IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000, para. 55 which both consider the relative significance of the accused's role in the broader context of, in those cases, the conflict.

<sup>480</sup> *Musema* Appeal Judgement, para. 384.

by the RUF, AFRC/RUF alliance and Liberian fighters, Issa Sesay, Alex Tamba Brima and Ibrahim Bazzy Kamara did not play as unique and critical a role in the overall campaign of atrocities as Mr. Taylor. Justice is manifestly not served if Mr. Taylor, whose role was indispensable and central to the commission of the crimes in Sierra Leone, is given the same or lesser sentence than these other Accused.

212. The Trial Chamber's failure resulted in a sentence that did not achieve "the primary goal in sentencing [which] is to ensure that the final or aggregate sentence reflects the *totality* of the criminal conduct and overall culpability of the offender."<sup>481</sup> A sentence of 80 years, however, would achieve that goal. Mr. Taylor, after all, was the man whose role the Trial Chamber characterised as "critical" and "indispensable",<sup>482</sup> who "prolonged the conflict" in Sierra Leone, whose actions meant that "[t]he lives of many more innocent civilians in Sierra Leone were lost or destroyed as a direct result of his actions",<sup>483</sup> and who single-handedly "caused and prolonged the harm and suffering inflicted on the people of Sierra Leone".<sup>484</sup>

***D. The Trial Chamber erred by failing to give sufficient weight to Mr. Taylor's conviction for planning the bloodiest chapter of the long standing campaign of atrocities against the people of Sierra Leone***

213. The Trial Chamber committed a discernible error in the exercise of its sentencing discretion by assessing Mr. Taylor's planning conviction as "limited in scope" and consequently giving insufficient weight to the conduct constituting his conviction pursuant to Article 6(1) of the Statute for planning the commission of the crimes set forth in Counts 1 to 11 of the Indictment that resulted from this plan.<sup>485</sup>
214. First, this assessment is not supported by the Trial Chamber's own factual findings, which establish Mr. Taylor's critical role in the creation and execution of the "Bockarie/Taylor plan"<sup>486</sup> and the gravity of the crimes that resulted from it. Second, the Trial Chamber's assessment of the significance of this form of liability

<sup>481</sup> *Ntabakuze Appeal Judgement*, para. 267 (emphasis added). *See also* *Sentencing Judgement*, para. 9.

<sup>482</sup> *Judgement*, paras. 5842, 6914.

<sup>483</sup> *Sentencing Judgement*, para. 97.

<sup>484</sup> *Sentencing Judgement*, para. 98.

<sup>485</sup> *Sentencing Judgement*, paras. 94, 101.

<sup>486</sup> *Judgement*, paras. 3606, 3109, 3111, 3112, 3129, 3611 (vi), 3611(xiv), 3615, 3618.

is not supported by established jurisprudence which indicates that, when considering the form of the conduct, more severe sentences should be given to architects and planners.<sup>487</sup>

215. The only lens through which Mr. Taylor's planning conviction might be considered "limited in scope"<sup>488</sup> is a temporal one,<sup>489</sup> as the time period of the crime base covered by this conviction was three months out of an Indictment period of over five years.<sup>490</sup> However, applying the "litmus test" of gravity to the Trial Chamber's extensive factual findings concerning the scale and ferocity of the crimes committed during this period which directly resulted from the plan, it is clear that three months cannot reasonably be considered "limited".<sup>491</sup> The Trial Chamber's own findings attest that the planning conviction was far from "limited".
216. Indeed, the Judgement contains a series of findings making clear the gravity of both the resulting crimes and Mr. Taylor's conduct in planning the two-pronged military terror operation encompassing Kono, Makeni and Freetown and the implementation of that plan.
217. First, in relation to the genesis of the plan, the Trial Chamber found that in late 1998, a delegation headed by Sam Bockarie returned to Buedu from Burkina Faso and Monrovia with a plan Bockarie had jointly designed with Mr. Taylor and a weapons shipment facilitated by Mr. Taylor which was "unprecedented in volume" and made the offensive possible.<sup>492</sup> The "Bockarie/Taylor plan" was presented by

<sup>487</sup> *Musema Appeal Judgement*, para. 383; *Ndindabahizi Trial Judgement*, para. 500.

<sup>488</sup> *Sentencing Judgement*, paras. 94, 101.

<sup>489</sup> The Prosecution notes that nowhere in the *Sentencing Judgement* does the Trial Chamber specifically explain the basis for its conclusion that the planning conviction was "limited".

<sup>490</sup> For example, the crimes in Srebrenica are not considered "limited in scope" even though they took place in one municipality, over approximately 10 days, in a war that lasted almost four years. *See, e.g., Krstić Trial Judgement*, paras. 2, 546, 720.

<sup>491</sup> For example, the ICTY Trial Chamber in *Hadžihasanović and Kubura* considered a period of three and a half months as "prolonged" and as an aggravating factor. *See Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, Judgement (TC), 15 March 2006, para. 2082 ("the cruel treatment at the Zenica Music School took place over approximately a seven-month period, and ... the cruel treatment in the other detention centres created in Bugojno was inflicted over a period of about three and a half months. ... [T]he prolonged period over which these crimes were committed warrants a more severe sentence").

<sup>492</sup> *Judgement*, paras. 3089, 3109, 3111, 3112, 3129, 3611(vi), 3615, 5507, 5524, 5525, 5561, 5702, 5835(xxvi), 5841.

Bockarie to RUF and AFRC commanders at the Waterworks meeting held near Buedu.<sup>493</sup> Bockarie later briefed Mr. Taylor about this meeting by satellite phone.<sup>494</sup> The Trial Chamber found that the “Bockarie/Taylor plan” comprised a two-pronged attack, with one flank attacking Kono and then Makeni and the other flank attacking Kenema.<sup>495</sup> Both flanks would ultimately advance and “capture Freetown”.<sup>496</sup> In planning these attacks, Mr. Taylor emphasised that Kono should be captured first due to its diamond wealth.<sup>497</sup> Mr. Taylor also ensured that terror would be used to achieve the plan as he instructed Bockarie to make the operation “fearful” and to use “all means” to capture Freetown.<sup>498</sup> Bockarie followed this instruction, naming the operation “Operation No Living Thing” which implied that anything that stood in their way should be eliminated.<sup>499</sup>

218. Second, the Trial Chamber found that Mr. Taylor’s involvement in the plan extended into its execution phase. While the Trial Chamber concluded that there was insufficient evidence to establish that Mr. Taylor directed or had control over the Kono and Freetown operations in December 1998 and January 1999,<sup>500</sup> it did find that Mr. Taylor gave advice to Bockarie and received updates on the implementation of the “Bockarie/Taylor plan”.<sup>501</sup> Bockarie was in frequent, even daily, contact via radio or satellite phone with Mr. Taylor, either directly or through Yeaten,<sup>502</sup> in relation to the progress of the Kono and Freetown operations, and to request ammunition.<sup>503</sup> Between December 1998 and January 1999, Bockarie and

---

<sup>493</sup> Judgement, paras. 3091, 3099.

<sup>494</sup> Judgement, paras. 3112, 3615.

<sup>495</sup> Judgement, paras. 3092, 3129.

<sup>496</sup> Judgement, paras. 3099, 3127, 3615, 6958.

<sup>497</sup> Judgement, paras. 3112, 3129.

<sup>498</sup> Judgement, paras. 6969, 3130. *See also* Judgement, paras. 3117, 3127, 3449, 3611(vii), 3615.

<sup>499</sup> Judgement, paras. 3130, 3611(vii), 3615.

<sup>500</sup> Judgement, para. 3605.

<sup>501</sup> Judgement, paras. 3606, 3611(xiv), 3618.

<sup>502</sup> The Trial Chamber identified Yeaten as Mr. Taylor’s subordinate. *See* Judgement, para. 5126.

<sup>503</sup> Judgement, paras. 3128, 3564, 3605, 3606, 3611(xiv), 3729, 3871, 4248(iii), 4252, 5126; Sentencing Judgement, para. 77.

Yeaten met at least twice, with Yeaten travelling to Sierra Leone.<sup>504</sup> Bockarie frequently consulted with Yeaten or Mr. Taylor on operational decisions.<sup>505</sup>

219. Third, the crimes set forth in all eleven Counts of the Indictment were included within the planning conviction.<sup>506</sup> These crimes extended geographically across Sierra Leone, from Kono in the East to Freetown in the West.<sup>507</sup> Specifically, the Trial Chamber found that Mr. Taylor was criminally responsible for planning the infliction of terror on the civilian population of Kono, Makeni and Freetown from December 1998 until February 1999 which included the burning of civilian homes, the unlawful killing of civilians, the subjection of women and girls to various forms of extreme sexual violence, the commission of cruel treatment and other inhumane acts against civilians, the conscription and use of children in military operations, the abduction and enslavement of civilians, and the looting of civilian property.<sup>508</sup>
220. Fourth, the Trial Chamber's findings on the horrific nature of the crimes ultimately committed as a result of the "Bockarie/Taylor plan"<sup>509</sup> also belie the conclusion that Mr. Taylor's planning conviction could ever be considered "limited". The crimes were of an intense ferocity and ensued directly from the plan Mr. Taylor jointly designed.<sup>510</sup> In considering the gravity of the crimes planned by Mr. Taylor, the Trial Chamber noted "the tremendous suffering caused" and "the tremendous loss of life" which resulted.<sup>511</sup> The Trial Chamber also noted that the effects of Mr. Taylor's criminal conduct on victims, their families and on Sierra Leonean society as a whole were "devastating" and "their suffering will be life-long".<sup>512</sup> The Trial Chamber further observed that the "scale and brutality of the crimes" was writ large on the names given to the military campaigns during which crimes were committed

<sup>504</sup> Judgement, paras. 3572, 3606, 3618.

<sup>505</sup> Judgement, paras. 3596, 3605. *See also* Judgement, paras. 3609, 3611(xvii), 3618.

<sup>506</sup> Judgement, para. 6994(b) (Disposition).

<sup>507</sup> Judgement, para. 6994(b) (Disposition).

<sup>508</sup> Judgement, para. 6994(b) (Disposition).

<sup>509</sup> Judgement, paras. 3617, 6962.

<sup>510</sup> Judgement, para. 6962.

<sup>511</sup> Sentencing Judgement, para. 71.

<sup>512</sup> Sentencing Judgement, para. 71. *See also* Sentencing Judgement, para. 74.

– “Operation Spare No Soul” and “Operation No Living Thing”.<sup>513</sup> In addition, the Trial Chamber found the crimes against vulnerable groups “[p]articularly reprehensible”.<sup>514</sup>

221. In fact, the crimes committed as part of the late 1998/early 1999 offensive fall squarely within the period during which the Trial Chamber found the bulk of the AFRC/RUF’s horrendous crimes were committed.<sup>515</sup> In this context, Mr. Taylor’s role in designing the plan and resultant crimes cannot reasonably be described as “limited in scope”.
222. The degree and centrality of Mr. Taylor’s involvement in planning the late 1998/early 1999 country-wide offensive, and the sheer gravity and extent of the crimes which resulted, combined with the absence of any significant mitigating circumstances,<sup>516</sup> demonstrate that the Trial Chamber erred in describing the planning conviction as “limited in scope”<sup>517</sup> and, thus, failed to give adequate weight to the planning conviction. This failure gives rise to a discernible error which warrants the Appeals Chamber’s revision.
223. Insofar as the Trial Chamber was required to consider the form of liability, it contradicted established jurisprudence that those who plan should generally receive a greater sentence than those who implement the plan.<sup>518</sup> The error is demonstrated by comparing the sentences imposed on one of the architects of this plan, Mr. Taylor, with Alex Tamba Brima, who implemented the plan in Freetown and its environs. Mr. Taylor, the mastermind who safely reaped the benefits at a distance, received the same sentence as imposed on Alex Tamba Brima,<sup>519</sup> one of the

<sup>513</sup> Sentencing Judgement, para. 73.

<sup>514</sup> Sentencing Judgement, para. 75.

<sup>515</sup> Sentencing Judgement, para. 78.

<sup>516</sup> Sentencing Judgement, paras. 88, 90-93, 99.

<sup>517</sup> Sentencing Judgement, paras. 94, 101.

<sup>518</sup> *Musema Appeal Judgement*, para. 383; *Ndindabahizi Trial Judgement*, para. 500; *Ndindiliyimana Trial Judgement*, para. 2174; *Kanyarukiga Appeal Judgement*, para. 280; *Ntabakuze Appeal Judgement*, para. 303. See also *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, ICTR-96-10-T & ICTR-96-17-T, Judgement and Sentence, 21 February 2003, (*Ntakirutimana Trial Judgement*), para. 773; *Duch Appeal Judgement*, paras. 375, 377; *Blaškić Trial Judgement*, para. 789; *Prosecutor v. Krnojelac*, IT-97-25-T, Judgment (TC), 15 March 2002, para. 77.

<sup>519</sup> *Brima et al. Sentencing Judgement*, p. 36.

principle perpetrators of the crimes committed in the implementation of Mr. Taylor's plan.<sup>520</sup>

***E. The Trial Chamber erred by giving undue and erroneous consideration to aiding and abetting as a form of liability rather than properly considering the gravity of Mr. Taylor's actual criminal conduct.***

224. The Trial Chamber committed two errors in relation to its assessment of aiding and abetting. First, it placed *undue focus* on aiding and abetting as a *form* of liability and insufficient weight on the significance and degree of Mr. Taylor's actual conduct. Second, the Trial Chamber erred in its assessment of the form of liability itself.
225. While form of conduct is *one* factor to be considered when determining an appropriate sentence, as discussed above, it is a lesser factor compared to the actual criminal conduct of the accused.<sup>521</sup> The Trial Chamber erred by failing to consider the actual criminal conduct behind Mr. Taylor's aiding and abetting conviction and the central and critical role of his conduct in the overall context of the campaign of atrocities against the people of Sierra Leone.<sup>522</sup> A proper assessment of the actual conduct, including the "critical" and "indispensable" role Mr. Taylor played in the commission of the crimes of which he stands convicted,<sup>523</sup> would have resulted in a higher sentence to adequately reflect the proportionality and inherent gravity of that conduct.
226. As to the second error, it is clear the Trial Chamber erred in law by discounting Mr. Taylor's sentence because his conduct fell under the form of liability of aiding and abetting rather than JCE or superior responsibility. The error is encapsulated in paragraph 94 of the Sentencing Judgement where it stated that:

Mr. Taylor was found not guilty of participation in a joint criminal enterprise, and not guilty of superior responsibility for the crimes committed. A conviction on these principal or significant modes of

<sup>520</sup> *Brima et al.* Sentencing Judgement, para. 41. Alex Tamba Brima was sentenced to a global sentence of 50 years for criminal conduct encompassing the districts of Freetown/Western Area and Bombali which conduct consisted primarily of the commission of crimes included within Mr. Taylor's planning conviction, see Judgement, paras. 3485, 3486.

<sup>521</sup> See paras. 199-200 of this Appellant's Submission.

<sup>522</sup> See also Judgement, paras. 5842, 6914.

<sup>523</sup> See also Judgement, paras. 5842, 6914; paras. 202-208 of this Appellant's Submission.



liability might have justified the sentence of 80 years' imprisonment proposed by the Prosecution. However, a sentence of 80 years would be excessive for the modes of liability on which Mr. Taylor has been convicted, taking into account the limited scope of his conviction for planning the attacks on Kono and Makeni in December 1998 and the invasion of and retreat from Freetown between December 1998 and February 1999.

227. Aiding and abetting is not, as implied by the Trial Chamber's statement, a "lesser" form of individual criminal responsibility<sup>524</sup> than other forms of responsibility such as JCE or superior responsibility. The fact that Mr. Taylor was convicted for aiding and abetting does not *in itself* entitle him to a lower sentence.<sup>525</sup> While the Trial Chamber correctly noted "that aiding and abetting as a mode of liability *generally* warrants a lesser sentence than that imposed for more direct forms of participation",<sup>526</sup> it failed to recognise that this is not a statement of principle which entitles automatic discounts to be given based on form of liability alone.<sup>527</sup> While "generally" aiders and abettors play a lesser role in the crimes, the Trial Chamber's factual findings make it clear that this does not apply to the instant case.

228. The Trial Chamber's reliance on the *Muhimana* case as a foundation for the assertion that aiding and abetting generally warrants a lower sentence was misplaced. In *Muhimana*, the ICTR Trial Chamber's statement that "[l]esser or secondary forms of participation generally receive a lower sentence" was based solely on the *Ntakirutimana* case,<sup>528</sup> where Ntakirutimana was convicted of aiding

<sup>524</sup> An implication which is made at paragraphs 21, 36 and 100 of the Sentencing Judgement.

<sup>525</sup> See, e.g., *Ntabakuze* Appeal Judgement, para. 303; *Prosecutor v. Stakić*, IT-97-24-A, Judgement (AC), 22 March 2006 (*Stakić* Appeal Judgement), para. 380 ("the fact that an accused is found guilty as an 'indirect co-perpetrator' does not in itself entitle him to a lower sentence. [...] Moreover, the Appeals Chamber notes that the role of the 'indirect co-perpetrators' can be very significant, particularly in cases of large scale crimes which could not be committed without the help of the indirect co-perpetrators in such ways as planning, instigating, co-ordinating or organising"). In *Fofana and Kondewa*, Trial Chamber I's findings regarding the relevance of the *dicta* given by the ICTY Appeals Chamber in *Stakić* are incorrect, see *Fofana & Kondewa* Sentencing Judgement, fn. 89. The ICTY Appeals Chamber's statements at the beginning of paragraph 380 cannot be dismissed as being case specific. The first three sentences of this paragraph were clearly statements of broad principle and set the legal context *into which* the facts of the case were placed.

<sup>526</sup> Sentencing Judgement, paras. 21, 36, 100 (emphasis added).

<sup>527</sup> *Stakić* Appeal Judgement, para. 380.

<sup>528</sup> Sentencing Judgement, fns. 38, 82; *The Prosecutor v. Muhimana*, ICTR-95-1B-T, Judgement and Sentence, 28 April 2005, para. 593. Muhimana was convicted of genocide, rape and murder and sentenced

and abetting genocide by conveying armed attackers to the scene of an attack in his vehicle and encouraging the attackers to kill Tutsis.<sup>529</sup> In imposing a ten-year sentence on Ntakirutimana, the ICTR Trial Chamber took into account the Accused's age, health, previous good work as a pastor, and noted that he "did not play a leading role in the attacks".<sup>530</sup> The case consequently serves as an example of a low-level aider and abettor; however, it does not serve as a basis for promulgating a sentencing principle, nor could it by any means be considered a sentencing yardstick in comparison to the situation of Mr. Taylor.

229. Further, the Trial Chamber's reliance on *Vaslijević* was equally misguided.<sup>531</sup> In *Vaslijević*, the Appeals Chamber found that the Accused aided and abetted the persecution and murder of seven men at the Drina River by escorting them to the river and pointing a gun at them to prevent their escape although he himself did not fire his gun.<sup>532</sup> *Vaslijević*'s role was typical of that of an aider and abettor whose conviction demonstrates why those convicted under this form of responsibility "generally" receive a lesser sentence. In contrast, Mr. Taylor was the leader of the NPFL and then the head of state in Liberia who stands convicted of facilitating thousands of crimes over a five-year period. Mr. Taylor's conviction demonstrates why it is not appropriate to mechanically apply this general approach to aiding and abetting without considering the individual facts concerning the accused person's conduct and overall role in the crimes.
230. Further, the ICTY Appeals Chamber's approach to aiding and abetting in *Vaslijević* was based on the approach taken to accessory liability in selected domestic jurisdictions.<sup>533</sup> However, if any domestic jurisdiction is of relevance in the instant

---

to three life sentences. See also *Muhimana v. The Prosecutor*, ICTR-95-1B-A, Judgement, 21 May 2007, p. 82.

<sup>529</sup> *Ntakirutimana* Trial Judgement, paras. 678, 718.

<sup>530</sup> *Ntakirutimana* Trial Judgement, paras. 782, 784-785.

<sup>531</sup> Sentencing Judgement, fn. 38, 82.

<sup>532</sup> See *Prosecutor v. Vasiljević*, IT-98-32-A, Judgement (AC), 25 February 2004, (*Vasiljević* Appeal Judgement), paras. 1, 2, 57, 131, 132, 134, 135, 181-182, p. 60.

<sup>533</sup> *Vasiljević* Appeal Judgement, para. 182 and fn. 291.

case it is that of Sierra Leone where “the law ... provides for the sentencing of an accessory to a crime on the same basis as a principal.”<sup>534</sup>

231. The Trial Chamber’s error in discounting Mr. Taylor’s sentence because he was not convicted under JCE or superior responsibility is obvious when the elements of those forms of responsibility are compared with the elements of aiding and abetting and the Trial Chamber’s actual findings regarding Mr. Taylor’s conduct and contributions to the crimes. Superior responsibility is a form of liability based on omission.<sup>535</sup> It requires no act or contribution to the crime but rather a failure to take necessary and reasonable measures to prevent or punish subordinates for crimes.<sup>536</sup> Further, it is not necessary to show that an accused had any intent that the crime at issue be committed. Rather, all that must be shown is that s/he “knew or had reason to know that the subordinate was about to commit [the crime] or had done so.”<sup>537</sup>
232. The *actus reus* for JCE requires a lower level of contribution to the crimes than that required for aiding and abetting. An accused’s contribution to a JCE need not be “substantial” but merely “significant”.<sup>538</sup> By comparison, aiding and abetting requires that an accused’s act or omission have a “substantial” effect upon the perpetration of the crimes.<sup>539</sup> Further, while the acts of the aider and abettor must “assist, encourage, or lend moral support to the perpetration of a certain specific crime,”<sup>540</sup> a participant in a JCE need only perform acts that are in some way directed towards furthering the common design.<sup>541</sup>

<sup>534</sup> Sentencing Judgement, paras. 37, 100.

<sup>535</sup> *Fofana & Kondewa* Trial Judgement, para. 234; *Brima et al.* Trial Judgement, para. 783.

<sup>536</sup> See, e.g., *Fofana & Kondewa* Trial Judgement, para. 234; *Brima et al.* Trial Judgement, para. 783.

<sup>537</sup> Statute, Article 6(3). See also, e.g., *Brima et al.* Trial Judgement, para. 781.

<sup>538</sup> See, e.g., *Sesay et al.* Trial Judgement, para. 261 (“the Prosecution need not demonstrate that the Accused’s participation is necessary or substantial, but the Accused must at least have made a significant contribution to the crimes for which he is held responsible”). This statement expressly acknowledges that there is a difference between “substantial” and “significant”.

<sup>539</sup> *Sesay et al.* Trial Judgement, para. 277; *Fofana & Kondewa* Trial Judgement, para. 229; *Brima et al.* Trial Judgement, para. 775.

<sup>540</sup> *Fofana & Kondewa* Trial Judgement, para. 229; *Brima et al.* Trial Judgement, para. 775; *Sesay et al.* Trial Judgement, para. 277.

<sup>541</sup> *Vasiljević* Appeal Judgement, para. 102(i): “The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial

233. The *mens rea* requirements for JCE may also be no more onerous than those for aiding and abetting. For a crime that falls outside the common purpose of a JCE, the extended form of JCE liability does not require that an accused intend the crime committed. Rather, only the intent to further the criminal purpose of the group and awareness of the foreseeability that members of the JCE may commit the crime and willingly accepting that risk is required.<sup>542</sup> In contrast, the *mens rea* for aiding and abetting requires that the accused knew that his acts would assist the commission of the crime by the perpetrator or was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator.<sup>543</sup>
234. The Trial Chamber also seems to have considered the absence of a conviction under JCE liability or as a superior as a mitigating factor or as somehow warranting a discount in sentence. This is incorrect. As recently stated by the ICTR Appeals Chamber, the absence of a conviction under other forms of liability does not reduce the accused's culpability and is not subject to consideration as a mitigating factor.<sup>544</sup>
- F. Relief Sought**
235. The 50-year sentence imposed in this case was the result of multiple errors in the Trial Chamber's assessment of Mr. Taylor's criminal conduct. The consequence of these errors is a sentence which is neither individualised nor proportionate to Mr. Taylor's conduct, nor reflective of the inherent gravity of the totality of his criminal conduct and overall culpability. These errors resulted in a sentence which fails to "to punish, deter, and consequently stigmatize [Mr. Taylor's] crimes at a level that corresponds to their overall magnitude".<sup>545</sup>
236. The discernible errors in the exercise of the Trial Chamber's discretion resulted in a sentence which fails to satisfy the fundamental consideration that Mr. Taylor's

---

effect upon the perpetration of the crime. By contrast, it is sufficient for a participant in a joint criminal enterprise to perform acts that in some way are directed to the furtherance of the common design."

<sup>542</sup> Judgement, para. 466 (ii); *Sesay et al.* Appeal Judgment, para. 475.

<sup>543</sup> Judgement, para. 486 (i); *Sesay et al.* Appeal Judgment, para. 546; *Brima et al.* Appeal Judgment, paras. 242-243; *Fofana & Kondewa* Appeal Judgment, para. 366.

<sup>544</sup> *Ntabakuze* Appeal Judgment, para. 282. *But see* *Boškoski and Tarčulovski* Trial Judgment, para. 594.

<sup>545</sup> *Ntakirutimana* Trial Judgment, para. 773.

sentence must reflect the totality of his criminal conduct.<sup>546</sup> Therefore, the Prosecution requests that the Appeals Chamber correct the Trial Chamber's errors by revising the sentence upward and sentence Mr. Taylor to 80 years' imprisonment.

### III. CONCLUSION

237. Based on the foregoing, the Prosecution requests the Appeals Chamber to grant its appeal in its entirety.

### IV. RELIEF SOUGHT

238. The Prosecution requests that the Appeals Chamber reverse the Trial Chamber's decisions regarding Ordering, Instigating and Notice of Locations and enter convictions as detailed in Grounds One through Three of this Appellant's Submission. Should the Chamber enter any or all of these additional convictions, the Prosecution requests that Mr. Taylor's sentence be increased accordingly.

239. For Ground Four, the Prosecution seeks an increase from the 50-year sentence imposed on Mr. Taylor by the Trial Chamber to a term of 80 years' imprisonment. The Prosecution seeks this relief regardless of whether the Appeals Chamber grants the Prosecution's other grounds of appeal.

Filed in The Hague, The Netherlands  
1 October 2012



Brenda J. Hollis  
The Prosecutor

<sup>546</sup> Sentencing Judgement, para. 9; *Fofana & Kondewa* Appeal Judgment, para. 546; *Sesay et al.* Appeal Judgment, para. 1229; *Brima et al.* Appeal Judgment, para. 322.

**APPENDIX A**  
**ABBREVIATIONS USED IN PROSECUTION APPELLANT'S SUBMISSIONS**

| Abbreviation             | Full Citation                                                                                                                     |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| AFL                      | Armed Forces of Liberia                                                                                                           |
| AFRC                     | Armed Forces Revolutionary Council (see Judicially Noticed Fact M)                                                                |
| Amended Case Summary     | <i>Prosecutor v. Taylor</i> , SCSL-03-01-T-327, Prosecution Notification of Filing of Amended Case Summary, 3 August 2007         |
| Art.                     | Article                                                                                                                           |
| The Prosecution          | Prosecution Appellant                                                                                                             |
| Case Summary             | The case summary accompanying the Amended Indictment filed on 17 March 2006 (SCSL-03-01-I-75)                                     |
| Count                    | A count specified in the Indictment                                                                                               |
| (CS)                     | Closed Session Testimony                                                                                                          |
| DCT-[number]             | Defence witness with pseudonym                                                                                                    |
| District                 | One of the districts of Sierra Leone referred to in Judicially Noticed Fact A including the city of Freetown and the Western Area |
| ECOMOG                   | ECOWAS Cease-fire Monitoring Group (see Judicially Noticed Fact AA)                                                               |
| ECOWAS                   | Economic Community of West Africa (see Judicially Noticed Fact I)                                                                 |
| Exh. D-[number]          | Defence Exhibit                                                                                                                   |
| Exh. P-[number]          | Prosecution Exhibit                                                                                                               |
| First Amended Indictment | Prosecution's first amended indictment against Charles Taylor ( <i>Prosecutor v. Taylor</i> , SCSL-2003-01-I-075, Amended         |

|                     |                                                                                                                                                                                                           |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                     | Indictment, 17 March 2006)                                                                                                                                                                                |
| fn.                 | Footnote                                                                                                                                                                                                  |
| fns.                | Footnotes                                                                                                                                                                                                 |
| Freetown Invasion   | The attack on Freetown by <i>inter alia</i> RUF and AFRC forces on or about 6 January 1999 (see Agreed Fact 31)                                                                                           |
| ICTY                | International Criminal Tribunal for the Former Yugoslavia                                                                                                                                                 |
| ICTR                | International Criminal Tribunal for Rwanda                                                                                                                                                                |
| Indictment Period   | Between about 30 November 1996 and about 18 January 2002                                                                                                                                                  |
| Intervention        | The operation whereby ECOMOG ousted the AFRC/RUF junta from power on or about 14 February 1998 (see Judicially Noticed Fact AD).                                                                          |
| JPK                 | Johnny Paul Koroma                                                                                                                                                                                        |
| Junta               | The regime formed in May 1997 by the AFRC and the RUF to govern Sierra Leone, which regime governed Sierra Leone until the Intervention (see Agreed Facts, paras. 17-19, 30 & Judicially Noticed Fact AD) |
| NPFL                | National Patriotic Front of Liberia                                                                                                                                                                       |
| Original Indictment | Prosecution's original indictment against Charles Taylor ( <i>Prosecutor v. Taylor</i> , SCSL-2003-01-I-001, Indictment, 7 March 2003)                                                                    |
| para.               | paragraph                                                                                                                                                                                                 |
| paras.              | paragraphs                                                                                                                                                                                                |
| p.                  | page                                                                                                                                                                                                      |
| pp.                 | pages                                                                                                                                                                                                     |

|                 |                                                                                                            |
|-----------------|------------------------------------------------------------------------------------------------------------|
| (PS)            | Private Session Testimony                                                                                  |
| Pre-Trial Brief | The Prosecution's Pre-Trial Brief filed pursuant to Rule 73 <i>bis</i> on 4 April 2007 (SCSL-03-01-PT-218) |
| RUF             | Revolutionary United Front (see Judicially Noticed Fact M)                                                 |
| TF1-[number]    | Prosecution witness with pseudonym                                                                         |
| T.              | Trial Transcript                                                                                           |
| ULIMO           | United Liberation Movement of Liberia for Democracy                                                        |
| UNAMSIL         | United Nations Mission in Sierra Leone (see Agreed Fact, para. 22)                                         |



## APPENDIX B: BOOK OF AUTHORITIES

### Table of Contents

#### A. SCSL Statutory and Regulatory Provisions

1. Statute of the Special Court for Sierra Leone (SCSL Statute) ..... 2
2. SCSL Rules of Procedure and Evidence, amended on 31 May 2012 (Rules) ..... 6

#### B. Jurisprudence of the International Tribunals (Judgements, Decisions, Orders)

*Arranged alphabetically by case and in reverse chronological order*

##### 1. SCSL

###### *Prosecutor v. Brima et al. (SCSL-04-16)*

- *Prosecutor v. Brima et al.*, SCSL-04-16-A-675, Judgment (AC), 22 February 2008 (*Brima et al.* Appeal Judgment) ..... 15
- *Prosecutor v. Brima et al.*, SCSL-04-16-T-624, Sentencing Judgment, 19 July 2007 (*Brima et al.* Sentencing Judgment) ..... 30
- *Prosecutor v. Brima et al.*, SCSL-04-16-T-613, Judgment (TC), 20 June 2007 (*Brima et al.* Trial Judgment) ..... 38
- *Prosecutor v. Brima et al.*, SCSL-04-16-PT-130, Order to Prosecution to Provide Witness List and Witness Summaries, 7 July 2004 ..... 49

###### *Prosecutor v. Norman et al. (SCSL-04-14)*

- *Prosecutor v. Fofana & Kondewa*, SCSL-04-14-A-829, Judgment (AC), 28 May 2008 (*Fofana & Kondewa* Appeal Judgment) ..... 52
- *Prosecutor v. Fofana & Kondewa*, SCSL-04-14-T-796, Judgment on the Sentencing of Moinina Fofana and Allieu Kondewa, 9 October 2007 (*Fofana & Kondewa* Sentencing Judgment) ..... 65
- *Prosecutor v. Fofana & Kondewa*, SCSL-04-14-T-785, Judgment (TC), 2 August 2007 (*Fofana & Kondewa* Trial Judgment) ..... 69
- *Prosecutor v. Norman et al.*, SCSL-04-14-PT-109, Order to Prosecution to Provide Order of Witnesses and Witness Statements, 28 May 2004 ..... 73

*Prosecutor v. Sesay et al. (SCSL-04-15)*

- *Prosecutor v. Sesay et al.*, SCSL-04-15-A-1321, Judgment (AC), 26 October 2009 (*Sesay et al.* Appeal Judgment) ..... 76
- *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1251, Sentencing Judgement, 8 April 2009 (*Sesay et al.* Sentencing Judgement) ..... 97
- *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1234, Judgement (TC), 2 March 2009 (*Sesay et al.* Trial Judgement) ..... 101
- *Prosecutor v. Sesay et al.*, SCSL-04-15-T-185, Order to Prosecution to Provide Order of Witnesses and Witness Statements, 9 February 2005 ..... 107

*Prosecutor v. Sesay (SCSL-03-05)*

- *Prosecutor v. Sesay*, SCSL-2003-05-PT-080, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 13 October 2003 (*Sesay* Decision on Form of Indictment) ..... 111

*Prosecutor v. Taylor et al. (SCSL-03-01)*

- Decision on Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone, SCSL-03-01-T-1101, 6 October 2010 ..... 114
- Decision on the Prosecution Motion Requesting Leave to Amend Indictment, SCSL-03-01-PT-255, 25 May 2007 ..... 117
- Decision Approving the Indictment and Order for Non-Disclosure, SCSL-03-01-I-003, 7 March 2003 ..... 120

**2. ICTR***Akayesu*

- *The Prosecutor v. Akayesu*, ICTR-96-4-A, Judgment (AC), 1 June 2001 ..... 123
- *The Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement (TC), 2 September 1998 (*Akayesu* Trial Judgement) ..... 125

*Gacumbitsi*

- *Gacumbitsi v. The Prosecutor*, ICTR-2001-64-A, Judgement (AC), 7 July 2006 (*Gacumbitsi* Appeal Judgement) ..... 128

- *The Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, Judgment (TC), 17 June 2004 (*Gacumbitsi Trial Judgement*) ..... 142

#### Gatete

- *The Prosecutor v. Gatete*, ICTR-2000-61-T, Judgement and Sentence, 31 March 2011 (*Gatete Trial Judgement*) ..... 147

#### Hategekimana

- *Hategekimana v. The Prosecutor*, ICTR-00-55B-A, Judgement (AC), 8 May 2012 (*Hategekimana Appeal Judgement*) ..... 149

#### Kajelijeli

- *Kajelijeli v. The Prosecutor*, ICTR-98-44A-A, Judgement (AC), 23 May 2005 (*Kajelijeli Appeal Judgement*) ..... 153
- *The Prosecutor v. Kajelijeli*, ICTR-98-44A-T, Judgment and Sentence, 1 December 2003 (*Kajelijeli Trial Judgement*) ..... 155

#### Kalimanzira

- *Kalimanzira v. The Prosecutor*, ICTR-05-88-A, Judgement (AC), 20 October 2010 ..... 159
- *The Prosecutor v. Kalimanzira*, ICTR-05-88-T, Judgement (TC), 22 June 2009 (*Kalimanzira Trial Judgement*) ..... 161

#### Kamuhanda

- *Kamuhanda v. The Prosecutor*, ICTR-99-54A-A, Judgement (AC), 19 September 2005 (*Kamuhanda Appeal Judgement*) ..... 165
- *The Prosecutor v. Kamuhanda*, ICTR-95-54A-T, Judgment and Sentence, 22 January 2004 (*Kamuhanda Trial Judgement*) ..... 170

#### Kanyarukiga

- *Kanyarukia v. The Prosecutor*, ICTR-02-78-A, Judgement (AC), 8 May 2012 (*Kanyarukiga Appeal Judgement*) ..... 174

#### Karera

- *Karera v. The Prosecutor*, ICTR-01-74-A, Judgement (AC), 2 February 2009 ..... 178

#### Muhimana

- *Muhimana v. The Prosecutor*, ICTR-95-1B-A, Judgement (AC), 21 May 2007 ..... 180
- *The Prosecutor v. Muhimana*, ICTR-95-1B-T, Judgement and Sentence, 28 April 2005 ..... 182

Munyakazi

- *The Prosecutor v. Munyakazi*, ICTR-97-36A-A, Judgement (AC), 28 September 2011 (*Munyakazi Appeal Judgement*) ..... 184

Musema

- *Musema v. The Prosecutor*, ICTR-96-13-A, Judgement (AC), 16 November 2001 (*Musema Appeal Judgement*) ..... 186
- *The Prosecutor v. Musema*, ICTR-96-13-A, Judgement and Sentence, 27 January 2000 ..... 189

Nahimana et al.

- *Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Judgement (AC), 28 November 2007 (*Nahimana Appeal Judgement*) ..... 191

Nchamihigo

- *Nchamihigo v. The Prosecutor*, ICTR-2001-63-A, Judgement (AC), 18 March 2010 (*Nchamihigo Appeal Judgement*) ..... 196

Ndahimana

- *The Prosecutor v. Ndahimana*, ICTR-01-68-T, Judgement and Sentence, 30 December 2011 (*Ndahimana Trial Judgement*) ..... 202

Ndindabahizi

- *Ndindabahizi v. The Prosecutor*, ICTR-01-71-A, Judgement (AC), 16 January 2007 (*Ndindabahizi Appeal Judgement*) ..... 205
- *The Prosecutor v. Ndindabahizi*, ICTR-2001-71-I, Judgement and Sentence, 15 July 2004 (*Ndindabahizi Trial Judgement*) ..... 210

Ndindiliyimana et al.

- *The Prosecutor v. Ndindiliyimana et al.*, ICTR-00-56-T, Judgement and Sentence, 17 May 2011 (*Ndindiliyimana Trial Judgement*) ..... 216

Ntabakuze

- *Ntabakuze v. The Prosecutor*, ICTR-98-41A-A, Judgement (AC), 8 May 2012 (*Ntabakuze Appeal Judgement*) ..... 218

Ntagerura et al.

- *The Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, Judgement (AC), 7 July 2006 ..... 227

Ntakirutimana

- *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, ICTR-96-10-A & ICTR-96-17-A, Judgement (AC), 13 December 2004 ..... 229

- *The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence, 21 February 2003 (*Ntakirutimana Trial Judgement*) ..... 231

#### Rutaganda

- *Rutaganda v. The Prosecutor*, ICTR-96-3-A, Judgement (AC), 26 May 2003 ..... 239
- *The Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgement and Sentence, 6 December 1999 ..... 241

#### Semanza

- *Semanza v. The Prosecutor*, ICTR-97-20-A, Judgement (AC), 20 May 2005 (*Semanza Appeal Judgement*) ..... 243
- *The Prosecutor v. Semanza*, ICTR-97-20-T, Judgement and Sentence, 15 May 2003 ..... 249

#### Setako

- *Setako v. The Prosecutor*, ICTR-04-81-A, Judgement (AC), 28 September 2011 ..... 251

### **3. ICTY**

#### Aleksovski

- *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement (AC), 24 March 2000 ..... 255

#### Babić

- *Prosecutor v. Milan Babić*, IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005 ..... 258

#### Blaškić

- *Prosecutor v. Blaškić*, IT-95-14-A, Judgement (AC), 29 July 2004 (*Blaškić Appeal Judgement*) ..... 260
- *Prosecutor v. Blaškić*, IT-95-14-T, Judgement (TC), 3 March 2000 (*Blaškić Trial Judgement*) ..... 262

#### Boškoski & Tarčulovski

- *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, Judgement (AC), 19 May 2010 ..... 266
- *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Judgement (TC), 10 July 2008 (*Boškoski & Tarčulovski Trial Judgement*) ..... 269

Brđanin

- *Prosecutor v. Brđanin*, IT-99-36-A, Judgement (AC), 3 April 2007 (*Brđanin* Appeal Judgement) ..... 274
- *Prosecutor v. Brđanin*, IT-99-36-T, Judgement (TC), 1 September 2004 (*Brđanin* Trial Judgement) ..... 282

Dorđević

- *Prosecutor v. Dorđević*, IT-05-87/1-T, Public Judgement with Confidential Annex (TC), 23 February 2011 (*Dorđević* Trial Judgement) ..... 291

Furundžija

- *Prosecutor v. Furundžija*, IT-95-17/1-A, Judgement (AC), 21 July 2000 ..... 293

Galić

- *Prosecutor v. Galić*, IT-98-29-A, Judgement (AC), 30 November 2006 (*Galić* Appeal Judgement) ..... 296

Hadžihasanović & Kubura

- *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, Judgement (TC), 15 March 2006 ..... 301

Kordić & Čerkez

- *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Judgement (AC), 17 December 2004 (*Kordić & Čerkez* Appeal Judgement) ..... 303
- *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Judgement (TC), 26 February 2001 (*Kordić & Čerkez* Trial Judgement) ..... 310

Krajišnik

- *Prosecutor v. Krajišnik*, IT-00-39-A, Judgement (AC), 17 March 2009 (*Krajišnik* Appeal Judgement) ..... 314

Krnojelac

- *Prosecutor v. Krnojelac*, IT-97-25-A, Judgement (AC), 17 September 2003 ... 316
- *Prosecutor v. Krnojelac*, IT-97-25-T, Judgment (TC), 15 March 2002 ..... 318

Krstić

- *Prosecutor v. Krstić*, IT-98-33-T, Judgement (TC), 2 August 2001 (*Krstić* Trial Judgement) ..... 320

Kunarac et al.

- *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Judgement (AC), 12 June 2002 (*Kunarac* Appeal Judgement) ..... 327

Kupreškić et al.

- *Prosecutor v. Zoran Kupreškić et al.*, IT-95-16-A, Appeal Judgement, 23 October 2001 (*Kupreškić Appeal Judgement*) ..... 332

Kvočka et al.

- *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Judgement (AC), 28 February 2005 ..... 336

Limaj et al.

- *Prosecutor v. Limaj et al.*, IT-03-66-A, Judgement (AC), 27 September 2007 ..... 339

Martić

- *Prosecutor v. Martić*, IT-95-11-A, Judgement (AC), 8 October 2008 ..... 342

D. Milošević

- *Prosecutor v. Dragomir Milošević*, IT-98-29/1-A, Judgement (AC), 12 November 2009 (*D. Milošević Appeal Judgement*) ..... 345

Milutinović et al.

- *Prosecutor v. Milutinović et al.*, IT-05-87-T, Judgement (TC), Vol. 1 of 4, 26 February 2009 (*Milutinović Trial Judgement – Vol. 1*) ..... 350
- *Prosecutor v. Milutinović et al.*, IT-05-87-T, Judgement (TC), Vol. 3 of 4, 26 February 2009 (*Milutinović Trial Judgement – Vol. 3*) ..... 353

Mrkšić & Šljivančanin

- *Prosecutor v. Mrkšić and Šljivančanin*, IT-95-13/1-A, Judgement (AC), 5 May 2009 (*Mrkšić & Šljivančanin Appeal Judgement*) ..... 356

Stakić

- *Prosecutor v. Stakić*, IT-97-24-A, Judgement (AC), 22 March 2006 (*Stakić Appeal Judgement*) ..... 359

Tadić

- *Prosecutor v. Duško Tadić*, IT-94-1-A & IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000 ..... 362

Vasiljević

- *Prosecutor v. Vasiljević*, IT-98-32-A, Judgement (AC), 25 February 2004 (*Vasiljević Appeal Judgement*) ..... 364

#### 4. Other

- ECCC Supreme Court Chamber, *KAING Guek Eav alias Duch*, 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012 (*Duch Appeal Judgement*) ..... 374

### **C. Taylor Trial Record (Trial Transcripts, Exhibits, Pleadings)** *Arranged in chronological and numerical order*

#### 1. Trial Transcripts

##### 2007:

- 4 June 2007 (Prosecution Opening Statement) ..... 382

##### 2008:

- 8 January 2008 ..... 384
- 9 January 2008 ..... 388
- 10 January 2008 ..... 391
- 7 February 2008 ..... 395
- 31 March 2008 ..... 398
- 8 April 2008 ..... 403
- 17 April 2008 ..... 406
- 18 April 2008 ..... 415
- 21 April 2008 ..... 419
- 29 April 2008 ..... 422
- 7 May 2008 ..... 425
- 21 May 2008 ..... 430
- 5 June 2008 ..... 433
- 7 July 2008 ..... 437
- 21 August 2008 ..... 441
- 2 September 2008 ..... 444
- 15 September 2008 ..... 452
- 16 September 2008 ..... 455
- 24 September 2008 ..... 458
- 30 September 2008 ..... 466
- 7 October 2008 ..... 470
- 5 November 2008 ..... 479
- 3 December 2008 ..... 483
- 11 December 2008 ..... 486

##### 2009:

- 29 January 2009 ..... 489
- 13 July 2009 (Defence Opening Statement) ..... 502
- 14 July 2009 ..... 504



|                                                   |     |
|---------------------------------------------------|-----|
| • 18 August 2009 .....                            | 507 |
| • 10 September 2009 .....                         | 510 |
| • 26 October 2009 .....                           | 515 |
| • 28 October 2009 .....                           | 520 |
| • 2 November 2009 .....                           | 523 |
| • 26 November 2009 .....                          | 527 |
| <br><u>2010:</u>                                  |     |
| • 12 April 2010 .....                             | 530 |
| • 13 April 2010 .....                             | 533 |
| • 6 August 2010 .....                             | 539 |
| • 13 August 2010 .....                            | 542 |
| <br><u>2011:</u>                                  |     |
| • 11 March 2011 (Defence Closing Arguments) ..... | 545 |

## 2. Admitted Exhibits

|                                                                                                                                 |     |
|---------------------------------------------------------------------------------------------------------------------------------|-----|
| • P-63, Minutes of the RUF Forum with the External Delegates led by the Chief of Defence Staff, 2 December 1998 .....           | 548 |
| • P-67, RUF People's Army – Situation Report to Foday Sankoh from the Black Guard Commander .....                               | 554 |
| • P-430B, Excerpts from Sierra Leone News article, 19 November 1998 .....                                                       | 557 |
| • P-431, Excerpts from IPS-Inter Press Service news article, "No Lawyer Willing to Defend Rebel Leader", 7 September 1998 ..... | 559 |

## 3. Pleadings

|                                                                                                                                            |     |
|--------------------------------------------------------------------------------------------------------------------------------------------|-----|
| • Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment, SCSL-03-01-I-74, 16 March 2006 .....    | 563 |
| • Amended Indictment and Case Summary Accompanying the Amended Indictment, SCSL-03-01-I-75, 17 March 2006 (First Amended Indictment) ..... | 570 |
| • Rule 73bis Pre-Trial Conference Materials – Pre-Trial Brief, SCSL-03-01-PT-218, 4 April 2007 (Prosecution Pre-Trial Brief) .....         | 591 |
| ○ Witness Summaries                                                                                                                        |     |
| ▪ TF1-015 .....                                                                                                                            | 603 |
| ▪ TF1-028 .....                                                                                                                            | 604 |
| ▪ TF1-045 .....                                                                                                                            | 605 |
| ▪ TF1-060 .....                                                                                                                            | 609 |
| ▪ TF1-065 .....                                                                                                                            | 610 |

|                                                                                                                                                                                                                                        |     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| ▪ TF1-072 .....                                                                                                                                                                                                                        | 611 |
| ▪ TF1-114 .....                                                                                                                                                                                                                        | 614 |
| ▪ TF1-141 .....                                                                                                                                                                                                                        | 616 |
| ▪ TF1-189 .....                                                                                                                                                                                                                        | 618 |
| ▪ TF1-197 .....                                                                                                                                                                                                                        | 619 |
| ▪ TF1-210 .....                                                                                                                                                                                                                        | 622 |
| ▪ TF1-263 .....                                                                                                                                                                                                                        | 623 |
| ▪ TF1-314 .....                                                                                                                                                                                                                        | 628 |
| ▪ TF1-330 .....                                                                                                                                                                                                                        | 629 |
| ▪ TF1-334 .....                                                                                                                                                                                                                        | 630 |
| ▪ TF1-360 .....                                                                                                                                                                                                                        | 632 |
| ▪ TF1-532 .....                                                                                                                                                                                                                        | 637 |
| ○ Document 1.073, Human Rights Watch Report Vol. 10, No. 3(A),<br>“Sowing Terror, Atrocities against civilians in Sierra Leone”, July 1998 ...                                                                                         | 641 |
| ○ Document 1.277, Excerpts from No Peace Without Justice “Sierra Leone<br>Conflict Mapping Program”, 9 March 2004 Draft Copy for Review ....                                                                                           | 643 |
| • Rule 73bis Taylor Defence Pre-Trial Brief, SCSL-03-01-PT-229, 26 April 2007<br>(Defence Pre-Trial Brief) .....                                                                                                                       | 645 |
| • Motion Requesting Leave to Amend Indictment, SCSL-03-01-PT-235, 14 May<br>2007.....                                                                                                                                                  | 652 |
| • Prosecution’s Second Amended Indictment, SCSL-03-01-PT-263, 29 May 2007<br>(Indictment) .....                                                                                                                                        | 657 |
| • Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment<br>and/or the Jurisdiction of the Special Court for Sierra Leone, SCSL-03-01-T-<br>1086, 24 September 2010 .....                                      | 667 |
| • Prosecution Response to Defence Motion to Exclude Evidence Falling Outside<br>the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra<br>Leone, SCSL-03-01-T-1093, 29 September 2010 .....               | 672 |
| • Defence Reply to Prosecution Response to Defence Motion to Exclude Evidence<br>Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special<br>Court for Sierra Leone, SCSL-03-01-T-1100, 5 October 2010 ..... | 684 |

## **A. SCSL Statutory and Regulatory Provisions**

## STATUTE OF THE SPECIAL COURT FOR SIERRA LEONE

Having been established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000, the Special Court for Sierra Leone (hereinafter "the Special Court") shall function in accordance with the provisions of the present Statute.

### Article 1

#### Competence of the Special Court

1. The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.
2. Any transgressions by peacekeepers and related personnel present in Sierra Leone pursuant to the Status of Mission Agreement in force between the United Nations and the Government of Sierra Leone or agreements between Sierra Leone and other Governments or regional organizations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Government of Sierra Leone, shall be within the primary jurisdiction of the sending State.
3. In the event the sending State is unwilling or unable genuinely to carry out an investigation or prosecution, the Court may, if authorized by the Security Council on the proposal of any State, exercise jurisdiction over such persons.

### Article 2

#### Crimes against humanity

The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:

- a. Murder;
- b. Extermination;
- c. Enslavement;
- d. Deportation;
- e. Imprisonment;
- f. Torture;
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;
- h. Persecution on political, racial, ethnic or religious grounds;
- i. Other inhumane acts.

### Article 3

#### Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

- i. Setting fire to dwelling - houses, any person being therein, contrary to section 2;
- ii. Setting fire to public buildings, contrary to sections 5 and 6;
- iii. Setting fire to other buildings, contrary to section 6.

**Article 6**  
**Individual criminal responsibility**

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.
2. The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
4. 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 Special Court determines that justice so requires.
5. Individual criminal responsibility for the crimes referred to in article 5 shall be determined in accordance with the respective laws of Sierra Leone.

**Article 7**  
**Jurisdiction over persons of 15 years of age**

1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.
2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

**Article 8**  
**Concurrent jurisdiction**

4. In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

- a. To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
- b. To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
- c. To be tried without undue delay;
- d. To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
- e. To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- f. To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Court;
- g. Not to be compelled to testify against himself or herself or to confess guilt.

#### **Article 18** **Judgement**

The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber, and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

#### **Article 19** **Penalties**

1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
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 forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

#### **Article 20** **Appellate proceedings**

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:

- a. A procedural error;
  - b. An error on a question of law invalidating the decision;
  - c. An error of fact which has occasioned a miscarriage of justice.
2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.
3. The judges of the Appeals Chamber of the Special Court shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the former Yugoslavia and for Rwanda. In the interpretation and application of the laws of Sierra Leone, they shall be guided by the decisions of the Supreme Court of Sierra Leone.

#### **Article 21** **Review proceedings**

1. Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit an application for review of the judgement.
2. An application for review shall be submitted to the Appeals Chamber. The Appeals Chamber may reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:
- a. Reconvene the Trial Chamber;
  - b. Retain jurisdiction over the matter.

#### **Article 22** **Enforcement of sentences**

1. Imprisonment shall be served in Sierra Leone. If circumstances so require, imprisonment may also be served in any of the States which have concluded with the International Criminal Tribunal for Rwanda or the International Criminal Tribunal for the former Yugoslavia an agreement for the enforcement of sentences, and which have indicated to the Registrar of the Special Court their willingness to accept convicted persons. The Special Court may conclude similar agreements for the enforcement of sentences with other States.
2. Conditions of imprisonment, whether in Sierra Leone or in a third State, shall be governed by the law of the State of enforcement subject to the supervision of the Special Court. The State of enforcement shall be bound by the duration of the sentence, subject to article 23 of the present Statute.

#### **Article 23** **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 Special Court accordingly. There shall only be pardon or commutation of sentence if the President of the Special Court, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.



**SPECIAL COURT FOR SIERRA LEONE**  
JOMO KENYATTA ROAD • NEW ENGLAND • FREETOWN, SIERRA LEONE

---

## **RULES OF PROCEDURE AND EVIDENCE**

---

Amended on 7 March 2003  
Amended on 1 August 2003  
Amended on 30 October 2003  
Amended on 14 March 2004  
Amended on 29 May 2004  
Amended on 14 May 2005  
Amended on 13 May 2006  
Amended on 24 November 2006  
Amended on 14 May 2007  
Amended on 19 November 2007  
Amended on 28 May 2010  
Amended on 16 November 2011  
Amended on 31 May 2012



- (C) An accused may only make one application for bail to the Judge or Trial Chamber unless there has been a material change in circumstances.
- (D) The Judge or Trial Chamber may impose such conditions upon the granting of bail to the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused at trial and the protection of others.
- (E) Any decision rendered under this Rule shall be subject to appeal in cases where leave is granted by a Single Judge of the Appeals Chamber, upon good cause being shown. Applications for leave to appeal shall be filed within seven days of the impugned decision.
- (F) If necessary, the Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been granted bail or is for any other reason at large. The provisions of Section 2 of Part V shall apply.
- (G) The Prosecutor may appeal a decision to grant bail. In the event of such an appeal, the accused shall remain in custody until the appeal is heard and determined.
- (H) Appeals from bail decisions shall be heard by a bench of at least three Appeals Chamber Judges.

**Rule 65bis: Status Conferences** *(amended 1 August 2003 and 24 November 2006)*

A status conference may be convened by the Designated Judge, the Trial Chamber or a Judge designated from among its members. The status conference shall:

- (i) organize exchanges between the parties so as to ensure expeditious trial proceedings;
- (ii) review the status of his case and to allow the accused the opportunity to raise issues in relation thereto.

**Section 3: Production of Evidence**

**Rule 66: Disclosure of materials by the Prosecutor** *(amended 29 May 2004)*

- (A) Subject to the provisions of Rules 50, 53, 69 and 75, the Prosecutor shall:
  - (i) Within 30 days of the initial appearance of an accused, disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92 *bis* at trial.
  - (ii) Continuously disclose to the Defence copies of the statements of all additional prosecution witnesses whom the Prosecutor intends to call to testify, but not later than 60 days before the date for trial, or as otherwise ordered by a Judge of the Trial Chamber either before or after the commencement of the trial, upon good cause being shown by the Prosecution. Upon good cause being shown by the Defence, a Judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses that the Prosecutor does not intend to call be made available to the defence within a prescribed time.

- (iii) At the request of the defence, subject to Sub-Rule (B), permit the defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defence, upon a showing by the defence of categories of, or specific, books, documents, photographs and tangible objects which the defence considers to be material to the preparation of a defence, or to inspect any books, documents, photographs and tangible objects in his custody or control which are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.
- (B) Where information or materials are in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to a Judge designated by the President sitting *ex parte* and *in camera*, but with notice to the Defence, to be relieved from the obligation to disclose pursuant to Sub-Rule (A). When making such an application the Prosecutor shall provide, only to such Judge, the information or materials that are sought to be kept confidential.

**Rule 67: Reciprocal Disclosure of Evidence** (*amended 7 March 2003*)

Subject to the provisions of Rules 53 and 69:

- (A) As early as reasonably practicable and in any event prior to the commencement of the trial:
  - (i) The Prosecutor shall notify the defence of the names of the witnesses that he intends to call to establish the guilt of the accused and in rebuttal of any defence plea of which the Prosecutor has received notice in accordance with Sub-Rule (ii) below, or any defence pleaded in the Defence Case Statement served under Sub-Rule (C);
  - (ii) The defence shall notify the Prosecutor of its intent to enter:
    - (a) The defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;
    - (b) Any special defence, including that of diminished or lack of mental responsibility; in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence.
- (B) Failure of the defence to provide such notice under this Rule shall not limit the right of the accused to rely on the above defences.
- (C) To assist the Prosecutor with its disclosure obligations pursuant to Rule 68, the defence may prior to trial provide the Prosecutor with a Defence Case Statement. The Defence Case Statement shall:
  - (i) set out in general terms the nature of the accused's defence;
  - (ii) indicate the matters on which he takes issue with the prosecution; and

or a representative of that entity as a witness or order their attendance. The consent shall be in writing.

- (D) If the Prosecutor calls as a witness the person providing or a representative of the entity providing information under this Rule, the Trial Chamber may not compel the witness to answer any question the witness declines to answer on grounds of confidentiality.
- (E) The right of the accused to challenge the evidence presented by the Prosecution shall remain unaffected subject only to limitations contained in Sub-Rules (C) and (D).
- (F) Nothing in Sub-Rule (C) or (D) above shall affect a Trial Chamber's power to exclude evidence under Rule 95.

#### **Section 4: Depositions**

##### **Rule 71: Depositions** (amended 7 March 2003)

- (A) At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial and appoint for that purpose a Legal Officer.
- (B) The motion for the taking of a deposition shall be in writing and shall indicate the name and whereabouts of the witness whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined, and of the interests of justice justifying the taking of the deposition.
- (C) If the motion is granted, the party at whose request the deposition is to be taken shall give reasonable notice to the other party, who shall have the right to attend the taking of the deposition and cross-examine the witness.
- (D) The deposition may also be given by means of a video-conference.
- (E) The Legal Officer shall ensure that the deposition is taken in accordance with the Rules and that a record is made of the deposition, including cross-examination and objections raised by either party for decision by the Trial Chamber. He shall transmit the record to the Trial Chamber.

#### **Section 5: Preliminary Motions**

##### **Rule 72: Preliminary Motions** (amended 29 May 2004)

- (A) Preliminary motions by either party shall be brought within 21 days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i).
- (B) Preliminary motions by the accused are:
  - (i) Objections based on lack of jurisdiction;
  - (ii) Objections based on defects in the form of the indictment;

**Rule 103: Place of Imprisonment** *(amended 14 March 2004)*

- (A) Imprisonment shall be served in Sierra Leone, unless circumstances require otherwise. The Special Court may conclude agreements with other countries willing to accept and imprison convicted persons.
- (B) The place of imprisonment for each convicted person shall be designated by the President.
- (C) Transfer of the convicted person to the place of imprisonment shall be effected as soon as possible after the time limit for appeal has lapsed.

**Rule 104: Forfeiture of Property** *(amended 7 March 2003)*

- (A) After a judgement of conviction containing a specific finding as provided in Rule 88 (B) the Trial Chamber, at the request of the Prosecutor or at its own initiative, may hold a special hearing to determine the matter of property forfeiture, including the proceeds thereof, and may in the meantime order such provisional measures for the preservation and protection of the property or proceeds as it considers appropriate.
- (B) The determination may extend to such property or proceeds, even in the hands of third parties not otherwise connected with the crime, for which the convicted person has been found guilty. Such third parties shall be entitled to appear at the hearing.
- (C) The Trial Chamber may order the forfeiture of any property, proceeds and any assets it finds has been acquired unlawfully or by criminal conduct, and order its return to the rightful owner, or its transfer to the State of Sierra Leone, as circumstances may require.

**Rule 105: Compensation to Victims** *(amended 7 March 2003)*

- (A) The Registrar shall transmit to the competent authorities of the States concerned the judgement finding the accused guilty of a crime which has caused injury to a victim.
- (B) Pursuant to the relevant national legislation, a victim or persons claiming through him may bring an action in a national court or other competent body to obtain compensation.
- (C) For the purposes of a claim made under Sub-Rule (B) the judgement of the Special Court shall be final and binding as to the criminal responsibility of the convicted person for such injury.

**Part VII - APPELLATE PROCEEDINGS****Rule 106: General Provisions** *(amended 1 August 2003)*

- (A) Pursuant to Article 20 of the Statute, the Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:
  - (a) A procedural error;

- (b) An error on a question on law invalidating the decision;
- (c) An error of fact which has occasioned a miscarriage of justice.
- (B) The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.
- (C) The rules of procedure and evidence that govern proceedings in the Trial Chambers shall apply as appropriate to proceedings in the Appeals Chamber.

**Rule 107: Practice Directions for the Appeals Chamber** *(amended 7 March 2003)*

The President may issue Practice Directions, in consultation with the Vice-President, addressing detailed aspects of the conduct of proceedings before the Appeals Chamber.

**Rule 108: Notice of Appeal** *(amended 1 August 2003)*

- (A) Subject to Sub-Rule (B), a party seeking to appeal a judgement or sentence shall, not more than 14 days from the receipt of the full judgement and sentence, file with the Registrar and serve upon the other parties a written notice of appeal, setting forth the grounds.
- (B) In appeals pursuant to Rules 77 and 91, the notice and grounds of appeal shall be filed within seven days of the receipt of the decision.
- (C) In appeals pursuant to Rules 46, 65 and 73(B), the notice and grounds of appeal shall be filed within 7 days of the receipt of the decision to grant leave.

**Rule 109: Pre-Hearing Judge** *(amended 1 August 2003, 24 November 2006 and 14 May 2007)*

- (A) The Presiding Judge of the Appeals Chamber may, after the filing of the notice of appeal, designate a pre-hearing judge from among the members of the Appeals Chamber to supervise all appeals arising from a particular trial.
- (B)
  - (i) The Pre-Hearing Judge shall ensure that the proceedings are not unduly delayed and shall take any measures related to procedural matters, including the issuing of decisions, orders and directions with a view to preparing the case for a fair and expeditious hearing.
  - (ii) The Pre-Hearing Judge may, as soon as possible after the filing of submissions pursuant to Rules 111, 112, and 113 below, convene a hearing or an exchange between the parties to the appeal. The Pre-Hearing Judge may:
    - a) Strike out any ground of appeal that does not come within the appellate jurisdiction conferred by Article 20 of the Statute, provided that any party aggrieved by such an order may within 14 days apply for its review by the Appeals Chamber;
    - b) Set a date, in due course, for the substantive appeal hearing after consultation with the President and Registrar, unless he decides to recommend to the Appeals Chamber that no oral hearing is necessary and

the Appeals Chamber accepts his recommendation and decides to rule on the appeal solely on the written submissions of the parties.

- (C) The Pre-Hearing Judge shall record the points of agreement and disagreement between the parties on matters of law and fact. In this connection, he or she may order the parties to file further written submissions with the Pre-Hearing Judge or the Appeals Chamber.
- (D) The Appeals Chamber may of its own initiative exercise any of the functions of the Pre-Hearing Judge.

**Rule 110: Record on Appeal** *(amended 7 March 2003)*

The record on appeal shall consist of the parts of the trial record as designated by the Pre-Hearing Judge, as certified by the Registrar.

**Rule 111: Appellant's Submissions** *(amended 7 March 2003)*

An Appellant's submissions shall be served on the other party or parties and filed with the Registrar within twenty one days of the notice of appeal pursuant to Rule 108.

**Rule 112: Respondent's Submissions** *(amended 7 March 2003)*

A Respondent's submissions shall be served on the other party or parties and filed with the Registrar within fourteen days of the filing of the Appellant's submissions.

**Rule 113: Submissions in Reply** *(amended 7 March 2003)*

- (A) An Appellant may file submissions in reply within five days after the filing of the Respondent's submissions.
- (B) No further submissions may be filed except with leave of the Appeals Chamber.

**Rule 114: Date of Hearing** *(amended 7 March 2003 and 24 November 2006)*

- (A) The date of any hearing shall be set as provided for by Rule 109(B)(ii)(b).
- (B) Where the Appeals Chamber decides that there will be a hearing, the Appeals Chamber or the Pre-Hearing Judge may request the parties to limit their oral submissions to an issue or issues indicated to them in writing.
- (C) The Registrar shall notify the parties accordingly.

**Rule 115: Additional Evidence** *(amended 13 May 2006 and 24 November 2006)*

- (A) A party may apply by motion to the Pre-Hearing Judge to present before the Appeals Chamber additional evidence which was not available to it at the trial. Such motion shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed. The motion shall also set out in full the reasons and supporting evidence on which the party relies to establish that the proposed additional evidence was not available to it at trial. The motion shall be served on the other party and

## **B. Jurisprudence of the International Tribunals (Judgements, Decisions, Orders)**

# 1. SCSL



392

675

SCSL-04-16-A  
(1883-1999)



~~1883~~

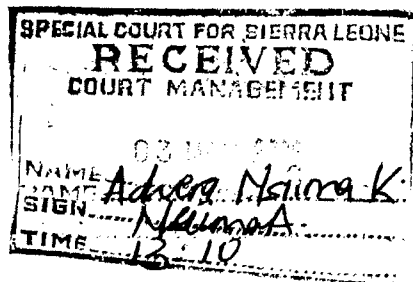
**SPECIAL COURT FOR SIERRA LEONE**

**IN THE APPEALS CHAMBER**

**Before:** Justice George Gelaga King, Presiding Judge  
Justice Emmanuel Ayoola  
Justice Renate Winter  
Justice Raja Fernando  
Justice Jon M. Kamanda

**Registrar:** Herman von Hebel

**Date:** 22 February 2008



**PROSECUTOR**                      **Against**                      **ALEX TAMBA BRIMA**  
**BRIMA BAZZY KAMARA**  
**SANTIGIE BORBOR KANU**  
**(Case No. SCSL-2004-16-A)**

**JUDGMENT**

**Office of the Prosecutor:**

Dr. Christopher Staker  
Mr. Karim Agha  
Mr. Chile Eboe-Osuji  
Ms. Anne Althaus

**Defence Counsel for Alex Tamba Brima:**

Kojo Graham

**Defence Counsel for Brima Bazy Kamara:**

Andrew Daniels

**Defence Counsel for Santigie Borbor**

**Kanu:**

Ajibola E. Manly-Spain  
Silas Chekera

~~1899~~

decisions without giving notice to the Parties or without giving them an opportunity to be heard on the correctness of the previous decision(s).

# 1. Applicable Principles

## (a) Specificity

37. In order to guarantee a fair trial the Prosecution is obliged to plead material facts with a sufficient degree of specificity.<sup>79</sup> The question whether material facts are pleaded with the required degree of specificity depends on the context of the particular case.<sup>80</sup>

38. In particular, the required degree of specificity varies according to the form of participation alleged against an accused.<sup>81</sup> Where direct participation is alleged in an indictment, we opine that the Prosecution's obligation to provide particulars in an indictment must be adhered to fully.<sup>82</sup>

39. Where superior responsibility is alleged, the liability of an accused depends on several material factors such as the relationship of the accused to his subordinates, his knowledge of the crimes and the necessary and reasonable measures that he failed to take to prevent the crimes or to punish his subordinates. Therefore, these are material facts that must be pleaded with a sufficient degree of specificity.<sup>83</sup>

40. In considering the extent to which there is compliance with the specificity requirement in an indictment, the term specificity should not be understood to have any special meaning. It is to be understood in its ordinary meaning as being specific in regard to an object or subject matter. An object or subject matter that is particularly named or defined cannot be said to lack specificity.

## (b) Exception to Specificity

41. The pleading principles that apply to indictments at international criminal tribunals differ from those in domestic jurisdictions because of the nature and scale of the crimes when compared with those in domestic jurisdictions. For this reason, there is a narrow exception to the specificity requirement for indictments at international criminal tribunals. In some cases, the widespread nature

<sup>79</sup> *Kvočka* Form of the Indictment Decision, para. 14.

<sup>80</sup> *Kupreškić* Appeal Judgment, para. 89.

<sup>81</sup> *Krnojelac* Form of the Indictment Decision, para. 18.

<sup>82</sup> *Brđanin* Form of the Indictment Decision, para. 22.

<sup>83</sup> *Krnojelac* Form of the Indictment Decision, para. 18; *Ntagerura* Trial Judgment, para. 35.

88. 6 1. 2008

~~1900~~

and sheer scale of the alleged crimes make it unnecessary and impracticable to require a high degree of specificity.<sup>84</sup>

## 2. Challenges to an Indictment on Appeal

42. Challenges to the form of an indictment should be made at a relatively early stage of proceedings and usually at the pre-trial stage pursuant to Rule 72(B)(ii) of the Rules of Procedure and Evidence ("Rules") which provides that it should be made by a preliminary motion.<sup>85</sup> An accused, therefore, is in the ordinary course of events expected to challenge the form of an indictment prior to the rendering of judgment or at the very least, challenge the admissibility of evidence of material facts not pleaded in an indictment by interposing a specific objection at the time the evidence is introduced.<sup>86</sup>

43. Failure to challenge the form of an indictment at trial is not, however, an absolute bar to raising such a challenge on appeal.<sup>87</sup> An accused may well choose not to interpose an objection when certain evidence is admitted or object to the form of an indictment, not as a means of exploiting a technical flaw, but rather, because the accused is under the reasonable belief that such evidence is being introduced for purposes other than those that relate to the nature and cause of the charges against him.

44. Where an accused fails to make specific challenges to the form of an indictment during the course of the trial or challenge the admissibility of evidence of material facts not pleaded in the indictment, but instead raises it for the first time on appeal, it is for the Appeals Chamber to decide the appropriate response. Where the Appeals Chamber holds that an indictment is defective, the options open to it are to find that the accused waived his right to challenge the form of an indictment, to reverse the conviction, or to find that no miscarriage of justice had resulted notwithstanding the defect.<sup>88</sup> In this regard the Appeals Chamber may also find that any prejudice

<sup>84</sup> *Kvočka* Form of the Indictment Decision, para. 17.

<sup>85</sup> Rule 72(B)(ii) expressly provides that preliminary motions by the accused include "[o]bjections based on defects in the form of the indictment."

<sup>86</sup> *Niyitegeka* Appeal Judgment, para. 199.

<sup>87</sup> *Semanza* Trial Judgment, para. 42.

<sup>88</sup> *Niyitegeka* Appeal Judgment, paras 195-200.

that may have been caused by a defective indictment was cured by timely, clear and consistent information provided to the accused by the Prosecution.<sup>89</sup>

45. The Appeals Chamber must ensure that a failure to pose a timely challenge to the form of the indictment did not render the trial unfair. The primary concern at the appeal stage therefore, when faced with a challenge to the form of an indictment, is whether the accused was materially prejudiced.<sup>90</sup>

## **B. Prosecution's Second Ground of Appeal: Locations Not Pled in the Indictment**

### **1. Trial Chamber's Findings**

46. The substance of the Prosecution's Second Ground of Appeal is that the Trial Chamber erred in law and in fact in failing to make findings on the responsibility of each Appellant in respect of crimes committed in several locations in Koindugu and Bombali Districts, Freetown and other parts of the Western Area and in Port Loko District including other locations enumerated in the Ground of Appeal, in respect of which evidence had been led.

47. The Trial Chamber in ruling on the submission of Brima complaining among other things, that the Indictment was impermissibly vague, because particulars of where the crimes occurred were not given, stated that:

"the Prosecution has led a considerable amount of evidence with respect to killings, sexual violence, physical violence, enslavement and pillage which occurred in locations not charged in the indictment [and that] while such evidence may support proof of the existence of an armed conflict or a widespread or systematic attack on a civilian population, no finding of guilt for those crimes may be made in respect of such locations not mentioned in the indictment."<sup>91</sup>

48. It had been pleaded in several paragraphs of the Indictment that particular acts took place in several named locations in named Districts. It was made clear that the named locations were not exhaustive of the locations where the acts took place. An example is paragraph 45 of the Indictment where it was alleged that "members of AFRC/RUF unlawfully killed several hundred civilians in

<sup>89</sup> *Kupreskić* Appeal Judgment, para. 114 ("The Appeals Chamber, however, does not exclude the possibility that, in some instances, a defective indictment can be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charges against him or her. Nevertheless, in light of the factual and legal complexities normally associated with the crimes within the jurisdiction of this Tribunal, there can only be a limited number of cases that fall within that category."). See also *Ntakirutimana* Appeal Judgment, para. 27.

<sup>90</sup> *Kupreskić* Appeal Judgment, para. 115.

<sup>91</sup> AFRC Trial Judgment, para. 37.

demonstrated or if it is necessary to prevent an injustice.<sup>113</sup> We endorse that opinion. Consequently, whether or not an issue relating to the form of an indictment should be reconsidered should be determined on a case-by-case basis having regard to the stage of proceedings, the issues raised by the earlier decision and the effect of reconsideration or reversal on the rights of the Parties.

64. With regard to question (ii) the Parties ought to have been given an opportunity to be heard on the matter as natural justice demands. However, even if they failed to accord the Parties that opportunity, this Chamber has the power to review the situation and come to its own conclusion in the interest of justice. In all the circumstances of the case, we opine that the Trial Chamber's error in not expressly giving notice to the Parties of its intention to reconsider the pre-trial decision, and its failure to re-open the hearings did not invalidate the decision. The Trial Chamber's limited treatment of the evidence of crimes committed in such locations was a proper exercise of its discretion in the interest of justice, taking into account that it is the Prosecution's obligation to plead clearly material facts it intends to prove, so as to afford the Appellants a fair trial.

65. The Prosecution's Second Ground of Appeal therefore fails.

**C. Prosecution's Fourth Ground of Appeal and Kanu's Tenth Ground of Appeal:**

**Joint Criminal Enterprise**

**1. Trial Chamber's Findings**

66. Prior to the establishment of Trial Chamber II, Trial Chamber I, ruling on a preliminary motion brought by the Appellant, dealt with several pre-trial issues in this case, including the form of the Indictment and the pleading of joint criminal enterprise ("JCE") as a form of liability. In this regard the Trial Chamber held that:

"the Indictment in its entirety, is predicated upon the notion of joint criminal enterprise . . . [and that] the nature of the alleged joint criminal enterprise, the nature of the Accused's participation in it, the identity of those involved in the same, and the time frame of the alleged joint criminal enterprise are all pleaded with the degree of particularity as the factual parameters of the case admits."<sup>114</sup>

67. On 17 January 2005, the case was transferred to Trial Chamber II. In the AFRC Trial Judgment, Trial Chamber II revisited the question whether joint criminal enterprise was properly

<sup>112</sup> *Ibid* at para. 2.14.

<sup>113</sup> *Ntagerura Appeal Judgment*, para. 55.

<sup>114</sup> *Kamara Form of the Indictment Decision*, para. 52.



~~15/17~~

timely, clear and consistent information, the appropriate remedy, as stated by Justice Doherty in her Partly Dissenting Opinion<sup>174</sup>, would have been to sever the allegation of "any other form of sexual violence" from Count 7, leaving only the allegation of sexual slavery.<sup>175</sup>

98. In response, Brima and Kamara submit that the Trial Chamber's power to cure defects in the Indictment may be used only where the material facts supporting those charges have not been pleaded with sufficient precision.<sup>176</sup> They argue that this power simply allows the Prosecution "to introduce material facts at a later stage in order to give the indictment a sufficient factual basis, and has no relevance to a legal flaw in the wording of the charges."<sup>177</sup> Kanu submits that "the nature of the defect in this instance was such that, short of amending the Indictment, [it] could not be cured" and that the disclosures made by the Prosecution subsequent to the filing of the Indictment actually made his understanding of the charges even less clear.<sup>178</sup>

#### 1. Discussion

99. The Appeals Chamber is of the opinion that the Prosecution's argument that the Trial Chamber reconsidered its prior decision is misconceived. Until its final judgment, the Trial Chamber did not rule on whether Count 7 was defective, even though Justice Sebutinde did point out that the Count was duplicitous in her Rule 98 Opinion.

100. Objections relating to defects in the form of the indictment should normally be raised at the pre-trial stage by way of a preliminary motion.<sup>179</sup> Where issues of defect in the form of an indictment are raised after the trial, it is incumbent on the party to show that its preparation of its case was materially impaired by the defect in the Indictment.

<sup>174</sup> Doherty Partly Dissenting Opinion. Justice Doherty agreed with the majority's view that the Prosecution did not sufficiently specify the second limb of Count 7 ('any other form of sexual violence'), but she disagreed with the view that if Count 7 is duplicitous, the Trial Chamber must dismiss it in its entirety (para. 3). Justice Doherty opined that the majority's reasoning that Count 7 is "bad for duplicity" is "formalistic and disregard[s] the fundamental issue, which is whether the right of the Accused to be informed promptly and in detail about the nature and the cause of the charges against them has been violated" (para. 2). Justice Doherty did not consider the interests of justice would be served by allowing the accused to invoke their right to quash an indictment after the case has closed without a showing of material prejudice. Furthermore, she noted that the Accused were not only silent on the issue of duplicity throughout the trial, but proceeded to adduce evidence and defend themselves against Count 7 (para. 15). Consequently, Justice Doherty did not consider there to have been a miscarriage of justice in this case and instead of dismissing the count, she would have considered evidence only relating to sexual slavery, not "other forms of sexual violence" (*Ibid*).

<sup>175</sup> Prosecution Appeal Brief, para. 568.

<sup>176</sup> Brima Response Brief, para. 115; Kamara Response Brief, para. 161.

<sup>177</sup> Brima Response Brief, para. 116; Kamara Response Brief, para. 162.

<sup>178</sup> Kanu Response Brief, para. 6.15.

<sup>179</sup> Kupreškić Appeal Judgment, para. 79.

~~192~~

Each case is to be considered on its own merits.

109. In the instant case, from the evidence accepted by the Trial Chamber and the findings it had made, it should have chosen the option to proceed on the basis that the offence of sexual slavery had been properly charged in Count 7, return appropriate verdict on that Count in respect of the crime of sexual slavery and struck out the charge of "any other form of sexual violence."

110. Although the Trial Chamber had not chosen that option, no miscarriage of justice has resulted therefrom. It is not necessary for the Appeals Chamber to substitute a conviction for sexual slavery as the Trial Chamber relied upon the evidence of sexual slavery to enter convictions for Count 9 which charged the offence of "outrages upon personal dignity."

#### **E. Kanu's Second Ground of Appeal: Waiver of Indictment Defects**

111. In his Second Ground of Appeal, Kanu alleges that the Trial Chamber erred in law in finding him guilty, under Article 6(1) of the Statute of committing three crimes in Freetown and other parts of the Western Area.<sup>187</sup> Due to the Prosecution's failure to plead material facts with the required degree of specificity, the Trial Chamber found the Indictment defective as regards the crimes relating to an amputation carried out near Kissy Old Road and another carried out at Uppun.<sup>188</sup> It nonetheless concluded that Kanu's ability to prepare his defence was not materially impaired, having regard to Kanu's failure to object in a timely manner to evidence being led in respect of these crimes and his cross-examination of witnesses in respect of the same.<sup>189</sup> With respect to the remaining crime of looting vehicles at State House in Freetown, although the Trial Chamber did not expressly find the Indictment defective, it appears that it adopted a similar approach.<sup>190</sup>

112. Kanu submits that the Trial Chamber ought to have dismissed all charges that alleged his personal commission after it established that those counts of the Indictment were defective.<sup>191</sup> In support of this submission he argues that in his Pre-Defence Motion he raised several challenges to the validity of the Indictment including lack of specificity regarding different forms of individual

<sup>186</sup> Doherty Partly Dissenting Opinion, para. 15 (suggesting the consideration of evidence relating only to sexual slavery instead of dismissing the entire count).

<sup>187</sup> Kanu Appeal Brief, para. 2.1.

<sup>188</sup> AFRC Trial Judgment, paras 2053, 2050.

<sup>189</sup> *Ibid* at paras 2051, 2055.

<sup>190</sup> *Ibid* at para. 2057.

<sup>191</sup> Kanu Appeal Brief, para. 2.1.

criminal responsibility and lack of specificity regarding various Counts.<sup>192</sup> He further argues that the Trial Chamber erred in law, in finding that his failure to object to evidence led by the Prosecution, during the course of the trial automatically amounted to a waiver.<sup>193</sup> Such evidence, Kanu argues, could have been relevant for purposes other than establishing individual liability.<sup>194</sup> Thus, according to Kanu, the Trial Chamber ought not to have concluded that his failure to object amounted to waiver “without firstly satisfying itself that the failure by the Defence to challenge the extraneous evidence was a deliberate defence tactic, in which case the Defence would have been held to have taken a gamble to its detriment.”<sup>195</sup>

113. In response, the Prosecution submitted that contrary to Kanu’s claims, Kanu had not previously challenged the manner in which the Indictment pleaded crimes that alleged his personal commission.<sup>196</sup> Further, in instances where evidence was adduced that tended to show that Kanu personally committed specific crimes, the Prosecution contends that it was clear to Kanu that such evidence would be relied upon to establish his individual responsibility for “committing” crimes.<sup>197</sup> The Prosecution finally submits that in any event, it is Kanu who bears the burden of showing that he was prejudiced by the Trial Chamber’s approach and that he has failed to discharge this burden.<sup>198</sup>

#### Discussion

114. Whether or not the Appellant raised a timely objection at trial will affect the question on appeal whether he was in fact prejudiced by the defective Indictment. Perusing the Record on Appeal and Kanu’s “Preliminary Motion On Defects In The Indictment,” it is clear that Kanu did not previously complain that the Indictment was defective in respect of his personal commission of the criminal acts alleged. This, therefore being the first time Kanu has raised this complaint, he must show that he was prejudiced.

115. The Appeals Chamber finds no merit in Kanu’s Second Ground of Appeal and finds that he has manifestly failed in discharging this burden. Neither in his Appeal Brief nor during oral argument did he say that he had no notice of the crimes he was alleged to have personally

<sup>192</sup> *Ibid* at para. 2.17.

<sup>193</sup> *Ibid* at para. 2.19.

<sup>194</sup> *Ibid* at para. 2.20.

<sup>195</sup> *Ibid* at para. 2.27.

<sup>196</sup> Prosecution Response Brief, para. 2.82.

<sup>197</sup> *Ibid* at para. 2.84.





1923 400

committed. Further, he neither demonstrated that he was prejudiced, nor that the preparation of his defence was materially impaired by the defect in the Indictment. On the contrary, counsel for Kanu cross-examined witnesses as to specific incidents, and when asked during the appeal hearing why no objection was raised when evidence was being led in respect of the aforementioned crimes, he replied that it was “a question of strategy” at trial.<sup>199</sup>

116. The Appeals Chamber accordingly rejects Kanu’s Second Ground.

#### IV. COMMON ISSUES OF FACT: EVALUATION OF EVIDENCE AND WITNESS CREDIBILITY

##### A. Brima’s Ninth, Tenth and Eleventh Grounds of Appeal: Evaluation of Evidence

###### 1. Brima’s Ninth Ground of Appeal

###### (a) Submissions of the Parties

117. Under the Ninth Ground of Appeal, Brima submits that the Trial Chamber committed an error of fact or law by resolving doubts in the evidence in favour of the Prosecution.<sup>200</sup> In support of this Ground, Brima raises two main arguments. First, that the Trial Chamber failed to address discrepancies between the evidence of witness TF1-184 and pre-trial statements he gave to the Prosecution.<sup>201</sup> Second, that other Prosecution witnesses including TF1-334, TF1-167, TF1-184, had incentives to lie and gave conflicting, contradictory or otherwise inconsistent evidence about certain events.<sup>202</sup>

118. In response, the Prosecution submits that Brima’s arguments are vague and imprecise.<sup>203</sup> In particular, it argues that Brima failed to state with precision the reasonable doubt that was resolved in favour of the Prosecution, and how such a doubt was resolved in favour of the Prosecution.<sup>204</sup>

<sup>198</sup> *Ibid* at para. 2.86.

<sup>199</sup> Transcript, AFRC Appeal Hearing, 14 November 2007, p. 22.

<sup>200</sup> Brima Appeal Brief, para. 168.

<sup>201</sup> *Ibid* at para. 169.

<sup>202</sup> *Ibid* at paras 176-177.

<sup>203</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-A, Response Brief of the Prosecution, 4 October 2007, para. 4.4.

<sup>204</sup> *Ibid* at para. 4.4.

#55

of the practice at international criminal courts of charging multiple instances of an offence within a single Count,<sup>332</sup> no identifiable legal principle should prevent compound convictions for multiple instances of the same offence charged in a single Count when multiple convictions would be allowed if multiple instances of the same offence at issue were charged in separate Counts.

215. The Appeals Chamber finds that the Trial Chamber was satisfied that the legal requirements for conviction under Article 6(3) were met in several instances, but that the Trial Chamber did not enter convictions for those crimes. This constitutes an error of law. Trial Chambers do not have discretion to decline to enter convictions for crimes once they have been proven beyond reasonable doubt and they are not impermissibly cumulative. Instead, when the accused is charged for multiple instances of an offence under a single Count pursuant to both Articles 6(1) and 6(3), and one or more is proved beyond a reasonable doubt for each mode of responsibility, then a compound conviction should be entered against the accused,<sup>333</sup> and the Trial Chamber must take into account all of the convictions and the fact that both types of responsibility were proved in its consideration of sentence.<sup>334</sup> As the jurisprudence of the international criminal tribunals shows, "multiple convictions serve to describe the full culpability of a particular accused or provide a complete picture of his criminal conduct."<sup>335</sup>

216. Although the Trial Chamber erred in failing to enter convictions on the Appellants where it had found that the legal requirements for entering convictions under Article 6(3) have been met, in this case no useful purpose will be served by the Appeals Chamber now entering convictions on the basis of such findings, made by the Trial Chamber, having regard to the adequate global sentence imposed on each Appellant.

<sup>332</sup> See *Stanković* Form of the Indictment Decision ("Within the limits of the rules governing indictments, the Prosecution may choose between putting forth multiple detailed counts, or fewer counts combining specific allegations. This is evident from the Prosecution's practice at this Tribunal"); *Čelebići* Appeal Judgment, para. 400.

<sup>333</sup> This is the practice when, for example, an accused is convicted for personally committing some instances of a crime and aiding and abetting other instances of the same substantive crime charged within a single Count. See *Limaj* Trial Judgment, para. 741 (finding the Accused Haradin Bala guilty, *inter alia*, of "Count 6: Cruel treatment, a violation of the laws or customs of war, under Article 3 of the Statute, for having personally mistreated detainees L04, L10 and L12, and aided another episode of mistreatment of L04, and for his personal role in the maintenance and enforcement of inhumane conditions of detention in the Lapushnik/Lapusnik prison camp").

<sup>334</sup> See *Naletilić* Trial Judgment, paras 627-628 (finding *Martinović* responsible under Article 7.1 for some instances of plunder, and responsible under Article 7.3 for separate instances of plunder, all charged under the same Count) *aff'd* *Naletilić* Appeal Judgment, paras 583-586.

<sup>335</sup> *Naletilić* Appeal Judgment, para. 585, citing *Kunarac* Appeal Judgment, para. 169.

85. 6. 1. 2. 3. 4.

~~197~~

**C. Kamara's Fifth and Sixth Grounds of Appeal: Aiding and Abetting Crimes in Freetown and the Western Area**

241. Kamara contends that the Trial Chamber erred in law and in fact by finding him guilty under Article 6(1) for aiding and abetting the mutilation of civilians in Freetown and other parts of the Western Area as well as the killing of civilians at Fourah Bay.<sup>353</sup> In particular, he argues that the Trial Chamber erroneously "applied a wider standard of liability instead of the stricter standard to find the Appellant guilty as an aider and abettor based on its analysis of the *mens rea* of aiding and abetting."<sup>354</sup> He submits that the Trial Chamber was required to find that he was aware that his acts assisted the specific crime committed by the principal perpetrator and that he was aware of the essential elements of that crime.<sup>355</sup>

**1. Errors of Law**

242. In discussing the *mens rea* for aiding and abetting, the Trial Chamber stated:

"The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed."<sup>356</sup>

243. The Appeals Chamber finds that the Trial Chamber was correct in its analysis. The Appeals Chamber of the ICTY in both *Blaškić* and *Simić* found that it was not necessary to prove that the aider and abettor knew the precise crime that was intended or actually committed by the principal perpetrator.<sup>357</sup> In both cases the ICTY Appeals Chamber held further that liability for aiding and abetting requires proof that the accused knew that one of a number of crimes would probably be committed, that one of those crimes was in fact committed, and that the accused was aware that his conduct assisted the commission of that crime.<sup>358</sup> The Appeals Chamber endorses this principle.

<sup>352</sup> See *supra* paras 127-128, 153.

<sup>353</sup> Kamara Appeal Brief, para. 156.

<sup>354</sup> *Ibid* at para. 165.

<sup>355</sup> *Ibid* at para. 166.

<sup>356</sup> AFRC Trial Judgment, para. 776.

<sup>357</sup> *Simić* Appeal Judgment, para. 86; *Blaškić* Appeal Judgment, para. 50.

<sup>358</sup> *Ibid* at para. 50.

82. 6 1 27 08

~~1482~~

## IX. GROUNDS OF APPEAL RELATING TO SENTENCE

### A. Introduction

307. The Trial Chamber imposed a sentence of fifty (50) years imprisonment on Brima and Kanu respectively and forty-five (45) years imprisonment on Kamara.<sup>469</sup> The Trial Chamber found that there were a number of aggravating but no mitigating factors. The Appellants have appealed against the sentence, while the Prosecution has not done so except to request that if some of its Grounds succeed, the Appeals Chamber should consider revising the sentence to reflect any additional criminal liability. The Appellants' Grounds of Appeal are closely related, therefore, dealing with them separately would lead to unnecessary repetition. It is convenient to address the Appellants' submissions together except for those which raise a different issue in Kanu's Eighth Ground of Appeal.

### B. Standard of Review on Appeals Relating to Sentence

308. Article 19 of the Statute limits the penalty that a Trial Chamber can impose upon a convicted person (other than a juvenile) to "imprisonment for a specified term of years." It further provides that the Trial Chamber shall, in determining the "terms of imprisonment," as appropriate, have recourse to the sentencing practices of the International Criminal Tribunal for Rwanda ("ICTR") and the national courts of Sierra Leone. The Statute requires the Trial Chamber to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person in imposing sentences.<sup>470</sup>

309. The determination of an appropriate sentence being at the discretion of the Trial Chamber, the Appeals Chamber will only revise a sentence where the Trial Chamber has committed a discernible error in exercising its discretion or has failed to follow the applicable law. To show that the Trial Chamber committed a discernible error in exercising its discretion:

"the Appellant has to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber's decision was so unreasonable or plainly unjust that the Appeals

<sup>469</sup> AFRC Sentencing Judgment, Disposition.

<sup>470</sup> Article 19, Statute of the Special Court.

82. 6 1 2008

Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly."<sup>471</sup>

**C. Excessive Sentences: Ground Twelve of Brima's Appeal and Ground Ten of Kamara's Appeal**

310. Brima alleges that the Trial Chamber erred by imposing a global sentence of fifty years, that it is "excessively harsh and disproportionate," and that it is inconsistent with the sentencing guidelines of the ICTY and the ICTR.<sup>472</sup> Kamara's Tenth Ground of Appeal argues that the Trial Chamber was required by Article 19(1) of the Statute to consider the sentencing practices in the ICTR and the national courts of Sierra Leone.<sup>473</sup> Kamara further argues that a sentence of 45 years is inconsistent with the penalties that have been imposed by the ICTR.<sup>474</sup>

311. Article 19(1) of the Statute provides that the "Trial Chamber, as appropriate, shall have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone." The phrase "where appropriate" shows that the Trial Chamber has a discretion in determining when to have recourse to sentencing practices in the two courts.

**D. Mitigating Factors: Ground Nine of Kamara's Appeal and Grounds Eleven, Fifteen, Sixteen, Seventeen and Eighteen of Kanu's Appeal**

312. The Appellants make two distinct submissions with regard to mitigating factors. First, that the Trial Chamber did not consider mitigating factors and second, that particular mitigating factors were not given adequate weight.<sup>475</sup>

313. Rule 101(B) of the Rules provides that the "Trial Chamber shall take into account the factors mentioned in Article 19(2) of the Statute, as well as such factors as: ...any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person

<sup>471</sup> *Babić* Judgment on Sentencing Appeal, para. 44. See also, *Nikolić* Sentencing Appeal Judgment, para. 95; *Blagojević* Appeal Judgment para. 137; *Brđanin* Appeal Judgment, para. 500; *Bratko* Sentencing Appeal Judgment, para. 9; *Galić* Appeal Judgment, para. 394.

<sup>472</sup> *Brima* Appeals Brief, paras 180-181.

<sup>473</sup> *Kamara* Appeals Brief, para. 246.

<sup>474</sup> *Ibid* at para. 249.

<sup>475</sup> *Brima* Appeal Brief, paras 184, 182; *Kamara* Appeal Brief, para. 237; *Kanu* Appeal Brief, paras 11.1, 11.9.

*[Handwritten signatures and initials]*

~~1985~~

considered the impact of the crimes on the victim in one section and the vulnerability of the victims in the other section.<sup>481</sup>

319. The Appeals Chamber notes that there were instances of double-counting in the Sentencing Judgment.<sup>482</sup>

320. Although the Trial Chamber made an error by double-counting, the Appeals Chamber does not consider that this error had a significant impact upon the Appellants' sentences.

#### **F. Kanu's Eighth Ground of Appeal: Cumulative Convictions and Sentence**

##### **1. Submissions of the Parties**

321. In his Eighth Ground of Appeal, Kanu submits that the Trial Chamber erred in law in imposing a global sentence of fifty years. He argues that the term of imprisonment shows that the cumulative convictions entered against him were not discounted for sentencing purposes<sup>483</sup> and that the sentence imposed on him reflects the number of convictions rather than the underlying criminal conduct.<sup>484</sup> Kanu further submits that a more appropriate penalty that reflects his criminal conduct and not the number of convictions should replace the sentence imposed on him. In response, the Prosecution contends that the Trial Chamber was under no obligation to discount the cumulative convictions entered against Kanu for sentencing purposes.<sup>485</sup>

##### **2. Discussion**

322. The Trial Chamber stated that the Special Court Statute permits it to impose a single sentence. It added that in exercising its discretion whether to impose a single sentence, "[t]he governing criteria is that the final or aggregate sentence should reflect the totality of the culpable conduct, or generally, that it should reflect the gravity of the offences and the overall culpability of the offender, so that it is both just and appropriate."<sup>486</sup> The Trial Chamber then explained that "[i]n

<sup>481</sup> *Ibid* at para. 66.

<sup>482</sup> AFRC Sentencing Judgment, paras 44, 53, 57, 72, 75, 82, 85, 96, 107, 112.

<sup>483</sup> Kanu Appeal Brief, para. 8.1.

<sup>484</sup> *Ibid* at para. 8.3.

<sup>485</sup> Prosecution Response Brief, para. 3.56.

<sup>486</sup> AFRC Sentencing Judgment, para. 12.

1986

the present case the Trial Chamber finds it is appropriate to impose a global sentence for the *multiple convictions* in respect of Brima, Kamara and Kanu.”<sup>487</sup>

323. In the Sentencing Judgment, the Trial Chamber enumerated all criminal acts for which Kanu was found responsible under Article 6(1) of the Statute and also referred to the gravity of the criminal conduct of his subordinates throughout Bombali District, Freetown and other parts of the Western Area for which he was found liable under Article 6(3) of the Statute. The emphasis placed on Kanu’s criminal acts demonstrates that the Trial Chamber ascertained the gravity of the offences in light of the individual criminal acts rather than in light of the multiple Counts for which Kanu was convicted. This approach ensured that the sentence encompasses Kanu’s, overall, criminal conduct.

324. The Appeals Chamber finds that in imposing sentence, the Trial Chamber considered the overall criminal conduct of Kanu, rather than the number of convictions entered against him.

325. The Appeals Chamber thus finds no error in the Trial Chamber’s approach that would warrant its interference with the sentence imposed. Ground Eight of Kanu’s Appeal therefore fails.

#### **G. Sentence: General Conclusion**

326. Having considered all the Grounds of Appeal relating to the Sentencing Judgment of the Trial Chamber, the Appeals Chamber is satisfied that the Trial Chamber has overall properly exercised its discretion within the provisions of the Statute of the Court.

327. Article 19(2) of the Statute states as follows:

“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” (emphasis added).

328. The Trial Chamber, in applying this provision to the case, had this to say:

“Brima, Kamara and Kanu have been found responsible for some of the most heinous, brutal and atrocious crimes ever recorded in human history. Innocent civilians – babies, children, men and women of all ages – were murdered by being shot, hacked to death, burned alive, beaten to death. Women and young girls were gang raped to death. Some had their genitals mutilated by the insertion of foreign objects. Sons were forced to rape mothers, brothers were forced to rape sisters. Pregnant women were killed by having their stomachs slit open and the foetus removed merely to settle a bet amongst the troops as to

<sup>487</sup> *Ibid* at para. 12.

624)

SCSL-04-16-T  
(22984 - 28019)



407  
22984

## SPECIAL COURT FOR SIERRA LEONE

---

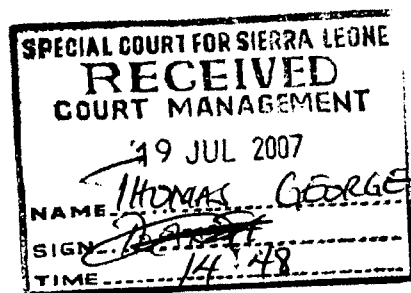
### TRIAL CHAMBER II

**Before:** Justice Julia Sebutinde, Presiding Judge  
Justice Richard Lussick  
Justice Teresa Doherty

**Registrar:** Herman von Hebel

**Date:** 19 July 2007

**Case No.:** SCSL-04-16-T



### PROSECUTOR

Against

Alex Tamba BRIMA  
Brima Bazy KAMARA  
Santigie Borbor KANU

---

### SENTENCING JUDGEMENT

---

**Office of the Prosecutor:**

Christopher Staker  
Karim Agha  
Chile Eboe-Osuji  
Anne Althaus

**Defence Counsel for Alex Tamba Brima:**

Kojo Graham  
Glenna Thompson

**Defence Counsel for Brima Bazy Kamara:**

Andrew Daniels  
Mohamed Pa-Momo Fofanah

**Defence Counsel for Santigie Borbor Kanu:**

Geert-Jan Alexander Knoops  
Agibola E. Manly-Spain  
Carry Knoops



### III. APPLICABLE LAW

22989

#### A. Applicable Provisions

10. Sentencing in the Special Court is regulated by the provisions of Article 19 of the Statute of the Special Court ("Statute") and Rule 101 of the Rules of Procedure and Evidence ("Rules"). Article 19 of the Statute provides:

1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
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 forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Rule 101 of the Rules provides:

- (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (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 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) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

11. According to the above provisions the Trial Chamber is obliged to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. Aggravating and mitigating circumstances and the general practice regarding prison sentences in the International Criminal Tribunal for Rwanda (ICTR) and the domestic courts of Sierra Leone shall, where appropriate, be taken into account. These requirements are not exhaustive and the Trial

~~SECRET~~

Chamber has the discretion to determine an appropriate sentence depending on the individual circumstances of the case.<sup>20</sup>

12. The Trial Chamber agrees with the holding of the ICTR Appeals Chamber in *Prosecutor v. Kambanda*, 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”.<sup>21</sup> The governing criteria is that the final or aggregate sentence should reflect the totality of the culpable conduct, or generally, that it should reflect the gravity of the offences and the overall culpability of the offender, so that it is both just and appropriate.<sup>22</sup> In the present case the Trial Chamber finds it is appropriate to impose a global sentence for the multiple convictions in respect of Brima, Kamara and Kanu.

### B. Sentencing Objectives

13. The preamble of the United Nations Security Council Resolution 1315 (2000)<sup>23</sup> recognises that

[...]in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.<sup>24</sup>

14. Retribution, deterrence and rehabilitation have been considered as the main sentencing purposes in international criminal justice.<sup>25</sup>

15. Furthermore, international criminal tribunals have held that retribution is not to be understood as fulfilling a desire for revenge but rather as duly expressing the outrage of the national and international community at these crimes,<sup>26</sup> and that is meant to reflect a fair and balanced

<sup>20</sup> *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006, (“*Momir Nikolić* Appeal Sentencing Judgement”), para. 106: “Sentencing decisions are discretionary and turn on the particular circumstances of each case.”

<sup>21</sup> *Kambanda* Appeal Judgement, para. 113

<sup>22</sup> *Čelebići* Appeal Judgement, paras. 429-430

<sup>23</sup> UN Sec Res. 1315(2000), 14 August 2000.

<sup>24</sup> UN Sec Res. 1315(2000), 14 August 2000, para. 7.

<sup>25</sup> See also *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000 (“*Aleksovski* Appeal Judgement”), para. 185; *Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka “Pavo”), Hazim Delić and Esad Landžo (aka “Zenga”)*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”), para. 806; see also *Prosecutor v. Stevan Todorović*, Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001 (“*Todorović* Sentencing Judgement”), paras 28-29; *Gacumbitsi* Trial Judgement, para. 335; *Semanza* Trial Judgement, para. 554; *Kambanda* Trial Judgement, para. 28.

<sup>26</sup> See also *Aleksovski* Appeal Judgement, para. 185; *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003, (“*Dragan Nikolić* Sentencing Judgement”), para. 140, stating that retribution should solely be seen as: “an objective, reasoned and measured determination of an appropriate punishment which properly reflects the [...] culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offenders conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more”, *R. v. M. (C.A.)* (1996) 1 S.C.R. 500, para. 80 (emphasis in original).

~~2071~~

approach to punishment for wrongdoing. The penalty imposed must be proportionate to the wrongdoing. In other words, the punishment must fit the crime.<sup>27</sup>

16. International criminal tribunals have held further that the element of deterrence is important in demonstrating “that the international community is not ready to tolerate serious violations of international humanitarian law and human rights”.<sup>28</sup> It follows that the penalties imposed by the Trial Chamber must be sufficient to deter others from committing similar crimes.<sup>29</sup> In the context of international criminal justice, it is recognised that one of the main purposes of a sentence is to “influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody”.<sup>30</sup>

17. International criminal tribunals have noted that unlike the case in domestic courts, rehabilitation cannot be considered as a predominant consideration in determining a sentence, as the sentencing aims of national jurisdictions are different from the aims of international criminal tribunals.<sup>31</sup>

18. In deciding appropriate sentences, the Trial Chamber has taken into account all the factors likely to contribute to the achievement of the above objectives.

### C. Sentencing Factors

#### 1. Gravity of Offence

19. In determining an appropriate sentence, the gravity of the crime is the primary consideration or “litmus test”.<sup>32</sup> The determination of the gravity of the crime must be individually assessed.<sup>33</sup> In making such an assessment, the Trial Chamber may examine, *inter alia*, the general nature of the

<sup>27</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-A/IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000 (“*Tadić* Appeal Sentencing Judgement”), para. 48; *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 803; *Todorović* Sentencing Judgement, para. 30.

<sup>28</sup> *Kambanda* Trial Judgement, para. 28, endorsed in *Aleksovski* Appeal Judgement, para. 66.

<sup>29</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-A/IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000 (“*Tadić* Appeal Sentencing Judgement”), para. 48; *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 803; *Todorović* Sentencing Judgement, para. 30.

<sup>30</sup> *Nikolić* Sentencing Judgement, para. 139.

<sup>31</sup> *Deronjić* Appeal Judgement, paras 136-137.

<sup>32</sup> *Čelebići* Appeal Judgement, para. 731; *Nikolić* Appeal Judgement, para. 18.

<sup>33</sup> *Blaskić* Appeal Judgement, para. 683; *Prosecutor v. Blagojević and Dragan Jokić*, IT-02-60, Judgement, 17 January 2005 (“*Blagojević* Trial Judgement”), para. 833.

~~1999~~

underlying criminal conduct;<sup>34</sup> the form and degree of participation of the Accused<sup>35</sup> or the specific role played by the Accused in the commission of the crime;<sup>36</sup> the degree of suffering, impact or consequences of the crime for the immediate victim in terms of physical, emotional and psychological effects;<sup>37</sup> the effects of the crime on relatives of the immediate victims and/or the broader targeted group;<sup>38</sup> the vulnerability of the victims;<sup>39</sup> and the number of victims.<sup>40</sup>

20. Where an Accused has been found liable as a commander pursuant to Article 6(3) of the Statute, two levels of consideration are necessary in determining the gravity of the offence: (1) the gravity of the underlying crime committed by a subordinate under the effective control of the Accused, and (2) the gravity of the Accused's own conduct in failing to prevent or punish the crimes committed by that subordinate.<sup>41</sup>

## 2. Aggravating Circumstances

21. The aggravating and mitigating circumstances to be taken into account by the Trial Chamber are not exhaustively set out in the Rules.<sup>42</sup> Thus, the Trial Chamber is tasked with the charge of weighing the individual circumstances of each case and has discretion to identify the relevant factors. The Trial Chamber may consider, for example,

(i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict [...]; (ii) the discriminatory intent or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime; (iii) the length of time during which the crime continued; (iv) active and direct criminal participation, if linked to a high-rank position of command, the accused's role as fellow perpetrator, and the active participation of a superior in the criminal acts of subordinates; (v) the informed, willing or enthusiastic participation in crime; (vi) premeditation and motive; (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims; (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them; (ix) the character of the accused; and (x) the circumstances of the offences generally.<sup>43</sup>

<sup>34</sup> *Blaskić* Appeal Chamber Judgement, para. 683; *Blagojević* Trial Judgement, para. 833.

<sup>35</sup> *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004 ("Kordić Appeal Judgement"), para. 1061.

<sup>36</sup> *Blaskić* Appeal Judgement, para. 683; *Blagojević* Trial Judgement, para. 833.

<sup>37</sup> *Blaskić* Appeal Judgement, para. 683; *Blagojević* Trial Judgement, para. 833.

<sup>38</sup> *Blaskić* Appeal Judgement, para. 683; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003 ("*Galić* Trial Judgement"), para. 758.

<sup>39</sup> *Blaskić* Appeal Judgement, para. 683.

<sup>40</sup> *Babić* Trial Judgement, para. 47; *Galić* Trial Judgement, para. 758.

<sup>41</sup> *Čelebići* Appeal Judgement, para. 732.

<sup>42</sup> SCSL RPE, Rule 101(B).

<sup>43</sup> *Blaskić* Appeal Judgement, para. 686 (citing *Čelebići* Appeal Judgement, para. 763); *Jokić* Sentencing Judgement, paras 61-62; *Tadić* Appeal Judgement, paras 55-56; *Vasiljević* Appeal Judgement, paras 172-173; *Vasiljević* Trial Judgement, para. 277; *Kunarac* Appeal Judgement, paras 356, 357; *Todorović* Trial Judgement, para. 57; *Todorović* Sentencing Judgement, para. 65; *Krstić* Trial Judgement, paras 708, 711-712; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998 ("*Furundžija* Trial Judgement"), para. 281; *Čelebići* Appeal Judgement, paras 736-737, 788; *Jelisić* Appeal Judgement, para. 86; *Kayishema* Appeal Judgement, para. 351; *Krstić* Appeal

extent and gravity of the offences, as well as the difficulty in ascertaining the precise number of victims.<sup>72</sup>

(b) Deliberations

40. The Trial Chamber considers that the crimes for which Brima was convicted were heinous, deliberate, brutal and targeted very large numbers of unarmed civilians and had a catastrophic and irreversible impact on the lives of the victims and their families.

41. Brima was convicted under Article 6(1) and under Article 6(3). Specifically, the Trial Chamber found Brima responsible under Article 6(1) for:

1. committing extermination in Karina, Bombali District;
2. committing the murder of five civilians at State House, Freetown, Western Area;
3. committing the mutilation of one civilian in Freetown, Western Area;
4. ordering the terrorisation of the civilian population in:
  - a. Karina, Bombali District;
  - b. Rosos, Bombali District; and
  - c. Freetown, Western Area;
5. ordering the collective punishment of the civilian population in Freetown, Western Area;
6. ordering and planning the recruitment and use of child soldiers in:
  - a. Freetown, Western Area; and
  - b. Rosos, Bombali District;
7. ordering the murders of civilians at:
  - a. Mateboi, Bombali District;
  - b. Gbendembu, Bombali District;
  - c. State House, Freetown, Western Area;
  - d. Kissy Mental Home, Freetown, Western Area; and
  - e. Rogbalan Mosque, Freetown, Western Area;
8. ordering and aiding and abetting the murders of civilians in Fourah Bay, Freetown, Western Area;
9. ordering and planning the enslavement of civilians in Freetown, Western Area;
10. ordering the looting of civilian property; Freetown, Western Area;

---

<sup>72</sup> Brima Defence Sentencing Brief, para. 12.

11. planning the commission of outrages upon personal dignity in the form of sexual slavery in Bombali District and the Western Area;
12. planning the enslavement of civilians in Bombali District.

42. Brima was further found liable under Article 6(3) for crimes committed by his subordinates throughout Bombali District and Freetown and the Western Area.

43. With regards to the crimes for which Brima is responsible under Article 6(1), the Trial Chamber recalls its factual findings that Brima was the primary perpetrator of the murders of at least 12 civilians in a mosque during the attack on Karina,<sup>73</sup> a fact indicative of the particular gravity of this offence.

44. With regards to the recruitment and use of child soldiers, the Trial Chamber recalls that the young victims were abducted from their families, often in situations of extreme violence, often drugged and forcibly trained to kill and to commit crimes against innocent civilians. These children were robbed of their childhood and many lost the chance of an education.

45. With regards to the crimes for which Brima is responsible under Article 6(3) the Trial Chamber has examined the gravity of the crimes committed by subordinates under his effective control. Many of these crimes, detailed in the Trial Chamber's Factual Findings are of a particularly heinous nature. The Trial Chamber recalls in particular that in Karina, Brima's subordinates unlawfully killed children by throwing them into the flames of burning houses.<sup>74</sup> In Rosos, five of Brima's subordinates beat and orally and vaginally gang-raped a civilian<sup>75</sup> and another four raped a civilian so brutally that she was in great pain, could not stand up and testified that "it seem[ed] as though all my guts were coming out".<sup>76</sup> With regards to the sexual crimes in general, the Trial Chamber notes that many of the victims were particularly young and vulnerable, were held in captivity for protracted periods, often coupled with unwanted pregnancy/miscarriages and endured social stigma.

46. The Trial Chamber considers the crime of mutilation was particularly grotesque and malicious. Victims who had their limbs hacked off not only endured extreme pain and suffering, if they survived, but lost their mobility and capacity to earn a living or even to undertake simple daily tasks. They have been rendered dependent on others for the rest of their lives.

---

<sup>73</sup> Judgement, para. 1709.

<sup>74</sup> Judgement, para. 888.

<sup>75</sup> Judgement, paras 1031-1032.

<sup>76</sup> Judgement, para. 1035.

414  
23019

## VI. DISPOSITION

**FOR THE FOREGOING REASONS, THE TRIAL CHAMBER UNANIMOUSLY**

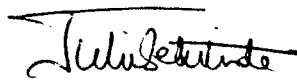
**SENTENCES** Alex Tamba Brima to a **SINGLE TERM OF IMPRISONMENT OF FIFTY YEARS** for all the Counts on which he has been found **GUILTY**. Credit shall be given to him for any period during which he was detained in custody pending this trial;

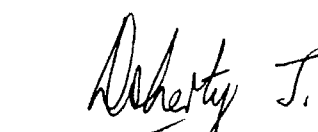
**SENTENCES** Ibrahim Bazzy Kamara to **SINGLE TERM OF IMPRISONMENT OF FORTY FIVE YEARS** for all the Counts on which he has been found **GUILTY**. Credit shall be given to him for any period during which he was detained in custody pending this trial;

**SENTENCES** Santigie Borbor Kanu to **SINGLE TERM OF IMPRISONMENT OF FIFTY YEARS** for all the Counts on which he has been found **GUILTY**. Credit shall be given to him for any period during which he was detained in custody pending this trial.

Done in Freetown, Sierra Leone, this 19<sup>th</sup> day of July 2007.

  
Justice Richard Lussick

  
Justice Julia Sebutinde  
Presiding Judge

  
Justice Peresa Doherty





## SPECIAL COURT FOR SIERRA LEONE

---

### TRIAL CHAMBER II

**Before:** Justice Julia Sebutinde, Presiding Judge  
Justice Richard Lussick  
Justice Teresa Doherty

**Registrar:** Herman von Hebel, Acting Registrar

**Date:** 20 June 2007

**Case No.:** SCSL-04-16-T

### PROSECUTOR

**Against**

**Alex Tamba BRIMA  
Brima Bazzy KAMARA  
Santigie Borbor KANU**

---

### JUDGEMENT

---

**Office of the Prosecutor:**

Karim Agha  
Christopher Staker  
Charles Hardaway  
Lesley Taylor  
Melissa Pack  
Vincent Wagona  
Shyamala Alagendra

**Defence Counsel for Alex Tamba Brima:**

Kojo Graham  
Glenna Thompson

**Defence Counsel for Brima Bazzy Kamara:**

Andrew Daniels  
Mohamed Pa-Momo Fofanah

**Defence Counsel for Santigie Borbor Kanu:**

Geert-Jan Alexander Knoops  
Agibola E. Manly-Spain  
Carry Knoops



indictment as to which each witness will testify, is sufficient to put the accused on notice.<sup>79</sup> However, in the same case, the Appeals Chamber also held that mere service of witness statements by the Prosecution in discharging its disclosure obligations does not automatically provide sufficient notice to the Defence.<sup>80</sup> The Trial Chamber is guided by these principles when determining whether the alleged defect in the Indictment has been cured.

49. The Defence submissions throughout the trial, including final trial briefs and closing arguments may assist in assessing whether the accused was sufficiently put on notice to respond to the allegations by the Prosecution.<sup>81</sup> In case of a lack of notice, the Defence must raise a specific objection at the time the evidence is introduced.<sup>82</sup> As the Appeals Chamber stated in the *Niyitegeka* case:

In general, "a party should not be permitted to refrain from making an objection to a matter which was apparent during the course of the trial, and to raise it only in the event of an adverse finding against that party." Failure to object in the Trial Chamber will usually result in the Appeals Chamber disregarding the argument on grounds of waiver. In the case of objections based on lack of notice, the Defence must challenge the admissibility of evidence of material facts not pleaded in the Indictment by interposing a specific objection at the time the evidence is introduced. The Defence may also choose to file a timely motion to strike the evidence or to seek an adjournment to conduct further investigations in order to respond to the unpleaded allegation. [...] <sup>83</sup> [emphasis added]

The Trial Chamber therefore finds that failure to object to the admissibility of evidence on material facts not pleaded in the Indictment constitutes a waiver and the Defence may not later raise an objection that it was not sufficiently put on notice.<sup>84</sup>

50. The aforesaid may be summarised as follows:

- (i) It must be established whether the Indictment pleaded the particulars in relation to crimes personally committed by the Accused in sufficient detail;
- (ii) If the Indictment does not provide sufficient detail, the Trial Chamber must consider whether this defect prejudiced the Accused in mounting a defence against the charge. In this context, the Trial Chamber will assess whether supplementary information given to the Defence

<sup>79</sup> *Naletilić* Appeal Judgement, para. 27, referring to Rule 65ter(E)(ii) of the ICTY Rules of Procedure and Evidence, which has no equivalent in the Special Court's Rules; *Gacumbtsi* Appeal Judgement, paras 57-58 quoting *Naletilić* Appeal Judgement, para. 45.

<sup>80</sup> *Naletilić* Appeal Judgement, para. 27.

<sup>81</sup> *Kvočka* Appeal Judgement, paras 52, 53; *Kordić* Appeal Judgement, para. 148; *Naletilić* Appeal Judgement, para. 27.

<sup>82</sup> *Kamuhanda* Appeal Judgement, para. 21, referring to *Niyitegeka* Appeal Judgement, para. 199.

<sup>83</sup> *Niyitegeka* Appeal Judgement, para. 199.

<sup>84</sup> *Kayishema* Appeal Judgement, para. 91; *Ntakirutimana* Appeal Judgement, para. 52.

774. The Trial Chamber agrees with the Prosecution that an accused may be responsible for “reissuing illegal orders”, *i.e.*, for receiving a criminal order from a superior and, in turn, instructing subordinates to act upon it.<sup>1497</sup>

(e) Aiding and abetting

775. The *actus reus* of ‘aiding and abetting’ requires that the accused gave practical assistance, encouragement, or moral support which had a substantial effect on the perpetration of a crime.<sup>1498</sup> “Aiding and abetting” may be constituted by contribution to the planning, preparation or execution of a finally completed crime.<sup>1499</sup> Such contribution may be provided directly or through an intermediary<sup>1500</sup> and irrespective of whether the participant was present or removed both in time and place from the actual commission of the crime.<sup>1501</sup> Mere presence at the scene of crime without preventing its occurrence does not *per se* constitute aiding and abetting.<sup>1502</sup> However, the presence at a crime scene of a person who is in a position of authority may be regarded as an important indication for encouragement or support.<sup>1503</sup>

776. The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed.<sup>1504</sup>

777. The Prosecution contends that a “persistent failure to prevent or punish crimes by subordinates over time may also constitute aiding or abetting.”<sup>1505</sup> The Trial Chamber agrees that, while such failure entails a superior’s responsibility under Article 6(3) of the Statute, it may also be a basis for his liability for aiding and abetting, subject to the *mens rea* and *actus reus* requirements being fulfilled.<sup>1506</sup>

<sup>1497</sup> Prosecution Final Brief, para. 423, referring to *Kupreškić* Trial Judgement, para. 862.

<sup>1498</sup> *Blaškić* Appeal Judgement, para. 46.

<sup>1499</sup> *Blaškić* Appeal Judgement, paras 45, 48; *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-T, Judgement, 23 January 2003 (“*Kamuhanda* Trial Judgement”), para. 597; *Orić* Trial Judgement, para. 282.

<sup>1500</sup> *Limaj* Trial Judgement, para. 516; *Orić* Trial Judgement, para. 282.

<sup>1501</sup> *Orić* Trial Judgement, para. 282; *Blaškić* Appeal Judgement, para. 48.

<sup>1502</sup> *Orić* Trial Judgement, para. 283.

<sup>1503</sup> *Kayishema* Appeal Judgement, para. 201; *Orić* Trial Judgement, para. 283; see also *Aleksovski* Trial Judgement, para. 65; *Kajelijeli* Trial Judgement, para. 769; see also *Brima* Final Brief, para. 92; *Kamara* Final Brief, para. 31.

<sup>1504</sup> *Blaškić* Appeal Judgement, para. 50.

<sup>1505</sup> Prosecution Final Brief, para. 431.

<sup>1506</sup> On the relationship between Article 6(1) and 6(3), see para. 800 *infra*.

(f) Participation in a Joint Criminal Enterprise

778. The Trial Chamber has already found that the pleading of common purpose in the Indictment was defective and that joint criminal enterprise as a mode of liability cannot be relied upon by the Prosecution.

3. Individual Criminal Responsibility Pursuant to Article 6(3) of the Statute

779. In addition, or alternatively, the Indictment charges pursuant to Article 6(3) of the Statute that the Accused, while holding positions of superior responsibility and exercising effective control over their subordinates, are each individually criminally responsible for the said crimes in that each Accused is responsible for the criminal acts of his subordinates which he knew or had reason to know that the subordinate was about to commit or had done so and which each Accused failed to take the necessary and reasonable measures to prevent or to punish the perpetrators thereof.<sup>1507</sup>

780. Article 6(3) of the Statute provides:

The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

(a) Elements of Superior Responsibility

781. As is evident from its terms, Article 6(3) of the Statute requires a three-pronged test for criminal liability to attach:

1. The existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime;
2. The accused knew or had reason to know that the crime was about to be or had been committed; and
3. The Accused failed to take necessary and reasonable measures to prevent the crime or punish the perpetrators thereof.<sup>1508</sup>

782. The principle that an individual may be held responsible as a superior in the course of an armed conflict is enshrined in customary international law.<sup>1509</sup> The scope of Article 6(3) does not

<sup>1507</sup> Indictment, para. 36.

<sup>1508</sup> Rule 98 Decision, para. 328, referring to *Čelebići* Trial Judgement, para. 346.

only include military commanders, but also political leaders and other civilian superiors in possession of authority.<sup>1510</sup>

783. Under Article 6(3) of the Statute, a superior is held responsible for an omission, *i.e.*, for the failure to perform an act required by international law.<sup>1511</sup> The culpable omission of a superior consists of his or her failure to prevent or punish crimes under the Statute committed by subordinates. Hence, a superior is responsible not for the principal crimes, but rather for what has been described as a ‘dereliction’ or ‘neglect of duty’ to prevent or punish the perpetrators of serious crimes.<sup>1512</sup> Responsibility of a superior is not limited to crimes committed by subordinates in person, but encompasses any modes of criminal liability proscribed in Article 6(1) of the Statute. It follows that a superior can be held responsible for failure to prevent or punish a crime which was planned, ordered, instigated or aided and abetted by subordinates.<sup>1513</sup>

(i) Existence of a Superior-Subordinate Relationship

784. The doctrine of command responsibility is “ultimately predicated upon the power of the superior to control the acts of his subordinates.”<sup>1514</sup> It is immaterial whether the power of the superior over the subordinates is based on *de jure* or on *de facto* authority,<sup>1515</sup> as long as the

<sup>1509</sup> *Čelebići* Trial Judgement, para. 333, stating “[t]hat military commanders and other persons occupying positions of superior authority may be held criminally responsible for the unlawful conduct of their subordinates is a well-established norm of customary international law.” See also *Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura*, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 (“*Hadžihasanović* Appeal Decision on Jurisdiction”), para. 31, holding that “[i]n the opinion of the Appeals Chamber, the Trial Chamber was correct in holding, after a thorough examination of the matter, that command responsibility was at all times material to this case a part of customary international law in its application to war crimes committed in the course of an internal armed conflict.”

<sup>1510</sup> *Aleksovski* Appeal Judgement, para. 76; *Stakić* Trial Judgement, para. 459; *Orić* Trial Judgement, para. 308; *Bagilshema* Appeal Judgement, para. 51; *Kajelijeli* Appeal Judgement, para. 85.

<sup>1511</sup> *Halilović* Trial Judgement, para. 54.

<sup>1512</sup> *Halilović* Trial Judgement, paras 42-54; *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-T, Judgement, 15 March 2006 (“*Hadžihasanović* Trial Judgement”), para. 75; see Judge Shahabuddeen’s partly dissenting opinion in the *Hadžihasanović* Appeal Decision on Jurisdiction, stating that “[t]he position of the appellants seems to be influenced by their belief that Article 7(3) of the Statute has the effect, as they say, of making the commander ‘guilty of an offence committed by others even he neither possessed the applicable mens rea nor had any involvement whatsoever in the actus reus.’ No doubt, arguments can be made in support of that reading of the provision, but I prefer to interpret the provision as making the commander guilty for failing in his supervisory capacity to take the necessary corrective action after he knows or has reason to know that his subordinate was about to commit the act or had done so”; *Orić* Trial Judgement, para. 293. See also Brima Final Brief, para. 65.

<sup>1513</sup> *Orić* Trial Judgement, paras 301-302; see also *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-PT, Decision on Prosecution’s Motion to Amend the Indictment, 26 May 2006, paras 18 et seq.

<sup>1514</sup> *Čelebići* Trial Judgement, para. 377.

<sup>1515</sup> *Orić* Trial Judgement, para. 309, stating that “the broadening of this liability as described above is supported by the fact that the borderline between military and civil authority can be fluid. This is particularly the case with regard to many contemporary conflicts where there may be only de facto self-proclaimed governments and/or de facto armies and paramilitary groups subordinate thereto” (footnotes omitted); see also *Kordić* Trial Judgement, paras 419, 422; *Prosecutor v. Juvenal Kajelijeli*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005 (“*Kajelijeli* Appeal Judgement”), para. 87; *Prosecutor v. Mladen Naletilić aka “Tuta” and Vinko Martinović aka “Stela”*, Case No. IT-98-34-T, Judgement, 31 March 2003 (“*Naletilić* Trial Judgement”), para. 67.

relies on the Prosecution evidence to determine whether the Accused Brima is individually criminally responsible for the Karina killings, it must take the following factors into account.

1706. The Indictment does not plead the material facts of this specific incident with regard to the Accused Brima.<sup>2947</sup> The Prosecution failed to include these particulars in the Indictment and rendered the Indictment defective.

1707. From the outset of its case, the Prosecution was aware of material facts regarding the Karina attack including the means with which the Accused Brima committed this attack on Karina and details of the killings at the mosque in Karina. The Prosecution Supplemental Pre-Trial Brief generally provides information that the Accused Brima ordered that AFRC/RUF should make its mark on Karina and that no one should be spared. It also alleges that the Accused Brima participated in the shooting on the attack on Karina.<sup>2948</sup> However, it does not specify the details of the attack on the mosque, that is the means and purpose of the attack or a description of the victims. In addition, the OTP Opening Statement does not specify the Accused Brima participation in the killing of civilians at a mosque in Karina. Instead, the Prosecution indicated that when the people of Karina village were assembled at the mosque at 5:00 o'clock for morning prayers, AFRC/RUF forces led by the three Accused descended on them with guns, machetes and axes. They lined them up and one after the other hacked them to death.<sup>2949</sup>

1708. The Trial Chamber notes that the Prosecution disclosure materials of a Witness Statement of TF1-334 dated 6 November 2003, does not mention the shooting of the Imam by the Accused Brima. However, it specifically states that Witness TF1-334 saw 'Gullit' going to a mosque in Karina and questioned the people as morning prayers were going on. Thereafter, the witness saw 'Gullit' remove his pistol and shoot the civilians dead.<sup>2950</sup> Therefore, the Trial Chamber finds that the above constitutes sufficient notice of the material particulars relating to Brima's participation in the Karina killings and that the defect in the Indictment with regard to this crime was cured by clear, timely and consistent notice to the Defence.

1709. In light of the foregoing considerations and the Trial Chamber's finding that the Accused Brima participated in a mass killing of at least 12 civilians at a mosque in Karina, the Trial

<sup>2947</sup> See test applied by the Trial Chamber in Alleged Defects in Form of Indictment, para. 55, *supra*.

<sup>2948</sup> Prosecution Supplemental Pre-Trial Brief, p. 24.

<sup>2949</sup> Prosecution Opening Statement, Transcript 7 March 2005, p. 39.

<sup>2950</sup> Statement of Witness TF1-334, 6 November 2003, CMS p. 6557 [confidential].

Chamber finds that the Prosecution has established beyond reasonable doubt the Accused's responsibility by committing on a large scale the massacre of civilians at a mosque in Karina. The Trial Chamber is further satisfied that the Accused Brima was aware that his participation in the killings on such a massive scale amounted to the crime of extermination.

b. Ordering

i. Order to terrorise and kill the civilian population at Karina

1710. Around June 1998, at Kamagbengbe and in the presence of Kamara and Kanu, the Accused Brima gave orders to the AFRC troops to attack Karina. Brima referred to Karina as a strategic location because it was the home town of President Ahmed Tejan Kabbah. The witness stated that Brima ordered the troops to burn down Karina, capture strong male civilians, and amputate civilians. Brima concluded that he wanted the attack on Karina to shock "the whole country" and the international community. The Trial Chamber has found that there were no ECOMOG or Kamajor troops in Karina at the time and that all the victims were civilians.<sup>2951</sup> Witness TF1-157 testified that after the attack on Karina, he heard rebels say that the town had been attacked because it was the home town of President Kabbah.<sup>2952</sup> Witness TF1-033 testified that he heard 'Gullit' order that civilian women should be stripped naked and raped during the attack on Karina, and the neighbouring town of Bornoya.<sup>2953</sup> The Trial Chamber found this evidence detailed, consistent and credible.

1711. The Trial Chamber is therefore satisfied that the Accused Brima ordered his subordinates to perpetrate crimes against the civilian population in Karina and its environs with the specific intent of instilling terror in the civilian population.

ii. Order to terrorise the civilian population around Rosos

1712. Witness TF1-334 testified that during the rainy season in 1998, the AFRC/Junta forces established a base at Rosos and remained there for approximately three months. While at Rosos, the witness heard Brima order the troops to occupy the surrounding villages and ensure that no civilians remained within 15 miles of the village.<sup>2954</sup> Brima ordered that any civilians be executed rather than brought back to the camp, and added that he would take disciplinary action against any soldier who

<sup>2951</sup> TF1-334, Transcript 23 May 2005, pp. 56-60, 61, 64-65; George Johnson, Transcript 15 September 2005, pp. 53-54.

<sup>2952</sup> TF1-157, Transcript 25 September 2005, pp. 29-30, 58-60; Transcript 26 September 2005, pp. 9, 23-24, 30.

<sup>2953</sup> TF1-033, Transcript 11 July 2005, pp. 18-20.

passage of time between the initial disclosure of the Prosecution material and the testimony of Witness TF1-184, and is therefore unable to determine the timeliness of the notice. However, the Brima Defence did not object. The Trial Chamber therefore finds that the failure to give notice did not materially impair the ability of the Brima Defence to prepare its case.

1760. The Trial Chamber accordingly finds that the Accused Brima is criminally responsible for personally killing a soldier's wife at the State House Area.

iii. Unlawful killings at Kissy Mental Home/Portee area

1761. The Trial Chamber heard unchallenged evidence that shortly after the AFRC forces invaded Freetown in early January 1999, on the way from Kissy Mental Home towards the Portee area, the Accused Brima personally shot dead a nun.<sup>3022</sup> Witness TF1-153 stated that he moved together with the AFRC troops to the Portee area by the Cotton Tree where they met nuns and that after 'Gullit' ordered the nuns to walk faster he later took out his pistol and shot dead "a black nun."<sup>3023</sup>

1762. The Trial Chamber finds that once again, the Indictment does not plead the incident on the killing of a black nun by the Accused Brima around the Portee area, the failure of which renders the Indictment defective. The Trial Chamber observes that the Prosecution Supplemental Pre-Trial Brief and its Opening Statement do not mention the killing of a black nun in the Portee area. However, this defect was cured by the information provided in the pre-trial Statement of witness TF1-153 dated 28 February 2003.

1763. Although the pre-trial statement of witness TF1-153 do not provide specific details on the killing of a black nun by the Accused Brima, the information contained therein put the Defence on adequate notice.<sup>3024</sup> Further information was contained in the pre-trial statement of witness TF1-153 on the conduct of the Accused Brima upon the AFRC troops' retreat from Freetown, and that the witness responded to the question put to him in relation to the killing of the black nun. In addition, the Defence cross examined the witness on this incident.<sup>3025</sup>

1764. Taking these statements together, the Trial Chamber finds that adequate notice was given to the Brima Defence of this incident. Accordingly, the Trial Chamber finds the Accused Brima

<sup>3022</sup> TF1-153, Transcript 23 September 2005, pp. 21-22.

<sup>3023</sup> TF1-153, Transcript 23 September 2005, p. 22.

<sup>3024</sup> TF1-153, Prior Witness Statement, 28 February 2003, CMS pp. 10269-10272 [confidential].

<sup>3025</sup> TF1-153, Transcript 23 September 2005, pp. 50-51.

individually criminally liable for committing the murder of a nun around the Kissy Mental Home/Portee area, as part of a widespread and systematic attack against the civilian population.

iv. Unlawful killings in the Wellington area

1765. Witness TF1-334 testified that in early January 1999, AFRC forces along the Wellington area, including the Accused Brima shot at civilians.<sup>3026</sup> The witness stated that all the three Accused participated in the shooting of civilians and that he saw 'Gullit' shooting with his own gun. The witness did not state whether any persons died as a result of the shooting.

1766. Furthermore, the Indictment does not plead the particulars of the incidents that took place around the Wellington area in which the Accused Brima is alleged to have shot at civilians, and the Prosecution Supplemental Pre-Trial Brief, OTP Opening Statement and Witness Statements provide no information on this specific incident with regard to the Accused Brima. The Trial Chamber will therefore make no finding on this incident.

v. Amputation of a civilian's hand at Old Road area

1767. The Trial Chamber heard unchallenged evidence that 'Gullit' (the Accused Brima) intentionally amputated the hand of a man at Shell Company by Old Road in Freetown in January 1999.<sup>3027</sup> The Indictment does not plead the material facts regarding this specific incident with regard to the Accused Brima and is therefore defective. The Trial Chamber must therefore determine whether this defect was cured by clear, timely and consistent notice to the Brima Defence.

1768. The Prosecution's Pre-Trial Brief and Opening Statement do not refer to this incident. Annex A of the Prosecution Supplemental Pre-Trial Brief states that "Alex Tamba Brima *ordered* amputations of civilians because they had pointed out the rebel positions to ECOMOG" [emphasis added].<sup>3028</sup> This information does not put the Defence on notice of the Prosecution's intent to charge the Accused with the personal commission of an amputation. The Trial Chamber notes however, that the pre-trial statement of witness TF1-184 specifically refers to the commission of the act by the Accused Brima:

<sup>3026</sup> TF1-334, Transcript 14 June 2005, p. 98.

<sup>3027</sup> TF1-184, Transcript 27 September 2005, p. 80.

<sup>3028</sup> Prosecution Supplemental Pre-Trial Brief, Annexure A, p. 100.



a. Committing

i. Fourah Bay: The killing of civilians

2048. The Trial Chamber has found that AFRC troops killed an unknown number of civilians at Fourah Bay in retaliation for the alleged murder of a soldier during the 1999 attack on Freetown.<sup>3393</sup> While witness TFI-334 testified that the Accused Kanu “partook” in the attack, the witness does not further clarify the manner of his participation.<sup>3394</sup>

2049. The Trial Chamber has found that this evidence does not establish that the Accused Kanu personally killed any civilians.<sup>3395</sup>

ii. Kissy Road: “Demonstration” of an amputation to the troops

2050. The Trial Chamber has found that the Accused Kanu amputated a civilian near Kissy Old Road during the 6 January 1999 invasion in order to “demonstrate” to his troops how best to carry out amputations.<sup>3396</sup> He explained that there were two types of amputation possible, one called a long sleeve, meaning an amputation of the arms, and the other a short sleeve, meaning an amputation of the arm up to the bicep.<sup>3397</sup> The Indictment does not provide any of the particulars of the incident and is therefore defective in this regard.

2051. The Trial Chamber must determine whether this defect in the Indictment was cured by clear, timely and consistent notice to the Kanu Defence. The Prosecution Supplemental Pre-Trial Brief and the Prosecution’s Opening Statements do not refer to this incident. Nevertheless, the Kanu Defence did not object to the evidence when led and in fact cross-examined the witness on this specific incident during trial. The Trial Chamber therefore finds that the failure to give notice did not materially impair the ability of the Kanu Defence to prepare its case.

2052. The Trial Chamber accordingly finds the Accused Kanu individually criminally responsible for committing an act of physical violence.

iii. Uppun: “Demonstration” of an amputation on a civilian

<sup>3391</sup> Kanu Final Brief, paras 420-421.

<sup>3392</sup> Kanu Final Brief, paras 422-424.

<sup>3393</sup> TFI-334, Transcript 14 June 2005, pp. 66-67.

<sup>3394</sup> Factual Findings, Unlawful Killings, para 919, *supra*.

<sup>3395</sup> Factual Findings, Unlawful Killings, para 926, *supra*.

2053. The Trial Chamber has found that subsequently the Accused Kanu demonstrated how to perform amputations on two other civilians at Upgun during the retreat from Freetown in January 1999.<sup>3398</sup> The Trial Chamber is satisfied that this is a separate incident to the act of physical violence described above. The Indictment does not provide any of the particulars of the incident and is therefore defective in this regard.

2054. The Trial Chamber must determine whether this defect in the Indictment was cured by clear, timely and consistent notice to the Brima Defence. The Prosecution Supplemental Pre-Trial Brief and the Prosecution's Opening Statements do not refer to this incident. The Trial Chamber observes that the relevant information did not come into the Prosecution's possession until March or April 2005, and that on 22 April 2005 it disclosed a statement to the defence in which the witness said that

Whilst we were at Upgun, 55 came with a commander, Major Mines and Captain Kabila and some people were amputated. 55 demonstrated by amputating two people. From then on the amputations started.<sup>3399</sup>

2055. Thus, the Defence was not put on notice of this allegation until over one month after the trial commenced. The Trial Chamber does not consider that this constitutes timely notice. Nevertheless, the Kanu Defence did not object to the evidence when led and in fact cross-examined the witness on this specific incident during trial. The Trial Chamber therefore finds that the failure to give timely notice did not materially impair the ability of the Kanu Defence to prepare its case.

2056. The Trial Chamber accordingly finds the Accused Kanu individually criminally responsible for committing an act of physical violence.

#### iv. State House: Looting of vehicles

2057. Witness Gibril Massaquoi testified that vehicles were looted by AFRC troops in Freetown and that the Accused Kanu arrived at State House with a stolen vehicle during the 6 January 1999 Freetown invasion.<sup>3400</sup> The Trial Chamber is satisfied beyond a reasonable doubt on this evidence that the Accused Kanu personally looted at least one vehicle in Freetown. The Trial Chamber accordingly finds the Accused Kanu individually criminally responsible for committing an act of pillage.

<sup>3396</sup> Factual Findings, Physical Violence, para 1230, *supra*; TF1-184, Transcript 27 September 2005, pp. 72-74.

<sup>3397</sup> TF1-184, Transcript 27 September 2005, p. 74.

<sup>3398</sup> TF1-334, Transcript 14 June 2005, pp. 68-70.

<sup>3399</sup> Statement of witness TF1-334 dated 16 March 2005-20 April 2005, CMS p. 7880 [confidential].

<sup>3400</sup> Gibril Massaquoi, Transcript 7 October 2005, p. 126.



## SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

## TRIAL CHAMBER II

**Before:** Judge Teresa Doherty, Presiding Judge  
 Judge Richard Lussick  
 Judge Julia Sebutinde

**Registrar:** Robin Vincent

**Date:** 9 February 2005

|                   |                |                                                                                                                |
|-------------------|----------------|----------------------------------------------------------------------------------------------------------------|
| <b>PROSECUTOR</b> | <b>Against</b> | <b>Alex Tamba Brima</b><br><b>Brima Bazzy Kamara</b><br><b>Santigie Borbor Kanu</b><br>(Case No.SCSL-04-16-PT) |
|-------------------|----------------|----------------------------------------------------------------------------------------------------------------|

**ORDER TO PROSECUTION TO PROVIDE ORDER OF WITNESSES  
AND WITNESS STATEMENTS**

Office of the Prosecutor:

Luc Côté  
 Lesley Taylor  
 Boi-Tia Stevens  
 Marc Wallbridge

Defence Counsel for Alex Tamba Brima:

Kevin Metzger  
 Glenna Thompson  
 Kojo Graham

Defence Counsel for Brima Bazzy Kamara:

Wilbert Harris  
 Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu:

Geert-Jan Alexander Knoop  
 Carry J. Knoop  
 Abibola E. Manley-Spaine

Neil Gibson  
 11:54

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Judge Teresa Doherty, Presiding Judge, Judge Richard Lussick and Judge Julia Sebutinde;

NOTING the Order of the Trial Chamber for the Commencement of Trial of 20 January 2005;

NOTING the Oral Decision on Prosecution's Motion for Renewed Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures Dated 2 April 2004, dated 3 February 2005;

NOTING the forthcoming Status Conference on 1 March 2005;

CONSIDERING that the Trial Chamber pursuant to Article 17 of the Statute of the Special Court ("the Statute") and Rule 26bis of the Rules of Procedure and Evidence ("the Rules") shall ensure that the trials are conducted in a fair and expeditious way with full respect for the rights of the Accused and due regard for the protection of victims and witnesses;

CONSIDERING that it is in the interest of justice to disclose to the Defence and the Trial Chamber the continuous order of witnesses the Prosecutor intends to call, with sufficient time available for the case preparation and investigation;

CONSIDERING that the Trial Chamber would benefit from having access to witness statements in advance of each witness testifying at trial, for the purpose of promoting comprehension of the issues and for the effective management of the trial;

CONSIDERING that this is an accepted practice within the Special Court<sup>1</sup> and international criminal tribunals<sup>2</sup>;

---

<sup>1</sup> *Prosecutor v. Sam Hinga Norman et al.*, SCSL04-14-PT, Order to Prosecution to Provide Order of Witnesses and Witness Statements, 28 May 2004; *Prosecutor v. Issa Hassan Sesay et al.*, SCSL04-15-T, Order to Prosecution to Produce Witness List and Witness Summaries, 7 July 2004.

<sup>2</sup> *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Decision by the Tribunal on its Request to the Prosecutor to Submit the Written Witness Statements, 28 January 1997; *Prosecutor v. Darko Kordic and Mario Cerkez*, Case No. IT-95-14/2-PT, Order for Disclosure of Documents and Extension of Protective Measures, 27 November 1998; *Prosecutor v. Dokmanovic*, IT-95-13a-PT, Order, 28 November 1997; See *Prosecutor v. Vidoje Blagojevic, Dragan Jokic, Momir Nikolic*, Decision in the Appeals Chamber, 8 April 2003.

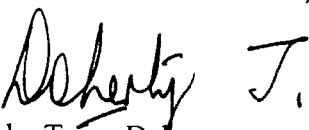
PURSUANT to Rule 54 of the Rules;

HEREBY ORDERS the Prosecution for all trial sessions in this case:

- (1) To provide the Defence and the Trial Chamber with a list of the next 10 witnesses to be called at trial and a copy of all their witness statements, and to file these 14 days prior to the testimony of the first witness of each group;
- (2) To ensure that the list identifies the following information:
  - (a) the order in which the Prosecution intends to call the witnesses;
  - (b) the pseudonym or his/ her name if the witness is not protected;
  - (c) the category of protective measures to be applied for the testimony of each of these witnesses;
  - (d) the language spoken by the witness;
  - (e) the date of her/ his witness statements;
  - (f) the number of pages of the witness statements;
  - (g) the estimated length of time required for each witness; and
  - (h) which count the witness is going to testify on;

FURTHER ORDERS the Prosecution to file a revised list, divided into "core " and "back-up" witnesses, of all the witnesses it is intending to call to testify at trial by Monday, 21 February 2005.

Done at Freetown this 9<sup>th</sup> day of February 2005

  
Judge Teresa Donnelly  
Presiding Judge  
Trial Chamber



429

829)

SCSL-04-14-A  
(968 — 1200)

968



**SPECIAL COURT FOR SIERRA LEONE**

**IN THE APPEALS CHAMBER**

**Before:** Justice George Gelaga King, Presiding Judge  
Justice Emmanuel Ayoola  
Justice Renate Winter  
Justice Raja Fernando  
Justice Jon M. Kamanda

**Registrar:** Herman von Hebel

**Date:** 28 May 2008

|                   |                |                                                                     |
|-------------------|----------------|---------------------------------------------------------------------|
| <b>PROSECUTOR</b> | <b>Against</b> | <b>MOININA FOFANA<br/>ALLIEU KONDEWA<br/>(Case: No.SCSL04-14-A)</b> |
|-------------------|----------------|---------------------------------------------------------------------|

**JUDGMENT**

**Office of the Prosecutor:**

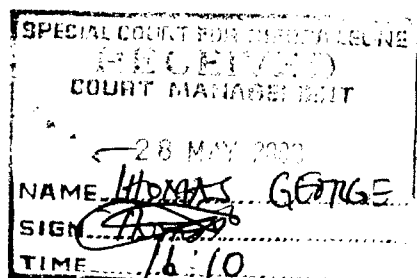
Stephen Rapp  
Christopher Staker  
Karim Agha  
Joseph Kamara  
Régine Gachoud  
Elisabeth Baumgartner  
Bridget Osho  
Francis Banks-Kamara

**Defence Counsel for Moinina Fofana:**

Wilfred Davidson Bola-Carrol  
Mohamed Pa-Momo Fofana

**Defence Counsel for Allieu Kondewa:**

Yada Williams  
Osman Jalloh



987

28 The Prosecution further alleged a number of errors of law and of fact: (i) in relation to the Trial Chamber's acquittal of Fofana and Kondewa (on Count 6) of terrorism as a war crime (Ground 6) and (ii) in refusing to consider acts of burning for the purposes of the war crime of pillage as charged under Count 5 of the Indictment (Ground 7).

29 In Grounds 8 and 9 the Prosecution alleged mixed errors of law and fact and of procedure, respectively, in that the Trial Chamber denied leave for the Prosecution to amend the Indictment in order to add four new counts of sexual violence (Ground 8) and in preventing the Prosecution from "leading, eliciting or adducing" evidence of sexual violence (Ground 9).

30 Finally, in its Ground 10, the Prosecution, in respect of its appeal against sentence, complained that the Trial Chamber erred in law and in fact and committed a procedural error, "in that there has been a discernible error in the exercise of the Trial Chamber's sentencing discretion" in the sentencing of Fofana and Kondewa.

#### **D. Some Guiding Principles on Appellate Review**

31 Before the Appeals Chamber embarks on a detailed consideration of the Parties' Grounds of Appeal, it is expedient to state at the threshold, albeit in general terms, some of the principles of appellate review that will guide it.

32 **In regard to errors of law:** On appeal, pursuant to Article 20 of the Statute and Rule 106 of the Rules of Procedure and Evidence ("Rules"),<sup>60</sup> only arguments relating to errors in law that invalidate the decision of the Trial Chamber would merit consideration. Some International Criminal Tribunals hold the view that in exceptional circumstances, the Appeals Chamber may consider legal issues raised by a party or *proprio motu* although such may not lead to the invalidation of the judgment if it is nevertheless of general significance to the Tribunal's jurisprudence.<sup>61</sup>

<sup>60</sup> Rules of Procedure and Evidence, Special Court for Sierra Leone, 12 April 2002 (as amended 19 November 2007), Rule 106 [Rules].

<sup>61</sup> See e.g., *Prosecutor v. Galić*, IT-98-29-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 30 November 2006, para. 6 [*Galić Appeal Judgement*]; *Prosecutor v. Stakić*, IT-97-24-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 22 March 2006, para. 7 [*Stakić Appeal Judgement*]; *Prosecutor v. Kupreškić et al.*, IT-95-16-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 23 October 2001, para. 22 [*Kupreškić Appeal Judgement*]; *Prosecutor v.*

8

6

12

1

202

33. **In regard to errors of fact:** On appeal where errors of fact are alleged also pursuant to Article 20 of the Statute and Rule 106 of the Rules, the Appeals Chamber will not lightly overturn findings of fact reached by a Trial Chamber. Where it is alleged that the Trial Chamber committed an error of fact, the Appeals Chamber will give a margin of deference to the Trial Chamber that received the evidence at trial. This is because it is the Trial Chamber that is best placed to assess the evidence, including the demeanour of witnesses. The Appeals Chamber will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous.<sup>62</sup> The Appeals Chamber applies the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.<sup>63</sup>

34. The Appeals Chamber adopts the statement of general principle contained in the ICTY Appeals Chamber decision in *Kupreškić*, as follows:

"... the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is wholly erroneous may the Appeals Chamber substitute its own finding for that of the Trial Chamber."<sup>64</sup>

35. **In regard to procedural errors:** Although not expressly so stated in Article 20 of the Statute, not all procedural errors vitiate the proceedings. Only errors that occasion a miscarriage of justice would vitiate the proceedings. Such are procedural errors that would affect the fairness of the trial. By the same token, procedural errors that could be corrected or waived or ignored (as immaterial or inconsequential) without injustice to the parties would not be regarded as procedural errors occasioning a miscarriage of justice.

*Tadić*, IT-94-1-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 15 July 1999, para. 247 [*Tadić* Appeal Judgement].

<sup>62</sup> *Kupreškić* Appeal Judgement, para. 30. *Prosecutor v. Ntakirutimana*, ICTR-96-10-A & ICTR-96-17-A, International Criminal Tribunal for Rwanda, Appeals Chamber, Judgement, 13 December 2004, para. 12 [*Ntakirutimana* Appeal Judgement].

<sup>63</sup> See *Galić* Appeal Judgement, para. 9, fn. 21; *Stakić* Appeal Judgement, para. 219; *Prosecutor v. Delalić et al.*, IT-96-21-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 20 February 2001, para. 458 [*Čelebići* Appeal Judgement]. Similarly, the standard of proof at trial is the same regardless of the type of evidence, direct or circumstantial.

<sup>64</sup> *Kupreškić* Appeal Judgement, para. 30.



49. Fofana submits that the *actus reus* required for aiding and abetting is different from that of instigation and that the Prosecution's arguments are therefore misleading.<sup>109</sup> He further submits that the Trial Chamber found that in order to prove the *actus reus* of instigation "a causal relationship between the instigation and the perpetration must be demonstrated."<sup>110</sup> Thus, for an aider and abetter to be convicted of instigation, his instigation must lead to the perpetration of the crime, and may not merely have a substantial effect on its outcome.<sup>111</sup>

50. Fofana, therefore, asserts that none of the factual findings referred to by the Prosecution establishes a direct causal link between Fofana's conduct and the crimes found by the Trial Chamber to have been perpetrated in Tongo Town.<sup>112</sup> Nothing in Fofana's speech at the First Passing Out Parade in December 1997 could have demonstrated his intent to provoke or induce the commission of the crimes outlined by the Prosecution,<sup>113</sup> or could have been understood by the Kamajors as a direct threat that they would face death or other serious consequences if they failed to carry out Norman's orders.<sup>114</sup> Thus, Fofana submits that "it is not the case that the only inference that can be drawn from the circumstances is that Fofana induced or provoked the Kamajors to commit crimes."<sup>115</sup> The more probable inference is that he encouraged the Kamajors to fight and capture Tongo Town.<sup>116</sup>

#### b. Discussion

51. The Trial Chamber held that the *actus reus* of instigating requires "an act or omission, covering both express and implied conduct of the Accused, which is shown to be a factor substantially contributing to the conduct of another person committing the crime,"<sup>117</sup> and that there must be a "causal relationship between the instigation and the perpetration of the crime . . . although it is not necessary to prove that the crime would not have occurred without the Accused's

<sup>109</sup> Fofana Response Brief, paras 23-25, referring to the Trial Chamber's finding at paragraph 223 that "proof of a cause-effect relationship between the conduct of the aider and abetter and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required."

<sup>110</sup> *Ibid* at para. 24.

<sup>111</sup> *Ibid* at para. 25.

<sup>112</sup> *Ibid* at paras 26, 29.

<sup>113</sup> *Ibid* at para. 29.

<sup>114</sup> *Ibid* at para. 26.

<sup>115</sup> *Ibid* at para. 30.

<sup>116</sup> *Ibid* at para. 30.

<sup>117</sup> CDF Trial Judgment, para. 223.

997  
#6

involvement.”<sup>118</sup> The Trial Chamber also held that the *mens rea* of instigating is an intention “to provoke or induce the commission of the crime,” or a “reasonable knowledge that a crime would likely be committed as a result of that instigation.”<sup>119</sup> Neither of the parties takes issue with the Trial Chamber’s definition of instigation.

52. The Trial Chamber found that Fofana’s speech at the First Passing Out Parade substantially contributed to the commission of crimes by the Kamajors in Tongo Town and thereby satisfied the *actus reus* of aiding and abetting. The parties have not challenged this finding. Both aiding and abetting and instigating require the *actus reus* to have a substantial effect on the perpetration of the crime.

53. The Trial Chamber concluded that Fofana’s actions had a substantial effect on the perpetration of these crimes.<sup>120</sup> The Trial Chamber found that “Fofana’s speech at the [first] passing out parade constitutes aiding and abetting only of the *preparation [sic]*”<sup>121</sup> of those criminal acts which were explicitly ordered by Norman, namely, killing of captured enemy combatants and ‘collaborators’, infliction of physical suffering or injury upon them and destruction of their houses.”<sup>122</sup>

54. The Prosecution argues that because the *actus reus* of aiding and abetting is satisfied, the *actus reus* is also satisfied for instigating. However, the Trial Chamber found, relying on ICTY Appeals Chamber jurisprudence, that unlike the *actus reus* of instigating, the *actus reus* of aiding and abetting does not require a causal link between the act of aiding and abetting and the commission of the crime.<sup>123</sup> The Appeals Chamber holds that the *actus reus* of instigating requires a causal link which aiding and abetting does not and accordingly disagrees with the Prosecution’s proposition.

55. Fofana’s speech at the First Passing Out Parade at Base Zero was removed both temporally and geographically from the unlawful acts committed by the Kamajors in Tongo Town in January 1998. This alone would not be enough to deny a causal link between the speech and the crimes

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> See *ibid* at paras 723, 724.

<sup>121</sup> Apparent mistyping for “perpetration.” See also Fofana Response Brief and Kondewa Response Brief.

<sup>122</sup> See CDF Trial Judgment, para. 727 (emphasis added).

<sup>123</sup> See *ibid* at para. 229, referring to *Blaskić* Appeal Judgement, para. 48.

~~1006~~

Chamber's finding that Kondewa expressly encouraged the crimes,<sup>172</sup> and argues that on occasions prior to the First Passing Out Parade, Kondewa threatened others, including members of the War Council, who accused the Kamajors of committing crimes.<sup>173</sup> In addition, while at Base Zero, Kondewa personally killed a civilian and ordered the killing of another civilian.<sup>174</sup> The Prosecution submits that although this evidence is not directly related to Tongo, it shows that Kondewa supported or advocated the crimes committed by the Kamajors in Tongo.<sup>175</sup>

82. Kondewa responds that he is not liable for instigating because a causal connection has not been shown between his speech at the First Passing Out Parade and the crimes committed in Tongo.<sup>176</sup> He submits that the Prosecution incorrectly stated: that the *actus reus* of instigating and aiding and abetting is the same;<sup>177</sup> that the *actus reus* of these forms of liability is different because proof of a cause-effect relationship is necessary for instigating but not for aiding and abetting;<sup>178</sup> that there is no evidence that the Kamajors who were present at the First Passing Out Parade were the same Kamajors who subsequently committed crimes in Tongo Town;<sup>179</sup> and finally that there is no evidence that any Kamajor was prompted to commit any crime on the basis of his ambiguously phrased words, which he uttered six weeks earlier.<sup>180</sup>

b. Discussion

83. The Trial Chamber's statement of the elements of the *actus reus* and the *mens rea* of instigating has already been noted in paragraph 51.

84. The Trial Chamber found Kondewa's speech at the First Passing Out Parade to have had a substantial effect on the perpetration of crimes in Tongo Town and thereby satisfied the *actus reus* of aiding and abetting. Both aiding and abetting and instigating require the *actus reus* to have a

<sup>172</sup> *Ibid.*

<sup>173</sup> *Ibid.*, referring to CDF Trial Judgment, paras 306, 308.

<sup>174</sup> *Ibid.*, referring to CDF Trial Judgment, paras 921(iii) (v), 934. In footnote 238 it is submitted that "In relation to the incident in which Kondewa was found to have ordered a civilian killed, the Trial Chamber was not satisfied that it occurred within the timeframe pleaded in the Indictment ([CDF Trial Judgment], para. 923). It is submitted that while this mean that Kondewa could not be convicted of this crime, the finding that it occurred and that Kondewa ordered it can be taken into account in determining Kondewa's intent at the time of the attacks on Koribondo, Bo and Kenema."

<sup>175</sup> Prosecution Appeal Brief, para. 3.93.

<sup>176</sup> Kondewa Response Brief, para. 2.2.

<sup>177</sup> *Ibid.* at para. 2.4.

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.* at para. 2.9.

<sup>180</sup> *Ibid.*

1007

substantial effect on the perpetration of the crime. A finding that an accused's conduct had a "substantial effect" for the purpose of aiding and abetting will therefore normally also satisfy the "substantial effect" requirement for the purpose of instigating.

85. In this case, in order to show a causal link between Kondewa's speech and the crimes committed in Tongo Town, the Prosecution must lead evidence to show that the Kamajors who were present at the First Passing Out Parade at which Kondewa's speech was made were the same Kamajors who subsequently committed the crimes in Tongo Town. There was no such evidence before the Trial Chamber. For this reason the Appeals Chamber finds that "instigation" for the crimes charged in Tongo Town was not proved.

86. Consequently, the Prosecution's Fourth Ground of Appeal fails in this respect.

#### 4. Liability for Crimes in Koribondo, Bo District and Kenema District

##### (a) The Findings of the Trial Chamber

87. The Trial Chamber found that Norman, Fofana and Kondewa also addressed the Kamajors at a Second Passing Out Parade in early January 1998 regarding an "all-out offensive."<sup>181</sup> After thanking the Kamajors for the training they had undergone, and talking about the prior and pending operations, Norman said that he had given instructions for the pending operations which the Kamajors should follow.<sup>182</sup> Norman also said that "whoever knows that he is used to fighting with the cutlass, it is time for him to take up the cutlass [; w]hoever knows that he's used to fighting with a gun, it is time for him to take up the gun [; w]hoever knows that he's used to fight with a stick, it is time for him to take up his stick."<sup>183</sup>

88. Fofana also gave a speech at this meeting, saying that:

"[T]he advice that Pa Norman had given to us, that the training that we underwent for a long time, the time has come for us to implement what we've learned. Now that we have received the order that we shall attack the various areas where the juntas are located, they have done a lot for the trainees. They've spent a lot on them. So any commander, if you

<sup>181</sup> CDF Trial Judgment, paras 323-337.

<sup>182</sup> *Ibid* at para. 323.

<sup>183</sup> *Ibid*.

1093

circumstances be cured by timely, clear and consistent information detailing the factual basis underpinning the charges against him or her.<sup>723</sup>

364. The Appeals Chamber finds that paragraph 28 of the Indictment is clear in establishing that the material facts supporting criminal responsibility under Count 6 are the material facts pleaded in relation to Counts 1 to 5 of the Indictment. These include “threats to kill, destroy and loot.” The Trial Chamber, therefore, erred in stating it would only consider crimes “charged and found to have been committed under Counts 1-5 in the Indictment.”<sup>724</sup> The Trial Chamber should have considered all conduct that was adequately pleaded in the Indictment irrespective of whether such conduct satisfied the elements of any other crimes under Counts 1-5.

365. Whether the Trial Chamber’s error invalidates the decision is discussed below as it is dependent on whether the Trial Chamber erred in its determination of the *mens rea* requirement for acts of terrorism. In particular, Fofana’s and Kondewa’s liability for acts of terrorism under Article 6(1) and Article 6(3) of the Statute depends on whether they had the requisite *mens rea* for liability as aiders and abettors or superiors. Accordingly, the Appeals Chamber will examine whether a reasonable tribunal of fact could have found, as the Trial Chamber did, that neither Fofana nor Kondewa had the requisite *mens rea*.

(b) Fofana’s and Kondewa’s Responsibility for Aiding and Abetting Acts of Terrorism in Togo

366. The Appeals Chamber has previously endorsed the following statement of the *mens rea* for aiding and abetting:

“The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed.”<sup>725</sup>

<sup>723</sup> *Ibid* at para. 114.

<sup>724</sup> CDF Trial Judgment, para. 49.

<sup>725</sup> AFRC Appeal Judgment, paras 242-243.

H18

3. Discussion

440. In this ground of appeal, the Prosecution alleges that the Trial Chamber committed both an error of law and of fact in refusing to admit evidence of sexual violence under existing Counts 3 and 4 of the Indictment.

441. The Appeals Chamber is of the opinion that acts of sexual violence may constitute "other inhumane acts" as alleged in Count 3 of the Indictment<sup>855</sup> as well as "cruel treatment," as alleged in Count 4 of the Indictment.<sup>856</sup>

442. Counts 3 and 4 of the Indictment do not explicitly list the acts of sexual violence that amounts either to an "other inhumane act" under Article 2.i. of the Statute or "cruel treatment" under Article 3.a. of the Statute. The Indictment on its face was defective with respect to allegations relating to sexual violence.

443. However, case law at the *ad hoc* Tribunals recognizes that in limited circumstances, a defect in the indictment may be "cured" if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charge.<sup>857</sup> While a vague indictment not cured by timely, clear and consistent notice causes prejudice to the accused, the defect may be deemed harmless if the Prosecution can demonstrate that the accused's ability to prepare his defence was not materially impaired. Factors to be considered in this respect include, among others, information provided in the Prosecution's pre-trial brief or its opening statement, the timing of the communications, the importance of the information to the ability of the accused to prepare his defence and the impact of the newly-disclosed material facts on the Prosecution's case.<sup>858</sup> The Appeals Chamber adopts these principles.

<sup>855</sup> AFRC Appeal Judgment, para. 186; *Akayesu* Trial Judgment, paras 688, 697; *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, International Criminal Tribunal for Rwanda, Trial Chamber, Judgment and Sentence, 1 December 2003, para. 936 [*Kajelijeli* Trial Judgment]; *Niyitigeka* Appeal Judgment, para. 465.

<sup>856</sup> *Akayesu* Trial Judgment, paras 711-712; *Kayishema* Trial Judgment, para. 108; *Prosecutor v. Musema*, ICTR-96-13-T, International Criminal Tribunal for Rwanda, Trial Chamber, Judgment and Sentence, 27 January 2000, para. 156; *Čelebići* Trial Judgment, paras 551-552.

<sup>857</sup> *Kupreškić* Appeal Judgment, para. 114; *Kvočka* Appeal Judgment, para. 43; *Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, International Criminal Tribunal for Rwanda, Appeals Chamber, Judgment, 7 July 2005, para. 28; *Ntakirutimana* Appeal Judgment, para. 27; *Gacumbitsi* Appeal Judgment, paras 175-179; *Prosecutor v. Seromba*, ICTR-01-66-A, International Criminal Tribunal for Rwanda, Appeals Chamber, Judgment, 12 March 2008, para. 100. See also *Blaškić* Appeal Judgment, para. 238-239.

<sup>858</sup> *Simić* Appeal Judgment, para. 24.

8

6

H

L

Dra

also provides that in determining the term of imprisonment the Trial Chamber shall have recourse to the practice regarding prison sentences in the ICTR and the national courts of Sierra Leone, as appropriate. According to Rule 101 of the Rules, aggravating and mitigating circumstances shall, *inter alia*, be taken into account.<sup>899</sup> Rule 101(c) of the Rules provides that the Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

466. Appeals against sentence, as appeals from a judgement of a Trial Chamber, are appeals *stricto sensu*. They are not trials *de novo*.<sup>900</sup> Trial Chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualise the penalties to fit the circumstances of the accused and the gravity of the crime.<sup>901</sup> The Appeals Chamber will not lightly overturn findings relevant to sentencing by the Trial Chamber.<sup>902</sup> As a general rule, the Appeals Chamber will not revise a sentence unless the Appellant demonstrates that the Trial Chamber has committed a "discernible error" in exercising its discretion or has failed to follow the applicable law.<sup>903</sup>

467. In the AFRC Appeal Judgment, the Appeals Chamber explained that to demonstrate that the Trial Chamber committed a discernible error in exercising its discretion:

---

position of leadership, his level in the command structure, or his role in the broader context of the conflict of the former Yugoslavia; (ii) the discriminatory intent or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime; (iii) the length of time during which the crime continued; (iv) active and direct criminal participation, if linked to a high-rank position of command, the accused's role as fellow perpetrator, and the active participation of a superior in the criminal acts of subordinates; (v) the informed, willing or enthusiastic participation in crime; (vi) premeditation and motive; (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims; (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them; (ix) civilian detainees; (x) the character of the accused; and (xi) the circumstances of the offences generally. See *Blaškić* Appeal Judgement, paras 685-686, 696

<sup>899</sup> In addition, Trial Chambers are obliged to take into account 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 and in Rule 101(B)(iii).

<sup>900</sup> *Kupreškić* Appeal Judgement, para. 408; *Prosecutor v. Mucić et al.*, IT-96-21-Abis, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement on Sentence Appeal, 8 April 2003, para. 11; *Čelebići* Appeal Judgement, para. 203.

<sup>901</sup> See e.g., *Čelebići* Appeal Judgement, para. 717. See also Article 19(2) of the Statute, Rule 101(B) of the Rules.

<sup>902</sup> AFRC Appeal Judgment, para. 309; see also *Krnojelac* Appeal Judgement, para. 11.

<sup>903</sup> See *Tadić* Judgement in Sentencing Appeals, para. 22; *Aleksovski* Appeal Judgement, para. 187; *Prosecutor v. Furundžija*, IT-95-17/1-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 21 July 2000, para. 239 [*Furundžija* Appeal Judgement]; *Čelebići* Appeal Judgement, para. 725; *Kupreškić* Appeal Judgement, para. 408; *Prosecutor v. Jelisić*, IT-95-10-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 5 July 2001, para. 99; *Prosecutor v. Krstić*, IT-98-33-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 19 April 2004, para. 242; *Blaškić* Appeal Judgement, para. 680.

"the Appellant has to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber's decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly."<sup>904</sup>

### 3. Alleged Refusal to Consider Sentencing Practices of the National Courts of Sierra Leone

#### (a) Trial Chamber Findings

468. Article 19(1) of the Statute states: "the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone."<sup>905</sup>

469. The Trial Chamber held that it would not give consideration to the sentencing practice in Sierra Leone because Fofana and Kondewa had not been convicted of any crime under Sierra Leone law and because the sentencing practice of Sierra Leone for the convictions in this case would indicate either sentence of death or life imprisonment.<sup>906</sup>

#### (b) Submissions of the Parties

470. The Prosecution submits that the Trial Chamber erred in law in holding as above.<sup>907</sup> The Prosecution argues that it is immaterial that Fofana and Kondewa were not convicted pursuant to Article 5 of the Statute (regarding certain crimes under Sierra Leone law) in light of the practice at the ICTY and ICTR to take into account the sentencing law and practices in the former Yugoslavia and Rwanda, respectively, despite not having jurisdiction over any violations of domestic law.<sup>908</sup>

471. The Prosecution also submits that the purpose of referring to national sentencing practice is that the punishment must reflect the victim's sense of justice and the needs of the affected communities.<sup>909</sup> The Prosecution further argues that the Statutory language instructing that the Trial Chamber "*shall*, as appropriate, have recourse to the practice regarding prison sentences in . . .

<sup>904</sup> AFRC Appeal Judgment, para. 309.

<sup>905</sup> Article 19(1) of the Statute.

<sup>906</sup> CDF Sentencing Judgment, paras 42-43.

<sup>907</sup> Prosecution Appeal Brief, para. 9.9.

<sup>908</sup> *Ibid* at para. 9.10.

<sup>909</sup> See Prosecution Appeal Brief, para. 9.11.



440

1151

because it considered the sentence inadequate and remitted it for revision.<sup>1043</sup> The ICTY Appeals Chamber held that the Trial Chamber's sentencing discretion "must be exercised by reference to the fundamental . . . consideration . . . that the sentence to be served by an accused must reflect the totality of the [convicted person's] criminal conduct" and that "a person who is convicted of many crimes should generally receive a higher sentence than a person convicted of only one of those crimes."<sup>1044</sup>

544. Fofana responds that the Statute and Rules are "sufficiently liberally worded" to allow the Trial Chamber to "impose a concurrent sentences or global sentence."<sup>1045</sup> Fofana argues that the Trial Chamber has the discretion to choose between concurrent and consecutive sentences, and that the "overarching goal in sentencing must be to ensure that the final or aggregate sentence reflects the totality of the criminal conduct and overall culpability of the offender."<sup>1046</sup> Fofana submits the Prosecution has not shown how the Trial Chamber violated the totality principle.<sup>1047</sup>

545. Kondewa submits that the Trial Chamber acted within its discretion in imposing separate sentences to run concurrently.<sup>1048</sup> Kondewa argues that contrary to the Prosecution's submission, the Trial Chamber only imposed multiple sentences to be served concurrently *after* analyzing all the aggravating and mitigating circumstances and after considering the gravity of the offences for which Kondewa was found guilty.<sup>1049</sup>

(c) Discussion

546. Rule 101(c) of the Rules states "[t]he Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently." The discretion conferred upon the Trial Chamber to choose between consecutive and concurrent sentences is not unchecked, because the Trial Chamber ultimately must impose a sentence that reflects the totality of the convicted person's culpable conduct. The totality principle is, in fact, recognized by all Parties and firmly supported in the case law of the international criminal tribunals. The totality principle requires that a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due

<sup>1043</sup> *Ibid* at para. 9.60.

<sup>1044</sup> *Ibid*, quoting *Čelebići* Appeal Judgement, para. 771.

<sup>1045</sup> Fofana Response Brief, para. 210.

<sup>1046</sup> *Ibid* at para. 211.

<sup>1047</sup> *Ibid* at para. 212.

<sup>1048</sup> Kondewa Response Brief, paras 9.51-9.52.

441

1152

consideration to the particular circumstances of the case and to the form and degree of the participation of the accused.<sup>1050</sup>

547. The following examination of several legal traditions demonstrates that Trial Chambers typically enjoy broad discretion to choose between concurrent and consecutive sentences. However, as at the other tribunals, this discretion is restricted by the requirement that the sentence reflect the gravity of the crime and the culpability of the convicted person.

548. In Australia, courts have generally held that it is “impracticable and undesirable to attempt to lay down comprehensive principles according to which a sentencing judge may determine, in every case, whether sentences should be ordered to be served concurrently or consecutively.”<sup>1051</sup> Australian courts have recognized that “[t]he practice of imposing either concurrent or consecutive sentences cannot avoid creating anomalies, or apparent anomalies, from time to time. What must be done is to use the various tools of analysis to mould a just sentence for the conduct of which the prisoner has been guilty.”<sup>1052</sup> Generally, courts consider that consecutive sentences are appropriate when there are “truly two or more incursions into criminal conduct.”<sup>1053</sup> However, where, “whatever the number of technically identifiable offences committed, the prisoner was truly engaged upon one multi-faceted course of criminal conduct, the judge is likely to find concurrent sentences just and convenient.”<sup>1054</sup>

549. In the United Kingdom (England and Wales), courts consider the “sentencer [is] entitled in his discretion to follow the course of imposing concurrent sentences, provided that the gravity of the criminal conduct . . . [is] properly reflected in the principal sentence.”<sup>1055</sup>

550. Likewise, in Canada, courts give the sentencing judge discretion to set the duration and type of sentence due to his or her first-hand knowledge of the case.<sup>1056</sup> The decision to impose

<sup>1049</sup> *Ibid* at para. 9.54.

<sup>1050</sup> *Furundzija* Appeal Judgement, para. 249; *Blaškić* Appeal Judgement, para. 683; *Aleksovski* Appeal Judgement, para. 182; *Čelebići* Appeal Judgement, para. 731.

<sup>1051</sup> *Attorney-General v Tichy* [1982] 30 SASR 84 at 92-93.

<sup>1052</sup> *See ibid*; *R v Van Der Horst* [2006] SASC 243 at para. 91.

<sup>1053</sup> *Attorney-General v Tichy* at 92-93; *see also Pearce v The Queen* [1998] 194 CLR 610 at 623.

<sup>1054</sup> *Ibid*; *R v Shaw* [1989] 39 A Crim R 343, 347, referring to Thomas “Principles of Sentencing” (1st Ed 1970).

<sup>1055</sup> *Court in Bottomley* [1985] 7 Cr. App. R. (S.) 355; *see also R. v. Allen John Wheeler* [2002] 2 Cr. App. R. (S.) 61, paras 27-28; *R. v. Dennis John Leckey* [1999] 1 Cr. App. R. (S.) 47; *R. v. Michael Dawkins* [1995] 16 Cr. App. R. (S.) 456; *R. v. David Ian Bottomley* [1985] 7 Cr. App. R. (S.) 355.

<sup>1056</sup> *R v. M. (T. E.)* [1997] Carswell Alta 213, Supreme Court of Canada.

442

796)

SCSL-04-14-T  
(22021 - 22064)



22021

**SPECIAL COURT FOR SIERRA LEONE**

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

**TRIAL CHAMBER I**

**Before:** Hon. Justice Benjamin Mutanga Itoe  
Hon. Justice Bankole Thompson  
Hon. Justice Pierre Boutet

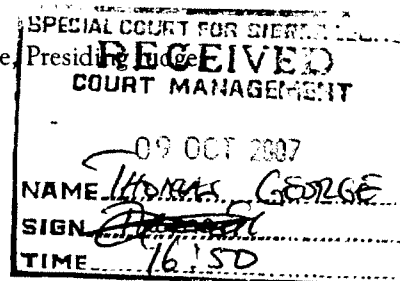
**Registrar:** Herman von Hebel

**Date:** 9<sup>th</sup> of October 2007

**PROSECUTOR**

**Against**

**MOININA FOFANA  
ALLIEU KONDEWA  
(Case No.SCSL-04-14T)**



**Public Document**

**JUDGEMENT ON THE SENTENCING  
OF MOININA FOFANA AND ALLIEU KONDEWA**

**Office of the Prosecutor:**

Stephen Rapp  
Christopher Staker  
James C Johnson  
Joseph Kamara  
Kevin Tavener  
Mohamed A Bangura  
Adwoa Wiafe

**Court Appointed Counsel for Moinina Fofana:**

Victor Koppe  
Arrow Bockarie  
Michiel Pestman  
Steven Powles

**Court Appointed Counsel for Allieu Kondewa:**

Charles Margai  
Yada Williams  
Ansu Lansana  
Susan Wright

Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be accepted by everyone.<sup>44</sup>

31. In fact, the sentence imposed must be individualized and proportionate to the conduct of the Accused.<sup>45</sup>

### 3. Sentencing Factors

32. The Chamber notes that Article 19 and Rule 101(B) stipulate that certain factors have to be considered in determining an appropriate sentence. These include the gravity of the offence, the individual circumstances of the Accused, any aggravating and mitigating factors, and where appropriate, the general sentencing practices of the ICTR and of the national courts of Sierra Leone.

#### 3.1. Gravity of the Offence

33. The Chamber is of the view that the "gravity of the offence" is an important principle in determining the sentence to be imposed by the Court. The determination of the gravity of the offence, which has been regarded as the "litmus test for the appropriate sentence",<sup>46</sup> requires a "consideration of the particular circumstances of the case, as well as the form and degree of participation of the Accused in the crime".<sup>47</sup> In considering the gravity of the offence, the Chamber has taken into account such factors as the scale and brutality of the offences committed,<sup>48</sup> the role played by the Accused in their commission,<sup>49</sup> the degree of suffering or

<sup>44</sup> *Prosecutor v. Dragan Nikolic*, IT-94-2-S, Sentencing Judgement (TC), 18 December 2003, para 139.

<sup>45</sup> *Prosecutor v. Tadic*, IT-94-1-A, Judgement in Sentencing Appeals (AC), 26 January 2000 [*Tadic* Sentencing Appeal], para 22, *Prosecutor v. Todorovic*, IT-95-9/1-S, Sentencing Judgement (TC), 31 July 2001, para 29, *Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-A, Judgement (AC), 23 October 2001 [*Kupreskic* Appeal Judgement], para 445, *Prosecutor v. Furundzija*, IT-95-17/1-A, Judgement (AC), 21 July 2000 [*Furundzija* Appeal Judgement], para 249.

<sup>46</sup> *Prosecutor v. Delalic, Mucic, Delic and Landzo*, IT-96-21-T, Judgement (TC), 16 November 1998 [*Celibici* Trial Judgement], para 1225, *Aleksovski* Appeal Judgement, para 182.

<sup>47</sup> *Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-T, Judgement (TC), 14 January 2000 [*Kupreskic* Trial Judgement], para 852, *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Judgement (AC), 17 December 2004, para 1061, *Prosecutor v. Stakic*, IT-97-24-A, Judgement (AC), 22 March 2006 [*Stakic* Appeal Judgement], para 380.

<sup>48</sup> *Stakic* Appeal Judgement, para 380, *Prosecutor v. Oric*, IT-03-68-T, Judgement (TC), 30 June 2006 [*Oric* Trial Judgement], para 729.

<sup>49</sup> *Celibici* Appeal Judgement, para 847, *Prosecutor v. Blagojevic*, IT-02-60-T, Judgement (TC), 17 January 2005, para 833.

22033

impact of the crime on the immediate victim, as well as its effect on relatives of the victim,<sup>50</sup> and the vulnerability and number of victims.<sup>51</sup>

34. In assessing the role of the Accused in the crime, the Chamber has taken into account the mode of liability under which the Accused was convicted, as well the nature and degree of his participation in the offence. In particular, the Chamber has considered whether the Accused was held liable as an indirect or a secondary perpetrator.<sup>52</sup> In assessing the gravity of offences for which the Accused was convicted as a superior, the Chamber has considered the gravity of the underlying offence and the gravity of the conduct of the Accused in failing to prevent or punish the crimes committed by the subordinate.<sup>53</sup>

35. The Chamber is of the opinion however, that the factors it has taken into account in assessing the gravity of the offence, cannot, in addition, be taken into account as aggravating circumstances.<sup>54</sup> Similarly, the Chamber takes the view that factors which it considers and accepts to lessen the gravity of the offence, cannot be taken into account as mitigating circumstances.

### 3.2. Aggravating Factors

36. Aggravating factors must be shown to have been established by the Prosecution beyond a reasonable doubt.<sup>55</sup> Only circumstances directly related to the commission of the offence charged, and for which the Accused has been convicted, can be considered to be aggravating.<sup>56</sup> If a

<sup>50</sup> *Prosecutor v. Blaskic*, IT-95-14-A, Judgement (AC), 29 July 2004 [*Blaskic* Appeal Judgement], para 683, *Stakic* Appeal Judgement, para 380, *Oric* Trial Judgement, para 729.

<sup>51</sup> *Blaskic* Appeal Judgement, para 683, *Prosecutor v. Babic*, IT-03-72-S, Sentencing Judgement (TC), 29 June 2004 [*Babic* Sentencing Judgement], para 47. The Chamber notes that the Prosecution has discussed some of these factors, including the vulnerability and age of victims and the humiliating and degrading nature of the acts, as aggravating factors (Prosecution Sentencing Brief, para 56). The Chamber is of the view that these are more appropriately considered in relation to its determination of the gravity of the offence.

<sup>52</sup> *Prosecutor v. Ntagerura, Bagambiki and Iminishimwe*, ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004, para 813, *Prosecutor v. Vasiljevic*, IT-98-32-A, Judgement (AC), 25 February 2004 [*Vasiljevic* Appeal Judgement], para 182.

<sup>53</sup> *Celibici* Appeal Judgement, para 732.

<sup>54</sup> *Deronjic* Sentencing Appeal, para 106.

<sup>55</sup> *Celibici* Appeal Judgement, para 763, *Blaskic* Appeal Judgement, para 688.

<sup>56</sup> *Prosecutor v. Kunarac, Kovac and Vokovic*, IT-96-23-T and IT-96-23/1-T, Judgement (TC), 22 February 2001, para 850, *Prosecutor v. Hadsahasanovic*, IT-01-47-T, Judgement (TC), 15 March 2006, para 2069.

to death by machetes or shot, and who was himself hacked with a machete and rolled into a swamp on top of the dead bodies in the belief that he was dead.<sup>88</sup>

50. With respect to the form and degree of Fofana's participation, the Chamber notes that he was found liable for the crimes in Tongo Field as an aider and abettor under Article 6(1) of the Statute. The jurisprudence of the ICTY and ICTR indicates that aiding and abetting as a mode of liability generally warrants a lesser sentence than that to be imposed for more direct forms of participation.<sup>89</sup> The Chamber also notes that while Fofana was found liable for aiding and abetting, he was not present at the scenes of the crimes and that the degree of his participation amounted only to encouragement.<sup>90</sup>

51. With respect to the crimes for which Fofana was convicted under Article 6(3), the Chamber has considered the gravity of Fofana's conduct in failing to prevent the crimes. It finds that the gravity of the offence committed by Fofana given his leadership role as a superior who failed to prevent his subordinates from committing crimes, is greater than that of the actual perpetrators of the crimes.<sup>91</sup> In this case, the fact that Fofana's failure to prevent was ongoing, rather than an isolated occurrence, had the implicit effect of encouraging his subordinates to

<sup>88</sup> Judgement, para 406.

<sup>89</sup> *Vasiljevic* Appeal Judgement, para 182. See also *Prosecutor v. Muhimana*, ICTR-95-1B-T, Judgement and Sentence (TC), 28 April 2005, para 593 and *Prosecutor v. Krstic*, IT-98-33-T, Judgement and Sentence (TC), 2 August 2001 [*Krstic* Trial Judgement], para 714. The Prosecution has submitted that "the fact that an accused is found liable as an indirect co-perpetrator does not entitle him to a lower sentence (Prosecution Sentencing Brief, para 40), citing the *Stakic* Appeal Judgement. In *Stakic*, while the ICTY Appeals Chamber did claim that "the fact that an accused is found guilty as an 'indirect co-perpetrator' does not necessarily lead to a lower sentence" (para 380), it discussed this specifically in relation to *Stakic*'s case, where he was a crucial member of a joint criminal enterprise, and had a "uniquely pivotal role in co-ordinating the persecutory campaign carried out by the military, police and civilian government in Prijedor" (para 380). The Chamber stressed the need to consider the form and degree of participation of the Accused in the crime. *Stakic*'s role was thus very different than the type of "indirect co-perpetration" (i.e. aiding and abetting) that Fofana was held liable for.

<sup>90</sup> Fofana Sentencing Brief, para 40, Transcript of 19 September 2007, pp. 67-68.

<sup>91</sup> *Prosecutor v. Blaskic*, IT-95-14-T, Judgement (TC), 3 March 2000 [*Blaskic* Trial Judgement], where the Court held that if a commander "fails in his duty to prevent the crime or punish the perpetrator thereof he should receive a heavier sentence than the subordinates who committed the crime insofar as the failing conveys some tolerance or even approval on the part of the commander towards the commission of crimes by his subordinates and thus contributes to encouraging the commission of new crimes" (para 789). In the *Blaskic* Appeal Judgement, the Appeals Chamber reduced *Blaskic*'s sentence on the basis of factual errors made by the Trial Chamber, but did not comment on this aspect of the law.

446

785

SCSL-04-14-T  
(21048-21487)

~~21048~~



**SPECIAL COURT FOR SIERRA LEONE**

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

---

**TRIAL CHAMBER I**

**Before:** Hon. Justice Benjamin Mutanga Itoe, Presiding Judge  
Hon. Justice Bankole Thompson  
Hon. Justice Pierre Boutet

**Registrar:** Herman von Hebel

**Date:** 2 August 2007

**PROSECUTOR** Against **MOININA FOFANA**  
**ALLIEU KONDEWA**  
(Case No.SCSL-04-14-T)

---

**Public Document**

---

**JUDGEMENT**

---

**Office of the Prosecutor:**

Stephen Rapp  
Christopher Staker  
James C Johnson  
Joseph Kamara  
Kevin Tavener  
Mohamed A Bangura  
Adwoa Wiafe

**Court Appointed Counsel for Moinina Fofana:**

Victor Koppe  
Arrow Bockarie  
Michiel Pestman  
Steven Powles

**Court Appointed Counsel for Allieu Kondewa:**

Charles Margai  
Yada Williams  
Ansu Lansana  
Susan Wright

|                                |                  |
|--------------------------------|------------------|
| SPECIAL COURT FOR SIERRA LEONE |                  |
| <b>RECEIVED</b>                |                  |
| COURT MANAGEMENT               |                  |
| 2 - AUG 2007                   |                  |
| NAME                           | MAUREGAL EDMONDS |
| SIGN                           | M Edmonds        |
| TIME                           | 15-10            |

in the Statute be committed or with reasonable knowledge that the crime would likely be committed in the execution of that plan.

#### 4.1.4. Instigating

222. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with instigating the crimes referred to in the Indictment.<sup>279</sup>

223. The Chamber is of the view that "instigating" a crime means urging, encouraging or "prompting another to commit an offence".<sup>280</sup> The *actus reus* required for instigating a crime is an act or omission, covering both express and implied conduct of the Accused,<sup>281</sup> which is shown to be a factor substantially contributing to the conduct of another person committing the crime.<sup>282</sup> A causal relationship between the instigation and the perpetration of the crime must be demonstrated; although it is not necessary to prove that the crime would not have occurred without the Accused's involvement.<sup>283</sup> To establish the *mens rea* requirement for "instigating" a crime, the Prosecution must prove that the Accused intended to provoke or induce the commission of the crime, or had reasonable knowledge that a crime would likely be committed as a result of that instigation.

#### 4.1.5. Ordering

224. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with ordering the crimes referred to in the Indictment.<sup>284</sup>

225. The Chamber takes the view that the *actus reus* of "ordering" a crime requires that a person who is in a position of authority orders a person in a subordinate position to commit an offence.<sup>285</sup> It is our opinion that no *formal* superior-subordinate relationship between the superior and the

<sup>279</sup> Indictment, para. 20.

<sup>280</sup> *Kordic and Cerkez* Appeal Judgement, para. 27; *Semanza* Trial Judgement, para. 381; *Krstic* Trial Judgement, para. 601; *Limaj et al.* Trial Judgement, para. 514.

<sup>281</sup> *Brdjanin* Trial Judgement, para. 269; *Blaskic* Trial Judgement, para. 280; *Limaj et al.* Trial Judgement, para. 514; *Oric* Trial Judgement, para. 273.

<sup>282</sup> *Kordic and Cerkez* Appeal Judgement, para. 27; *Gacumbitsi* Appeal Judgement, para. 129; *Limaj et al.* Trial Judgement, para. 514.

<sup>283</sup> *Kordic and Cerkez* Appeal Judgement, para. 27; *Limaj et al.* Trial Judgement, para. 515; *Brdjanin* Trial Judgement, para. 269; *Bagilishema* Trial Judgement, para. 30.

<sup>284</sup> Indictment, para. 20.

<sup>285</sup> *Kordic and Cerkez* Appeal Judgement, para. 28; *Limaj et al.* Trial Judgement, para. 514.



229. The Chamber is of the opinion that the *actus reus* of aiding and abetting requires that the Accused carries out an act specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime and that this act of the aider and abettor must have a substantial effect upon the perpetration of the crime.<sup>292</sup> "Proof of a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required."<sup>293</sup> Further, taking into account the specific wording of Article 6(1) of the Statute that "[a] person who [...] aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime", this Chamber is of the opinion that the *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated and at a location geographically removed from the location of the principal crime.<sup>294</sup> The Chamber reiterates, however, that the act of the aider and abettor must have a substantial effect upon the perpetration of the crime.

230. Mere presence at the scene of a crime will not usually constitute aiding and abetting. Where, however, such presence provides encouragement or support to the principal offender, that may be sufficient. For example, the presence of a person with superior authority at the scene of a principal crime may be probative to determining whether such person encouraged or supported the principal perpetrator.<sup>295</sup> The Chamber also notes that a superior's failure to punish for past crimes might result in acts that would constitute instigation or aiding and abetting for further crimes.<sup>296</sup>

231. The Chamber recognises that the *mens rea* of aiding and abetting is the knowledge that the acts performed by the Accused assist the commission of the crime by the principal offender.<sup>297</sup>

<sup>292</sup> Vasiljevic Appeal Judgement, para. 102; see also Blaskic Appeal Judgement, para. 46 referring to Furundzija Trial Judgement, para. 249.

<sup>293</sup> Blaskic Appeal Judgement, para. 48; see also Gacumbitsi Appeal Judgement, para. 140.

<sup>294</sup> Blaskic Appeal Judgement, para. 48; see also Vasiljevic Trial Judgement, para. 70, Aleksovski Trial Judgement, para. 62.

<sup>295</sup> Blaskic Appeal Judgement, para. 47; see also Limaj et al. Trial Judgement, para. 517; Brdjanin Trial Judgement, para. 271 and footnoted references; Aleksovski Trial Judgement, para. 65.

<sup>296</sup> Blaskic Trial Judgement, para. 337;

<sup>297</sup> Vasiljevic Appeal Judgement, para. 102; see also Blaskic Appeal Judgement, para. 49; Tadic Appeal Judgement, para. 229.

~~1113~~

internal armed conflict.<sup>305</sup> The Chamber further concurs with the finding of the Appeals Chamber of the *Ad Hoc* Tribunals that the principle of individual criminal responsibility of superiors is applicable, albeit not exactly in the same way, to both civilian and military superiors.<sup>306</sup>

234. The Chamber is of the opinion that the nature of responsibility pursuant to Article 6(3) is based upon the duty of a superior to act, which consists of a duty to prevent and a duty to punish criminal acts of his subordinates.<sup>307</sup> It is thus the failure to act when under a duty to do so which is the essence of this form of responsibility.<sup>308</sup> It is responsibility for an omission<sup>309</sup> where a superior may be held criminally responsible when he fails to take the necessary and reasonable measures to prevent the criminal act or punish the offender.<sup>310</sup>

235. The Chamber takes the view that the following three elements must be satisfied in order to invoke individual criminal responsibility under Article 6(3) of the Statute:

- (i) the existence of a superior-subordinate relationship between the superior and the offender of the criminal act;
- (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and
- (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the offender thereof.<sup>311</sup>

<sup>305</sup> See for the application of the principle of command responsibility to internal armed conflicts, *Hadzihasanovic et al* Appeal Decision on Command Responsibility, paras 27, 31; see also *Brđjanin* Trial Judgement, para. 275; *Strugar* Trial Judgement, para. 357; *Limaj et al* Trial Judgement, para. 519; *Oric* Trial Judgement, para. 291.

<sup>306</sup> *Bagilishema* Appeal Judgement, paras 35, 51-52; *Celebici* Appeal Judgement, paras 195-197; for the distinction in the application of the principle to civilian and military superiors, see para. 163 *infra*.

<sup>307</sup> *Halilovic* Trial Judgement, para. 38; *Celebici* Trial Judgement, para. 334.

<sup>308</sup> *Halilovic* Trial Judgement, para. 38 and footnoted references.

<sup>309</sup> *Halilovic* Trial Judgement, para. 54: "The Trial Chamber finds that under Article 7(3) command responsibility is responsibility for an omission. The commander is responsible for the failure to perform an act required by international law. This omission is culpable because international law imposes an affirmative duty on superiors to prevent and punish crimes committed by their subordinates. Thus "for the acts of his subordinates" as generally referred to in the jurisprudence of the Tribunal does not mean that the commander shares the same responsibility as the subordinates who committed the crimes, but rather that because of the crimes committed by his subordinates, the commander should bear responsibility for his failure to act. The imposition of responsibility upon a commander for breach of his duty is to be weighed against the crimes of his subordinates; a commander is responsible not as though he had committed the crime himself, but his responsibility is considered in proportion to the gravity of the offences committed. The Trial Chamber considers that this is still in keeping with the logic of the weight which international humanitarian law places on protection values."

<sup>310</sup> *Bagilishema* Appeal Judgement, para. 35.

<sup>311</sup> See *Blaskic* Appeal Judgement, para. 484; *Kordic and Cerkez* Appeal Judgement, para. 827; *Aleksowski* Appeal Judgement, para. 72; *Gacumbitsi* Appeal Judgement, para. 143.

K35

L

B

450

SCSL-2004-14-PT  
(6910-6912)

6910



# SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995  
FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

## THE TRIAL CHAMBER

Before: Judge Bankole Thompson, Presiding Judge  
Judge Benjamin Mutanga Itoe  
Judge Pierre Boutet

Registrar: Robin Vincent

Date: 28 May 2004

PROSECUTOR Against Sam Hinga Norman  
Moinina Fofana  
Allieu Kondewa  
(Case No.SCSL-04-14-PT)

## ORDER TO PROSECUTION TO PROVIDE ORDER OF WITNESSES AND WITNESS STATEMENTS

### Office of the Prosecutor:

Luc Côté  
James Johnson

### Defence Counsel for Sam Hinga Norman:

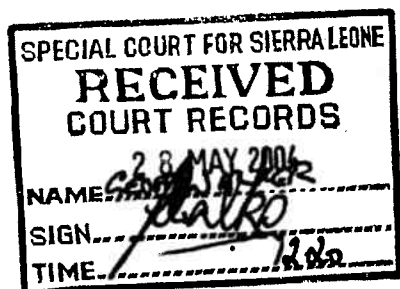
James Jenkins-Johnston

### Defence Counsel for Moinina Fofana:

Michiel Pestman

### Defence Counsel for Allieu Kondewa:

Charles Margai



**THE TRIAL CHAMBER** ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Judge Bankole Thompson, Presiding Judge, Judge Benjamin Mutanga Itoe and Judge Pierre Boutet;

**NOTING** the Trial Chamber "Order for Commencement of Trial", delivered on 11 May 2004, whereby the Trial Chamber ordered the Prosecution to disclose the identifying data of the first 10 witnesses it intends to call for trial by 12 May 2004;

**NOTING** that at the Pre-Trial Conference held on 28 April 2004, the Prosecution submitted that it was not at that time in a position to indicate to the Chamber which order its witnesses would be called at trial;

**NOTING** the "Materials filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the commencement of Trial of 1 April 2004", filed by the Prosecution on 26 May 2004, that provided a list of pseudonyms of each witness it intends to call at trial, together with a report indicating the number of witnesses for whom witness statements or summaries have been disclosed and the count or counts of the Indictment to which the witness will testify;

**CONSIDERING** that the Trial Chamber shall ensure that a trial is fair and expeditious and that the proceedings before the Special Court are conducted in accordance with the Rules of Procedure and Evidence of the Special Court ("Rules"), with full respect for the rights of the accused and due regard for the protection of victims and witnesses;

**CONSIDERING** Article 17 of the Statute of the Special Court for Sierra Leone ("Statute"), that provides *inter alia* that the Defence should have sufficient notice and adequate time to prepare for trial;

**CONSIDERING** that it is in the interests of justice for the Prosecution to disclose to the Defence the order of witnesses it intends to call, with sufficient time available for case preparation and investigation;

**CONSIDERING** that the Trial Chamber would benefit from having access to witness statements in advance of each witness testifying at trial, for the purpose of promoting comprehension of the issues and for the effective management of the trial;

CONSIDERING that it is an accepted practice within international criminal tribunals to request the filing of witness statements prior to trial;<sup>1</sup>

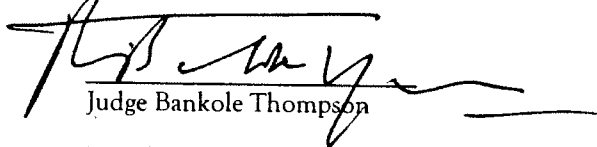
PURSUANT TO Rules 54 and Rule 73 bis of the Rules;

HEREBY ORDERS the Prosecution:

For the first trial session that runs from 3 June to 22 June 2004:

- (1) Concerning the first ten witnesses called to give testimony, to provide the Trial Chamber with a list of the order it intends to call witnesses by Tuesday, 1 June 2004, and for the remaining witnesses called in the first trial session, to provide each Defence Team and the Trial Chamber with a list of the order it intends to call witnesses to testify, 14 days in advance of their testimony;
- (2) Concerning the first ten witnesses called to give testimony, to provide the Trial Chamber with a confidential copy of their unredacted witness statements by Tuesday, 1 June 2004, and for the remaining witnesses called in the first trial session, to provide the Trial Chamber with a confidential copy of their unredacted witness statements one week prior to their testimony.

Done at Freetown this 28<sup>th</sup> day of May 2004

  
Judge Bankole Thompson

Presiding Judge,  
Trial Chamber



<sup>1</sup> *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Decision by the Tribunal on its Request to the Prosecutor to Submit the Written Witness Statements, 28 January 1997; *Prosecutor v. Darko Kordic and Mario Cerkez*, Case No. IT-95-14/2-PT, Order for Disclosure of Documents and Extension of Protective Measures, 27 November 1998; *Prosecutor v. Dokmanovic*, IT-95-13a-PT, Order, 28 November 1997, p.2; See *Prosecutor v. Vidoje Blagojevic, Dragan Jokic, Momir Nikolic*, Decision in the Appeals Chamber, 8 April 2003.

453

1321)

SCSL-04-15-A  
(5167-5728)

~~5167~~



**SPECIAL COURT FOR SIERRA LEONE**

**IN THE APPEALS CHAMBER**

**Before:** Justice Renate Winter, Presiding Judge  
Justice Jon M. Kamanda  
Justice George Gelaga King  
Justice Emmanuel Ayoola  
Justice Shireen Avis Fisher

**Acting Registrar:** Binta Mansaray

**Date:** 26 October 2009

|                   |                |                                                                                                             |
|-------------------|----------------|-------------------------------------------------------------------------------------------------------------|
| <b>PROSECUTOR</b> | <b>Against</b> | <b>ISSA HASSAN SESAY</b><br><b>MORRIS KALLON</b><br><b>AUGUSTINE GBAO</b><br><b>(Case No. SCSL-04-15-A)</b> |
|-------------------|----------------|-------------------------------------------------------------------------------------------------------------|

**JUDGMENT**

**Office of the Prosecutor:**

Christopher Staker  
Vincent Wagona  
Nina Jørgensen  
Reginald Fynn  
Elisabeth Baumgartner  
Régine Gachoud

**Defence Counsel Issa Hassan Sesay:**

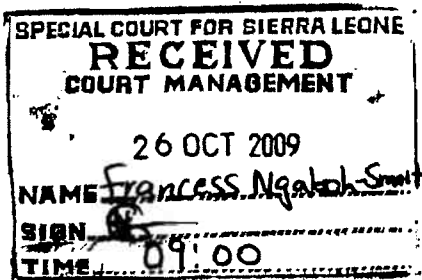
Wayne Jordash  
Sareta Ashraph  
Jared Kneitel

**Defence Counsel for Morris Kallon:**

Charles Taku  
Kennedy Ogeto

**Defence Counsel for Augustine Gbao:**

John Cammegh  
Scott Martin



Case No. SCSL-04-15-A

26 October 2009

## II. APPELLATE REVIEW

### A. Standard of Review on Appeal

30. Before the Appeals Chamber embarks on a detailed consideration of the Parties' Grounds of Appeal, it is expedient to recall at the threshold, albeit in general terms, some of the principles of appellate review that will guide it.<sup>58</sup>

31. **In regard to errors of law:** Where the appellant alleges an error of law pursuant to Article 20 of the Statute and Rule 106 of the Rules of Procedure and Evidence ("Rules"), only arguments relating to errors in law that invalidate the decision of the Trial Chamber would merit consideration. The appellant must provide details of the alleged error and state with precision how the legal error invalidates the decision.<sup>59</sup> In exceptional circumstances, the Appeals Chamber may consider legal issues raised by a party or *proprio motu* although they may not lead to the invalidation of the judgment, if they are nevertheless of general significance to the Special Court's jurisprudence.<sup>60</sup>

32. **In regard to errors of fact:** On appeal where errors of fact are alleged also pursuant to Article 20 of the Statute and Rule 106 of the Rules, the Appeals Chamber will not lightly overturn findings of fact reached by a Trial Chamber; the error of fact must have resulted in a miscarriage of justice.<sup>61</sup> The appellant must provide details of the alleged error and state with precision how the error of fact occasioned a miscarriage of justice. A miscarriage of justice is defined as "[a] grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential element of the crime."<sup>62</sup> For an error to be one that occasioned a miscarriage of justice it must have been "critical to the verdict reached."<sup>63</sup> Where it is alleged that the Trial Chamber committed an error of fact, the Appeals Chamber will give a margin of deference to the Trial Chamber that received the evidence at trial.<sup>64</sup> This is because it is the Trial Chamber that is best placed to assess the evidence, including the demeanour of witnesses.<sup>65</sup> The Appeals Chamber will only interfere in those findings where no reasonable trier of fact could have reached the same

<sup>58</sup> See *Fofana and Kondewa* Appeal Judgment, paras 32-36.

<sup>59</sup> *Norman et al.* Subpoena Decision, para. 7.

<sup>60</sup> *Fofana and Kondewa* Appeal Judgment, para. 32. See also *Galić* Appeal Judgment, para. 6; *Stakić* Appeal Judgment, para. 7; *Kupreškić et al.* Appeal Judgment, para. 22; *Tadić* Appeal Judgment, para. 247.

<sup>61</sup> *Fofana and Kondewa* Appeal Judgment, para. 33; *Kupreškić et al.* Appeal Judgment, para. 29.

<sup>62</sup> *Kupreškić et al.* Appeal Judgment, para. 29, citing *Furundžija* Appeal Judgment, para. 37.

<sup>63</sup> *Kupreškić et al.* Appeal Judgment, para. 29.

<sup>64</sup> *Fofana and Kondewa* Appeal Judgment, para. 33.

<sup>65</sup> *Fofana and Kondewa* Appeal Judgment, para. 33.

finding or where the finding is wholly erroneous.<sup>66</sup> The Appeals Chamber has adopted the statement of general principle contained in the ICTY Appeals Chamber decision in *Kupreškić et al.*, as follows:

[T]he task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is 'wholly erroneous' may the Appeals Chamber substitute its own finding for that of the Trial Chamber.<sup>67</sup>

The Appeals Chamber applies the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.<sup>68</sup>

33. The same standard of reasonableness and deference to factual findings applies when the Prosecution appeals against an acquittal,<sup>69</sup> however, the Appeals Chamber endorses the view that:

Considering that it is the Prosecution that bears the burden at trial of proving the guilt of the accused beyond reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal than for a defence appeal against conviction. A convicted person must show that the Trial Chamber's factual errors create a reasonable doubt as to his guilt. The Prosecution must show that, when account is taken of the errors of fact committed by the Trial Chamber, all reasonable doubt of the convicted person's guilt has been eliminated.<sup>70</sup>

34. **In regard to procedural errors:** Although not expressly so stated in Article 20 of the Statute, not all procedural errors vitiate the proceedings. Only errors that occasion a miscarriage of justice would vitiate the proceedings. Such are procedural errors that would affect the fairness of the trial. By the same token, procedural errors that could be waived or ignored (as immaterial or inconsequential) without injustice or prejudice to the parties would not be regarded as procedural errors occasioning a miscarriage of justice.

35. **In regard to appellate review of the exercise of discretionary powers by the Trial Chamber:** The guiding principles can be stated succinctly. The Trial Chamber's exercise of

<sup>66</sup> *Fofana and Kondewa* Appeal Judgment, para. 33; *Ntakirutimana* Appeal Judgment, para. 12; *Kupreškić et al.* Appeal Judgment, para. 30.

<sup>67</sup> *Fofana and Kondewa* Appeal Judgment, para. 34, quoting *Kupreškić et al.* Appeal Judgment, para. 30.

<sup>68</sup> See *Galić* Appeal Judgment, para. 9, fn. 21; *Stakić* Appeal Judgment, para. 219; *Čelebići* Appeal Judgment, para. 458. Similarly, the standard of proof at trial is the same regardless of the type of evidence, direct or circumstantial.

<sup>69</sup> *Muvunyi* Appeal Judgment, para. 10; *Mrkšić and Sljivančanin* Appeal Judgment, para. 15; *Martić* Appeal Judgment, para. 12.

<sup>70</sup> *Muvunyi* Appeal Judgment, para. 10; *Mrkšić and Sljivančanin* Appeal Judgment, para. 15; *Martić* Appeal Judgment, para. 12.



### III. GROUNDS OF APPEAL RELATING TO THE INDICTMENT

#### A. Principles applicable to the pleading of an Indictment

##### 1. Specificity

47. In order to guarantee a fair trial, the Prosecution is obliged to plead material facts with a sufficient degree of specificity.<sup>97</sup> The Appeals Chamber has on previous occasions set out the principles regarding the pleading of an indictment and hereafter reiterates these principles.

48. The question whether material facts are pleaded with the required degree of specificity depends on the context of the particular case.<sup>98</sup> In particular, the required degree of specificity varies according to the form of participation alleged against an accused.<sup>99</sup> Where direct participation is alleged, the Prosecution's obligation to provide particulars in an indictment must be adhered to fully.<sup>100</sup>

49. Where joint criminal enterprise ("JCE") is alleged, the Prosecution must plead the nature or purpose of the JCE, the time at which or the period over which the enterprise is said to have existed, the identity of those engaged in the enterprise so far as their identity is known, but at least by reference to their category or as a group, and the nature of the participation by the accused in that enterprise.<sup>101</sup>

50. Where superior responsibility is alleged, the liability of an accused depends on several material factors such as the relationship of the accused to his subordinates, notice of the crimes and that the accused failed to take necessary and reasonable measures to prevent the crimes or to punish his subordinates. These are material facts that must be pleaded with a sufficient degree of specificity.<sup>102</sup>

51. In considering the extent to which there is compliance with the specificity requirements in an indictment, the term specificity should be given its ordinary meaning as being specific in regard

<sup>97</sup> *Brima et al.* Appeal Judgment, para. 37.

<sup>98</sup> *Brima et al.* Appeal Judgment, para. 37.

<sup>99</sup> *Brima et al.* Appeal Judgment, para. 38.

<sup>100</sup> *Brima et al.* Appeal Judgment, para. 38.

<sup>101</sup> *Brima et al.* Appeal Judgment, fn. 146; *Taylor* Appeal Decision on JCE Pleading, para. 15.

<sup>102</sup> *Brima et al.* Appeal Judgment, para. 39.

to an object or subject matter. An object or subject matter that is particularly named or defined cannot be said to lack specificity.<sup>103</sup>

## 2. Exception to Specificity

52. The pleading principles that apply to indictments at international criminal tribunals differ from those in domestic jurisdictions because of the nature and scale of the crimes when compared with those in domestic jurisdictions. For this reason, there is a narrow exception to the specificity requirement for indictments at international criminal tribunals. In some cases, the widespread nature and sheer scale of the alleged crimes make it unnecessary and impracticable to require a high degree of specificity.<sup>104</sup>

### B. Challenges to an Indictment on appeal

53. Challenges to the form of an indictment should be made at a relatively early stage of proceedings and usually at the pre-trial stage pursuant to Rule 72(B)(ii) of the Rules which provides that it should be made by a preliminary motion.<sup>105</sup> An accused, therefore, is in the ordinary course of events expected to challenge the form of an indictment prior to the rendering of the judgment or at the very least, challenge the admissibility of evidence of material facts not pleaded in an indictment by interposing a specific objection at the time the evidence is introduced.<sup>106</sup>

54. Failure to challenge the form of an indictment at trial is not, however, an absolute bar to raising such a challenge on appeal.<sup>107</sup> An accused may well choose not to interpose an objection when certain evidence is admitted or object to the form of an indictment, not as a means of exploiting a technical flaw, but rather because the accused is under the reasonable belief that such evidence is being introduced for purposes other than those that relate to the nature and cause of the charges against him.<sup>108</sup>

55. Where an accused fails to make specific challenges to the form of an indictment during the course of the trial or challenge the admissibility of evidence of material facts not pleaded in the

<sup>103</sup> *Brima et al.* Appeal Judgment, para. 40.

<sup>104</sup> *Brima et al.* Appeal Judgment, para. 41; *Kvočka* Form of the Indictment Decision, para. 17.

<sup>105</sup> *Brima et al.* Appeal Judgment, para. 42; Rule 72(B)(ii) expressly provides that preliminary motions by the accused include "[o]bjections based on defects in the form of the indictment."

<sup>106</sup> *Brima et al.* Appeal Judgment, para. 42; *Niyitegeka* Appeal Judgment, para. 199.

<sup>107</sup> *Brima et al.* Appeal Judgment, para. 43.

<sup>108</sup> *Brima et al.* Appeal Judgment, para. 43.

~~5229~~

command and authority to direct his subordinates<sup>320</sup> through "instructions"<sup>321</sup> to attack UNAMSIL peacekeepers in Bombali District on 1 May 2000 and 3 May 2000.<sup>322</sup> These attacks included the "attack on Maroa,"<sup>323</sup> the "abduction of Mendy and Gjellesdad,"<sup>324</sup> "[t]he abduction of Kasoma and ten peacekeepers" and the attack against Kasoma's convoy of approximately 100 peacekeepers<sup>325</sup> to which Kallon objects in his fourth argument in this sub-ground of his appeal.

166. In relation to the material facts of Kallon's superior responsibility for crimes charged under Counts 15 and 17, the Appeals Chamber notes that the Indictment provided notice that Kallon was the Battle Group Commander from "early 2000,"<sup>326</sup> that "while holding [this] position of superior responsibility and exercising effective control over ... subordinates ... [he] is responsible for the criminal acts of his subordinates,"<sup>327</sup> and that by his acts in relation to the attacks against UNAMSIL peacekeepers, Kallon, pursuant to Article 6(3) of the Statute, is individually criminally responsible for the crimes charged under Counts 15 and 17.<sup>328</sup> The Indictment also alleges that Kallon knew or had reason to know that his subordinates were about to commit the criminal acts for which Kallon was alleged to be responsible.<sup>329</sup> The Appeals Chamber considers that these facts are precisely the material facts underpinning Kallon's convictions for superior responsibility. We, therefore, find that Kallon had sufficient notice of these charges and reject his first and second arguments in this sub-ground of his appeal.

167. With regard to Kallon's third and fourth arguments concerning the defective pleading and cure of his liability for personal commission of the attack against Salahuedin, the Appeals Chamber notes that the Trial Chamber found that the pleading of personal commission lacked requisite specificity and therefore was defective.<sup>330</sup> Such defect may be cured by the provision of timely, clear and consistent information detailing the factual basis underpinning the charges against Kallon, which compensates for the failure of the indictment to give proper notice of the charges.<sup>331</sup> Contrary to Kallon's assertion, defective pleading of personal commission may be cured by the Prosecution

<sup>320</sup> Trial Judgment, para. 2252.

<sup>321</sup> Trial Judgment, para. 2252; *see also* Trial Judgment, paras 2255, 2257 for similar findings.

<sup>322</sup> Trial Judgment, paras 2248, 2253, 2255, 2258.

<sup>323</sup> Kallon Appeal, para. 259.

<sup>324</sup> Kallon Appeal, para. 260.

<sup>325</sup> Kallon Appeal, para. 263.

<sup>326</sup> Indictment, para. 27.

<sup>327</sup> Indictment, para. 39.

<sup>328</sup> Indictment, para. 83 and p. 22.

<sup>329</sup> Indictment, para. 39.

<sup>330</sup> Trial Judgment, para. 399.

<sup>331</sup> *Brima et al.* Appeal Judgment, para. 44; *Kupreškić et al.* Appeal Judgment, para. 114.

~~SECRET~~

through witness statements and additional filings.<sup>332</sup> This has also been the practice at other international tribunals. For example, in *Gacumbitsi*, the ICTR Appeals Chamber relied upon one document which indicated the anticipated testimony of a prosecution witness to find that the defective pleading of personal commission of a killing was cured.<sup>333</sup> In *Ntakirutimana*, the ICTR Appeals Chamber relied upon a witness statement taken together with “unambiguous information” contained in the Pre-Trial Brief and its annexes to determine the defective pleading of personal commission was cured.<sup>334</sup> In *Naletilić and Martinović*, the ICTY Appeals Chamber found that the Prosecution had cured the indictment’s failure to provide information about a beating through information provided by a chart of witnesses and the reiteration of those details by the Prosecution in its opening statement.<sup>335</sup>

168. In the present case, the Trial Chamber found that the Prosecution had disclosed on 26 May 2003 a witness statement indicating that “the witness would testify [about material particulars] including the direct participation of Kallon in physically assaulting a peacekeeper.”<sup>336</sup> The Prosecution also filed a motion on 12 July 2004 indicating that another witness “would testify about the individual criminal responsibility of Kallon during the abduction of the UN peacekeepers.”<sup>337</sup> The Appeals Chamber considers that these statements provided sufficient timely notice of Kallon’s personal commission of the attack on Salahuedin, such that they cured the defect in the charge against Kallon under Article 6(1) of the Statute with respect to the attacks against UNAMSIL personnel.<sup>338</sup> Kallon’s third and fourth arguments in this sub-ground of appeal are, therefore, dismissed.

(c) Conclusion

169. The Appeals Chamber dismisses Kallon Grounds 23, 24 and 28 in regard to the pleading of crimes under Counts 15 and 17 concerning attacks against UNAMSIL peacekeepers.

<sup>332</sup> See *Gacumbitsi* Appeal Judgment, para. 56; *Ntakirutimana* Appeal Judgment, para. 32.

<sup>333</sup> *Gacumbitsi* Appeal Judgment, paras 56, 58.

<sup>334</sup> *Ntakirutimana* Appeal Judgment, para. 48.

<sup>335</sup> *Naletilić and Martinović* Appeal Judgment, para. 45.

<sup>336</sup> Trial Judgment, para. 2244.

<sup>337</sup> Trial Judgment, para. 2244, fn 3914.

<sup>338</sup> Indictment, para. 83.

~~5343~~

With regard to the third category, what is required is the *intention* to participate in and further the criminal activity or the criminal purpose of a group and to contribute to the joint criminal enterprise or in any event to the commission of a crime by the group. In addition, responsibility for a crime other than the one agreed upon in the common plan arises only if, under the circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused *willingly took that risk*.<sup>1234</sup> ["JCE 3"]

475. At issue here are primarily the *mens rea* elements for JCE 1 and JCE 3. Under JCE 1, also known as the "basic" form of JCE, liability attaches where the accused intended the commission of the crime in question and intended to participate in a common plan aimed at its commission.<sup>1235</sup> In other words, JCE 1 liability attaches to crimes within the common criminal purpose.<sup>1236</sup> By contrast, JCE 3 liability attaches to crimes which are *not* part of the common criminal purpose.<sup>1237</sup> That is why it is often referred to as the "extended" form of JCE.<sup>1238</sup> However, before an accused person can incur JCE 3 liability, he must be shown to have possessed "the *intention* to participate in and further the criminal activity or the criminal purpose of a group."<sup>1239</sup> Therefore, both JCE 1 and JCE 3 require the existence of a common criminal purpose which must be shared by the members of the JCE, including in particular the accused.<sup>1240</sup> Where that initial requirement is met, JCE 3 liability can attach to crimes outside the common criminal purpose committed by members of the JCE or by non-JCE perpetrators used by members of the JCE if it was reasonably foreseeable to the accused that a crime outside the common criminal purpose might be perpetrated by other members of the group in the execution of the common criminal purpose and that the accused willingly took that risk (*dolus eventualis*).<sup>1241</sup>

(b) Did the Trial Chamber err in failing to specify which category of JCE it applied?

476. The Appeals Chamber is not persuaded by Kallon's submissions that the Trial Chamber failed to find whether JCE 1 or JCE 3 liability applied in respect of the crimes and that it instead

<sup>1234</sup> Tadić Appeal Judgment, para. 228.

<sup>1235</sup> Brđanin Appeal Judgment, para. 365.

<sup>1236</sup> Brđanin Appeal Judgment, para. 418; Martić Appeal Judgment, para. 82.

<sup>1237</sup> See e.g., Stakić Appeal Judgment, para. 87.

<sup>1238</sup> See e.g., Kvočka et al. Appeal Judgment, para. 83.

<sup>1239</sup> Tadić Appeal Judgment, para. 228.

<sup>1240</sup> See e.g., Stakić Appeal Judgment, paras 85, 86 (establishing that a common criminal purpose existed and that the accused shared its intent and participated in it, before moving on to assess whether the accused could be held liable under JCE 3 for "crimes beyond the scope of that enterprise").

<sup>1241</sup> Brđanin Appeal Judgment, para. 365; Stakić Appeal Judgment, para. 87; Tadić Appeal Judgment, para. 228; Kvočka et al. Appeal Judgment, para. 83. The Appeals Chamber recalls that it is not decisive whether these fellow JCE members carried out the *actus reus* of the crimes themselves or used principal perpetrators who did not share the common purpose. See *supra*, paras 393-455.

544. The Appeals Chamber notes that all that remains is Gbao's argument that the actions on which the Trial Chamber based its findings as to his *actus reus* and *mens rea* took place after the crimes were committed. It is helpful to reproduce, at the outset, the key findings of the Trial Chamber:

2263. ... the Chamber finds that Gbao deliberately fomented an atmosphere of hostility and orchestrated an armed confrontation at the Makump DDR camp and that Gbao's actions in arming himself with an AK-47 amounted to tacit approval of Kallon's conduct. We therefore find that Gbao's conduct before and during the attacks on Salahuedin and Jaganathan had a substantial effect on their perpetration.

2264. The Chamber further finds that the only reasonable inference to be drawn from the evidence is that Gbao possessed the requisite *mens rea* as he took up arms and stood by while the attacks were carried out and in so doing he intended to assist Kallon in their commission.<sup>1392</sup>

545. In relation to both the *actus reus* and the *mens rea*, the actions of Gbao considered crucial by the Trial Chamber are his taking up of arms and his standing passively by. The taking up of arms took place at some point during the period in which Kallon was inside the camp, as did the start of Gbao's passive behaviour; the exact moment has not been determined. Given that Kallon proceeded to enter the camp after an exchange with Gbao, Kallon would have been aware of Gbao's presence outside the camp. However, there is no indication that Kallon was aware of Gbao having taken up arms until after he left the camp. The question is, then, whether Gbao's presence outside the camp can be said to have had a substantial effect on the perpetration of the crime. The Appeals Chamber takes the view that it is within the discretion of a reasonable trier of fact to hold that such presence did have a substantial effect on the perpetration of the offence.

546. The Appeals Chamber recalls that the *mens rea* for aiding and abetting is that:

the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed.<sup>1393</sup>

547. The Appeals Chamber notes that there is no indication in the Trial Judgment that, prior to Kallon's entry into the camp, Gbao knew that any attacks might take place or any crimes might be committed by Kallon or Kallon's forces. It does not follow from Gbao's knowledge of Kallon's

<sup>1392</sup> Trial Judgment, paras 2263, 2264.

### 3. Discussion

828. The Indictment particularises the charge of murder under Counts 4 and 5 in relation to Kono District as follows:

About mid February 1998, AFRC/RUF fleeing from Freetown arrived in Kono District. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF unlawfully killed several hundred civilians in various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya.<sup>2175</sup>

829. The relevant question on appeal is whether the pleading of locations of murder in Kono District as “various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya” without naming Wendedu, is sufficiently specific to allow Kallon to prepare his defence to the charge of instigating murder in Wendedu.

830. As a general matter, the location of the crimes alleged to have been committed should be specified in an indictment.<sup>2176</sup> However, the degree of specificity required will depend on the nature of the Prosecution’s case.<sup>2177</sup> The specificity required for the pleading of the location of an alleged crime will depend on factors such as: the form of accused’s participation in the crime;<sup>2178</sup> the proximity of the accused person to the events at the location for which he is alleged to be criminally responsible;<sup>2179</sup> the nature of the crime itself, such as whether the crime is characterized by the movement of the victim; whether the victim’s identity provides specificity; and whether the crime was committed at numerous locations within a defined geographic area that was pleaded.

831. As the form of the accused’s participation in the crime is relevant to the specificity required, the material facts to be pleaded will vary according to the particular form of Article 6(1) liability averred. For example, the Appeals Chamber has indicated that the material facts for pleading

<sup>2175</sup> Indictment, para. 48.

<sup>2176</sup> *Bagasora et al.*, Appeal Decision on Ntabakuze Appeal on Questions of Law.

<sup>2177</sup> See *Kupreškić et al.* Appeal Judgment, para. 89; *Krnojelac* Appeal Judgment, para. 132; *Blaškić* Appeal Judgment, paras 210, 212-213, 216-218; *Kvočka et al.* Appeal Judgment, para. 28; *Naletilić & Martinović* Appeal Judgment, para. 24; *Ntagerura et al.* Appeal Judgment, paras 23-26.

<sup>2178</sup> *Brima et al.* Appeal Judgment, para. 38; *Krnojelac* Form of the Indictment Decision, para. 18.

<sup>2179</sup> *Kvočka et al.* Appeal Judgment, para. 65 (“As the proximity of the accused person to those events becomes more distant, less precision is required in relation to those particular details and greater emphasis is placed upon the conduct of the accused person himself upon which the Prosecution relies to establish his responsibility as an accessory or a superior to the persons who personally committed the acts giving rise to the charges against him.”), citing *Galić* Decision on Leave to Appeal, para. 15.

personal commission are distinct from those pleaded for JCE liability.<sup>2180</sup> As stated by the ICTR Appeals Chamber, there may well be "situations in which the specific location of criminal activities cannot be listed, such as where the accused is charged as having effective control over several armed groups that committed crimes in numerous locations. In cases concerning physical acts of violence perpetrated by the accused personally, however, location can be very important."<sup>2181</sup>

832. This distinction between the specificity requirements for the pleading of locations in relation to different modes of liability is consistent with our holding in the *Brima et al.* Appeal Judgment. There, we held that the Trial Chamber's decision to reconsider an earlier form of indictment decision was a proper exercise of its discretion in the interests of justice.<sup>2182</sup> The *Brima et al.* Trial Chamber held that the indictment had not pleaded locations with sufficient specificity and they therefore declined to find the accused liable for crimes committed at unnamed locations. Similar to Kallon's present conviction, the accused in *Brima et al.* were not convicted pursuant to their participation in a JCE, but rather they were convicted of more direct forms of participation, such as, *inter alia*, personal commission and instigation.

833. An accused's proximity to the events at the location for which he is alleged to be criminally responsible is also a factor in determining the pleading specificity required. In the present case, Kallon's liability for instigating the murder of Waiyoh in Wendedu stems directly from his conduct in Wendedu. In May 1998, Waiyoh was being held at an RUF civilian camp in Wendedu. Kallon visited the camp and questioned CO Rocky about Waiyoh, "stating that he considered her a threat."<sup>2183</sup> On a subsequent visit to the camp in Wendedu, Kallon asked CO Rocky if he was "still keeping 'enemies' of the RUF in the camp."<sup>2184</sup> Kallon's bodyguards later visited the camp to enquire about Waiyoh again and Rocky then ordered that she be killed.<sup>2185</sup>

834. In view of the mode of Kallon's liability for the crime and that his culpable conduct occurred at the location, the location of the murder as having occurred at Wendedu was a material

<sup>2180</sup> See *supra*, paras 48, 49; *Kupreškić et al.* Appeal Judgment, para. 89 (requiring detailed pleading of personal commission) cf. *Brdanin* Decision on Form of Further Amended Indictment, paras 21, 22 (material facts for JCE liability).

<sup>2181</sup> *Ntakirutimana* Appeal Judgment, para. 75.

<sup>2182</sup> *Brima et al.* Appeal Judgment, para. 64.

<sup>2183</sup> Trial Judgment, para. 1174.

<sup>2184</sup> Trial Judgment, para. 1174.

<sup>2185</sup> Trial Judgment, para. 1175.



464

5471

fact that must have been pleaded in the Indictment to inform Kallon clearly of the charges against him so that he could prepare a defence.<sup>2186</sup>

835. The Prosecution's failure to plead Wenedu as a location in the Indictment rendered the Indictment defective with respect to the pleading of Kallon's instigation of murder at Wenedu. As Kallon objected at trial to the pleading of a nonexhaustive list of locations,<sup>2187</sup> the Prosecution bears the burden of showing on appeal that the defect in the Indictment did not prejudice Kallon's ability to prepare his defence. The Prosecution has not offered any submissions that Kallon had notice of the charge as a result of timely, clear and consistent information detailing the factual underpinnings of the charge.<sup>2188</sup>

836. The Appeals Chamber, therefore, finds that Kallon was not put on notice of the charge that he instigated murder at Wenedu. The trial against Kallon was thereby rendered unfair, and as a result he should not have been found responsible for the killing of Waiyoh.

837. For the foregoing reasons, the Appeals Chamber grants Kallon's Ground 12.

**C. Superior responsibility for the forced marriages of TF1-016 and her daughter in Kissi Town, Kono District, between May and June 1998 (Kallon Ground 13)**

**1. Trial Chamber's findings**

838. The Trial Chamber found that approximately three months after the Intervention in February 1998, TF1-016 and her eleven year old daughter were captured together with twelve other civilians in Tomandu, Kono District, by fighters who identified themselves as belonging to the RUF.<sup>2189</sup> It found that TF1-016 and her daughter were among those given as "wives" to the rebels, with TF1-016 given to "Kotor" a member of the RUF, and that she was forced to reside with him in the house of the armed rebel leader Alpha.<sup>2190</sup> It consequently found that RUF members forcibly married TF1-016 and her daughter in Kissi Town, Kono District between May and June 1998.<sup>2191</sup>

<sup>2186</sup> See *Kupreškić et al.* Appeal Judgment, para. 88.

<sup>2187</sup> See Trial Judgment, para. 420.

<sup>2188</sup> The Prosecution was invited to do so at the Appeal Hearing, however it declined to expand on its submissions on appeal, which do not address possible curing information. Appeal Transcript, 3 September 2009, pp. 234, 244.

<sup>2189</sup> Trial Judgment, para. 1209.

<sup>2190</sup> Trial Judgment, para. 1212.

<sup>2191</sup> Trial Judgment, paras 1209-1214, 2065.

promote violence, targeted civilians, civilian object[s] in order to spread terror among the civilian population” and did not consider any alternative reasons for the conduct or explain its rationale.<sup>2289</sup>

882. The Prosecution responds that it is settled case law that the prohibition of terror against the civilian population is part of customary international law and a crime punishable under the Statute.<sup>2290</sup> The Prosecution further argues that the “the specific intent to spread terror need not be the only purpose of the unlawful acts or threats of violence”, and the fact of coexisting purposes does not disprove the specific intent to spread terror.<sup>2291</sup> Kallon replies that even if acts of terrorism were a recognised crime during the relevant time-period, the specific intent to spread terror was not the only reasonable inference available from the evidence.<sup>2292</sup>

### 3. Discussion

#### (a) Notice of acts of burning in Koidu Town

883. Kallon submits that the Trial Chamber “erred in law by relying on the burning of civilian homes in Rembodu [*sic*]<sup>2293</sup> and Koidu Town not pleaded in the indictment. This occasioned prejudice to the Accused preparation for defence as he had no notice of these occasions and crimes.”<sup>2294</sup> As a preliminary matter, the Appeals Chamber notes that the Trial Chamber makes no reference to the location “Rembodu” in its judgment. The Appeals Chamber therefore understands Kallon to contend that he lacked notice of the crimes because Koidu Town was not a named location in the Indictment under Count 14, which pertained to acts of burning.

884. The Indictment particularises the charge under Counts 14 in relation to Kono District as follows:

Between about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including Tombodu, Foindu and Yardu Sando, where virtually every home in the village was looted and burned.<sup>2295</sup>

<sup>2288</sup> Kallon Appeal, para. 161.

<sup>2289</sup> Kallon Appeal, para. 169, *quoting* Trial Judgment, para. 1342.

<sup>2290</sup> Prosecution Response, para. 7.7, *citing* Trial Judgment, para. 112.

<sup>2291</sup> Prosecution Response, para. 7.9, *quoting* Trial Judgment, para. 121; *Fofana and Kondewa Appeal Judgment*, para. 357.

<sup>2292</sup> Kallon Reply, para. 44.

<sup>2293</sup> The Trial Chamber, in fact, made no findings in regard to Rembodu.

<sup>2294</sup> Kallon Appeal, para. 171 (internal quotation omitted).

<sup>2295</sup> Indictment, para. 80.

885. The relevant question on appeal is whether the pleading of locations of acts of burning in Kono District as “in various locations in the District, including Tombodu, Foindu and Yardu Sando” without naming Koidu Town, is sufficiently specific to allow Kallon to prepare his defence for alleged JCE liability for acts of burning as terrorism in Koidu Town.

886. The Appeals Chamber recalls that the specificity required for the pleading of locations will depend on factors including those previously discussed.<sup>2296</sup> Kallon was convicted for acts of burning as acts of terrorism pursuant to his participation in the JCE. His liability for these acts derives significantly from his conduct in relation to other events and crimes, including those committed in locations in Kono that were pleaded with sufficient specificity.<sup>2297</sup> Much of his culpable conduct did not occur in Koidu Town, and therefore the pleading of the location does not require a high degree of specificity for Kallon’s ability to prepare his defence with respect to his culpable conduct.

887. In regard to his notice of the alleged criminal acts in Koidu Town, the Appeals Chamber recalls that the Trial Chamber found that nonexhaustive pleading of locations may be adequate in light of the “sheer scale” of the alleged crimes.<sup>2298</sup> Therefore, in this case, Kallon had adequate notice notwithstanding the nonexhaustive pleading of locations.<sup>2299</sup> The Appeals Chamber has not found error in the Trial Chamber’s general approach to applying the exception,<sup>2300</sup> and Kallon has not offered any argument as to why this exception to the requirements for pleading specificity should not apply to the pleading of acts of burning in Koidu Town, in view of the fact that his liability is pursuant to his participation in the JCE. Accordingly, the Appeals Chamber, Justices Winter and Fisher dissenting, reject Kallon’s submission.

<sup>2296</sup> See *supra*, para. 830.

<sup>2297</sup> The Trial Chamber found that his relevant participation in the JCE included (i) involvement in the planning and execution of the attack against Koidu Town, (ii) participation in a meeting with Johnny Paul Koroma, Sesay and Superman in Koidu Town, (iii) presence in Koidu Town when AFRC/RUF fighters burned houses and killed civilians, (iv) ordering ambushes along the Makeni-Kono Highway between April and August 1998, (v) use of children under the age of 15 years as bodyguards, (vi) participation in the abduction for and planning of training SBUs in Kono, and (vii) ordering civilians to go on “food-finding” missions during which they were raped by RUF fighters, which activity Kallon endorsed and encouraged. Trial Judgment, paras 2093-2099.

<sup>2298</sup> Trial Judgment, para. 422, citing *Sesay* Decision on Form of Indictment, para. 23.

<sup>2299</sup> *Sesay* Decision on Form of Indictment, para. 23.

<sup>2300</sup> See *supra*, para. 52, 60, 172.

**F. Alleged errors relating to physical violence (Kallon Ground 19)**

**1. Trial Chamber's findings**

898. The Trial Chamber found that Kallon incurred JCE liability under Counts 10 to 11, *inter alia*, for the physical mistreatment of TF1-122 and the infliction of physical violence on TF1-129 in Kenema Town,<sup>2348</sup> and the amputation of the hands of three civilians<sup>2349</sup> and the flogging of TF1-197 and his brother in Tombodu in Kono District.<sup>2350</sup>

**2. Submissions of the Parties**

899. Kallon submits that the Trial Chamber erred in law and in fact by convicting him for acts of physical violence at locations in Kono District not pleaded in the Indictment, and that this defect was not cured.<sup>2351</sup>

900. In relation to acts of physical violence in Kenema District, Kallon submits that there was no evidence that he knew about, contributed to, or shared with the perpetrators the intent to commit the beatings of TF1-122 and of TF1-129.<sup>2352</sup> He also claims a lack of evidence that he knew about or shared the intent for the amputations of the hands of three civilians and the flogging of TF1-197 and his younger brother.<sup>2353</sup> As to the amputations, Kallon further claims a lack of evidence that he "was in any way linked to the perpetrators of the crime," and as to the flogging he avers that the perpetrators "were neither under his control or authority."<sup>2354</sup> The Prosecution responds that it was only required that Kallon substantially contributed to the JCE.<sup>2355</sup> Kallon offers no additional arguments in reply.

**3. Discussion**

901. With respect to physical violence in Kono District, the Indictment particularises the charge under Counts 10 and 11 in relation to Kono District as follows:

<sup>2348</sup> Trial Judgment, paras 1110-1112, 2050, 2056.

<sup>2349</sup> Trial Judgment, paras 1172, 2063, 2102.

<sup>2350</sup> Trial Judgment, paras 1173, 2063, 2102.

<sup>2351</sup> Kallon Appeal, para. 174.

<sup>2352</sup> Kallon Appeal, para. 176.

<sup>2353</sup> Kallon Appeal, para. 175.

<sup>2354</sup> Kallon Appeal, para. 175.

<sup>2355</sup> Prosecution Response, para. 7.67.

Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombodu, Kaima (or Kayima) and Wonedu. The mutilations included cutting off limbs and carving "AFRC" and "RUF" on the bodies of the civilians.<sup>2356</sup>

902. The relevant question on appeal is whether the pleading of locations of acts of physical violence in Kono District as "in various locations in the District, including Tombodu, Kaima (or Kayima) and Wonedu" without naming Penduma and Yardu, is sufficiently specific to allow Kallon to prepare his defence for alleged JCE liability for acts of physical violence in Penduma and Yardu.

903. The Appeals Chamber recalls that the specificity required for the pleading of locations will depend on factors including those previously listed.<sup>2357</sup> Kallon was convicted for acts of physical violence pursuant to his participation in the JCE. Kallon makes no submission that he directly participated in any of these crimes, and in fact he contends he did not know of them. His liability is pursuant to his participation in the JCE and it is derived from his conduct in relation to other events and crimes which were committed at locations that were named in the Indictment.<sup>2358</sup>

904. In regard to his notice of the alleged criminal acts in Penduma and Yardu, the Appeals Chamber recalls that the Trial Chamber found that nonexhaustive pleading of locations may be adequate in light of the "sheer scale" of the alleged crimes.<sup>2359</sup> The Appeals Chamber has not found error in the Trial Chamber's general approach to applying the exception,<sup>2360</sup> and Kallon has not offered any argument why this exception to the requirements for pleading specificity should not apply to the acts of physical violence in Penduma and Yardu, in view of the fact that his liability is pursuant to his participation in the JCE. Accordingly, this submission is dismissed.

905. With respect to physical violence in Kenema District, the Appeals Chamber notes that the Trial Chamber did not specifically detail how it reached the conclusion that Kallon shared the intent for the acts of physical violence in question, nor did it expressly set out on which evidence it relied.<sup>2361</sup> Nonetheless, the Appeals Chamber considers that the Trial Chamber's conclusion was open to a reasonable trier of fact. Based on the "widespread and systematic nature of the crimes," the Trial Chamber found that the Supreme Council, of which Kallon was a member, initiated a

<sup>2356</sup> Indictment, para. 62.

<sup>2357</sup> See *supra*, para. 830.

<sup>2358</sup> See *supra*, para. 886, fn. 2515.

<sup>2359</sup> Trial Judgment, para. 422, *citing* Sesay Decision on Form of Indictment, para. 23.

<sup>2360</sup> See *supra*, para. 52, 60, 172.

3. Discussion

5507

938. Concerning Kallon's notice of his alleged liability for the looting of a bank in Koidu Town, the Appeals Chamber recalls that the specificity required for the pleading of locations will depend on factors including those previously listed.<sup>2461</sup> The Trial Chamber found that Kallon significantly contributed to the looting from Ibrahim Kamara by his participation in the JCE,<sup>2462</sup> and that his liability derives from his conduct in relation to other events and crimes,<sup>2463</sup> and in particular, his participation in unlawful killings in Koidu Town, which were pleaded.<sup>2464</sup>

939. The Appeals Chamber recalls that the Trial Chamber found that nonexhaustive pleading of locations may be adequate in light of the "sheer scale" of the alleged crimes.<sup>2465</sup> The Appeals Chamber has not found error in the Trial Chamber's general approach to applying the exception,<sup>2466</sup> and Kallon has not offered any argument as to why this exception to the requirements for pleading specificity should not apply to pillage in Koidu Town. Accordingly, this submission is rejected.

940. Concerning the looting from Ibrahim Kamara, the Trial Chamber also found that Kallon incurred liability because of his significant contribution to the crime by his participation in the JCE.<sup>2467</sup> Kallon's present challenges to that conclusion are without merit, as it was not required that Kallon was either present in Bo at the time the crime was committed<sup>2468</sup> or knew about the specific incident.<sup>2469</sup> Further, given the finding that both Kallon and Bockarie were members of the JCE,<sup>2470</sup> which finding Kallon does not challenge here, it is irrelevant whether Kallon had control over Bockarie. This argument is rejected.

941. Regarding the finding that Kallon was present at the meeting when Johnny Paul Koroma ordered the burning of Koidu Town, the Appeals Chamber notes that the Trial Chamber referred

<sup>2461</sup> See *supra*, para. 830.

<sup>2462</sup> Trial Judgment, para. 2008.

<sup>2463</sup> See *supra*, para. 886, fn. 2515.

<sup>2464</sup> Trial Judgment, para. 2103.

<sup>2465</sup> Trial Judgment, para. 422, citing *Sesay* Decision on Form of Indictment, para. 23.

<sup>2466</sup> See *supra*, para. 60.

<sup>2467</sup> Trial Judgment, para. 2008.

<sup>2468</sup> *Simba* Appeal Judgment, para. 296 ("The Appeals Chamber agrees with the Prosecution that physical presence at the time a crime is committed by the physical perpetrator is not required for liability to be incurred by a participant in a JCE. However, as conceded by the Prosecution, it may be taken as an indicator of a co-perpetrator's contribution." [internal references omitted]); *Kvočka et al.* Appeal Judgment, paras 112, 113; *Krnojelac* Appeal Judgment, para. 81.

<sup>2469</sup> See *supra*, paras 795, 906; see also *Rwamakuba* JCE Decision, para. 19, quoting the *Justice* case; *Kvočka et al.* Appeal Judgment, para. 276.

<sup>2470</sup> Trial Judgment, para. 1990.

470  
5605

101(c) of the Rules provides that the Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.<sup>3330</sup>

1202. Appeals against sentence, as appeals from a judgment of a Trial Chamber, are appeals *stricto sensu*. They are not trials *de novo*.<sup>3331</sup> Trial Chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualise the penalties to fit the circumstances of the accused and the gravity of the crime.<sup>3332</sup> The Appeals Chamber will not lightly overturn findings relevant to sentencing by the Trial Chamber.<sup>3333</sup> As a general rule, the Appeals Chamber will not revise a sentence unless the Appellant demonstrates that the Trial Chamber has committed a “discernible error” in exercising its discretion or has failed to follow the applicable law.<sup>3334</sup>

1203. In the *Brima et al.* and *Fofana and Kondewa* Appeal Judgments, the Appeals Chamber explained that to demonstrate that the Trial Chamber committed a discernible error in exercising its discretion:

the Appellant has to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber’s decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly.<sup>3335</sup>

**C. Sesay’s appeal against sentence (Sesay Ground 46)**

**1. Trial Chamber’s findings**

1204. The Trial Chamber convicted Sesay for:

(i) Committing by participating in a joint criminal enterprise pursuant to Article 6(1) of the Statute crimes under:

i. Count 1 in relation to events in Bo, Kenema, Kono and Kailahun Districts;

ii. Count 2 in relation to events in Kenema, Kono and Kailahun Districts;

<sup>3330</sup> *Fofana and Kondewa* Appeal Judgment, paras 465, 546-552.

<sup>3331</sup> *Fofana and Kondewa* Appeal Judgment, para. 466.

<sup>3332</sup> *Fofana and Kondewa* Appeal Judgment, para. 466.

<sup>3333</sup> *Brima et al.* Appeal Judgment, para. 309; *Fofana and Kondewa* Appeal Judgment, para. 466.

471

5616

### 3. Discussion

#### (a) The form and degree of Sesay's participation in the crimes

1229. A Trial Chamber must ultimately impose a sentence that reflects the totality of the convicted person's culpable conduct.<sup>3420</sup> This principle, the totality principle, requires that a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused in the crimes.<sup>3421</sup>

1230. Sesay contests the Trial Chamber's evaluation of his role in the crimes. To do so, he draws comparisons with the criminal conduct of others, but he does not directly challenge or address the Trial Chamber's numerous findings of the specific roles that he played. For example, Sesay contends that the Trial Chamber should have considered that his role was "remote" and "minimal," but he fails to address the extensive findings of his direct participation in crimes, such as his liability for planning enslavement and the use of children under the age of 15 to participate actively in hostilities, his superior responsibility for enslavement, attacks against peacekeepers and murder of peacekeepers. He also ignores the Trial Chamber's findings that at all relevant times he was an influential senior RUF commander and that during the JCE he was a member of the Supreme Council who furthered the Common Criminal Purpose by securing revenues, territory and manpower for the Junta government and by using criminal means to reduce or eliminate the civilian opposition to the Junta regime.

1231. The Appeals Chamber endorses the view of the ICTY Appeals Chamber that a Trial Chamber is not required to assess the participation of an accused in a JCE relative to the participation of other perpetrators when determining the overall level of the accused's participation.<sup>3422</sup> Sesay's reliance on the *Krstić* Appeals Judgment for this proposition is inapposite. The ICTY Appeals Chamber in *Krstić* held that:

Radislav Krstić's guilt should have been assessed on an individual basis. The Appeals Chamber further agrees that the comparative guilt of other alleged co-conspirators, not adjudicated in this case, is not a relevant consideration.<sup>3423</sup>

<sup>3420</sup> *Fofana and Kondewa* Appeal Judgment, para. 546.

<sup>3421</sup> *Fofana and Kondewa* Appeal Judgment, para. 546.

<sup>3422</sup> *Babić* Appeal Judgment, para. 40.

<sup>3423</sup> *Krstić* Appeal Judgment, para. 254.



472

5647

the Trial Chamber did not, and need not have, relied upon findings that he was “the senior RUF commander” (*i.e.*, as Gbao states, the *most* senior RUF commander<sup>3596</sup>) with “the largest number of fighters” at the Makump DDR camp in order to find that his conduct amounted to aiding and abetting.

1314. Gbao’s contention that the Trial Chamber erred by taking into account his leadership role rather than any abuse of that role as an aggravating factor is similarly unavailing. The relevant passage of the Sentencing Judgment must be read in conjunction with the Trial Chamber’s findings on Gbao’s role in the attack on Jaganathan in paragraphs 2261 through 2265 of the Trial Judgment.

1315. In the Sentencing Judgment, the Trial Chamber noted that Gbao was convicted of aiding and abetting the attacks directed against Jaganathan at the Makump DDR camp “where he was the senior RUF Commander present at the time of Kallon’s arrival and he remained the RUF Commander with the largest number of fighters present.” As the senior RUF Commander until Kallon’s arrival representing the RUF, a signatory to the Lomé Accord, he had a duty to support UNAMSIL personnel who were tasked with bringing peace to the population of Sierra Leone. Thus, it was reasonable for the Trial Chamber to find that Gbao had abused his position of authority, including by (i) demanding, with the support of thirty to forty armed RUF subordinates, that UNAMSIL give him back his five fighters, (ii) fomenting an atmosphere of hostility and (iii) orchestrating an armed confrontation at the Makump DDR camp.<sup>3597</sup>

(f) Serving sentence in a foreign country

1316. The Appeals Chamber recalls its holding that the Trial Chamber did not error in declining to mitigate the sentences of the Accused in light of its finding that they will likely serve their sentences in a foreign country.<sup>3598</sup> Gbao does not extend the argument made previously by Sesay, and therefore the Appeals Chamber dismisses his argument for the same reasons.

(g) Disproportionate sentence for aiding and abetting an attack against a UNAMSIL peacekeeper

1317. We endorse the view of the ICTY Appeals Chamber that sentences of like individuals in like cases should be comparable.<sup>3599</sup> The relevance of previous sentences is however often limited as a

<sup>3596</sup> Gbao Appeal, para. 387.

<sup>3597</sup> Trial Judgment, paras 1786, 2263.

<sup>3598</sup> See *supra*, para. 1246.

<sup>3599</sup> *Kvočka et al.* Appeal Judgment, para. 681.

473

~~5648~~

number of elements, relating, *inter alia*, to the number, type and gravity of the crimes committed, the personal circumstances of the convicted person and the presence of mitigating and aggravating circumstances, dictate different results in different cases such that it is frequently impossible to transpose the sentence in one case *mutatis mutandis* to another.<sup>3600</sup> This follows from the principle that the determination of the sentence involves the individualisation of the sentence so as to appropriately reflect the particular facts of the case and the circumstances of the convicted person.<sup>3601</sup>

1318. As a result, previous sentencing practice is but one factor among a host of others which must be taken into account when determining the sentence.<sup>3602</sup> Nonetheless, as held by the ICTY Appeals Chamber in *Jelisić*, a disparity between an impugned sentence and another sentence rendered in a like case can constitute an error if the former is out of reasonable proportion with the latter. This disparity is not in itself erroneous, but rather gives rise to an inference that the Trial Chamber must have failed to exercise its discretion properly in applying the law on sentencing.<sup>3603</sup>

1319. In the instant appeal, none of the cases cited by Gbao are instructive because the crimes for which the accused were convicted and the individual circumstances of the accused are readily and significantly distinguished from the present case. Importantly, Gbao fails to address the fact that, unlike any of the cases he relies upon, he is convicted of aiding and abetting an attack against a UN peacekeeper. Gbao's submissions are therefore rejected.

#### 4. Conclusion

1320. For the foregoing reasons, the Appeals Chamber holds that the Trial Chamber erred in double-counting the specific intent of acts of terrorism and collective punishments as increasing the

<sup>3600</sup> *Kvočka et al.* Appeal Judgment, para. 681. See also *Čelebići* Appeal Judgment, paras 719, 721; *Furundžija* Appeal Judgment, para. 250; *Limaj et al.* Appeal Judgment, para. 135, *Blagojević and Jokić* Appeal Judgment, para. 333, *M. Nikolić* Judgment on Sentencing Appeal, para. 38, *Musema* Appeal Judgment, para. 387.

<sup>3601</sup> *Čelebići* Appeal Judgment, paras 717, 821; *D. Nikolić* Judgment on Sentencing Appeal, para. 19; *Babić* Judgment on Sentencing Appeal, para. 32; *Naletilić and Martinović* Appeal Judgment, para. 615; *Simić* Appeal Judgment, para. 238; *Bralo* Judgment on Sentencing Appeal, para. 33; *Jelisić* Appeal Judgment, para. 101.

<sup>3602</sup> *Krstić* Appeal Judgment, para. 248.

<sup>3603</sup> *Jelisić* Appeal Judgment, para. 96.

474

33460

1251)

SCSL-04-15-T  
(33460-33583)

## SPECIAL COURT FOR SIERRA LEONE

## TRIAL CHAMBER I

Before: Hon. Justice Pierre Boutet, Presiding Judge  
Hon. Justice Benjamin Mutanga Itoe  
Hon. Justice Bankole Thompson

Registrar: Herman von Hebel

Date: 8<sup>th</sup> of April 2009

PROSECUTOR Against ISSA HASSAN SESAY  
MORRIS KALLON  
AUGUSTINE GBAO  
(Case No. SCSL-04-15-T)

## SENTENCING JUDGEMENT

Office of the Prosecutor:

Stephen Rapp  
Joseph Kamara  
James C. Johnson  
Peter Harrison  
Vincent Wagona  
Reginald Fynn  
Elisabeth Baumgartner  
Nina Jørgensen  
Régine Gachoud  
Amira Hudroge  
Bridget Osho  
Subhi Barakat

Defence for Issa Hassan Sesay:

Wayne Jordash  
Sareta Ashraph  
Jared Kneitel

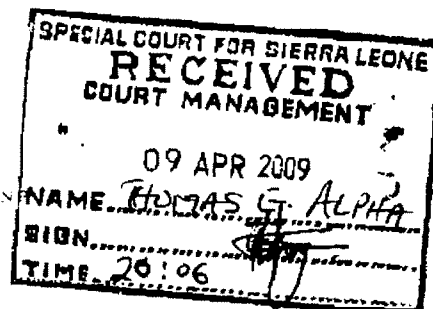
Defence for Morris Kallon:

Charles Taku  
Kennedy Ogeto  
Momoh Fofanah  
Kingsley Belle

Defence for Augustine Gbao:

John Cammegh  
Scott Martin  
Lea Kulinowski

SPECIAL COURT FOR SIERRA LEONE



14. Other sentencing objectives recognised under international criminal law are (i) prevention; (ii) rehabilitation; and, (iii) stigmatisation.<sup>7</sup>

15. In relation to the commission of international crimes, it such as crimes against humanity, war crimes and other serious violations of international humanitarian law, is our opinion that the punishment of the offender must also adequately reflect the revulsion of the international community to such conduct, and denounce it as unacceptable. The Chamber endorses the following rationale:

One of the main purposes of a sentence imposed by an international Tribunal is to influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be accepted by everyone.<sup>8</sup>

16. Rehabilitation as a goal of punishment means the restoration of the convicted person to a state of physical, mental and moral health through treatment and education, so that he can become a useful and productive member of society.<sup>9</sup> However, the Chamber recognises that despite its importance as an objective of punishment, rehabilitation is more relevant in the context of domestic criminality than international criminality.

### 3. Sentencing Factors

17. The Chamber notes that Article 19 and Rule 101(B) stipulate that certain factors have to be considered in determining an appropriate sentence. These include the gravity of the offence, the individual circumstances of the Accused, any aggravating and mitigating factors, and where appropriate, the general sentencing practices of the ICTR and of the national courts of Sierra Leone.

18. In this regard the Chamber recognises that it is necessary to impose a sentence which reflects the totality of the convicted person's criminal conduct.<sup>10</sup> Furthermore we note that it is universally recognised and accepted that a person who has been convicted of many crimes

<sup>7</sup> CDF Appeals Judgement, para. 532.

<sup>8</sup> Nikolic, Sentencing Judgement (TC), para.139.

<sup>9</sup> Bankole Thompson, *Criminal Law of Sierra Leone*, p. 18.

<sup>10</sup> CDF Appeals Judgement, para. 546.

476  
33474

should generally receive a higher sentence than a person convicted of only one of those crimes.<sup>11</sup> By parity of reasoning, the Chamber acknowledges that the sentence should be individualised and also proportionate to the conduct of the Accused,<sup>12</sup> reflecting the inherent gravity of the totality of the criminal conduct of the convicted person, taking into consideration the particular circumstances of the case and the form and degree of the participation of the accused.<sup>13</sup> Within these parameters, and provided that the factors which have been considered are made clear, a Trial Chamber has a broad discretion to choose between the imposition of either a single "global" sentence or separate sentences for each count on which the Accused was found guilty.<sup>14</sup> After having carefully considered the issue, the Chamber deems it more appropriate to address each count separately. Where the Chamber so exercises its discretion to impose separate sentences, it must indicate whether those sentences should be served concurrently or consecutively.<sup>15</sup>

### 3.1. Gravity of the Offence

19. The Chamber acknowledges that Article 19(1) of the Statute imposes the obligation, when determining an appropriate sentence, to take into account the "gravity of the offence." It has been held that the gravity of the offence is the "litmus test for the appropriate sentence",<sup>16</sup> and that it requires a "consideration of the particular circumstances of the case, as well as the form and degree of participation of the Accused in the crime".<sup>17</sup> In assessing the gravity of the offence, the Chamber has taken into account such factors as:

- i) the scale and brutality of the offences committed;<sup>18</sup>
- ii) the role played by the Accused in their commission;<sup>19</sup>

<sup>11</sup> *Celibici Appeals Judgement*, para. 771.

<sup>12</sup> *Tadic, Sentencing Appeals Judgement*, para. 22; *Todorovic, Sentencing Judgement*, para. 29; *Kupreskic Appeal Judgement*, para. 445; *Furundzija Appeal Judgement*, para. 249.

<sup>13</sup> *CDF Appeals Judgement* para. 546; *Krajisnik Appeals Judgement*, para. 774; *Nahimana Appeals Judgement*, para. 1038; *Furundzija Appeals Judgement*, para. 249; *Blaskic Appeals Judgement*, para. 683; *Aleksovski Appeals Judgement*, para. 182; *Celibici Appeals Judgement*, para. 731.

<sup>14</sup> *AFRC Appeals Judgement*, paras 328-329.

<sup>15</sup> *CDF Appeals Judgement*, para. 547.

<sup>16</sup> *Celibici Trial Judgement*, para. 1225; *Aleksovski Appeal Judgement*, para. 182.

<sup>17</sup> *Kupreskic et al Trial Judgement*, para. 852; *Kordic and Cerke Appeals Judgement*, para. 1061, *Stakic Appeals Judgement*, para. 380.

<sup>18</sup> *Stakic Appeal Judgement*, para. 380, *Ono, IT-03-68-T, Judgement (TC)*, 30 June 2006 [*Ono Trial Judgement*], para. 729.

477

33475

iii) the degree of suffering or impact of the crime on the immediate victim, as well as its effect on relatives of the victim;<sup>20</sup> and,

iv) the vulnerability and number of victims.<sup>21</sup>

20. Furthermore, in determining the role of the Accused in the crime, the Chamber may take into account the mode of liability under which the Accused was convicted, as well as the nature and degree of his participation in the commission of the offence. The Chamber may also consider whether the Accused was held liable as an indirect or a secondary perpetrator.<sup>22</sup> In this respect, we have found that aiding and abetting as a mode of liability generally warrants a lesser sentence than that imposed for a more direct form of participation.<sup>23</sup>

21. The Chamber acknowledges that it is also settled law that in assessing the gravity of the offences for which the Accused was convicted as a superior, it should consider the gravity of the underlying offence and the gravity of the conduct of the Accused in failing to prevent or punish the crimes committed by his subordinates.<sup>24</sup>

22. We also endorse the view that where the Accused has been convicted as a participant in a joint criminal enterprise, the level of contribution as well as the category of joint criminal enterprise under which responsibility attaches are to be considered in assessing the appropriate sentence.<sup>25</sup> As stated in *Brdjanin*, the doctrine of joint criminal enterprise:

[...] offers no formal distinctions between JCE members who make overwhelmingly large contributions and JCE members whose contributions, though significant, are not as great. However, the Appeals Chambers recalls that any such disparity is adequately dealt with at the sentencing stage.<sup>26</sup>

<sup>19</sup> *Celibici* Appeal Judgement, para. 847; *Blagojevic*, Trial Judgement, para. 833.

<sup>20</sup> *Blaskic* Appeal Judgement, para. 683; *Stakic* Appeal Judgement, para. 380, *Oric* Trial Judgement, para. 729.

<sup>21</sup> *Blaskic* Appeal Judgement, para. 683; *Babic* Sentencing Judgement, para. 47. The Chamber notes that the Prosecution has discussed some of these factors, including the vulnerability and age of victims and the humiliating and degrading nature of the acts, as aggravating factors (Prosecution Sentencing Brief, para. 56). The Chamber is of the view that these are more appropriately considered in relation to its determination of the gravity of the offence.

<sup>22</sup> *Ntangenira*, Sentencing Judgement, para. 813; *Vasiljevic* Appeal Judgement, para. 182.

<sup>23</sup> *CDF* Sentencing Judgement, para. 50.

<sup>24</sup> *Celibici* Appeals Judgement, para. 732.

<sup>25</sup> *Martić* Appeals Judgement, para. 350.

<sup>26</sup> *Brdjanin* Appeals Judgement, para. 432.



**SPECIAL COURT FOR SIERRA LEONE**

**TRIAL CHAMBER I**

**Before:** Hon. Justice Pierre Boutet, Presiding Judge  
 Hon. Justice Benjamin Mutanga Itoe  
 Hon. Justice Bankole Thompson

**Registrar:** Herman von Hebel

**Date:** 2 March 2009

|                   |                |                                                                                                      |
|-------------------|----------------|------------------------------------------------------------------------------------------------------|
| <b>PROSECUTOR</b> | <b>Against</b> | <b>ISSA HASSAN SESAY</b><br><b>MORRIS KALLON</b><br><b>AUGUSTINE GBAO</b><br>(Case No. SCSL-04-15-T) |
|-------------------|----------------|------------------------------------------------------------------------------------------------------|

**Public Document**

**JUDGEMENT**

**Office of the Prosecutor:**

Pete Harrison  
 Vincent Wagona  
 Charles Hardaway  
 Reginald Fynn  
 Elisabeth Baumgartner  
 Régine Gachoud  
 Amira Hudroge  
 Bridget Osho

**Defence Counsel for Issa Hassan Sesay:**

Wayne Jordash  
 Sareta Ashraph

**Defence Counsel for Morris Kallon:**

Charles Taku  
 Kennedy Ogeto

**Court Appointed Counsel for Augustine Gbao:**

John Cammegh  
 Scott Martin

260. The Appeals Chamber has clarified that “the requirement that the common plan, design or purpose of a joint criminal enterprise is inherently criminal means that it must either have as its objective a crime within the Statute, or contemplate crimes within the Statute as the means of achieving its objective.”<sup>457</sup>

261. Third, the participation of the Accused in the common purpose is required.<sup>458</sup> “This participation need not involve the commission of a specific crime under one of the provisions (for example murder, extermination, torture, rape, *etcetera*), but may take the form of assistance in, or contribution to, the execution of the common purpose.”<sup>459</sup> It must be shown that the plurality of persons acted in concert with each other in the implementation of a common purpose.<sup>460</sup> As to the required extent of the participation, the Prosecution need not demonstrate that the Accused’s participation is necessary or substantial, but the Accused must at least have made a significant contribution to the crimes for which he is held responsible.<sup>461</sup>

262. Where the joint criminal enterprise is alleged to include crimes committed over a wide geographical area, the Chamber opines that an Accused may be found criminally responsible for his participation in the enterprise, even if his significant contributions to the enterprise occurred only in a much smaller geographical area, provided that he had knowledge of the wider purpose of the common design.<sup>462</sup> It is also legally possible for an Accused to withdraw

---

conceptualizes the common objective as fluid in its criminal means. An expansion of the criminal means of the objective is proven when leading members of the JCE are informed of new types of crime committed pursuant to the implementation of the common objective, take no effective measures to prevent recurrence of such crimes, and persist in the implementation of the common objective of the JCE. Where this holds, JCE members are shown to have accepted the expansion of means, since implementation of the common objective can no longer be understood to be limited to commission of the original crimes. With acceptance of the actual commission of new types of crime and continued contribution to the objective, comes intent, meaning that subsequent commission of such crimes by the JCE will give rise to liability under JCE form 1.”

<sup>457</sup> AFRC Appeal Judgement, para. 80. *See also* Martić Appeal Judgement, paras 112-123, endorsing Martić Trial Judgement, para. 442.

<sup>458</sup> Stakić Appeal Judgement, para. 64.

<sup>459</sup> Tadić Appeal Judgement, para. 227.

<sup>460</sup> Krajisnik Trial Judgement, para. 884.

<sup>461</sup> Brđjanin Appeal Judgement, para. 430, citing *Kvočka et al.* Appeal Judgement, paras 97-98.

<sup>462</sup> Tadić Appeal Judgement, para. 199, fn. 243, citing two cases of the Supreme Court for the British Zone (of occupied Germany) dealing with the participation of accused in the *Kristallnacht* riots: *Case no. 66*, Strafsenat. Urteil vom 8 Februar 1949 gegen S. StS 120/48, vol. II, p. 284-290 and *Case no. 17*, vol. I, pp. 94-98. In the first case, according to the Appeals Chamber in Tadić, the Supreme Court held that “it was not required that the accused knew about the rioting in the entire Reich. It was sufficient that he was aware of the local action, that he approved it, and that he wanted it ‘as his own’ ... The fact that the accused participated consciously in the arbitrary measures directed against the Jews was sufficient to hold him responsible for a crime against humanity.” In the second case, as summarized by the Tadić Appeals Chamber, the Supreme Court held “that it was irrelevant that



269. If an Accused is found guilty of having committed a crime, that Accused cannot also be convicted of having planned the same crime.<sup>475</sup> Involvement in the planning may be considered an aggravating factor.<sup>476</sup>

#### 4.1.4. Instigating

270. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with instigating the crimes referred to in the Indictment.<sup>477</sup>

271. The Chamber is of the view that “instigating” a crime means urging, encouraging or prompting another person to commit an offence.<sup>478</sup> The *actus reus* required for instigating a crime is an act or omission, covering both express and implied conduct of the Accused,<sup>479</sup> which is shown to be “a factor substantially contributing to the conduct of another person committing the crime.”<sup>480</sup> A causal relationship between the instigation and the perpetration of the crime must be demonstrated,<sup>481</sup> although it is not necessary to prove that the crime would not have occurred without the Accused’s involvement.<sup>482</sup> To establish the *mens rea* requirement for instigating a crime, the Prosecution must prove that the Accused intended to provoke or induce the commission of the crime or was aware of the substantial likelihood that the crime would be committed as a result of that instigation.

#### 4.1.5. Ordering

272. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with ordering the crimes referred to in the Indictment.<sup>483</sup>

273. The Chamber considers that “ordering” involves a person in a position of authority using that position to compel another to commit an offence.<sup>484</sup> The *actus reus* of ordering requires that a person who is in a position of authority instructs a person in a subordinate

<sup>475</sup> See *Brdjanin* Trial Judgement, para. 268; *Kordic and Cerkez* Trial Judgement, para. 386.

<sup>476</sup> See *Brdjanin* Trial Judgement, para. 268; *Stakic* Trial Judgement, para. 443.

<sup>477</sup> Indictment, para. 38.

<sup>478</sup> *Kordic and Cerkez* Appeal Judgement, para. 27.

<sup>479</sup> *Oric* Trial Judgement, para. 273; *Brdjanin* Trial Judgement, para. 269; *Blaskic* Trial Judgement, para. 280.

<sup>480</sup> *Kordic and Cerkez* Appeal Judgement, para. 27. See also *CDF* Appeal Judgement, para. 52.

<sup>481</sup> *CDF* Appeal Judgement, para. 54.

<sup>482</sup> *Kordic and Cerkez* Appeal Judgement, para. 27.

<sup>483</sup> Indictment, para. 38.

<sup>484</sup> *Kordic and Cerkez* Appeal Judgement, para. 28.

position to commit an offence.<sup>485</sup> It is the Chamber's opinion that no *formal* superior-subordinate relationship between the superior and the subordinate is required. It is sufficient that there is proof of some position of authority on the part of the Accused that would compel another to commit a crime in compliance with the Accused's order, command or direction.<sup>486</sup> Such authority can be *de jure* or *de facto* and can be reasonably implied.<sup>487</sup> The Chamber is of the view that a "causal link between the act of ordering and the physical perpetration of a crime [...] also needs to be demonstrated as part of the *actus reus* of ordering" but that this "link need not be such as to show that the offence would not have been perpetrated in the absence of the order."<sup>488</sup>

274. The Chamber finds that to establish the *mens rea* requirement for ordering a crime, the Prosecution must prove that the Accused either intended to bring about the commission of the crime or that the Accused gave an order with the awareness of the substantial likelihood that a crime would likely be committed as a consequence of the execution or implementation of that order, command or direction.<sup>489</sup>

#### 4.1.6. Aiding and Abetting

275. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with aiding and abetting in the planning, preparation or execution of the crimes referred to in the Indictment.<sup>490</sup>

276. The Chamber considers that "aiding and abetting" consists of the act of rendering practical or material assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.<sup>491</sup> Aiding and abetting may also consist of an omission,

<sup>485</sup> *Kordic and Cerkez* Appeal Judgement, para. 28.

<sup>486</sup> *Prosecutor v. Semanza*, ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 361 [*Semanza* Appeal Judgement], referring to *Kordic and Cerkez* Appeal Judgement, para. 28. See also *Gacumbitsi* Appeal Judgement, paras 181-182; *Prosecutor v. Kamuhanda*, ICTR-99-54A-A, Judgement (AC), 19 September 2005, para. 75 [*Kamuhanda* Appeal Judgement]: "To be held responsible under Article 6(1) of the Statute for ordering a crime, on the contrary, it is sufficient that the accused have authority over the perpetrator of the crime, and that his order have a direct and substantial effect on the commission of the illegal act." [original footnotes omitted].

<sup>487</sup> *Limaj et al.* Trial Judgement, para. 515 referring to *Brdjanin* Trial Judgement, para. 270.

<sup>488</sup> *Prosecutor v. Strugar*, IT-01-42-T, Judgement (TC), 31 January 2005, para. 332 [*Strugar* Trial Judgement].

<sup>489</sup> *Blaskic* Appeal Judgement, para. 42.

<sup>490</sup> Indictment, para. 38.

<sup>491</sup> See, amongst others, *Tadic* Appeals Judgement, para. 229; *Limaj et al.* Trial Judgement, para. 516; *Krstic* Trial Judgement, para. 601.

providing that the basic elements of aiding and abetting as set out below are satisfied.<sup>492</sup>

277. The *actus reus* of aiding and abetting requires that the Accused perpetrates an act or an omission specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime and that this act or omission of the aider and abettor must have a substantial effect upon the perpetration of the crime.<sup>493</sup> The provision of material or physical assistance can also constitute the *actus reus* of aiding and abetting. “[P]roof of a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required.”<sup>494</sup>

278. Further, taking into account the specific wording of Article 6(1) of the Statute that “[a] person who [...] aided and abetted in the *planning, preparation or execution* of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime”, this Chamber is of the opinion that the *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated and at a location geographically removed from the location of the principal crime.<sup>495</sup> If the aiding and abetting occurs after the crime, it must be established that a prior agreement existed between the principal and the person who subsequently aided and abetted in the commission of the crime.<sup>496</sup> The Appeals Chamber has confirmed that acts of aiding and abetting “can be made at a time and place removed from the actual crime.”<sup>497</sup> The Chamber reiterates, however, that the act of the aider and abettor must have a substantial effect upon the perpetration of the crime.

279. Mere presence at the scene of a crime, without more, will not usually constitute aiding and abetting. There may be situations, however, in which the physical presence at the crime scene of the Accused, combined with his or her position of authority, “allowed the inference that non-interference by the accused actually amounted to tacit approval and encouragement”

<sup>492</sup> *Prosecutor v. Oric*, IT-03-68-A, Judgement (AC), 3 July 2008, para. 43 [*Oric* Appeal Judgement].

<sup>493</sup> See *Gacumbitsi* Appeal Judgement, para. 140; *Vasiljevic* Appeal Judgement, para. 102; *Oric* Appeal Judgement, para. 43. See also *Blaskic* Appeal Judgement, para. 46 referring to *Furundzija* Trial Judgement, para. 249. And see also CDF Appeal Judgement, para. 72: “The Appeals Chamber agrees that ‘encouragement’ and ‘moral support’ may constitute the *actus reus*” of aiding and abetting.

<sup>494</sup> *Blaskic* Appeal Judgement, para. 48.

<sup>495</sup> *Blaskic* Appeal Judgement, para. 48.

<sup>496</sup> *Blagojevic and Jokic* Trial Judgement, para. 731.

<sup>497</sup> CDF Appeal Judgement, para. 72.

## VIII. CUMULATIVE CONVICTIONS

### 1. Applicable Law

2300. The issue of cumulative convictions arises when more than one conviction is imposed for the same criminal conduct. The Chamber is of the view that an accused may only be convicted of multiple criminal convictions that arise under different statutory provisions, but are based on the same conduct, “if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.”<sup>3981</sup> In other words, multiple convictions may only be upheld if both of the provisions require proof of an element that is not required by the other provision.<sup>3982</sup> If an additional element is only required for one of the provisions, then the accused will be convicted on that count, but not on the other count for which no distinct element is required.

2301. In applying this test, the Chamber is mindful that it must be guided by the considerations of justice for the Accused<sup>3983</sup> while still ensuring that the convictions “describe the full culpability of a particular accused or provide a complete picture of his criminal conduct.”<sup>3984</sup>

### 2. Findings on Cumulative Convictions

#### 2.1. Cumulative Convictions on War Crimes and Crimes Against Humanity

2302. The general requirements for each offence must be taken into consideration when applying the test for cumulative convictions.<sup>3985</sup> The general requirements for crimes against

<sup>3981</sup> *Celebici* Appeal Judgement, para. 412. See also: *Prosecutor v. Musema*, ICTR-96-13-A, Judgement (AC), 16 November 2001 [*Musema* Appeal Judgement], paras 361-363; *Naletilic and Martinovic* Appeal Judgement, paras 584-585.

<sup>3982</sup> *CDF* Appeal Judgement, para. 220.

<sup>3983</sup> *Kunarac et al.* Appeal Judgement, para. 173. See also para. 174: “The Appeals Chamber wishes to emphasise that whether the same conduct violates two distinct statutory provisions is a question of law. Nevertheless, the Chamber must take into account the entire situation so as to avoid a mechanical or blind application of its guiding principles.”

<sup>3984</sup> *Kunarac et al.* Appeal Judgement, para. 169, citing the Partial Dissenting Opinion of Judge Shahabuddeen in the *Jelisić* Appeal Judgement, para. 34.

<sup>3985</sup> *Kunarac et al.* Appeal Judgement, para 177.

185

SCSL-2004-15-T  
(6801 - 6804)

484  
6801



**SPECIAL COURT FOR SIERRA LEONE**

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

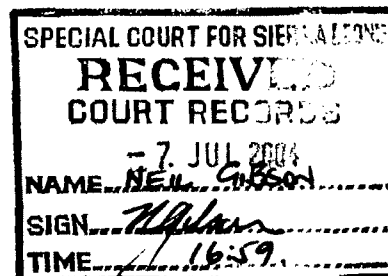
---

**THE TRIAL CHAMBER**

Before: Judge Benjamin Mutanga Itoe, Presiding Judge  
Judge Bankole Thompson  
Judge Pierre Boutet

Registrar: Robin Vincent

Date: 7 July 2004



PROSECUTOR                      Against                      Issa Hassan Sesay  
Morris Kallon  
Augustine Gbao  
(Case No.SCSL-04-15-T)

---

**ORDER TO PROSECUTION TO PRODUCE WITNESS LIST AND WITNESS SUMMARIES**

---

Office of the Prosecutor:

Luc Côté  
Lesley Taylor

Defence Counsel for Issa Hassan Sesay:

Timothy Clayson  
Wayne Jordash

Defence Counsel for Morris Kallon:

Shekou Touray  
Melron Nicol-Wilson

Defence Counsel for Augustine Gbao:

Girish Thanki  
Andreas O'Shea

**THE TRIAL CHAMBER** ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Judge Benjamin Mutanga Itoe, Presiding Judge, Judge Bankole Thompson, and Judge Pierre Boutet;

**NOTING** that on 1 April 2004, the Trial Chamber issued the "Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial" and that this Order required the Prosecution to file a witness list for all the witnesses the Prosecution intends to call at trial with the name or the pseudonym of each witness;

**NOTING** the "Materials filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the commencement of Trial of 1 April 2004", filed by the Prosecution on 26 April 2004, that provided a list of pseudonyms of each witness it intends to call at trial, together with a report indicating the number of witnesses for whom witness statements or summaries have been disclosed and the count or counts of the Indictment to which the witness will testify;

**NOTING** that the witness list contained in these Materials lists 266 witnesses;

**NOTING** that the Prosecution stated in its "Prosecution Chart Indicating Documentary and Testimonial Evidence by Paragraph of Consolidated Indictment Pursuant to Trial Chamber Order dated 1 April 2004" filed on 4 May 2004 that it intended to file the final witness list following a decision on the pending Motion for Judicial Notice and the Issuance of Notice of Hearing setting a trial date;

**NOTING** that in its "Updated Compliance Report Filed Pursuant to Undertaking by the Prosecution in PreTrial Conference held 29 April 2004 (RUF)" filed on 11 May 2004, the Prosecution asserted that six of the witnesses on its witness list filed on 26 April 2004 were erroneously included, thereby reducing the number of witnesses in its witness list to 260;

**NOTING** that at the Status Conference held on 23 June 2004, the Prosecution stated that the Prosecution was intending to call approximately 170 "core" witnesses at trial depending on the outcome of its "Motion for Judicial Notice and Admission of Evidence" filed on 2 April 2004;

**NOTING** that this Chamber issued its "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence" on 24 June 2004 and that the RUF trial commenced on 5 July 2004;

CONSIDERING the determination of the Trial Chamber to ensure that the trial is fair and expeditious and that the proceedings before the Special Court are conducted in accordance with the Rules of Procedure and Evidence of the Special Court ("Rules"), with full respect for the rights of the accused and due regard for the protection of victims and witnesses;

CONSIDERING the provisions of Article 17(4)(b) of the Statute of the Special Court for Sierra Leone, that stipulate, *inter alia*, that the Defence shall be entitled to have adequate time and facilities for the preparation of its defence;

CONSIDERING that it is in the interests of justice for the Prosecution to disclose to the Defence and the Court a modified witness list that identifies clearly which witnesses the Prosecution has identified as its "core" witnesses and which witnesses are meant to be used only as "back-up" witnesses if some of the "core" witnesses are not available to testify;

CONSIDERING that the Trial Chamber would benefit from having access to witness statements in advance of each witness testifying at trial, for the purpose of promoting comprehension of the issues and for the effective management of the trial;

CONSIDERING that it is an accepted practice within international criminal tribunals to request the filing of witness statements prior to trial;<sup>1</sup>

PURSUANT TO Rules 54 and Rule 73 bis of the Rules;

HEREBY ORDERS the Prosecution:

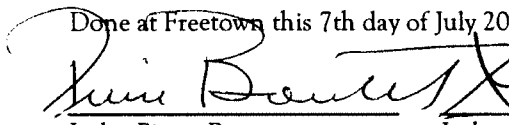
- (1) To produce a list of the "core" witnesses that the Prosecution is intending to call to testify at trial;
- (2) To produce a list of the "back-up" witnesses that the Prosecution intends to call only if it is later deemed necessary at trial;

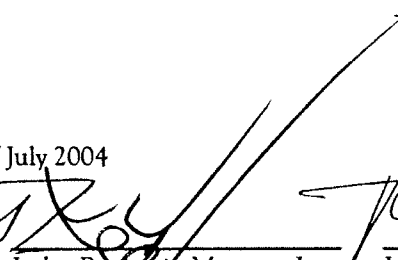
---

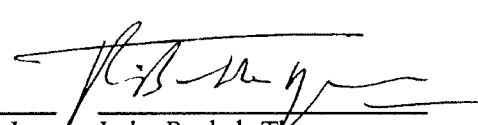
<sup>1</sup> *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Decision by the Tribunal on its Request to the Prosecutor to Submit the Written Witness Statements, 28 January 1997; *Prosecutor v. Darko Kordic and Mario Cerkez*, Case No. IT-95-14/2-PT, Order for Disclosure of Documents and Extension of Protective Measures, 27 November 1998; *Prosecutor v. Dokmanovic*, IT-95-13a-PT,

- (3) To produce a copy of all witness statements to the Trial Chamber one week prior to the witness' testimony.

Done at Freetown this 7th day of July 2004

  
Judge Pierre Boutet

  
Judge Benjamin Mutanga Itoe  
Presiding Judge,  
Trial Chamber

  
Judge Bankole Thompson



Order, 28 November. 1997, p.2; See *Prosecutor v. Vidoje Blagojevic, Dragan Jokic, Momir Nikolic*, Decision in the Appeals Chamber, 8 April 2003.



080

488

1602

SCSL-2003-05-PT  
(1602-1619)



**SPECIAL COURT FOR SIERRA LEONE**

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

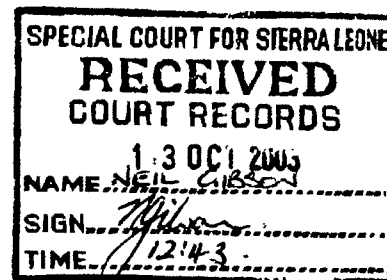
---

**THE TRIAL CHAMBER**

**Before:** Judge Bankole Thompson, Presiding Judge,  
Judge Benjamin Mutanga Itoe  
Judge Pierre Boutet

**Registrar:** Robin Vincent

**Date:** 13<sup>th</sup> day of October 2003



**The Prosecutor against**

Issa Hassan Sesay  
(Case No.SCSL-2003-05-PT)

---

**DECISION AND ORDER ON DEFENCE PRELIMINARY MOTION FOR DEFECTS  
IN THE FORM OF THE INDICTMENT**

---

**Office of the Prosecutor:**  
Mr. Luc Côté, Chief of Prosecutions  
Robert Petit, Senior Trial Counsel

**Defence Counsel:**  
Mr. William Hartzog, Lead Counsel  
Alexandria Marcil, Co-Counsel

against him. Secondly, Rule 47 (C) of the Rules of Procedure and Evidence of the Special Court expressly provides that:

The indictment shall contain, and be sufficient of it contains, the name and particulars of the suspect, a statement of each specific offence of which the named suspect is charged and a short description of the particulars of the offence. It shall be accompanied by a Prosecutor's case summary briefly setting out the allegations he proposes to prove in making his case.

6. The cumulative effect of the above provisions is to ensure the integrity of the proceedings against an accused person and to guarantee that there are no undue procedural constraints or burdens on his ability to adequately and effectively prepare his defence. Predicated upon these statutory provisions, the Chamber deems it necessary, at this stage, to articulate briefly the general applicable principles from the evolving jurisprudence on the framing of indictments in the sphere of international criminality. One cardinal principle is that an indictment must embody a concise statement of the facts specifying the crime or crimes preferred against the accused. A second basic principle is that to enable the accused to adequately and effectively prepare his defence, the indictment must plead with sufficient specificity or particularity the facts underpinning the specific crimes. Judicial support for these principles abound in both national legal systems and the international legal system.

7. As to the specific principles on the framing of indictments deducible from the evolving jurisprudence of sister international criminal tribunals, the Chamber finds that the following propositions seem to represent the main body of the law:

- (i) Allegations in an indictment are defective in form if they are not sufficiently clear and precise so as to enable the accused to fully understand the nature of the charges brought against him.<sup>1</sup>
- (ii) The fundamental question in determining whether an indictment was pleaded with sufficient particularity is whether an accused had enough detail to prepare his defence.<sup>2</sup>
- (iii) The indictment must state the material facts underpinning the charges, but need not elaborate on the evidence by which such material facts are to be proved.<sup>3</sup>
- (iv) The degree of specificity required in an indictment is dependent upon whether it sets out material facts of the Prosecution's case with enough

<sup>1</sup> *The Prosecutor v. Karemera* ICTR-98-44-T, Decision on the Defence Motion pursuant to Rule 72 of the Rules of Procedure and Evidence, pertaining to, *inter alia*, lack of jurisdiction and defects in the form of the Indictment, ICTR, Trial Chamber, April 25, 2001, para 16. See also *Prosecutor v. Kanyabashi*, ICTR-96-15-I, Decision in Defence Preliminary Motion for Defects in the Form of the Indictment, 31 May 2000, para 5.1.

<sup>2</sup> *Kupreskic*, Judgement AC, para 88, see also *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, 15 May, 2003.

<sup>3</sup> *Kupreskic*, Judgement AC, para 88.

detail to inform the accused clearly of the charges against him so he may prepare his defence.<sup>4</sup>

- (v) The nature of the alleged criminal conduct with which the accused is charged, including the proximity of the accused to the relevant events is a decisive factor in determining the degree of specificity in the indictment.<sup>5</sup>
- (vi) The indictment must be construed as a whole and not as isolated and separate individual paragraphs.<sup>6</sup>
- (vii) The practice of identifying perpetrators of alleged crimes by reference to their category or group is permissible in law.<sup>7</sup>
- (viii) Where an indictment charges the commission of crimes on the part of the accused with "other superiors", the Prosecutor is not obliged to provide an exhaustive list of such "other superiors".<sup>8</sup>
- (ix) In cases of mass criminality the sheer scale of the offences makes it impossible to give identity of the victims.<sup>9</sup>
- (x) Identification of victims in indictments by reference to their group or category is permissible in law.<sup>10</sup>
- (xi) The sheer scale of the alleged crimes make it "impracticable" to require a high degree of specificity in such matters as the identity of the victims and the time and place of the events.<sup>11</sup>
- (xii) Individual criminal responsibility under Article 6(1) and criminal responsibility as a superior under Article 6(3) of the Statute are not mutually exclusive and can be properly charged both cumulatively and alternatively based on the same set of facts.<sup>12</sup>

<sup>4</sup> *Prosecutor v. Elizaphan and Gerald Ntakirutimana*, Judgement and Sentence, Case No ICTR -96-10 and ICTR 96-17-T, TCI, 2 February, 2003.

<sup>5</sup> *Prosecutor v. Meakic, Gruban, Fustar, Banovic, Knezevic*, "Decision on Dusan Fustar's Preliminary Motion on the Form of the Indictment"; IT-02-65-PT, 4 April, 2003.

<sup>6</sup> *Prosecutor v. Krnojelac*, "Decision on the Defence Preliminary Motion on the Form of the Indictment." IT-97-25, 24 February, 1999, para 7.

<sup>7</sup> *Prosecutor v. Kvocka et al*, IT-98-30-PT, "Decision on Defence Preliminary Motion on Form of Indictment" TC III, 12 April 1999, para 22.

<sup>8</sup> *Prosecutor v. Nahimana*, ICTR-96-11-T " Decision on the Defence Motion on Defects in the Form of the Amended Indictment, 17 November, 1998, paras 3-4.

<sup>9</sup> *Kvocka et al*, *supra* 6, paras 16-17.

<sup>10</sup> *Krnojelac*, *supra* 6.

<sup>11</sup> *Ntakirutimana*, *supra* 4.

<sup>12</sup> *Kvocka*, *supra* 9 para 50; see also *Prosecutor v. Musema*, ICTR-96-13-T, Judgement, TCI, 27, January 2001, para 884-974; para 891-895, and *Prosecutor v. Delalic et al*, Judgement IT-96-21-T, 16 November 1998.

491

1101)

SCSL-03-01-T  
(30707-30709)

30707



## SPECIAL COURT FOR SIERRA LEONE

## TRIAL CHAMBER II

**Before:** Justice Julia Sebutinde, Presiding Judge  
 Justice Richard Lussick  
 Justice Teresa Doherty  
 Justice El Hadji Malick Sow, Alternate Judge

**Registrar:** Binta Mansaray

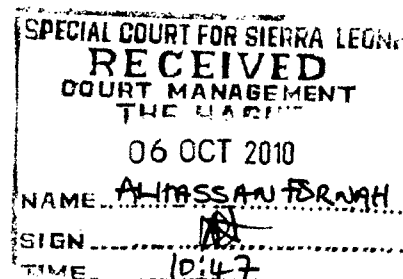
**Case No.:** SCSL03-1-T

**Date:** 6 October 2010

PROSECUTOR

v.

Charles Ghankay TAYLOR




---

DECISION ON DEFENCE MOTION TO EXCLUDE EVIDENCE FALLING OUTSIDE THE SCOPE OF  
 THE INDICTMENT AND/OR THE JURISDICTION OF THE SPECIAL COURT FOR SIERRA LEONE

---

Office of the Prosecutor:

Brenda J. Hollis  
 Leigh Lawrie  
 Kathryn Howarth

Counsel for the Accused:

Courtenay Griffiths, Q.C.  
 Terry Munyard  
 Morris Anyah  
 Silas Chekera  
 James Supuwood

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court");

SEISED of the "Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone", filed on 24 September 2010 ("Motion"),<sup>1</sup> wherein the Defence submits that much of the ex-temporal and ex-territorial evidence adduced in the case is irrelevant to the Indictment or falls outside the jurisdiction of the Special Court and should be excluded from the Trial Chamber's consideration of the evidence when it retires to consider judgement, and requests the Trial Chamber to:

- (i) exclude Prosecution evidence which falls outside the temporal scope of the Indictment and/or the jurisdiction of the Court, or impose limits on the scope to which such evidence may be taken into consideration;
- (ii) exclude Prosecution evidence of crimes committed in locations within Sierra Leone not pleaded in the Indictment, or impose limits on the scope to which such evidence may be taken into consideration;
- (iii) exclude Prosecution evidence of crimes committed outside of Sierra Leone and impermissibly admitted pursuant to Rule 93 or other Rules;<sup>2</sup>

NOTING the "Prosecution Response to Defence Motion to Exclude Evidence Falling Outside of the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone", filed on 29 September 2010 ("Response"),<sup>3</sup> wherein the Prosecution opposes the Motion and submits that it should be dismissed in its entirety on the basis that it is, at least in part, *res judicata*, and is otherwise untimely, insufficiently specific and contrary to the accepted international jurisprudence,<sup>4</sup> and argues that evidence outside of the scope of the Court's jurisdiction and/or the Indictment is admissible for a wide variety of purposes including to:

- (i) provide the context in which the offences are said to have been committed;
- (ii) prove the existence of a joint criminal enterprise, command and control, *de facto* authority over a subordinate, and the *mens rea* of the Accused;
- (iii) establish by inference the elements (in particular, criminal intent) of criminal conduct occurring during the Court's jurisdiction;

---

<sup>1</sup> SCSL-03-01-T-1086.

<sup>2</sup> Motion, paras 1, 4, 28.

<sup>3</sup> SCSL-03-01-T-1093.

<sup>4</sup> Response, paras 1-9, 20.

- (iv) demonstrate a deliberate or consistent pattern of conduct, which can then be relied upon to establish specific offences, including a campaign of terror, and/or modes of liability charged in an indictment; and/or
- (v) prove the chapeau requirements of Articles 2, 3 and 4 of the Statute;<sup>5</sup>

NOTING ALSO the "Defence Reply to Prosecution Response to Defence Motion to Exclude Evidence Falling Outside of the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone", filed on 5 October 2010 ("Reply");<sup>6</sup>

COGNISANT of the provisions of Articles 1 and 17 of the Statute of the Special Court for Sierra Leone ("Statute") and Rules 89, 93, and 95 of the Rules of Procedure and Evidence ("Rules");

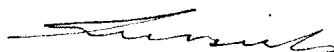
CONSIDERING that the issues raised by the Defence are matters for the Trial Chamber to determine at the end of the trial when it deliberates on the final judgement after having considered the totality of the evidence tendered into the record;

FINDING therefore that the Motion is premature at this stage of the trial and that the said issues are more appropriately addressed by the parties in the final trial Briefs and/or closing arguments;

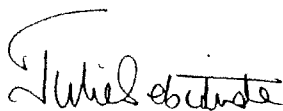
PURSUANT to Rule 73(A) of the Rules;

HEREBY DISMISSES THE MOTION.

Done at The Hague, The Netherlands, this 6<sup>th</sup> day of October 2010.

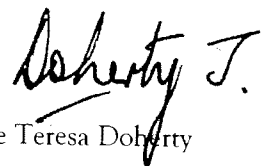


Justice Richard Lussick



Justice Julia Sebutinde

Presiding Judge



Justice Teresa Doherty



<sup>5</sup> Response, paras 10-18.

<sup>6</sup> SCSL03-01-T-1100.

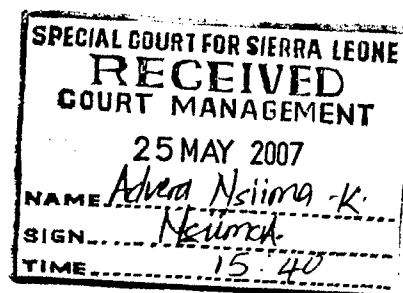
255



9434

## SPECIAL COURT FOR SIERRA LEONE

## TRIAL CHAMBER II



Before: Justice Julia Sebutinde, Presiding Judge  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Herman von Hebel, Acting Registrar

Case No.: SCSL-03-1-PT

Date: 25 May 2007

## PROSECUTOR

Against

CHARLES GHANKAY TAYLOR

---

DECISION ON THE PROSECUTION MOTION  
REQUESTING LEAVE TO AMEND INDICTMENT

---

Office of the Prosecutor:  
Stephen Rapp  
Brenda Hollis

Defence Counsel for Charles G. Taylor:  
Karim A.A. Khan  
Roger Sahota

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court");

SEISED of the "Prosecution Motion Requesting Leave to Amend the Amended Indictment", filed on 14 May 2007, in which the Prosecution requests leave to amend the following counts of the Amended Indictment, which amendments are incorporated in a Second Amended Indictment attached to the Motion as Annex A, as follows :

- (a) Count 5 by deletion of the words "and any other form of sexual violence";
- (b) Count 11 by deletion of the word "Masiaka" from paragraph 30;
- (c) Count 11 by insertion between paragraphs 30 and 31 of a heading entitled "Port Loko District" and a paragraph numbered 30A which states "Between about 1 February 1998 and about 30 April 1998, in various locations, including Masiaka";<sup>1</sup>

NOTING the "Defence Response to Motion Requesting Leave to Amend Indictment" filed on 18 May 2007 in which the Defence does not object to the proposed amendments to the Amended Indictment of 16 March 2006;<sup>2</sup>

NOTING that the Prosecution has not filed a Reply to the Response;

RECALLING that the original Indictment ("Indictment") against the Accused Charles Ghankay Taylor as filed by the Prosecutor on 3 March 2003 and approved<sup>3</sup> by the Honourable Justice Bankole Thompson, Designated Judge on 7 March 2003 was first amended<sup>4</sup> on 16 March 2006 ("Amended Indictment");

RECALLING the Accused Charles Ghankay Taylor made his initial appearance on 3 April 2006 pursuant to Rule 61 of the Rules of Procedure and Evidence ("Rules") before the Honourable Justice Richard Lussick and formally pleaded not guilty to all 11 counts of the Amended Indictment;

MINDFUL of the provisions of Article 17(4)(a) of the Statute of the Special Court for Sierra Leone ("Statute"), and of Rules 50(A), 52(A), and 73 of the Rules of Evidence and Procedure ("Rules");

SATISFIED that the proposed amendments do not cause any injustice to the accused, nor otherwise prejudice him unfairly in the conduct of his defence;<sup>5</sup>

HEREBY GRANTS the Prosecution leave to amend the Amended Indictment dated 16 March 2006 by substituting for the said Amended Indictment, the Second Amended Indictment which is attached to the Motion as Annex A.

<sup>1</sup> Motion Requesting Leave to Amend Indictment, para. 5.

<sup>2</sup> Defence Response to Motion Requesting Leave to Amend Indictment, para. 1.

<sup>3</sup> *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-I, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003.

<sup>4</sup> *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-I, Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment, 16 March 2006.

<sup>5</sup> *Prosecutor v. Norman, Kondewa, Fofana*, SCSL-04-14-A73, Decision on Amendment of the Consolidated Indictment, 16 May 2005, para 78 et seq; *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T, Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15 - 18, 15 February 2005, page 2; *Prosecutor v. Casimir Bizimungu et al.*, ICTR-99-50-AR50, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment, 12 February 2004.

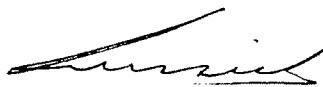


## AND ORDERS

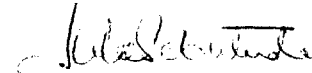
9436

1. That the Prosecution file the Second Amended Indictment by 4.00 p.m. on 29 May 2007;
2. That the Registrar effect personal service on the Accused of a copy of the Second Amended Indictment in accordance with Rule 52(B) of the Rules not later than 4.00 p.m. on 30 May 2007;
3. That the Accused enter a plea to the new Count 5, on 4 June 2007, before the Opening Statement of the Prosecution.

Done at Freetown, Sierra Leone, this 25<sup>th</sup> day of May 2007.



Justice Richard Lussick


Justice Julia Sebutinde  
Presiding Judge


Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]



003

497  
36



**SPECIAL COURT FOR SIERRA LEONE**  
**JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE**  
**PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995**  
**FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996**

---

Before: Judge Bankole Thompson  
Registry: Mr. Robin Vincent  
Decision of: 07 March 2003

**THE PROSECUTOR**

**Against**

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

CASE NO. SCSL - 2003 - 01 - I

---

**DECISION APPROVING THE INDICTMENT**

**and**

**ORDER FOR NON-DISCLOSURE**

---

The Office of the Prosecutor:

David Crane  
Brenda Hollis

498  
37

**THE SPECIAL COURT FOR SIERRA LEONE (the Special Court),**

**SITTING AS** Judge Thompson, designated by the President of the Special Court according to Rule 28 of the Rules of Procedure and Evidence ("the Rules");

**HAVING RECEIVED** on 07 March 2003 from the Prosecutor the enclosed Indictment and accompanying material, pursuant to Rule 47 of the Rules against CHARLES GHANKAY TAYLOR also known as CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR a citizen of Liberia, born 28 January 1948 at Arthington in the Republic of Liberia, who is accused of Crimes against Humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, and other Serious Violations of International Humanitarian Law;

**BEING SATISFIED** from the material tendered by the Prosecutor that there is sufficient evidence to provide reasonable grounds for believing that the suspect has committed crimes within the jurisdiction of the Court and that the allegations would, if proven, amount to the crimes specified and particularised in the said Indictment;

**HEREBY APPROVES**

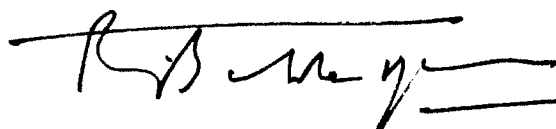
the Indictment submitted by the Prosecutor against CHARLES GHANKAY TAYLOR in respect to each and every count.

**TAKES NOTE** of the Prosecutor's request that a Warrant of Arrest and Order for Transfer and Detention be issued against CHARLES GHANKAY TAYLOR.

**ORDERS**, pursuant to Rule 53 and after consultation with the Prosecutor, that there be no public disclosure of the Indictment or any part thereof or information pertaining to the Indictment, the Warrant of Arrest, the transfer and detention until further order by the Special Court.

**DIRECTS** the Registrar, in accordance with Rule 56 of the Rules of Procedure and Evidence, to address this Decision and the Warrant of Arrest of the accused to the national authorities of such States, or to the relevant international body, including the International Criminal Police Organisation (INTERPOL), as may be indicated by the Prosecutor.

Done in London, this 7<sup>th</sup> day of March 2003.

  
Signed, Judge Bankole Thompson



## 2. ICTR



UNITED NATIONS  
NATIONS UNIES

ICTR-96-4-A  
23RD NOVEMBER 2001  
(6052/ABIS-5883/ABIS)

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

Arusha International Conference Centre  
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie  
Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 255 27 2504000/2504373 or 1 212 963 2848/49

6052/ABIS  
Jn

ENGLISH

Original : ENGLISH/ FRENCH

Before Judges: Claude Jorda, presiding  
Lal Chand Vohrah  
Mohamed Shahzaddeen  
Rafael Nieto-Navia  
Fausto Pocar

Registry: Adama Dieng

Judgment of: 1 June 2001

**THE PROSECUTOR**

v.

**JEAN-PAUL AKAYESU**

ICTR  
JUDICIAL RECORDS SECTION  
RECEIVED

23/11/2001  
2001 NOV 23 A 11: 06  
Jn

**JUDGMENT**

Office of the Prosecutor:

Carla Del Ponte  
Solomon Loh  
Wen-qu Zhu  
Sonja Boelaert-Suominen

Counsel for the Defence:

John Philpot  
André Tremblay

Translation certified by LCSS, ICTR

HAG(A)01-001 (E)

5912/01/11

**V. DISPOSITION**

For these reasons, **The Appeals Chamber,**

**Considering** Article 24 of the Statute and Rule 118 of the Rules,

**Noting** the respective written submissions of the parties and their oral arguments at the hearings of 1 and 2 November 2000,

**Sitting** in open court,

**Unanimously dismisses** each of the grounds of appeal raised by Jean-Paul Akayesu,

**Affirms** the verdict of guilty entered against Jean-Paul Akayesu of all the counts on which he was convicted and the sentence of life imprisonment handed down,

**Rules** that this judgement shall be enforced immediately pursuant to Rule 119 of the Rules,

**Considers** the First, Third and Fourth Grounds of Appeal of the Prosecutor and **Finds** that, with respect to the points of law in issue in the Prosecution's appeal, this Judgement sets out the relevant legal findings thereon.

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

(Signed)

Claude Jorda

Lal Chand Vohrah

Mohamed Shahabuddeen

Rafael Nieto-Navia

Fausto Pocar

Judge Shahabuddeen appends a Declaration to this Judgment

Judge Nieto-Navia appends a Dissenting Opinion to this Judgment

Done on this first day of June 2001

At Arusha (United Republic of Tanzania)

[Seal of the Tribunal]



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

## CHAMBER I - CHAMBRE I

OR : ENG

**Before:**

Judge Laïty Kama, Presiding  
Judge Lennart Aspegren  
Judge Navanethem Pillay

**Registry:**

Mr. Agwu U. Okali

**Decision of: 2 September 1998**

**THE PROSECUTOR  
VERSUS  
JEAN-PAUL AKAYESU**

*Case No. ICTR-96-4-T*

---

## JUDGEMENT

---

**The Office of the Prosecutor:**

Mr. Pierre-Richard Prosper

**Counsel for the Accused:**

Mr. Nicolas Tiangaye

Mr. Patrice Monthé

---

## List of Contents

### 1. INTRODUCTION

#### 1.1. The International Tribunal

479. Therefore, as can be seen, the forms of participation referred to in Article 6 (1), cannot render their perpetrator criminally liable where he did not act knowingly, and even where he should have had such knowledge. This greatly differs from Article 6 (3) analyzed here below, which does not necessarily require that the superior acted knowingly to render him criminally liable; it suffices that he had reason to know that his subordinates were about to commit or had committed a crime and failed to take the necessary or reasonable measures to prevent such acts or punish the perpetrators thereof. In a way, this is liability by omission or abstention.

480. The first form of liability set forth in Article 6 (1) is **planning** of a crime. Such planning is similar to the notion of *complicity* in Civil law, or *conspiracy* under Common law, as stipulated in Article 2 (3) of the Statute. But the difference is that planning, unlike complicity or plotting, can be an act committed by one person. Planning can thus be defined as implying that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases.

481. The second form of liability is '**incitation**' (in the french version of the Statute) to commit a crime, reflected in the English version of Article 6 (1) by the word *instigated*. In English, it seems the words incitement and instigation are synonymous<sup>82</sup>. Furthermore, the word "instigated" or "instigation" is used to refer to incitation in several other instruments<sup>83</sup>. However, in certain legal systems and, under Civil law, in particular, the two concepts are very different<sup>84</sup>. Furthermore, and even assuming that the two words were synonymous, the question would be to know whether instigation under Article 6 (1) must include the direct and public elements, required for incitement, particularly, incitement to commit genocide (Article 2 (3)(c) of the Statute) which, in this instance, translates *incitation* into English as "incitement" and no longer "instigation". Some people are of that opinion<sup>85</sup>. The Chamber also accepts this interpretation <sup>86</sup>.

482. That said, the form of participation through instigation stipulated in Article 6 (1) of the Statute, involves prompting another to commit an offence; but this is different from incitement in that it is punishable only where it leads to the actual commission of an offence desired by the instigator<sup>87</sup>.

483. By **ordering** the commission of one of the crimes referred to in Articles 2 to 4 of the Statute, a person also incurs individual criminal responsibility. Ordering implies a superior- subordinate relationship between the person giving the order and the one executing it. In other words, the person in a position of authority uses it to convince another to commit an offence. In certain legal systems, including that of Rwanda <sup>88</sup>, ordering is a form of complicity through instructions given to the direct perpetrator of an offence. Regarding the position of authority, the Chamber considers that sometimes it can be just a question of fact.

484. Article 6 (1) declares criminally responsible a person who "(...) or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 (...)". **Aiding** and **abetting**, which may appear to be synonymous, are indeed different. Aiding means giving assistance to someone. Abetting, on the other hand, would



692. The Tribunal finds, under Article 6(1) of its Statute, that the Accused, by his own words, specifically ordered, instigated, aided and abetted the following acts of sexual violence:

- (i) the multiple acts of rape of ten girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal;
- (ii) the rape of Witness OO by an Interahamwe named Antoine in a field near the bureau communal;
- (iii) the forced undressing and public marching of Chantal naked at the bureau communal.

693. The Tribunal finds, under Article 6(1) of its Statute, that the Accused aided and abetted the following acts of sexual violence, by allowing them to take place on or near the premises of the bureau communal, while he was present on the premises in respect of (i) and in his presence in respect of (ii) and (iii), and by facilitating the commission of these acts through his words of encouragement in other acts of sexual violence, which, by virtue of his authority, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place:

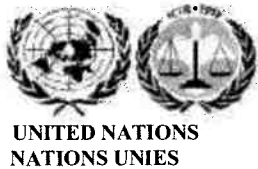
- (i) the multiple acts of rape of fifteen girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal;
- (ii) the rape of a woman by Interahamwe in between two buildings of the bureau communal, witnessed by Witness NN;
- (iii) the forced undressing of the wife of Tharcisse after making her sit in the mud outside the bureau communal, as witnessed by Witness KK;

694. The Tribunal finds, under Article 6(1) of its Statute, that the Accused, having had reason to know that sexual violence was occurring, aided and abetted the following acts of sexual violence, by allowing them to take place on or near the premises of the bureau communal and by facilitating the commission of such sexual violence through his words of encouragement in other acts of sexual violence which, by virtue of his authority, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place:

- (i) the rape of Witness JJ by an Interahamwe who took her from outside the bureau communal and raped her in a nearby forest;
- (ii) the rape of the younger sister of Witness NN by an Interahamwe at the bureau communal;
- (iii) the multiple rapes of Alexia, wife of Ntereye, and her two nieces Louise and Nishimwe by Interahamwe near the bureau communal;
- (iv) the forced undressing of Alexia, wife of Ntereye, and her two nieces Louise and Nishimwe, and the forcing of the women to perform exercises naked in public near the bureau communal.

695. The Tribunal has established that a widespread and systematic attack against the civilian ethnic population of Tutsis took place in Taba, and more generally in Rwanda, between April 7 and the end of June, 1994. The Tribunal finds that the rape and other inhumane acts which took place on or near the bureau communal premises of Taba were committed as part of this attack.

#### COUNT 13



**Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

**Before:** Judge Mohamed Shahabuddeen, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Wolfgang Schomburg

**Registrar:** Mr. Adama Dieng

**Judgement of:** 7 July 2006

**SYLVESTRE GACUMBITSI**

**v.**

**THE PROSECUTOR**

***Case No. ICTR-2001-64-A***

---

**JUDGEMENT**

---

**Counsel for Sylvestre Gacumbitsi:**

Mr. Kouengoua  
Ms. Anne Ngatio Mbattang

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. James Stewart  
Mr. Neville Weston  
Mr. George Mugwanya  
Ms. Inneke Onsea

practice” would have been for the specific killing of Mr. Murefu to be pleaded as a material fact.<sup>115</sup> It contends, however, that any pleading defect with regard to this killing could not have affected the outcome of the trial because it was only one fact among many supporting the Appellant’s genocide conviction.<sup>116</sup>

49. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in the Indictment so as to provide notice to the accused. The Appeals Chamber has held that “criminal acts that were physically committed by the accused personally must be set forth in the indictment specifically, including where feasible ‘the identity of the victim, the time and place of the events and the means by which the acts were committed.’”<sup>117</sup> An indictment lacking this precision may, however, be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charge.<sup>118</sup> When an appellant raises a defect in the indictment for the first time on appeal, then he bears the burden of showing that his ability to prepare his defence was materially impaired.<sup>119</sup> In cases where an accused has raised the issue of lack of notice before the Trial Chamber, in contrast, the burden rests on the Prosecution to demonstrate that the accused’s ability to prepare a defence was not materially impaired.<sup>120</sup>

50. The Indictment, taken alone, does not allege the killing of Mr. Murefu. In the Statement of Facts (“Statement”) related to the genocide count, it states that “Sylvestre Gacumbitsi killed persons by his own hand”, but provides no further details.<sup>121</sup> The Statement goes on to describe the massacre at Nyarubuye Parish, but does not mention Mr. Murefu and does not suggest that the Appellant participated personally in the killing there.<sup>122</sup> Count 4 of the Indictment (Murder) does allege that the Appellant killed a number of individuals in several separate incidents, but Mr. Murefu is not among them. The Appellant could not reasonably have known, on the basis of the Indictment alone, that he was being charged with the killing of Mr. Murefu. While in certain cases, “the sheer scale of the alleged crimes ‘makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes’”,<sup>123</sup> this is not such a case. The Prosecution should have expressly pleaded the killing of Mr. Murefu,

<sup>115</sup> Prosecution Response, para. 154.

<sup>116</sup> Prosecution Response, para. 155.

<sup>117</sup> *Ntakirutimana* Appeal Judgement, para. 32, quoting *Kupreškic et al.* Appeal Judgement, para. 89.

<sup>118</sup> *Ntakirutimana* Appeal Judgement, para. 27, referring to *Kupreškic et al.* Appeal Judgement, para. 114.

<sup>119</sup> *Niyitegeka* Appeal Judgement, para. 200; *Kvocka et al.* Appeal Judgement, para. 35.

<sup>120</sup> *Niyitegeka* Appeal Judgement, para. 200; *Kvocka et al.* Appeal Judgement, para. 35.

<sup>121</sup> Indictment, para. 4.

<sup>122</sup> Indictment, paras. 15-19.

<sup>123</sup> *Kupreškic et al.* Appeal Judgement, para. 89, referring to *Kvocka* Decision, para. 17.

in the indictment, but were included in a chart of witnesses that set forth the facts to which each witness would testify and clearly identified the charges in the indictment to which those facts corresponded. The Appeals Chamber held that this “rather detailed information [...] was sufficient to put Martinovic on notice of what specific incident was being alleged”, and thus cured the defect in the indictment.<sup>141</sup> And it did not, contrary to the Appellant’s suggestion here, hold that the Prosecution was obligated to formally amend the indictment to correspond with the clarifying information it subsequently provided. Likewise, in *Ntakirutimana*, the Appeals Chamber held that a witness statement, when taken together with “unambiguous information” contained in a Pre-Trial Brief and its annexes, was sufficient to cure a defect in an indictment.<sup>142</sup>

58. By majority, the Appeals Chamber holds, Judge Liu and Judge Meron dissenting, that the circumstances in this case are materially indistinguishable from those in *Naletilic and Martinovic*, and that the summary of Witness TAQ’s testimony was sufficient to clarify the general statement, already included in the genocide section of the Indictment, that “Sylvestre Gacumbitsi killed persons by his own hand”. The summary clearly alleged the killing of Mr. Murefu and connected it to the genocide, did not conflict with any other information that was provided to the Appellant, and was provided in advance of the trial. It therefore unambiguously constituted “timely, clear, and consistent information” sufficient to put the Appellant on notice that he was being charged with committing genocide through the killing of Mr. Murefu.<sup>143</sup>

59. In addition, by a differently composed majority, the Appeals Chamber holds, Judge Güney dissenting, that even if the killing of Mr. Murefu were to be set aside, the Trial Chamber’s conclusion that the Appellant “committed” genocide would still be valid. The Trial Chamber convicted the Appellant of “ordering” and “instigating” genocide on the basis of findings of fact detailing certain conduct that, in the view of the Appeals Chamber, should be characterized not just as “ordering” and “instigating” genocide, but also as “committing” genocide.

60. As the Trial Chamber observed, the term “committed” in Article 6(1) of the Statute has been held to refer “generally to the direct and physical perpetration of the crime by the offender himself.”<sup>144</sup> In the context of genocide, however, “direct and physical perpetration” need not mean

<sup>141</sup> See *Naletilic and Martinovic* Appeal Judgement, para. 45.

<sup>142</sup> *Ntakirutimana* Appeal Judgement, para. 48.

<sup>143</sup> In addition to his argument concerning the Indictment, the Appellant also challenges the evidentiary basis for the finding that he killed Mr. Murefu. His challenges to the credibility of Witness TAQ and the consistency of that witness’s testimony with other testimony given at trial are considered elsewhere in this Judgement. His statement that the “Prosecutor failed to prove that Mr. Murefu existed” is a bare assertion that does not provide any reason to doubt the Trial Chamber’s conclusion to the contrary; it merits no further discussion. See Gacumbitsi Appeal Brief, para. 217.

<sup>144</sup> Trial Judgement, para. 285; see *Kayishema and Ruzindana* Appeal Judgement, para. 187; *Tadic* Appeal Judgement, para. 188. The term also encompasses joint criminal enterprise, as discussed further below.

physical killing; other acts can constitute direct participation in the *actus reus* of the crime.<sup>145</sup> Here, the accused was physically present at the scene of the Nyarubuye Parish massacre, which he “directed” and “played a leading role in conducting and, especially, supervising”.<sup>146</sup> It was he who personally directed the Tutsi and Hutu refugees to separate -- and that action, which is not adequately described by any other mode of Article 6(1) liability, was as much an integral part of the genocide as were the killings which it enabled.<sup>147</sup> Moreover, these findings of fact were based on allegations that were without question clearly pleaded in the Indictment.<sup>148</sup>

61. The Appeals Chamber is persuaded that in the circumstances of this case, the modes of liability used by the Trial Chamber to categorize this conduct -- “ordering” and “instigating” -- do not, taken alone, fully capture the Appellant’s criminal responsibility. The Appellant did not simply “order” or “plan” genocide from a distance and leave it to others to ensure that his orders and plans were carried out; nor did he merely “instigate” the killings. Rather, he was present at the crime scene to supervise and direct the massacre, and participated in it actively by separating the Tutsi refugees so that they could be killed. The Appeals Chamber finds by majority, Judge Güney dissenting, that this constitutes “committing” genocide.

62. The Appeals Chamber unanimously dismisses this sub-ground of the Appellant’s appeal.

### 3. Assessment of the Evidence Supporting the Genocide Conviction

63. The Appellant raises a number of challenges to the findings of fact underlying his conviction for genocide. The Appeals Chamber notes that in this part of his appeal, the Appellant repeatedly points to evidence he introduced at trial that contradicts the findings made by the Trial Chamber without attempting to demonstrate why the Trial Chamber’s decision to instead credit the evidence introduced by the Prosecution was in error. In such instances, the Appeals Chamber will exercise its prerogative not to address the Appellant’s submissions in detail.

<sup>145</sup> For instance, it has been recognized that selection of prisoners for extermination played an integral role in the Nazi genocide. See, e.g., Judgment of the International Military Tribunal for the Trial of German Major War Criminals, Nuremberg, 30th September and 1st October, 1946, p. 63 (London: His Majesty’s Stationary Office, 1946) (Reprinted Buffalo, New York: William S. Hein & Co., Inc., 2001) (describing the selection process at Auschwitz); Att’y Gen. of Israel v. Adolf Eichmann, 36 I.L.R. 5, p. 185 (Isr. D.C., Jerusalem, Dec. 12, 1961), aff’d, 36 I.L.R.277 (Isr. S. Ct., May 29, 1962) (same).

<sup>146</sup> See Trial Judgement, paras. 168, 169, 171, 172, 173, 261.

<sup>147</sup> Trial Judgement, para. 168.

<sup>148</sup> See Indictment, paras. 4, 13-21.

75. Moreover, even if the Trial Chamber had erred in crediting Witness TBH's testimony, the Appellant has not shown how relying on it caused a miscarriage of justice. The Trial Chamber relied on the largely corroboratory accounts of Witnesses TBH and TAW. As noted above, Witness TAW was credible and the Appellant does not establish that reliance on his testimony alone, absent corroboration, would have been unsafe or would have resulted in a different verdict.<sup>178</sup>

(c) Credibility of Witnesses TAS, TBI, TBJ, and TBK

76. The Appellant contends that the Trial Chamber committed a logical error when it found, on the basis of Witness TAS's and TAW's testimony, that the Appellant exhorted a crowd consisting of a Hutu majority at Nyakarambi market to "let no one escape". He reasons that some Tutsis must have been present, and yet there is no allegation that anyone was killed at Nyakarambi on that day.<sup>179</sup> This is a *non sequitur*. The Trial Chamber did not hold that the Appellant was giving instructions for immediate killings, but rather that he was seeking "to prepare the Hutu population for the elimination of the Tutsi."<sup>180</sup>

77. The Appellant further notes that the Witnesses TBI, TBJ, and TBK have all been arrested and/or sentenced in Rwanda for genocide.<sup>181</sup> He does not explain the implications of this observation for the witnesses' credibility or for the Trial Judgement. As noted above, the Trial Chamber explained with respect to Witness TBH that his genocide conviction did not preclude reliance on his testimony; the Appellant does not explain why a similar conclusion would not have been reasonable with respect to the other three witnesses. In light of the Appellant's failure to demonstrate an error meriting reversal, no further discussion is warranted.<sup>182</sup>

(d) Alleged Factual Errors Concerning the Attacks at Nyarubuye Parish

78. Finally, the Appellant challenges the Trial Chamber's assessment of the testimony of Prosecution Witnesses TAO, TAQ, and TAX concerning the attacks at Nyarubuye Parish from 15 through 17 April 1994.<sup>183</sup> These attacks were the central facts underlying the Appellant's genocide

<sup>178</sup> The Trial Chamber expressly relied on Witness TBH's testimony and not Witness TAW's with respect to the discussion of weapons distribution at the 9 April 1994 meeting. But as to that point, the Trial Chamber's reliance on Witness TBH's version of events favoured the Appellant.

<sup>179</sup> Gacumbitsi Appeal Brief, paras. 184, 185.

<sup>180</sup> Trial Judgement, para. 97.

<sup>181</sup> Gacumbitsi Appeal Brief, paras. 191, 193, 194.

<sup>182</sup> The Appellant's other observations in this subsection are also without merit. He asserts that Witness TAS was "coached and sent by *IBUKA*", but provides no further explanation or evidence. He contends that one witness testified that he did not find the Appellant in Kigarama; it is unclear which witness he means, and several witnesses testified that the Appellant did lead a crowd to Kigarama. The Appellant's contentions concerning the interlocutory decision of 1 August 2003 are considered in section II.A.

<sup>183</sup> Gacumbitsi Appeal Brief, paras. 209-256.

conviction. The Trial Chamber found that he had planned, instigated, ordered, committed, and aided and abetted the killings of thousands of Tutsi refugees, who had fled various surrounding areas and sought shelter at Nyarubuye, in multiple massacres over the course of those three days.<sup>184</sup>

79. First, the Appellant points to various minor variations among the testimonies of different witnesses, such as whether the Appellant spoke “aloud” or “through a megaphone”, and whether the *Interahamwe* chanted “Let’s exterminate them” or “Let’s massacre them”.<sup>185</sup> He also notes that Witness TAO first stated that he “saw” the Appellant and six police officers arrive at the parish, but then clarified on cross-examination that he in fact heard the car arrive, and shortly thereafter saw the Appellant and the officers.<sup>186</sup> In the Appeals Chamber’s view, these discrepancies are minor, and the Trial Chamber was certainly reasonable in deeming the witnesses credible despite them. As the Trial Chamber noted, their testimonies largely corroborated one another and “[n]o major inconsistency or discrepancy was noted in their evidence. The discrepancies noted can be explained by the time that has elapsed since the massacres, the fact that they witnessed the massacres from different locations and at different times, and the considerable stress they were subjected to.”<sup>187</sup>

80. The Appellant also points to disparities in what the various Prosecution witnesses observed.<sup>188</sup> For instance, on 16 April 1994, Witness TAQ did not see the Appellant at Nyarubuye Parish, while Witness TAO did. On 17 April 1994, Witness TAX heard the Appellant exhort the *Interahamwe* to kill the few surviving Tutsi refugees, using a metaphor of “striking at a snake”. Witnesses TAQ and TAO did not hear these remarks. Some witnesses did not mention looting following the massacre, while others did. The Appeals Chamber finds that these contrasts do not amount to inconsistencies, but simply reflect the fact that different people in different vantage points saw and heard different things.<sup>189</sup> The Trial Chamber so found, and the Appellant has not demonstrated that its conclusions were unreasonable.<sup>190</sup>

81. Finally, the Appellant states that the Trial Chamber’s findings of fact were contradicted by evidence introduced by the Defence, including the Appellant’s own diary from 1994, which does not detail his participation in the massacres.<sup>191</sup> The Appellant does not show that the Trial Chamber improperly ignored any of this evidence. Rather, the Trial Chamber simply concluded that to the

<sup>184</sup> Trial Judgement, para. 288. The issue of defects in the Indictment was considered in section II.B.2 above.

<sup>185</sup> Gacumbitsi Appeal Brief, paras. 227-229.

<sup>186</sup> Gacumbitsi Appeal Brief, para. 231.

<sup>187</sup> Trial Judgement, para. 145.

<sup>188</sup> See, e.g., Gacumbitsi Appeal Brief, paras. 233, 234, 243, 244, 255.

<sup>189</sup> See *Niyitegeka* Appeal Judgement, para. 142.

<sup>190</sup> See Trial Judgement, paras. 149, 159, 163.

<sup>191</sup> Gacumbitsi Appeal Brief, paras. 236-242, 250-253.

assessment of the credibility of the Prosecution witnesses. The Appellant has not shown that the Trial Chamber applied differing standards in the assessment of the evidence.

97. The Appellant also submits that the Trial Chamber erred in rejecting the testimony of Defence Witnesses NG2, ZHZ, and ZIZ that the Appellant was not at Nyarubuye on 15 April 1994, especially since the Trial Chamber had not disputed the credibility of these witnesses.<sup>239</sup> But as the Trial Chamber stated, it was “quite aware” of these witnesses’ testimonies.<sup>240</sup> It simply found that, in light of the “consistent and specific” evidence placing the Appellant at Nyarubuye Parish on 15 April 1994, the Defence evidence did not raise a reasonable doubt as to his participation in the massacre.<sup>241</sup> The Appellant has not shown that this was unreasonable.

98. For the foregoing reasons, this sub-ground of appeal is dismissed and the appeal under this ground is dismissed in its entirety.

---

survivors, he did not take part in finishing off the wounded [...] he could not testify as to what he did, apart from staying with his brother-in-law, being shocked and frightened”; and 2) Witness UHT was unclear as to the second vehicle that he saw at the parish. *Ibid.*

<sup>239</sup> Gacumbitsi Appeal Brief, paras. 298-306. The Appeals Chamber notes that the witnesses did not testify as to the events of 16 and 17 April 1994.

<sup>240</sup> See Trial Judgement, para. 153; *see also ibid.*, paras. 127, 130, 131.

<sup>241</sup> See Trial Judgement, para. 153.



## **B. Responsibility for Rapes Committed in Rusumo Commune (Ground of Appeal 3)**

126. Although the Appellant was convicted of eight rapes under Count 5 of the Indictment, the Trial Chamber acquitted him of certain other rapes that had been recounted by Prosecution Witnesses TAO, TAS, and TAP. The Trial Chamber found that these rapes had taken place, but that the Prosecution had not proven that the Appellant had instigated them.<sup>300</sup> On appeal, the Prosecution argues that the Trial Chamber should have convicted the Appellant for these rapes, either for instigation or under other modes of Article 6(1) or Article 6(3) liability.<sup>301</sup>

### **1. Instigation**

#### **(a) Legal Requirements for Instigation**

127. The Prosecution argues that the Trial Chamber erred in law by requiring it to establish that the Appellant's instigation was a condition *sine qua non* of the commission of the rapes.<sup>302</sup> Instead, it contends that to establish culpability for instigation, it suffices to show that the accused's instigation "substantially contributed" to the commission of the crime -- that is, that he "set in motion a chain of events that were the foreseeable consequence of his instigation of the crime."<sup>303</sup> The Prosecution concludes that the totality of the evidence in this case establishes beyond reasonable doubt that this standard was satisfied.<sup>304</sup>

128. The Trial Chamber held that conviction for instigation requires proof "of a causal connection between the instigation and the *actus reus* of the crime."<sup>305</sup> It found "no evidence of a link" between the Appellant's words and the rapes recounted by Witnesses TAS, TAO, and TAP.<sup>306</sup>

129. As the *Kordic and Cerkez* Appeal Judgement established, "it is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused"; rather, "it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime."<sup>307</sup> Thus, the Prosecution has correctly stated the causation requirement for instigation. However, there is no indication that the Trial Chamber misunderstood this requirement. Its reference to a "causal connection between the instigation and the *actus reus* of

<sup>300</sup> Trial Judgement, paras. 226, 227, 329.

<sup>301</sup> Prosecution Appeal Brief, para. 117.

<sup>302</sup> Prosecution Appeal Brief, para. 120.

<sup>303</sup> Prosecution Appeal Brief, paras. 120-122, referring to *Kayishema and Ruzindana* Appeal Judgement, para. 198.

<sup>304</sup> Prosecution Appeal Brief, para. 121.

<sup>305</sup> Trial Judgement, para. 279.

<sup>306</sup> Trial Judgement, para. 329.

<sup>307</sup> *Kordic and Cerkez* Appeal Judgement, para. 27.

the crime”<sup>308</sup> does not specify what kind of causation must be proven, and without more it cannot be inferred that the Trial Chamber required that the instigation be the *sine qua non* of the rapes.

130. While the Trial Chamber did not use the phrase “substantially contributing”, its language made clear that it found that this standard was not satisfied. Specifically, it found “no evidence establishing a link” -- substantial or otherwise -- between the Appellant’s words and the rapes recounted by Witnesses TAS, TAO, and TAP.<sup>309</sup> Accordingly, the Trial Chamber did not err in law, and this sub-ground of appeal is dismissed.

(b) Evidence Supporting Instigation

131. In the alternative, the Prosecution argues that the Trial Chamber erred by failing to draw the only reasonable conclusion supported by the totality of the evidence and by its own factual findings: that the Appellant was responsible for instigating all the rapes established.<sup>310</sup> For instance, the Prosecution notes, the Trial Chamber found that on or about 17 April 1994,<sup>311</sup> the Appellant drove around Nyarubuye *secteur* with a megaphone inciting Hutu men to rape Tutsis and to kill atrociously those who resisted. Such rapes were then carried out, including by inserting sticks in the victims’ genitals, and some victims died.<sup>312</sup> The specific rapes recounted by Witnesses TAO, TAS, and TAP were perpetrated around mid-April 1994 in Rusumo Commune; some of them were perpetrated within Nyarubuye *secteur*, including by the Nyarubuye *conseiller*.<sup>313</sup> The Prosecution points to the findings concerning the Appellant’s knowledge of the rapes, his authority as *bourgmestre*, and his role in the genocide, and cites the testimony of Witness TAS that those who raped her told her that the Appellant had ordered the rape and killing of Tutsi women and girls.<sup>314</sup>

(i) The Rape of Witness TAS

132. Witness TAS, a Hutu woman married to a Tutsi man, testified that, on an unspecified date, she was raped by two Hutu men, one of whom told her that the Appellant had authorized the rape of Tutsis but that no decision had yet been taken concerning Hutu women who were married to

<sup>308</sup> Trial Judgement, para. 279.

<sup>309</sup> Trial Judgement, para. 329.

<sup>310</sup> Prosecution Appeal Brief, paras. 123-135.

<sup>311</sup> Although paragraph 215 of the Trial Judgement puts the instigation on 16 April 1994, the Trial Chamber relied on the testimony of Witness TAQ, who in fact testified that the Appellant made the relevant statements on 17 April 1994. See T. 29 July 2003 pp. 61, 62. Paragraph 227 of the Trial Judgement refers to the correct date, 17 April 1994.

<sup>312</sup> See Trial Judgement, para. 215; Prosecution Appeal Brief, para. 124.

<sup>313</sup> See Trial Judgement, paras. 205, 215, 226; Prosecution Appeal Brief, para. 124.

<sup>314</sup> Prosecution Appeal Brief, para. 124; *but see* Trial Judgement, para. 327 (finding this testimony inadequate to establish the Appellant’s involvement).

### E. Authority for Ordering (Ground of Appeal 6)

180. The Trial Chamber found that the Appellant ordered crimes committed by the communal policemen, but did not find that he ordered crimes committed by the *conseillers*, gendarmes, soldiers, and *Interahamwe* who were in his commune at the time of the events under consideration. The Prosecution challenges this. First, it argues that the Trial Chamber erred in law by requiring proof of a formal superior-subordinate relationship in order to find that the Appellant had the authority or power to order.<sup>394</sup> Second, it contends that the Trial Chamber failed to draw the only reasonable conclusion on the evidence: that the Appellant was a superior to, and possessed the capacity to order, not only the communal policemen, but also the other perpetrators of the crimes.<sup>395</sup> The Appellant responds that the Trial Chamber correctly stated the law and that the factual findings and evidence cited by the Prosecution do not show when or how he gave orders to the other assailants.<sup>396</sup>

#### 1. Alleged Error of Law

181. The Appeals Chamber agrees with the Prosecution that ordering does not require the existence of a formal superior-subordinate relationship. But the Trial Chamber did not misapprehend the law in this respect. It held:

The Trial Chamber is of the opinion that the issue must be determined in light of the circumstances of the case. The authority of an influential person can derive from his social, economic, political or administrative standing, or from his abiding moral principles. Such authority may also be *de jure* or *de facto*. When people are confronted with an emergency or danger, they can naturally turn to such influential person, expecting him to provide a solution, assistance or take measures to deal with the crisis. When he speaks, everyone listens to him with keen interest; his advice commands overriding respect over all others and the people could easily see his actions as an encouragement. Such words and actions are not necessarily culpable, but can, where appropriate, amount to forms of participation in crime, such as “incitement” and “aiding and abetting” provided for in Article 6(1) of the Statute. In certain circumstances, the authority of an influential person is enhanced by a lawful or unlawful element of coercion, such as declaring a state of emergency, the *de facto* exercise of an administrative function, or even the use of threat or unlawful force. The presence of a coercive element is such that it can determine the way the words of the influential person are perceived. Thus, mere words of exhortation or encouragement would be perceived as orders within the meaning of Article 6(1) referred to above. *Such a situation does not, ipso facto, lead to the conclusion that a formal superior-subordinate relationship exists between the person giving the order and the person executing it.* As a matter of fact, instructions given outside a purely informal context by a superior to his subordinate within a formal administrative hierarchy, be it *de jure* or *de facto*, would also be considered as an “order” within the meaning of Article 6(1) of the Statute.

The Chamber recalls its factual finding that Sylvestre Gacumbitsi had superior authority only over the communal police. *The Prosecution failed to show that he also had superior authority over the conseillers, Interahamwe, gendarmes or any other persons who participated in the attacks. Moreover, the Prosecution failed to demonstrate that, in the absence of a formal superior-*

<sup>394</sup> Prosecution Appeal Brief, paras. 213-218.

<sup>395</sup> Prosecution Appeal Brief, paras. 219-220.

<sup>396</sup> Gacumbitsi Response, paras. 316-327.

*subordinate relationship between the Accused and the population and attackers, the circumstances of the case suggest that the Accused's words of incitement were perceived as orders within the meaning of Article 6(1) of the Statute.*<sup>397</sup>

182. Thus, after finding that no formal superior-subordinate relationship existed, the Trial Chamber proceeded to consider whether, under the circumstances of the case, the Appellant's statements nevertheless were perceived as orders. This is in accordance with the most recent judgements of the Appeals Chamber. In the *Semanza* Appeal Judgement, the Appeals Chamber explained:

As recently clarified by the ICTY Appeals Chamber in *Kordić and Cerkez*, the *actus reus* of "ordering" is that a person in a position of authority instruct another person to commit an offence. No formal superior-subordinate relationship between the accused and the perpetrator is required. It is sufficient that there is proof of some position of authority on the part of the accused that would compel another to commit a crime in following the accused's order.<sup>398</sup>

The Appeals Chamber notes that this element of "ordering" is distinct from that required for liability under Article 6(3) of the Statute, which does require a superior-subordinate relationship (albeit not a formal one but rather one characterized by effective control).<sup>399</sup> Ordering requires no such relationship -- it requires merely authority to order, a more subjective criterion that depends on the circumstances and the perceptions of the listener.

183. Accordingly, this sub-ground of appeal is dismissed.

## 2. Alleged Error of Fact

184. The Trial Chamber found that, as *bourgmestre*, the Appellant was the highest authority and most influential person in the commune, with the power to take legal measures binding all residents.<sup>400</sup> His role in the genocide demonstrated his authority: he convened meetings with the *conseillers*; asked them to organize meetings to tell people to kill Tutsis, and verified that these meetings had been held; and directly instructed *conseillers*, other leaders, and the Hutu population to kill and rape Tutsis.<sup>401</sup> The Trial Chamber pointed to several instances in which the Appellant "instructed", "ordered", or "directed" the attackers in general, not just the communal policemen:

<sup>397</sup> Trial Judgement, paras. 282, 283 (emphasis added, internal citations omitted).

<sup>398</sup> *Semanza* Appeal Judgement, para. 361, referring to *Kordić and Cerkez* Appeal Judgement, para. 28. See also *Kamuhanda* Appeal Judgement, para. 75 ("To be held responsible under Article 6(1) of the Statute for ordering a crime, on the contrary, it is sufficient that the accused have authority over the perpetrator of the crime, and that his order have a direct and substantial effect on the commission of the illegal act." (internal citations omitted)).

<sup>399</sup> See *supra* section III.B.3.

<sup>400</sup> Trial Judgement, paras. 241-243.

<sup>401</sup> Trial Judgement, paras. 101, 104.

stated that it was not convinced that the accused in that case deserved life imprisonment.<sup>441</sup> The Appellant further argues that the comparative analysis engaged in by the Prosecution is not helpful because the differences between the various cases are more important than the similarities and because the sentence must be individualized.<sup>442</sup>

204. The Appeals Chamber is of the view that, although the Trial Chamber correctly noted that the sentence should first and foremost be commensurate with the gravity of the offences and the degree of liability of the convicted person, it then disregarded these principles in imposing a sentence of only thirty years' imprisonment on the Appellant. The Appeals Chamber recalls that the Appellant played a central role in planning, instigating, ordering, committing, and aiding and abetting genocide and extermination in his commune of Rusumo, where thousands of Tutsis were killed or seriously harmed.<sup>443</sup> The Trial Chamber also found the Appellant guilty of instigating rape as a crime against humanity,<sup>444</sup> noting that he had exhibited particular sadism in specifying that where victims resisted, they should be killed in an atrocious manner.<sup>445</sup> The Appellant was thus convicted of extremely serious offences. Moreover, unlike in most of the other cases in which those convicted for genocide have received less than a life sentence, there were no especially significant mitigating circumstances here.<sup>446</sup> Instead, the Appellant was a primary player, a leader in the commune who used his power to bring about the brutal massacre and rape of thousands.

205. The Appeals Chamber is, as noted above, fully cognizant of the margin of discretion to which Trial Chambers are entitled in sentencing. This discretion is not, however, unlimited. It is the Appeals Chamber's prerogative to substitute a new sentence when the one given by the Trial Chamber simply cannot be reconciled with the principles governing sentencing at the Tribunal. This is such a case. The Appeals Chamber concludes that in light of the massive nature of the crimes and the Appellant's leading role in them, as well as the relative insignificance of the purported mitigating factors, the Trial Chamber ventured outside its scope of discretion by imposing a

<sup>441</sup> Gacumbitsi Response, para. 92, referring to *Semanza* Trial Judgement, para. 559. However, the Appellant does not explain the similarities between Semanza's case and his own.

<sup>442</sup> Gacumbitsi Response, paras. 93 (referring to *Celebici Case* Appeal Judgement, paras. 717, 719), 94, 95.

<sup>443</sup> Trial Judgement, para. 174.

<sup>444</sup> Trial Judgement, paras. 321-333.

<sup>445</sup> Trial Judgement, paras. 224, 325.

<sup>446</sup> Although not every individual convicted of genocide or extermination has been sentenced to life imprisonment (for instance, a fixed term of imprisonment was imposed in cases where the convicted person had pleaded guilty (see *Serushago* Sentencing Judgement, upheld on appeal (*Serushago* Appeal Judgement); *Ruggiu* Sentencing Judgement) or where the pre-trial rights of the convicted person had been infringed (see *Semanza* Appeal Judgement, para. 389 and Disposition; *Kajelijeli* Appeal Judgement, paras. 324, 325) and in two other cases (*Kayishema and Ruzindana* Trial Judgement, Sentence, para. 28, upheld on appeal (*Kayishema and Ruzindana* Appeal Judgement, para. 372); *Ntakirutimana* Appeal Judgement, para. 564 and Disposition)), the Appeals Chamber considers that the Appellant's case is not comparable to these cases.

sentence of only thirty years' imprisonment. The Appeals Chamber therefore upholds this sub-ground of the Prosecution's appeal.

6. Implications of the Appeals Chamber's Findings on the Sentence

206. Furthermore, the Appeals Chamber has held that the Appellant was responsible for ordering the acts of genocide, extermination, murder, and rape committed not only by the communal police, but also by the other perpetrators who participated in the attacks at Nyarubuye Parish and at Kigarama.<sup>447</sup> Additionally, the Appeals Chamber has found by majority, Judge Güney and Judge Meron dissenting, that the Appellant aided and abetted the murders of two of his Tutsi tenants, Marie and Béatrice, whom he expelled from their home and who were killed later that night. Consequently, it will enter a new conviction for murder as a crime against humanity under Count 4 of the Indictment.<sup>448</sup> The Appeals Chamber has also found that the Trial Chamber erred in failing to give proper weight to the gravity of the crimes committed by the Appellant and to his central role in those crimes. The Appeals Chamber considers that the maximum sentence is warranted in the Appellant's case and that there are no significant mitigating circumstances that would justify imposing a lesser sentence than imprisonment for the remainder of his life.

---

<sup>447</sup> See *supra* section III.E.

<sup>448</sup> See *supra* section III.A.

#### IV. DISPOSITION

207. For the foregoing reasons, **THE APPEALS CHAMBER**,

**PURSUANT** to Article 24 of the Statute and Rule 118 of the Rules;

**NOTING** the written submissions of the parties and their oral arguments presented at the hearing on 8 and 9 February 2006;

**SITTING** in open session;

**CORRECTS**, *proprio motu*, the reference to Articles 2(3)(a) and 2(3)(b) of the Statute in paragraphs 293 and 295 of the Trial Judgement to Articles 2(2)(a) and 2(2)(b) of the Statute;

**DISMISSES** the Appellant's appeal in its entirety;

**ALLOWS**, in part, by majority, Judge Güney and Judge Meron dissenting, the Prosecution's second ground of appeal, **FINDS** that the Appellant aided and abetted the murder of his Tutsi tenants, Marie and Béatrice, and **ENTERS** a conviction for murder as a crime against humanity under Count 4 of the Indictment;

**ALLOWS**, in part, the Prosecution's sixth ground of appeal and **HOLDS** that the Appellant is responsible for ordering the crimes committed by all attackers at Nyarubuye Parish on 15, 16, and 17 April 1994 and on 14 April 1994 at Kigarama;

**ALLOWS**, in part, the Prosecution's first ground of appeal and **QUASHES** the sentence of thirty years' imprisonment imposed on the Appellant by the Trial Chamber;

**DISMISSES** the Prosecution's appeal in all other respects;

**ENTERS** a sentence of imprisonment for the remainder of the Appellant's life, subject to credit being given under Rule 101(D) of the Rules for the period already spent in detention from 20 June 2001;

**RULES** that this Judgement shall be enforced immediately pursuant to Rule 119 of the Rules;

**ORDERS**, in accordance with Rules 103(B) and 107 of the Rules, that Sylvestre Gacumbitsi is to remain in the custody of the Tribunal pending his transfer to the State in which his sentence will be served.



**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

---

**TRIAL CHAMBER III**

**ENGLISH  
Original: FRENCH**

Before Judges:       Andresia Vaz, presiding  
                              Jai Ram Reddy  
                              Sergei Alekseevich Egorov

Registrar:            Adama Dieng

Date:                   17 June 2004

**THE PROSECUTOR**

**v.**

**SYLVESTRE GACUMBTSI**

**Case No. ICTR-2001-64-T**

---

**JUDGMENT**

---

Office of the Prosecutor:

Richard Karegyesa  
Andra Mobberley  
Khaled Ramadan

Counsel for the Defence:

Kouengoua  
Anne Ngatio Mbattang



161. The Chamber notes, however, that Witness TAO, who alone saw the Accused in the morning of 16 April 1994, did not testify that the Accused was armed. Moreover, neither Witness TAO, Witness TAQ nor Witness UHT mentioned any looting in the parish building after the massacre.

#### **17 April 1994**

162. As the Defence points out, Witness TAQ testified that he heard the Accused speaking over a megaphone at a location, other than Nyarubuye Parish, on 17 April 1994 at around 9 a.m. Witness TAX also testified that she saw the Accused at the same time. Both Witnesses TAX and TAQ only approximated the time when they saw the Accused.<sup>161</sup> Moreover, Witness TAQ testified that she heard the Accused speaking over a megaphone, and that the Accused was part of a convoy of three vehicles that she saw passing at the time, at the frontier between Kankobwa *secteur* and Nyarubuye *secteur*, in which Nyarubuye Parish is also located. As Witness TAX saw the Accused arriving at the parish in a vehicle, both witnesses could have seen the Accused within a reasonably short interval of time, at around 9 a.m. The Chamber therefore finds that Witness TAQ's evidence does not cast doubt over the reliability and credibility of Witness TAX as to this incident.

163. The Chamber finds that the conditions under which Witness TAX observed the Accused were particularly good. The incident took place in the morning and Witness TAX was at a very short distance, which she estimated to be two metres away from the Accused. On her evidence, the Chamber finds that, on 17 April 1994 at about 9 a.m., the Accused addressed a group of attackers who had gathered 15 Tutsi survivors in front of the Nyarubuye Church, and told them to take their weapons and kill the survivors, aiming at the head and sparing no one. There is no doubt that by these words, the Accused was ordering the murder of each of the 15 Tutsi survivors, given that once these words were uttered, the attackers attacked the survivors with machetes, with two of them mutilating Witness TAX, despite her pleas, leaving her for dead. On this evidence, the Chamber finds that, on 17 April 1994, the Accused led an attack against Tutsi civilians at Nyarubuye Parish by ordering the attackers to kill the refugees, as alleged in paragraph 27 of the Indictment.

#### ***The Defence Case: massacres committed by RPF***

164. The Defence submits that the pictures in Fergal Keane's report do not date from the attacks on Nyarubuye Parish on 15, 16 and 17 April 1994<sup>162</sup>. Thus, regarding the bodies seen in parts of Fergal Keane's report and blamed on the massacre of 15 April at Nyarubuye Parish, the Defence submits that they are rather proof of the crimes committed by RPF. Such is the purport of the report of the two forensic pathologists, expert witnesses called by the Defence.<sup>163</sup> Similarly, Defence witnesses testified about the crimes committed by RPF. Thus, Defence Witness XW9, a member

<sup>161</sup> T., 31 July 2003, p. 37 (Witness TAX) and T., 29 July 2003, pp. 61 to 62 (Witness TAQ).

<sup>162</sup> Defence Closing Brief, paras. 385 to 394.

<sup>163</sup> Report of Expert Witnesses Vorhauer and Lecomte, p. 13.

who gives the order and the one who executes it.<sup>263</sup> The other has held that ordering does not necessarily imply the existence of such a formal superior-subordinate relationship.<sup>264</sup>

282. The Trial Chamber is of the opinion that the issue must be determined in light of the circumstances of the case. The authority of an influential person can derive from his social, economic, political or administrative standing, or from his abiding moral principles. Such authority may also be *de jure* or *de facto*. When people are confronted with an emergency or danger, they can naturally turn to such influential person, expecting him to provide a solution, assistance or take measures to deal with the crisis. When he speaks, everyone listens to him with keen interest; his advice commands overriding respect over all others and the people could easily see his actions as an encouragement. Such words and actions are not necessarily culpable, but can, where appropriate, amount to forms of participation in crime, such as “incitement” and “aiding and abetting” provided for in Article 6(1) of the Statute. In certain circumstances, the authority of an influential person is enhanced by a lawful or unlawful element of coercion, such as declaring a state of emergency, the *de facto* exercise of an administrative function, or even the use of threat or unlawful force. The presence of a coercive element is such that it can determine the way the words of the influential person are perceived. Thus, mere words of exhortation or encouragement would be perceived as orders within the meaning of Article 6(1) referred to above. Such a situation does not, *ipso facto*, lead to the conclusion that a formal superior-subordinate relationship exists between the person giving the order and the person executing it. As a matter of fact, instructions given outside a purely informal context by a superior to his subordinate within a formal administrative hierarchy, be it *de jure* or *de facto*, would also be considered as an “order” within the meaning of Article 6(1) of the Statute.

283. The Chamber recalls its factual finding that Sylvestre Gacumbitsi had superior authority only over the communal police.<sup>265</sup> The Prosecution failed to show that he also had superior authority over the *conseillers*, *Interahamwe*, *gendarmes* or any other persons who participated in the attacks. Moreover, the Prosecution failed to demonstrate that, in the absence of a formal superior-subordinate relationship between the Accused and the population and attackers, the circumstances of the case suggest that the Accused’s words of incitement were perceived as orders within the meaning of Article 6(1) of the Statute.

284. Accordingly, the Chamber finds that Sylvestre Gacumbitsi ordered communal policemen who were present at Nyarubuye Parish on 15 April 1994 to kill the Tutsi. On the evidence adduced, the participation of those policemen in the massacre was a direct consequence of the orders given by the Accused. Thus, the Accused incurs liability, pursuant to Article 6(1) of the Statute, for having ordered them to so participate in those crimes.

<sup>263</sup> *Semanza* Judgment (TC), para. 382; *Ntagerura and others* Judgment (TC), para. 624.

<sup>264</sup> ICTY, *Kordić and Cerkez*, Judgment (TC), para. 388. See also *Kajelijeli* Judgment (TC), para. 763.

<sup>265</sup> See *supra*: Chapter II, Part F.

285. “Committing” refers generally to the direct and physical perpetration of the crime<sup>266</sup> by the offender himself. In the present case, the Accused killed Murefu, a Tutsi. The Chamber therefore finds that he committed the crime of genocide, within the meaning of Article 6(1) of the Statute.

286. “Aiding and abetting” constitute a more complex form of participation.<sup>267</sup> *Aiding* means assisting or helping another to commit a crime. *Abetting* means facilitating, advising or instigating the commission of a crime.<sup>268</sup> In this case, the Accused, on several occasions, drove the attackers in a convoy, with the vehicle in which he was always leading the convoy. The attackers were transported in communal vehicles, the use of which the Accused was in a position to prevent. That the Accused was leading the convoy is sufficient proof that he consented to the use of such vehicles. Lastly, the Accused was present throughout the attack on the Tutsi in Rusumo. The Accused was also at Nyarubuye Parish on 15 April, and in the vicinity of the parish on 16 and 17 April 1994.<sup>269</sup> The Chamber therefore finds that Sylvestre Gacumbitsi aided or abetted in the perpetration of the massacres, thereby encouraging the commission of the crime of genocide in Rusumo *commune* in April 1994.

287. The Chamber finds that the requisite specific intent to establish genocide is in itself evidence of the Accused’s intention to participate in the commission of such acts of genocide.

288. In the light of the foregoing, the Chamber finds Sylvestre Gacumbitsi responsible for planning, instigating, ordering the communal police, committing and aiding and abetting in the killing of members of the Tutsi ethnic group, as part of the scheme to perpetrate the crime of genocide.

289. In paragraph 25 of the Indictment, the Prosecutor also charges the Accused with conspiring with others, participating in the planning, preparation or implementation of a common plan, strategy or scheme aimed at exterminating the Tutsi, through his own acts, or through people whom he helped, or through his subordinates, whose acts he knew and approved of. The Prosecution seems to allege that the Accused participated in a joint criminal enterprise. However, the Chamber cannot make a finding on such allegation since it was not pleaded clearly enough to allow the Accused to defend himself adequately. The Prosecution also seems to allege that the Accused participated in a conspiracy, a form of commission of the crime of genocide (Article 2(3)(c) of the Statute). Again, the Chamber cannot make a finding on such allegation because the Indictment contains only the counts of genocide and complicity in genocide. In the same paragraph, the Prosecution further alleges that the Accused planned, ordered, or aided and abetted the commission of genocide. However, the Chamber has already made a finding on this matter. Lastly, the Prosecution alleges, in the alternative, that the Accused is responsible for the actions of his subordinates, i.e. he is so responsible pursuant to Article 6(3) of the Statute.

<sup>266</sup> *Kayishema and Ruzindana* Judgment (AC), para. 187; ICTY, *Tadić* Judgment (AC), para. 188; ICTY, *Kunarac and Others* Judgment (TC), para. 390; *Semanza* Judgment (TC), para. 383.

<sup>267</sup> *Semanza* Judgment (TC), para. 384; *Akayesu* Judgment (TC), para. 484.

<sup>268</sup> *Ntakirutimana* Judgment (TC), para. 787; *Akayesu* Judgment (TC), para. 484; *Kajelijeli* Judgment (TC), para. 765.

<sup>269</sup> See *supra*: Chapter II, Part C.

massacre that resulted in numerous deaths. The fact is corroborated by Prosecution Witness Patrick Fergal Keane who, weeks later, saw many corpses.<sup>289</sup>

311. Considering the leading role of the Accused in preparing and launching the attack, as well as his subsequent visits to the parish to instigate attackers to kill survivors, and the fact that he supervised their actions, the Chamber does not doubt the Accused's intention to participate in a large scale massacre in Nyarubuye.

312. The Chamber finds that the Accused had knowledge of such a widespread and systematic attack against a civilian population in Rusumo in April 1994 because, at the local level, he planned and led certain operations.<sup>290</sup>

313. The Chamber recalls that it has already made a finding on the widespread and systematic nature of the attacks against the Tutsi.<sup>291</sup>

314. In conclusion, the Chamber is satisfied beyond a reasonable doubt that the Accused incurs individual criminal responsibility under Article 6(1) of the Statute for planning extermination, inciting extermination, ordering communal policemen to exterminate and aiding and abetting in the extermination of members of the Tutsi ethnic group in Rusumo *commune* in April 1994.

315. Since the Chamber has found the Accused individually responsible under Article 6(1) of the Statute for the extermination of Tutsi in Rusumo *commune* in April 1994, it deems it unnecessary to find, given the similarity of the acts charged, whether the Accused is equally liable under Article 6(3) of the Statute.

316. Accordingly, the Chamber finds the Accused GUILTY OF EXTERMINATION AS A CRIME AGAINST HUMANITY, as charged under Count 3 of the Indictment.

### **3. Crimes against humanity – murder**

317. Count 4 of the Indictment charges the Accused with murder as a crime against humanity, pursuant to Article 3(a) of the Statute. The Prosecutor's factual allegations in support of this charge are contained in paragraphs 31 to 36 of the Indictment.

318. In the Indictment, the Prosecutor alleges that Sylvestre Gacumbitsi stabbed to death a pregnant Tutsi woman and her mother-in-law, and disembowelled the pregnant woman to extract two fetuses. The Prosecutor also alleges that Sylvestre Gacumbitsi killed a Tutsi woman and her three children, one of whom was Sylvestre Gacumbitsi's godson; that he shot and killed two civilian Tutsi; that he ordered and or planned the killing of children who had sought refuge at Nyarubuye Parish and, lastly, that he expelled and ordered the killing of his tenants.<sup>292</sup>

<sup>289</sup> See *supra*: Chapter II, Part C.

<sup>290</sup> See *supra*: Chapter II, Parts B and C.

<sup>291</sup> See *supra*: paras. 303 to 306.

<sup>292</sup> See *supra*: Chapter II, Part D.



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

---

ORIGINAL: ENGLISH

TRIAL CHAMBER III

**Before:** Judge Khalida Rachid Khan, presiding  
Judge Lee Gacuiga Muthoga  
Judge Aydin Sefa Akay

**Registrar:** Adama Dieng

**Date:** 31 March 2011

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2000-61-T

---

JUDGEMENT AND SENTENCE

---

**Office of the Prosecutor:**

Richard Karegyesa  
Drew White  
Adelaide Whest  
Didace Nyirinkwaya  
Yasmine Chubin  
Leo Nwoye

**Counsel for the Defence:**

Marie-Pierre Poulain  
Kate Gibson

assailants, who physically perpetrated the killings, possessed the intent to destroy in whole or in part the Tutsi ethnic group. This genocidal intent was shared by all participants in the joint criminal enterprise, including Gatete.<sup>739</sup>

608. In view of the above, the Chamber finds that Gatete's participation through a basic form of joint criminal enterprise most aptly captures his responsibility for the killings at Mukarange parish. In order to fully characterise Gatete's criminal conduct, the Chamber also finds that he is responsible under Article 6 (1) of the Statute for planning, instigating, ordering and aiding and abetting the killing of Tutsis at Mukarange parish on 12 April 1994.<sup>740</sup>

### 3. COMPLICITY IN GENOCIDE

609. Count II of the Indictment charges Gatete with complicity in genocide under Article 2 (3)(e) of the Statute. The Prosecution has indicated that the count of complicity is pleaded in the alternative to the count of genocide (Count I). Accordingly, having found the Accused guilty of genocide under Count I, the Chamber dismisses Count II of the Indictment.

### 4. CONSPIRACY TO COMMIT GENOCIDE

#### 4.1 Introduction

610. Count III of the Indictment charges Gatete with conspiracy to commit genocide under Article 2 (3)(b) of the Statute.

#### 4.2 Law

611. Conspiracy to commit genocide is "an agreement between two or more persons to commit the crime of genocide".<sup>741</sup> The *actus reus* of the crime is the existence of an agreement between individuals to commit genocide.<sup>742</sup> The persons involved in the agreement must possess the *mens rea* for genocide, that is the intent to destroy in whole or in part a national, ethnic, racial or religious group as such.<sup>743</sup> The *mens rea* for genocide has been discussed more fully above in connection with the crime of genocide (III.2.2).

612. With respect to the *actus reus*, the agreement can be proven by establishing the existence of planning meetings for the genocide, but it can also be inferred, based on

<sup>739</sup> In finding that Gatete had genocidal intent, consideration has been given to evidence of his close association with Tutsis and the Defence submissions that he could not, therefore, have committed genocide. However, when reviewing Gatete's conduct in relation to the killings at Mukarange parish, that evidence does not raise doubt that he possessed the genocidal intent at that time. See *Kvočka* Appeal Judgement, paras. 232-233.

<sup>740</sup> *Id.* n. 732-733.

<sup>741</sup> *Bagosora et al.* Trial Judgement para. 2087, citing *Seromba* Appeal Judgement paras. 218, 221; *Nahimana et al.* Appeal Judgement para. 894; *Ntagerura et al.* Appeal Judgement para. 92; *Kajelijeli* Trial Judgement para. 787; *Niyitegeka* Trial Judgement para. 423; *Ntakirutimana* Trial Judgement para. 798; *Musema* Trial Judgement para. 191.

<sup>742</sup> *Bagosora et al.* Trial Judgement para. 2087, citing *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896.

<sup>743</sup> *Bagosora et al.* Trial Judgement para. 2087 citing *Nahimana et al.* Appeal Judgement, paras. 894, 896; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192.



**Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda**

1406/H

A

ICTR-00-55B-A

8<sup>th</sup> May 2012

{1406/H – 1302/H}

**IN THE APPEALS CHAMBER**

Before:

Judge Fausto Pocar, Presiding  
Judge Patrick Robinson  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Carmel Agius

Registrar:

Mr. Adama Dieng

Judgement of:

8 May 2012

ICTR Appeals Chamber

Date: 8<sup>th</sup> May 2012

Action: R. Juma

Copied To: Concerned Judges

Parties, JPU, LDs

**Iddephonse HATEGEKIMANA**

v.

**THE PROSECUTOR**

Case No. ICTR-00-55B-A

**JUDGEMENT**

**Counsel for Iddephonse Hategekimana:**

Mr. Jean de Dieu Momo

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. James J. Arguin  
Mr. Alphonse Van  
Mr. Alfred Orono Orono  
Ms. Thembile Segoete  
Ms. Ndeye Marie Ka  
Mr. Leo Nwoye

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS

NAME / NOM: ROSETTE MUZIGO-MORRISON

SIGNATURE: [Signature] DATE: 8/May/2012

123. In addition, Hategekimana has not demonstrated that it was unreasonable for the Trial Chamber to reject many key aspects of Witness MZA's evidence concerning the role of civilians in the killing and the absence of soldiers at the site where the corpse was found. The Trial Chamber considered a number of factors affecting the witness's credibility.<sup>271</sup> Additionally, the Trial Chamber heard competing first-hand evidence from Witness QCL, which it found reliable and detailed, about the presence and actions of Hategekimana and soldiers following the discovery of Rugomboka's corpse.<sup>272</sup> The Trial Chamber also considered that "fright and trauma" explained why Witness QDC did not observe Hategekimana at the site where the body was discovered.<sup>273</sup> The Appeals Chamber recalls that the Trial Chamber has the main responsibility to resolve any inconsistencies that may arise within or among witnesses' testimonies.<sup>274</sup> Hategekimana has not shown that the Trial Chamber's evaluation was unreasonable.

124. Hategekimana has also not shown that it was unreasonable for the Trial Chamber to conclude that civilian assailants did not play a role in Rugomboka's removal from the camp and his killing. Notably, the Trial Chamber reasonably found that, despite the presence of civilian assailants at Rugomboka's house, the perpetrators of the abduction were soldiers, that these soldiers detained Rugomboka at the camp, and that Hategekimana and soldiers attempted to control the civilian population throughout the events.<sup>275</sup> In these circumstances, the Appeals Chamber is not convinced that, as Hategekimana submits, it would be reasonable to infer that civilian assailants murdered Rugomboka.

125. Finally, the Appeals Chamber is not convinced that the Trial Chamber erred in relying on evidence of Hategekimana's actions following the abduction and killing of Rugomboka as further support for its inference that he ordered the murder. The Appeals Chamber recalls that charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused.<sup>276</sup> However, the Prosecution need not plead all of the evidence by which facts are to be proven.<sup>277</sup> The Appeals Chamber considers

<sup>271</sup> Trial Judgement, paras. 278, 279, 301.

<sup>272</sup> Trial Judgement, paras. 298, 299.

<sup>273</sup> Trial Judgement, para. 299.

<sup>274</sup> *Munyakazi* Appeal Judgement, para. 71; *Renzaho* Appeal Judgement, para. 355; *Rukundo* Appeal Judgement, para. 207; *Simba* Appeal Judgement, para. 103.

<sup>275</sup> Trial Judgement, paras. 285, 289, 296, 303, 304.

<sup>276</sup> *Muvunyi II* Appeal Judgement, para. 19; *Muvunyi I* Appeal Judgement, para. 18; *Seromba* Appeal Judgement, paras. 7, 100; *Simba* Appeal Judgement, para. 63; *Muhimana* Appeal Judgement, paras. 76, 167, 195; *Gacumbitsi* Appeal Judgement, para. 49.

<sup>277</sup> See *Ntagerura et al.* Appeal Judgement, para. 21. See also *Arsène Shalom Ntahobali and Pauline Nyiramasuhuko v. Prosecutor*, Case No. ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ inadmissible", 5 July 2004 ("*Ntahobali and Nyiramasuhuko* Decision of 5 July 2004"), paras. 14-16 (finding that a trial chamber has the discretion to accept any relevant evidence which it deems to have probative value even where it is not possible to convict an accused on such evidence due to lack of notice).



that the events following the killing of Rugomboka were simply used to provide further context to Hategekimana's role in ordering the murder.<sup>278</sup> Even if the Prosecution were required to plead the events following the killing, the Appeals Chamber observes that Hategekimana did not object to this issue at trial and that he also has not identified any prejudice to his ability to defend against these allegations.

126. Accordingly, Hategekimana has not demonstrated that the Trial Chamber erred in concluding that the only reasonable inference from the evidence was that soldiers from the Ngoma Military Camp killed Rugomboka on the night of 9 to 10 April 1994.

### 3. Conclusion

127. For the foregoing reasons, the Appeals Chamber finds that Hategekimana has failed to demonstrate that the Trial Chamber committed any error in the assessment of the evidence which would occasion a miscarriage of justice.

### D. Conclusion

128. For the foregoing reasons, the Appeals Chamber dismisses Hategekimana's Second Ground of Appeal.

---

<sup>278</sup> See Trial Judgement, para. 304.

## IX. ALLEGED ERRORS RELATING TO THE SENTENCE (GROUND 7)

287. The Trial Chamber sentenced Hategekimana to a single sentence of life imprisonment for his convictions for genocide (Count 1), murder as a crime against humanity (Count 3), and rape as a crime against humanity (Count 4).<sup>629</sup>

288. The Appeals Chamber recalls that trial chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualize penalties to fit the circumstances of the accused and the gravity of the crimes.<sup>630</sup> As a rule, the Appeals Chamber will revise a sentence only if the appealing party demonstrates that the trial chamber committed a discernible error in exercising its sentencing discretion or that it failed to follow the applicable law.<sup>631</sup>

289. Hategekimana submits that the Trial Chamber erred in assessing his sentence and that no trier of fact could have sentenced him to life imprisonment.<sup>632</sup> In this section, the Appeals Chamber considers Hategekimana's submissions that the Trial Chamber erred in assessing: (i) the gravity of his crimes; (ii) the aggravating factors; and (iii) the mitigating factors.

### A. Gravity of the Crimes

290. Hategekimana submits that the Trial Chamber erred in focusing exclusively on the inherent gravity of the crimes and by failing to consider the nature of his personal participation.<sup>633</sup> Specifically, he contends that he did not play a leading role in the attacks and questions the quality of the evidence underpinning his convictions.<sup>634</sup> Hategekimana also challenges the Trial Chamber's comparison of his case to the much more serious crimes committed by the convicted persons in the *Renzaho*, *Seromba*, and *Gacumbitsi* cases.<sup>635</sup> Finally, Hategekimana questions how, as a junior officer, his sentence could be significantly harsher than that imposed on the much higher ranking accused in the *Ndindiliyimana et al.* case, which involved the chiefs-of-staff of the Rwandan army and gendarmerie as well as a major and a captain.<sup>636</sup> In a similar vein, he notes the reduction on

<sup>629</sup> Trial Judgement, paras. 730, 748.

<sup>630</sup> See *Munyakazi* Appeal Judgement, para. 166; *Setako* Appeal Judgement, para. 277; *Muvunyi II* Appeal Judgement, para. 63; *Renzaho* Appeal Judgement, para. 606; *Rukundo* Appeal Judgement, para. 240; *Kalimanzira* Appeal Judgement, para. 224; *Nchamihigo* Appeal Judgement, para. 384.

<sup>631</sup> See *Munyakazi* Appeal Judgement, para. 166; *Setako* Appeal Judgement, para. 277; *Muvunyi II* Appeal Judgement, para. 63; *Renzaho* Appeal Judgement, para. 606; *Rukundo* Appeal Judgement, para. 240; *Kalimanzira* Appeal Judgement, para. 224; *Nchamihigo* Appeal Judgement, para. 384.

<sup>632</sup> Notice of Appeal, paras. 140-142, 146; Appeal Brief, paras. 425-443; Reply Brief, para. 154.

<sup>633</sup> Appeal Brief, paras. 426-435; Reply Brief, paras. 153, 154.

<sup>634</sup> Appeal Brief, paras. 428, 429, 435.

<sup>635</sup> Appeal Brief, para. 427.

<sup>636</sup> Appeal Brief, paras. 431-433.

530



ICTR-98-44A-A  
23 May 2005  
C3615/H-3488/H

3615/H  
RMM

Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Florence Ndepele Mwachande Mumba  
Judge Wolfgang Schomburg  
Judge Inés Mónica Weinberg de Roca

Registrar:

Mr. Adama Dieng

Judgement of:

23 May 2005

JUVÉNAL KAJELIJELI  
(Appellant)

v.

THE PROSECUTOR  
(Respondent)

Case No. ICTR-98-44A-A

ICTR Appeals Chamber

Date: 23 May 2005

Action:

Copied To: Concerned Judges,

Parties, Judicial Archives,  
LOs, LSS

2005 MAY 23 A 10:36

JUDICIAL RECORDS/ARCHIVES  
ICTR

JUDGEMENT

Counsel for the Appellant:

Prof. Lennox S. Hinds  
Prof. Sherrie L. Russell-Brown  
Ms. Juliette Chinaud

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow  
Mr. James Stewart

|                                                                                                  |                |
|--------------------------------------------------------------------------------------------------|----------------|
| International Criminal Tribunal for Rwanda<br>Tribunal pénal international pour le Rwanda        |                |
| CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME<br>COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS |                |
| NAME / NOM: Rosette Muzigo-Morrison                                                              |                |
| SIGNATURE: <i>[Signature]</i>                                                                    | DATE: 23/05/05 |

**XXIV. DISPOSITION**

325. For the foregoing reasons, **THE APPEALS CHAMBER**, unanimously

**PURSUANT** to Article 24 of the Statute and Rule 118 of the Rules;

**NOTING** the written submissions of the parties and their oral arguments presented at the hearing on 7 March 2005;

**SITTING** in open session;

**VACATES** the Appellant's convictions under Counts 2 and 6 for genocide and extermination as a crime against humanity insofar as they are based on a finding of the Appellant's superior responsibility under Article 6(3) of the Statute;

**DISMISSES** the appeal in all other respects;

**FINDS**, *proprio motu*, that the Appellant's fundamental rights were seriously violated during his arrest and detention and, therefore:

**SETS ASIDE** the sentences imposed by the Trial Chamber and **CONVERTS** them into a single sentence of 45 years of imprisonment, subject to credit being given under Rule 101(D) of the Rules for the period already spent in detention from 5 June 1998;

**RULES** that this Judgement shall be enforced immediately pursuant to Rule 119 of the Rules;

**ORDERS**, in accordance with Rules 103(B) and 107 of the Rules, that Juvénal Kajelijeli is to remain in the custody of the Tribunal pending his transfer to the State in which his sentence will be served.

**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

UNITED NATIONS  
NATIONS UNIES



**TRIAL CHAMBER II**

Original: English

**Before Judges:** William H. Sekule, Presiding  
Winston C. Matanzima Maqutu  
Arlette Ramaroson  
**Registrar:** Adama Dieng

**Judgment of: 1 December 2003**

**THE PROSECUTOR**  
v.  
**Juvénal KAJELIJELI**  
**Case No. ICTR-98-44A-T**

---

**JUDGMENT AND SENTENCE**

---

**Counsel for the Prosecution:**  
Ifeoma Ojemeni

**Counsel for the Defence:**  
Lennox S. Hinds  
Nkeyi M. Bompaka

Nkuli *Commune*; and that Witness GDD committed these murders, in furtherance of the Accused's order to "fine comb" the Nkuli *Commune* for Tutsis.

834. The Chamber found that on or around 14 April 1994 at the Ruhengeri Court of Appeal, about three hundred Tutsi were killed by *Interahamwe*. The Chamber found that the Accused played a vital role as an organizer and facilitator of the *Interahamwe* and other attackers. He did this by procuring weapons, rounding up the *Interahamwe* for purposes of the attack, and facilitating their transport to the Ruhengeri Court of Appeal by supplying them with petrol.

835. Accordingly, the Chamber finds that genocidal killings of members of the Tutsi group occurred in Mukingo, Nkuli and Kigombe *Communes* (at the Ruhengeri Court of Appeal) in April 1994, and that the Accused participated in those killings.

▪ **Individual Criminal Responsibility of the Accused (Article 6.1 of the Statute)**

836. On the basis of its factual findings and its legal findings above the Chamber finds that the Accused participated in the killings in Mukingo and Nkuli *communes* by instigating the attacks against members of the Tutsi group, ordering the *Interahamwe* to kill members of the Tutsi group and instigating others to kill members of the Tutsi group.

837. The Chamber finds that the Accused participated to the killings of members of the Tutsi group in the Ruhengeri Court of Appeal in Kigombe *commune* by aiding and abetting the commission of the crime.

838. The Chamber finds that at the time of his participation in these killings, the Accused harboured the intent to destroy the Tutsi ethnic group in whole or in part.

▪ **Criminal Responsibility of the Accused as a superior (Article 6.3 of the Statute)**

839. On the basis of all the evidence reviewed to in Part III and on the basis of its previous findings the Chamber finds that the Accused knew or had reason to know that the *Interahamwe* were about to commit acts of genocide in Mukingo and Nkuli *Communes* and at the Ruhengeri Court of Appeal in Kigombe *Commune* between 7 and 14 April 1994.

840. The Chamber infers from the evidence and its previous findings as well as from the circumstances of the case that the Accused failed to take the necessary and reasonable measures to prevent the acts of genocide committed by his subordinates.

841. There is, however, insufficient evidence for the Chamber to find that the Accused failed to take the necessary and reasonable measures to punish the acts of genocide committed by his subordinates.

*(d) Conclusion*

842. In conclusion, the Chamber finds beyond a reasonable doubt that the Accused is individually criminally responsible for instigating, ordering, and aiding and abetting the killing of members of the Tutsi ethnic group in Mukingo *Commune* and Nkuli *Commune*, as well as at the Ruhengeri Court of Appeal in Kigombe *Commune*, pursuant to Article 6(1) of the Statute.

843. The Chamber finds beyond a reasonable doubt that the Accused is criminally responsible for the acts of genocide (killing of members of the Tutsi ethnic group) committed by his subordinates in Mukingo and Nkuli *Communes* and at the Ruhengeri Court of Appeal in Kigombe *Commune*, pursuant to Article 6(3) of the Statute.

844. Having found the Accused criminally responsible for the killing of members of the Tutsi group in the areas mentioned above, the Chamber will not consider the question whether the Accused or his subordinate caused serious bodily or mental harm to members of the Tutsi population.

845. Accordingly, the Chamber finds Juvénal Kajelijeli GUILTY of GENOCIDE, pursuant to Article 2(3)(a), as charged in **Count 2** of the Indictment.

*4. Complicity of Genocide**(a) Indictment*

846. As an alternative count to Count 2, Count 3 of the Indictment charges:

*Count 3: Complicity to commit genocide, pursuant to Article 2(3)(e) of the Statute*

Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.18, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9,

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.18, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9,

Is responsible for killing and causing serious bodily and mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed COMPLICITY IN GENOCIDE, pursuant to Article 2(3)(e) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

*(b) Conclusion*

847. The Chamber recalls that Count 3 is an alternative count to Count 2 of the Indictment and that both charges arose out of the same factual allegations. Considering that the Chamber has already found the Accused guilty of genocide under Count 2

possible involvement in Tutsi deaths and mistreatment prior to 1994, with the result that this subject matter was not fully explored at trial.

949. The Chamber finds upon a careful consideration of the evidence of Defence Witness JK-312 that Kajelijeli assisted in the evacuation of a Tutsi family on or about 8 April 1994.

950. The Chamber finds that no credit is due to Kajelijeli on the basis that a handful of Tutsi civilians received shelter at the home of Kajelijeli's second wife. The Chamber finds that it was the wife that took these refugees in and stayed with them, and not Kajelijeli. Hence, any credit due in this regard will more appropriately go to the wife of Kajelijeli, and not to Kajelijeli himself.

951. The Chamber considers that assisting in the evacuation of one Tutsi man and his family is insufficient to mitigate Kajelijeli's sentence, in light of the number of Tutsis whom Kajelijeli not only failed to protect, but whose deaths he actively brought about.

952. The Chamber finds that there are no circumstances to mitigate the culpability of Kajelijeli for the crimes for which he has been found guilty.

### C. Aggravating Factors

953. The Chamber notes that according to Article 23(2) of the Statute, the gravity of the crimes committed should be taken into account during sentencing. The Chamber interprets this to mean that the more heinous the crime, the higher the sentence that should be imposed upon its perpetrator. However, in assessing the gravity of the offence, the Chamber ought to go beyond the abstract gravity of the crime to take into account the particular circumstances of the case as well as the form and the degree of the participation of Kajelijeli in the crime.<sup>1118</sup>

954. Kajelijeli has been found guilty on two counts of Genocide and one count of Extermination as crime against humanity.

955. The Chamber notes that there is no evidence of any previous criminal conduct on the part of Kajelijeli.

956. The Prosecution submitted that Kajelijeli should be sentenced to imprisonment for the remainder of his life.<sup>1119</sup> It gives its reasons for making this submission as, first, that the crime of genocide constitutes the "crime of crimes" and that this should be taken into account when deciding the sentence. Secondly, that only a sentence for the remainder of his life will provide an appropriate punishment for the heinous crimes that Kajelijeli committed. Thirdly, that Kajelijeli was central in organizing hundreds of perpetrators, an entire community, to murder the defenceless civilian Tutsi in Ruhengeri *prefecture*, nearly

<sup>1118</sup> *Semanza*, Judgment (TC), para. 555.

<sup>1119</sup> Prosecution Closing Brief (Corrigendum), para. 355.





**Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Andréia Vaz  
Judge Carmel Agius

**Registrar:** Mr. Adama Dieng

**Judgement of:** 20 October 2010

**CALLIXTE KALIMANZIRA**

**v.**

**THE PROSECUTOR**

*Case No. ICTR-05-88-A*

---

**JUDGEMENT**

---

**Counsel for Callixte Kalimanzira:**

Mr. Arthur Vercken  
Ms. Anta Guissé

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. Alphonse Van  
Ms. Charity Kagwe-Ndungu  
Mr. François-Xavier Nsanzuwerwa  
Ms. Florida Kabasinga  
Ms. Jane Mukangira

this case, the Appeals Chamber, Judge Pocar dissenting, is not convinced that the opening statement alone was sufficient to eliminate the confusion described above. Considered individually, the inaccurate description of the location of the roadblock in the annex of the Pre-Trial Brief, the comments by the Trial Chamber and the Prosecution at the status conference about the Prosecution Pre-Trial Brief, the short time-period between the filing of the French translation of the Prosecution Pre-Trial Brief and Witness BXK's testimony, and the confusion exhibited by Kalimanzira's Defence team are not necessarily sufficient to undermine Kalimanzira's conviction. Considered together however, these factors demonstrate that Kalimanzira failed to receive sufficient notice that he was facing charges related to the Butare-Gisagara roadblock, rendering his conviction unsafe.

149. In sum, the Appeals Chamber agrees with the Trial Chamber that paragraph 15 of the Indictment is defective in relation to Kalimanzira's role in the events at the Butare-Gisagara roadblock. The Appeals Chamber, Judge Pocar dissenting, finds however that the subsequent notice of this allegation was not timely, clear, or consistent, and resulted in prejudice to Kalimanzira. Accordingly, the Appeals Chamber, Judge Pocar dissenting, finds that the Trial Chamber erred in law by finding that this defect was cured and accordingly in judging Kalimanzira guilty on the basis of his actions at the Butare-Gisagara roadblock.

150. For the foregoing reasons, the Appeals Chamber, Judge Pocar dissenting, grants Kalimanzira's Seventh Ground of Appeal. Accordingly, the Appeals Chamber reverses Kalimanzira's conviction for instigating and aiding and abetting genocide on this basis. It is therefore unnecessary to address Kalimanzira's remaining arguments concerning the assessment of the evidence.

---

a firearm to the leader of those manning the roadblock with the specific instruction that it was going to be used to kill Tutsi. He also spurred on the killing of Tutsi at the roadblock situated on the Butare-Gisagara road in Ndora *commune* in connection with the Kabuye hill massacres. Once again, the Accused Kalimanzira instructed the people manning the roadblock to kill Tutsi and distributed a firearm to facilitate such killings.”).

538

ICTR-05-88-T  
22-6-2009  
(1873-1690)

1873  
HM



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 22 June 2009

**THE PROSECUTOR**

v.

Callixte KALIMANZIRA

Case No. ICTR-05-88-T

JUDICIAL RECORDS ARCHIVE  
2009 JUN 22 A 9:05  
22/06/2009

**JUDGEMENT**

**Office of the Prosecutor**  
Christine Graham  
Veronic Wright  
Ousman Jammeh

**Defence Counsel**  
Arthur Vercken  
Anta Guissé

|                                                                                                  |                     |
|--------------------------------------------------------------------------------------------------|---------------------|
| International Criminal Tribunal for Rwanda<br>Tribunal pénal international pour le Rwanda        |                     |
| CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME<br>COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS |                     |
| NAME / NOM:                                                                                      | AMINATTA L.R. N'GUM |
| SIGNATURE:                                                                                       | 22/06/2009          |

86y

14. The Defence suggests that any consideration of *de facto* authority should be ruled out because the defect has not been cured in any subsequent filings.<sup>8</sup> However, the Chamber notes that in its own Pre-Trial Brief, filed six and a half months before it raised the present issue, the Defence introduced the Prosecution's position on Kalimanzira's alleged control in Butare *préfecture* as including both *de jure* and *de facto* authority.<sup>9</sup> The Defence was clearly aware long ago that Kalimanzira's alleged *de facto* authority over the people of Butare was an issue in this trial and formed part of the Prosecution's case. The omission of "de fait" from the French version of the Indictment has not caused the Defence any prejudice or created any confusion. In fact, Kalimanzira's defence is premised on his high-standing and good reputation throughout Butare society. Kalimanzira's *de facto* authority is therefore not in serious contention (see also III.1.1.4); the question is whether he abused it to genocidal ends. The Defence's attempt to persuade the Chamber to dismiss a consideration of Kalimanzira's alleged *de facto* authority is therefore unfounded.

## 2.2. Failure to Plead Superior Responsibility

15. The Defence points out that Kalimanzira is only accused of individual criminal responsibility under Article 6 (1) of the Statute, and argues that because superior responsibility under Article 6 (3) has not been pleaded, Kalimanzira's alleged criminal responsibility may not be evaluated in light of any hierarchical powers he may have held. This contention stands to be rejected for the following reasons.

16. The language used in paragraph 2(vii) of the Indictment, *i.e.* that by virtue of the government positions Kalimanzira held, he exercised "*de jure* and *de facto* authority" over various Butare officials and civilians, "in that he could order these persons to commit or refrain from committing unlawful acts and discipline or punish them for their unlawful acts or omission," is similar to that used when pleading an accused's responsibility as a superior. However, crimes committed by virtue of an accused's abuse of his or her *de jure* or *de facto* powers are not limited to liability under Article 6 (3). Evidence of *de jure* or *de facto* authority can also assist in factually proving criminal liability under the modes of participation contained within Article 6 (1). In fact, at times it is more appropriate to convict under Article 6 (1) than 6 (3), even if an accused has *de jure* authority.<sup>10</sup>

17. The first portion of the underlined extract above refers to Kalimanzira's alleged ability to order others to commit crimes. Ordering is a mode of participation under Article 6 (1). With respect to ordering, a person in a position of authority<sup>11</sup> may incur responsibility for ordering another person to commit an offence,<sup>12</sup> if the person who received the order actually proceeds to commit the offence subsequently.<sup>13</sup>

<sup>8</sup> See Defence Closing Brief, fn 998.

<sup>9</sup> See Defence Closing Brief, para. 10.

<sup>10</sup> For instance, when, for the same count and the same set of facts, the accused's responsibility is pleaded pursuant to both Articles 6 (1) and 6 (3) and the accused could be found liable under both provisions, the Trial Chamber should rather enter a conviction on the basis of Article 6 (1) alone and consider the superior position of the accused as an aggravating circumstance. See *Nahimana et al.* Appeal Judgement, para. 487; *Kajelijeli* Appeal Judgement, para. 81; see also *Galić* Appeal Judgement, para. 186; *Jokić* Appeal Judgement, paras. 23-28; *Kordić and Čerkez* Appeal Judgement, paras. 34-35; *Blaškić* Appeal Judgement, para. 91.

<sup>11</sup> It is not necessary to demonstrate the existence of an official relationship of subordination between the accused and the perpetrator of the crime: *Galić* Appeal Judgement, para. 176; *Gacumbitsi* Appeal Judgement, para. 182; *Kamuhanda* Appeal Judgement, para. 75; *Semanza* Appeal Judgement, para. 361; *Kordić and Čerkez* Appeal Judgement, para. 28.

<sup>12</sup> *Galić* Appeal Judgement, para. 176; *Ntagerura et al.* Appeal Judgement, para. 365; *Kordić and Čerkez* Appeal Judgement, paras. 28-29.

<sup>13</sup> *Nahimana et al.* Appeal Judgement, para. 481.

arrival at the roadblock on 23 April, allowing time for Kalimanzira to arrive from Kibungo.<sup>502</sup> In any event, the alibi evidence of Kalimanzira does not cast reasonable doubt on the testimony of BXX.

473. In light of the above, the Chamber finds that the Prosecution has proven beyond reasonable doubt that, in April 1994, Kalimanzira stopped at a roadblock on the Butare-Gisagara road, asked the men manning the roadblock why they did not have weapons and why they had instructed the Tutsis to sit down instead of killing them. Kalimanzira then provided a weapon to a man at the roadblock. Subsequently, Tutsis at the roadblock were deprived of their belongings and taken to a nearby pit, where they were killed.

474. The Chamber also finds that the Prosecution has proven beyond reasonable doubt that, by doing so, Kalimanzira both instigated and aided and abetted genocide. The Chamber recalls that modes of liability under Article 6 (1) of the Statute are not mutually exclusive and that the Chamber may find the accused guilty of more than one mode if it is necessary to reflect the totality of the accused's conduct.<sup>503</sup> By asking those men at the roadblock why they had not killed the Tutsis who were detained there, Kalimanzira prompted those men to kill the Tutsis; by providing the weapon with which at least some of those Tutsis were killed, Kalimanzira assisted in the perpetration of their murders. The Chamber finds that Kalimanzira's speech and actions substantially contributed to the killings of the Tutsis detained at the roadblock, and that it was his intention to do so. Kalimanzira exhibited here, as elsewhere, an intent to destroy the Tutsi group (see III.5.2). For these reasons, the Chamber finds Kalimanzira guilty beyond reasonable doubt of having instigated and aided and abetted genocide at a roadblock on the Butare-Gisagara road on or around 22 April 1994.

## **2.8. Muganza Commune Football Field, May**

475. At paragraph 17 of the Indictment, the Prosecution charges Kalimanzira with Genocide for personally demonstrating how to shoot arrows at a public rally held on the Muganza *commune* football field for the purpose of training people how to handle weapons. It is alleged that those who were trained under Kalimanzira's supervision subsequently took part in killing Tutsis in the area.

476. In its Closing Brief, the Prosecution submits that the main significance of the meeting was not the weapons training provided, but the underlying call to kill any Tutsis who may have survived the first round of massacres.<sup>504</sup>

477. The Defence contends that while rallies may have been held on a field near the Muganza *commune* office between April and June 1994, Kalimanzira was not in attendance at any of them. Further, the weapons training exercise that a Defence witness did attend only proves the existence of a civil defence programme under military supervision, rather than a call to kill Tutsi.<sup>505</sup> In addition, Kalimanzira relies on his alibi that, save for a few specified occasions, he was working in Murambi (Gitarama *préfecture*) from 14 April to 31 May 1994 (see III.1.2).

### **2.8.1. Evidence**

#### ***Prosecution Witness BCA***

<sup>502</sup> Exhibit D7.

<sup>503</sup> *Nahimana* Appeal Judgement, para. 483.

<sup>504</sup> Prosecution Closing Brief, paras. 182-185.

<sup>505</sup> Defence Closing Brief, paras. 515-519.

aiding and abetting.<sup>774</sup> However, this alone does not mean that a life sentence is the only appropriate sentence for a principal perpetrator of genocide.<sup>775</sup> At this Tribunal, a sentence of life imprisonment is generally reserved those who planned or ordered atrocities and those who participate in the crimes with particular zeal or sadism.<sup>776</sup> Offenders receiving the most severe sentences tend to be senior authorities.<sup>777</sup> The Chamber has also considered the sentences handed down for convictions of Direct and Public Incitement to Commit Genocide only, which have ranged from 12 years to life imprisonment.<sup>778</sup>

745. The Chamber has found Kalimanzira guilty of aiding and abetting the crime of Genocide at the inauguration of Élie Ndayambaje (see III.2.3.6.2) and at Kabuye hill (see III.2.4.2). In addition, the Chamber has found Kalimanzira guilty of aiding and abetting, as well as instigating, the crime of Genocide at a roadblock on the Butare-Gisagara road (see III.2.7.4.2). Kalimanzira indirectly perpetrated these crimes. The Chamber has also found Kalimanzira guilty of committing the crime of Direct and Public Incitement to Commit Genocide at the Jaguar roadblock (see III.4.3.2), the Kajyanama roadblock (see III.4.4.2), the Nyabisagara football field (see III.4.5.2), and the Gisagara marketplace (see III.4.9.5.2). Kalimanzira was the principal perpetrator of these crimes.

746. The Chamber takes due notice of the intrinsic gravity of Kalimanzira's crimes. Genocide is, by definition, a crime of the most serious gravity which affects the very foundations of society and shocks the conscience of humanity. Directly and publicly inciting others to commit that crime is, in the Chamber's opinion, of similar gravity. The harm that justifies the criminalization of direct and public incitement is in the special dangerousness associated with inciting an unspecified and indeterminate group of people to commit a crime so heinous as genocide, which risks creating an overall atmosphere conducive to violence and criminal activity capable of reaching uncontrollable proportions.

747. The Chamber also notes that the charges for which Kalimanzira is convicted relate to crimes committed in his own *préfecture* and not crimes committed at the national level. Moreover, although he was the *Directeur de Cabinet* of the Ministry of the Interior and this lent him the credibility and influence required for some of his criminal acts, the crimes for which he is convicted are essentially unrelated to his official duties and powers at the national level.

<sup>774</sup> *Semanza* Appeal Judgement, para. 388.

<sup>775</sup> *Ntakirutimana* Trial Judgement, paras. 791-793, 832-834, 908-909, 924 (imposing 25 years' imprisonment for personal participation).

<sup>776</sup> *Musema* Appeal Judgement, para. 383 (noting that the leaders and planners of a particular conflict should bear heavier responsibility, with the qualification that the gravity of the offence is the primary consideration in imposing a sentence); *Nchamihigo* Trial Judgement, para. 395 (deputy prosecutor, the Chamber noting that he exhibited extreme zeal in killing); *Niyitegeka* Trial Judgement, para. 486; *Muhimana* Trial Judgement, paras. 604-616 (*conseiller*, but recounting the particularly atrocious manner in which the accused personally raped, killed, mutilated, and humiliated his victims).

<sup>777</sup> Life sentences have been imposed against senior government authorities in: *Ndindabahazi* Trial Judgement, paras. 505, 508, 511 (Minister of Finance); *Niyitegeka* Trial Judgement, paras. 499, 502 (Minister of Information); *Kambanda* Trial Judgement, paras. 44, 61-62 (Prime Minister); *Kamuhanda* Trial Judgement, paras. 6, 764, 770 (Minister of Higher Education and Scientific Research). In addition, life sentences have been imposed on lower level officials, as well as those who did not hold government positions. See e.g., *Nchamihigo* Trial Judgement, paras. 395-396 (deputy prosecutor in Cyangugu *préfecture*); *Musema* Trial Judgement, paras. 999-1008 (influential director of a tea factory who exercised control over killers); *Rutaganda* Trial Judgement, paras. 466-473 (second vice-president of *Interahamwe* at national level).

<sup>778</sup> *Akayesu* Trial Judgement (life sentence); *Kajelijeli* Trial Judgement (15 year sentence); *Ruggiu* Trial Judgement (12-year sentence); *Bikindi* Trial Judgement (15-year sentence).



UNITED NATIONS  
NATIONS UNIES

**Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Florence Ndepele Mwachande Mumba  
Judge Wolfgang Schomburg  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr. Adama Dieng

**Judgement of:** 19 September 2005

**JEAN DE DIEU KAMUHANDA**  
(Appellant)

v.

**THE PROSECUTOR**  
(Respondent)

**Case No. ICTR-99-54A-A**

---

**JUDGEMENT**

---

**Counsel for the Appellant:**

Ms. Aïcha Condé

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. James Stewart  
Ms. Amanda Reichman  
Mr. Neville Weston  
Ms. Inneke Onsea

65. First, the Appeals Chamber observes that the Trial Chamber in the cited paragraph found that the Appellant enjoyed a "certain influence in the Gikomero community".<sup>129</sup> This fact alone is not sufficient to establish the Appellant's responsibility for "instigating" the crimes. Second, this reasoning would be inconsistent with the fact that the Trial Chamber did not exclude the possibility that the attackers did not come from Gikomero, but from Rubungo.<sup>130</sup> Therefore, the Appeals Chamber finds the fact that the Appellant enjoyed a certain influence in the Gikomero community to be immaterial to the alleged relation between the meeting in the Appellant's cousin's home and the attack on the Gikomero Parish Compound.

66. In summary, the Appeals Chamber finds that the Trial Chamber's conclusion that the Appellant instigated assailants to kill members of the Tutsi ethnic group is not supported by the evidence.

## 2. Aiding and Abetting

67. The Trial Chamber concluded that the Appellant aided and abetted the commission of the crimes through the distribution of weapons and by leading the attackers to the Gikomero Parish Compound. The Appellant challenges the Trial Chamber's finding that he distributed weapons prior to the attack, and argues that there was no evidence that he directed the attackers.<sup>131</sup>

68. The Appeals Chamber agrees, Judge Schomburg dissenting, with the Appellant that the evidence does not support any connection between the distribution of weapons and the subsequent attack on the Gikomero Parish Compound. It was neither established that the persons present during the meeting in the house of the Appellant's cousin took part in the attack, nor that the weapons he distributed were used at all. The Appeals Chamber recalls again that the Trial Chamber did not rule out the possibility that the attackers did not come from Gikomero, but from another location.<sup>132</sup>

69. In paragraph 648 of the Trial Judgement, the Trial Chamber found that the Appellant aided and abetted the commission of the crimes "by leading the attackers to the Gikomero Parish Compound".<sup>133</sup> This could be understood in the sense that the Trial Chamber held the Appellant responsible for aiding and abetting the attackers by guiding them to the Gikomero Parish

---

<sup>129</sup> Trial Judgement, para. 73.

<sup>130</sup> Trial Judgement, para. 67.

<sup>131</sup> Appeal Brief, para. 185.

<sup>132</sup> Trial Judgement, para. 67.



- Augustin Bucundura was shot by an armed person who had come with the Appellant, while the Appellant was still present at the Parish.<sup>141</sup>
- The Appellant was in a position of authority over the attackers.<sup>142</sup>
- The Appellant led the attackers in the Gikomero Parish Compound and initiated the attack.<sup>143</sup>

72. It has been already noted that a link between the participants of the meeting in the home of the Appellant's cousin and the attackers has not been established, so the first of these findings has to be disregarded. However, considering only the remaining five findings, the Appeals Chamber finds that a reasonable trier of fact could arrive at the conclusion that the Appellant aided and abetted the commission of the crimes by his actions at the Gikomero Parish Compound on 12 April 1994. The erroneous finding of the Trial Chamber that the Appellant aided and abetted the commission of crimes also by distributing weapons therefore does not amount to a miscarriage of justice.

### 3. Ordering

73. The Appellant submits that it has not been demonstrated that he held a position of authority in relation to the assailants.<sup>144</sup> He points to the Trial Chamber's finding that there was no specific evidence concerning the relationship between the attackers and him, and that the Trial Chamber did not find him responsible under Article 6(3) of the Statute. The Appellant argues that this finding should have prevented the Trial Chamber from finding him responsible for ordering under Article 6(1) of the Statute.<sup>145</sup> He adds that the simple fact that he arrived in the company of the attackers did not constitute circumstantial evidence of the necessary authority over the attackers. Concerning the order he allegedly gave, the Appellant submits that he has already demonstrated that most witnesses never mentioned an order, and that those witnesses who did were not credible.<sup>146</sup> He adds that he had established at trial that the attackers came from Rubungu, whereas the Trial Chamber had found that he had influence only in the Gikomero

---

<sup>140</sup> Trial Judgement, para. 639.

<sup>141</sup> Trial Judgement, para. 640.

<sup>142</sup> Trial Judgement, para. 641.

<sup>143</sup> Trial Judgement, para. 643.

<sup>144</sup> Appeal Brief, para. 186.

<sup>145</sup> Appeal Brief, paras. 188, 189.

<sup>146</sup> Appeal Brief, para. 192.

*commune*. This, the Appellant contends, shows that he could not have had any authority over the attackers.<sup>147</sup>

74. The Prosecution responds that there was sufficient evidence supporting the Trial Chamber's finding that the Appellant gave the order to "work", and that, in the absence of any clear evidence of authority, the existence of such authority may be inferred from the fact that an order is obeyed.<sup>148</sup> The Prosecution adds that the Appellant held a prominent and influential position in the Gikomero community and was a well-known civil servant, and that his mere presence at the Parish would have been an encouragement to the attackers.<sup>149</sup>

75. The Appeals Chamber notes that superior responsibility under Article 6(3) of the Statute is a distinct mode of responsibility from individual responsibility for ordering a crime under Article 6(1) of the Statute. Superior responsibility under Article 6(3) of the Statute requires that the accused exercise "effective control" over his subordinates to the extent that he can prevent them from committing crimes or punish them after they committed the crimes.<sup>150</sup> To be held responsible under Article 6(1) of the Statute for ordering a crime, on the contrary, it is sufficient that the accused have authority over the perpetrator of the crime,<sup>151</sup> and that his order have a direct and substantial effect on the commission of the illegal act.<sup>152</sup> In the *Semanza* Appeal Judgement, the Appeals Chamber made clear that no formal superior-subordinate relationship is required.<sup>153</sup>

76. There is no requirement that an order be given in writing or in any particular form, and the existence of an order may be proven through circumstantial evidence.<sup>154</sup> As will be shown below, the factual finding that the Appellant gave the order to start the massacre, and that this order was obeyed, was not unreasonable.<sup>155</sup> The Appeals Chamber finds that a reasonable trier of fact could conclude from the fact that the order to start the massacre was directly obeyed by the attackers that this order had direct and substantial effect on the crime, and that the Appellant had

<sup>147</sup> Appeal Brief, paras. 204-210.

<sup>148</sup> Respondent's Brief, paras. 259, 260.

<sup>149</sup> Respondent's Brief, para. 261.

<sup>150</sup> *Bagilishema* Appeal Judgement, para. 50.

<sup>151</sup> *Semanza* Appeal Judgement, para. 361. See also *Kordi* and *Cerkez* Appeal Judgement, para. 28 (for the identical provision in Article 7(1) of the ICTY Statute).

<sup>152</sup> *Kayishema and Ruzindana* Appeal Judgement, para. 186.

<sup>153</sup> *Semanza* Appeal Judgement, para. 361.

<sup>154</sup> *Kordi* and *Cerkez* Trial Judgement, para. 388.

<sup>155</sup> See Chapter XI.K.4.c.

authority over the attackers, regardless of their origin. This sub-ground of appeal is therefore without merit and the Appeals Chamber dismisses it.

#### 4. The Appellant's Convictions for Ordering and Aiding and Abetting

77. The factual findings of the Trial Chamber support the Appellant's conviction for aiding and abetting as well as for ordering the crimes. Both modes of participation form distinct categories of responsibility. In this case, however, both modes of responsibility are based on essentially the same set of facts: the Appellant "led" the attackers in the attack and he ordered the attackers to start the killings. On the facts of this case, with the Appeals Chamber disregarding the finding that the Appellant distributed weapons for the purposes of determining whether the Appellant aided and abetted the commission of the crimes, the Appeals Chamber does not find the remaining facts sufficiently compelling to maintain the conviction for aiding and abetting. In this case the mode of responsibility of ordering fully encapsulates the Appellant's criminal conduct at the Gikomero Parish Compound.<sup>156</sup>

#### B. Genocide

78. The Appellant submits that his intent to destroy the Tutsi ethnic group in whole or in part has not been proven.<sup>157</sup> He argues that the Trial Chamber based its finding on circumstantial evidence which was unreliable.<sup>158</sup> He challenges, in particular, the Trial Chamber's holding that the origin of the attackers was immaterial to his criminal responsibility.<sup>159</sup> The Appellant maintains that the attackers did not come from Gikomero, but from the neighbouring commune of Rubungu, whereas, the Appellant argues, the Trial Chamber found that he had influence only in the Gikomero Commune.<sup>160</sup>

79. Under the heading "Intent to Destroy in Whole or in Part the Tutsi Ethnic Group", the Trial Chamber referred to a number of its earlier findings:

---

<sup>156</sup> Cf. *Semanza* Appeal Judgement, paras. 353, 364, Disposition (where the Trial Chamber's convictions for aiding and abetting extermination and complicity in genocide were reversed on appeal and the Appeals Chamber entered convictions for ordering extermination and genocide (ordering) with respect to the same events).

<sup>157</sup> Appeal Brief, para. 194.

<sup>158</sup> Appeal Brief, paras. 196-201.

<sup>159</sup> Appeal Brief, para. 204.

<sup>160</sup> Appeal Brief, paras. 205-210.

547

ICTR-99-54A-T  
23-01-2004  
(1597-1273)

1597  
mump



United Nations  
Nations Unies

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

## TRIAL CHAMBER II

**Before:** Judge William H. Sekule, Presiding  
Judge Winston C. Matanzima Maqutu  
Judge Arlette Ramaroson

**Registrar:** Adama Dieng

**Date:** 22 January 2003

**The PROSECUTOR**

v.

**Jean de Dieu KAMUHANDA**

*Case No. ICTR-99-54A-T*

2004 JAN 23 P 7:55  
JAN 23 2004  
JAN 23 2004

## JUDGMENT AND SENTENCE

### Counsel for the Prosecution

Mr. Marks Moore  
Mr. Ibukunolo Alao Babajide  
Ms. Dorothee Marotine (Case Manager)

### Counsel for the Defence

Ms. Aïcha Condé  
Ms. Patricia Mongo  
Ms. Anta Guisse (Legal Assistant)  
Ms. Seynabou Benga (Legal Assistant)

Amel

omissions may constitute instigation.<sup>1198</sup> Instigation is punishable on proof of a causal connection between the instigation and the commission of the crime.<sup>1199</sup>

(iii) Ordering

594. "Ordering", implies a situation in which an individual with a position of authority uses such authority to impel another, who is subject to that authority, to commit an offence.<sup>1200</sup> No formal superior-subordinate relationship is required for a finding of "ordering" so long as it is demonstrated that the accused possessed the authority to order.<sup>1201</sup> The position of authority of the person who gave an order may be inferred from the fact that the order was obeyed.

(iv) Committing

595. To "commit" a crime usually means to perpetrate or execute the crime by oneself or to omit to fulfil a legal obligation in a manner punishable by penal law. In this sense, there may be one or more perpetrators in relation to the same crime where the conduct of each perpetrator satisfies the requisite elements of the substantive offence.<sup>1202</sup>

(v) Aiding and Abetting in the Planning, Preparation, or Execution of an Offence

596. "Aiding and abetting" relate to discrete legal concepts.<sup>1203</sup> "Aiding" signifies providing assistance to another in the commission of a crime. "Abetting" signifies facilitating, encouraging, advising or instigating the commission of a crime.<sup>1204</sup> Legal usage, including that in the Statute and case law of the ICTR and the ICTY, often inter-links the two terms and treats them as a broad singular legal concept.<sup>1205</sup>

597. "Aiding and abetting", pursuant to the jurisprudence of the *ad hoc* Tribunals, relates to acts of assistance that intentionally provide encouragement or support to the commission of a crime.<sup>1206</sup> The act of

<sup>1198</sup> *Kordic and Cerkez*, Judgment (TC), para. 387.

<sup>1199</sup> *Semanza*, Judgment (TC), para. 381; *Bagilishema*, Judgment (TC), para. 30.

<sup>1200</sup> *Semanza*, Judgment (TC), para. 382; *Bagilishema*, Judgment (TC), para. 30; *Rutaganda*, Judgment (TC), para. 39; *Akayesu*, Judgment (TC), para. 483.

<sup>1201</sup> *Kordic and Cerkez*, Judgment (TC), para. 388.

<sup>1202</sup> *Kayishema and Ruzindana*, Judgment (AC), para. 187; *Tadic*, Judgment (AC), para. 188; *Kunarac, Vukovic and Kovac*, Judgment (TC), para. 390; *Semanza*, Judgment (TC), para. 383.

<sup>1203</sup> *Semanza*, Judgment (TC), para. 385; *Akayesu*, Judgment (TC), para. 484.

<sup>1204</sup> *Semanza*, Judgment (TC), para. 384; *Ntakirutimana*, Judgment (TC), para. 787; *Akayesu*, Judgment, para. 484.

<sup>1205</sup> *Semanza*, Judgment (TC), para. 384, referring to Mewett & Manning, *Criminal Law* (3<sup>rd</sup> ed. 1994), p. 272 (noting that aiding and abetting are "almost universally used conjunctively").

<sup>1206</sup> *Kayishema and Ruzindana*, Judgment (AC), para. 186; *Semanza*, Judgment (TC), para. 385; *Ntakirutimana*, Judgment (TC), para. 787; *Bagilishema*, Judgment (TC), paras. 33 and 36; *Musema*, Judgment (TC), paras. 125 and 126; *Kayishema and Ruzindana*, Judgment (TC), paras. 200-202; *Akayesu*, Judgment (TC), para. 484.

549

1419

o *Killing of Members of the Tutsi Group*

646. The Chamber has found that a large number of members of the Tutsi ethnic group were killed by *Interahamwe*, soldiers, policemen and individuals from the local population at the Gikomero Parish Compound on 12 April 1994.
647. Accordingly, the Chamber finds that genocidal killings of members of the Tutsi group occurred at the Gikomero Parish Compound, in Gikomero *commune*, Kigali-Rural *préfecture*, on 12 April 1994.

o *Individual Criminal Responsibility of the Accused (Article 6.1 of the Statute)*

648. On the basis of its factual findings and legal findings above, the Chamber finds that the Accused participated in the killings in Gikomero Parish Compound in Gikomero *commune* by ordering *Interahamwe*, soldiers, and policemen to kill members of the Tutsi ethnic group, instigating other assailants to kill members of the Tutsi ethnic group and by aiding and abetting in the commission of the crime through the distribution of weapons and by leading the attackers to the Gikomero Parish Compound.
649. Judge Maqutu joins with the Majority to conclude that the Accused participated in the crime by ordering these killings, but his reasoning differs from that of the Majority. This reasoning is explained in his Separate and Concurring Opinion on the Verdict.
650. The Chamber finds that at the time of his participation in these killings, the Accused had the intent to destroy the Tutsi ethnic group in whole or in part.

**d. Conclusion**

651. In conclusion, the Chamber finds beyond a reasonable doubt that the Accused is individually criminally responsible for instigating, ordering, and aiding and abetting the killing of members of the Tutsi ethnic group in Gikomero Parish Compound, Gikomero *commune*, Kigali-Rural *préfecture*, pursuant to Article 6(1) of the Statute.
652. Accordingly, in relation to **Count 2** of the Indictment, the Chamber finds the Accused GUILTY of GENOCIDE.



550  
1388

757. After considering the evidence, the Chamber notes the fact that prior to his involvement in the genocide, Kamuhanda was widely regarded as a good man, who did a lot to help his *commune* and his country.
758. However, the Chamber finds by a majority, Judge Maqutu dissenting, that given the gravity of the Crimes for which the Accused has been found guilty, there are insufficient reasons to conclude that there are any mitigating factors in this case.

### C. Aggravating Factors

759. The Chamber notes that there is no evidence of any previous criminal conduct on the part of Kamuhanda, and the Chamber finds no aggravating circumstances in his conduct prior to 1994.
760. The Chamber notes that according to Article 23(2) of the Statute, the gravity of the crimes committed should be taken into account during sentencing. The Chamber interprets this to mean that the more heinous the crime, the higher the sentence that should be imposed upon its perpetrator. However, in assessing the gravity of the offence, the Chamber ought to go beyond the abstract gravity of the crime to take into account the particular circumstances of the case as well as the form and the degree of the participation of Kamuhanda in the crime.<sup>1322</sup>
761. Kamuhanda has been found guilty of Genocide and guilty of Extermination as a Crime against Humanity.
762. The Prosecution submitted in its closing brief that the fact that Kamuhanda was a top civil servant who subsequently rose to the highest position of Minister in Charge of the Ministry of Higher Education and Scientific Research is a strong aggravating factor that should be considered by the Chamber in its deliberations on sentencing.<sup>1323</sup> It also submitted that, as a top civil servant, Kamuhanda was a prominent figure within Rwandan society generally, and the Gikomero *commune* particularly. It submits that Kamuhanda was popular and renowned in Gikomero, where he held the position of Chairman of the Electoral College and the Technical Committee. It submits that his high position placed him under a duty to espouse the principles laid down in the Constitution, and uphold a higher than average degree of morality. Instead, according to the Prosecution, he supported the genocidal campaign, actively engaging himself in the killing of Tutsis and inciting others to kill.<sup>1324</sup>

<sup>1322</sup> *Semanza*, Judgment (TC), para. 555.

<sup>1323</sup> Prosecution Closing Brief, para. 868, p. 177 (English).

<sup>1324</sup> Prosecution Closing Brief, para. 869, pp. 177 and 178 (English).

551



UNITED NATIONS  
NATIONS UNIES



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

1790/H

*DF*

ICTR-02-78-A

8<sup>th</sup> May 2012

{1790/H - 1692/H}

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Arlette Ramaroson  
Judge Andréia Vaz

Registrar: Mr. Adama Dieng

Judgement of: 8 May 2012

ICTR Appeals Chamber  
Date: 8<sup>th</sup> May 2012  
Action: R. Juma  
Copied To: Concerned Judges,

Parties, JPU, LDs  
*Ruth*

GASPARD KANYARUKIGA

v.

THE PROSECUTOR

Case No. ICTR-02-78-A

JUDGEMENT

Counsel for Gaspard Kanyarukiga

Mr. David Jacobs  
Mr. Peter Zaduk

Office of the Prosecutor

Mr. Hassan Bubacar Jallow  
Mr. James Arguin  
Ms. Deborah Wilkinson  
Mr. Abdoulaye Seye  
Mr. Steffen Wirth  
Ms. Lydia Mugambe  
Ms. Ndèye Marie Ka

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIÉ CERTIFIÉ CONFORMÉ À L'ORIGINAL PAR MOI  
NAME / NOM: ROSETTE MUZIGO-MORRISON  
SIGNATURE: *Ruth* DATE: 8<sup>th</sup> May 2012



## V. SENTENCING APPEALS

269. The Trial Chamber sentenced Kanyarukiga to a single sentence of 30 years' imprisonment for his convictions for genocide (Count 1) and extermination as a crime against humanity (Count 3).<sup>561</sup>

270. Kanyarukiga and the Prosecution have both appealed this sentence.<sup>562</sup> The Appeals Chamber addresses their appeals in turn, bearing in mind that trial chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualise penalties to fit the circumstances of the accused and the gravity of the crime.<sup>563</sup> As a rule, the Appeals Chamber will revise a sentence only if the appealing party demonstrates that the trial chamber committed a discernible error in exercising its sentencing discretion or that it failed to follow the applicable law.<sup>564</sup>

### A. KANYARUKIGA'S SENTENCING APPEAL

271. Under ground 72 of his appeal, Kanyarukiga submits that the Trial Chamber erred in law by imposing on him a "harsh and excessive" sentence and requests the Appeals Chamber to substantially reduce it.<sup>565</sup> He argues that the Trial Chamber erred by "double counting" the same factor both in relation to the gravity of his crimes and as an aggravating circumstance.<sup>566</sup> He further argues that the Trial Chamber erred in its assessment of the gravity of the offence since it failed to take into account that he was not shown to have had a position of leadership and authority.<sup>567</sup> He also argues that the Trial Chamber failed to take into account as a mitigating factor his prior good relationship with Tutsis.<sup>568</sup> In light of the latter fact, he submits that a "30 year sentence for a man who was between 63 and 72 years old [...] was an abuse of discretion."<sup>569</sup>

<sup>561</sup> Trial Judgement, para. 688.

<sup>562</sup> Kanyarukiga Notice of Appeal, para. 79; Prosecution Notice of Appeal, para. 3.

<sup>563</sup> See, e.g., *Bagosora and Nsengiyumva* Appeal Judgement, para. 419; *Ntawukulilyayo* Appeal Judgement, para. 232; *Munyakazi* Appeal Judgement, para. 166; *Setako* Appeal Judgement, para. 277.

<sup>564</sup> See, e.g., *Bagosora and Nsengiyumva* Appeal Judgement, para. 419; *Ntawukulilyayo* Appeal Judgement, para. 232; *Munyakazi* Appeal Judgement, para. 166; *Setako* Appeal Judgement, para. 277.

<sup>565</sup> Kanyarukiga Notice of Appeal, paras. 79, 81; Kanyarukiga Appeal Brief, paras. 204, 208.

<sup>566</sup> Kanyarukiga Appeal Brief, para. 204, referring to Trial Judgement, paras. 675, 678. See also AT. 14 December 2011 p. 49.

<sup>567</sup> Kanyarukiga Notice of Appeal, para. 79; Kanyarukiga Appeal Brief, para. 205. See also Kanyarukiga Reply Brief, para. 100. In particular, Kanyarukiga submits that there was no evidence of the particular role he played "in the planning," and no proof that he made any particularised or special causal contribution to the attacks. See Kanyarukiga Appeal Brief, para. 205.

<sup>568</sup> Kanyarukiga Notice of Appeal, para. 79; Kanyarukiga Appeal Brief, para. 206.

<sup>569</sup> Kanyarukiga Appeal Brief, para. 206.

1709/H

276. In light of the above, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber committed a discernible error in determining his sentence. The Appeals Chamber therefore dismisses Kanyarukiga's ground of appeal 72.

#### **B. PROSECUTION'S SENTENCING APPEAL**

277. Under ground 2 of its appeal, the Prosecution submits that the Trial Chamber committed a discernible error in its assessment of the gravity of the offence by giving weight to irrelevant factors, namely that Kanyarukiga did not directly participate in and was not present during the destruction of the Nyange church on 16 April 1994.<sup>578</sup> The Prosecution submits that these factors did not alter the impact of Kanyarukiga's criminal conduct.<sup>579</sup> It asserts that Kanyarukiga was a "mastermind" of the attacks and that the Trial Chamber erred in considering that his planning was less grave than the conduct of the physical perpetrators.<sup>580</sup> The Prosecution therefore requests that the Appeals Chamber increase Kanyarukiga's sentence substantially or to life imprisonment, or, in the alternative, remand the case to the Trial Chamber to re-evaluate the gravity of Kanyarukiga's offences.<sup>581</sup>

278. Kanyarukiga responds that the Trial Chamber did not imply that planning is a less serious mode of liability, but "was simply attempting to gauge the gravity of Kanyarukiga's crime or individual responsibility, a characterization that must surely be influenced by actual participation and presence".<sup>582</sup>

279. In assessing the gravity of the offence, the Trial Chamber found that "[a]lthough Kanyarukiga's crimes are grave, [it] is not satisfied that he is deserving of the most serious sanction available under the Statute, given that it has not been established that he directly participated in, or was present during the destruction of Nyange church itself".<sup>583</sup>

280. The Appeals Chamber recalls that the well-established principle of gradation in sentencing holds that leaders and planners should bear heavier criminal responsibility than those further down the scale, subject to the proviso that the gravity of the offence is the primary consideration for a trial

<sup>578</sup> Prosecution Notice of Appeal, para. 3; Prosecution Appeal Brief, paras. 13, 16, 24; AT. 14 December 2011 pp. 47, 48.

<sup>579</sup> Prosecution Appeal Brief, paras. 20, 27, 28.

<sup>580</sup> Prosecution Appeal Brief, paras. 18, 19, 21, 22, 29.

<sup>581</sup> Prosecution Notice of Appeal, para. 3; Prosecution Appeal Brief, paras. 31, 32; AT. 14 December 2011 p. 49.

<sup>582</sup> Kanyarukiga Response Brief, para. 39. *See also* Kanyarukiga Response Brief, paras. 2, 40, 42, 46.

<sup>583</sup> Trial Judgement, para. 676.

chamber in imposing a sentence.<sup>584</sup> Thus, although Kanyarukiga was convicted as a planner, the primary consideration remained the gravity of his offences.

281. The determination of the gravity of the offence requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the convicted person in the crime.<sup>585</sup> The Appeals Chamber notes that the Trial Chamber expressly considered the very serious nature of the crimes committed, their scale, and the fact that Kanyarukiga participated in planning them.<sup>586</sup> In particular, the Trial Chamber observed that the destruction of the Nyange church on 16 April 1994 resulted in the deaths of over 2,000 Tutsi civilians and that the crimes "were grave and resulted in overwhelming human suffering".<sup>587</sup>

282. The Appeals Chamber further notes that there is no finding in the Trial Judgement that Kanyarukiga played a central or a leading role or was a mastermind of the attacks at the Nyange church on 16 April 1994. By contrast, other planners of the crime were found to have been present and directly involved in it.<sup>588</sup> The Appeals Chamber finds that under these specific circumstances, Kanyarukiga's absence and lack of direct participation could be reasonably considered by the Trial Chamber as relevant factors in individualising his sentence. The Appeals Chamber therefore also rejects the Prosecution's contention that the Trial Chamber implied that planning is a less grave mode of liability than physical perpetration.

283. In any event, the Appeals Chamber is of the view that the weight given by the Trial Chamber to the contested factors must have been limited given the severity of the sentence imposed. A sentence of 30 years' imprisonment may be considered among the most severe sentences. The Appeals Chamber does not find it so unreasonable or plainly unjust to require its intervention.

284. In view of the foregoing, the Appeals Chamber concludes that the Prosecution has failed to demonstrate that the Trial Chamber committed a discernible error in determining Kanyarukiga's sentence. Accordingly, the Appeals Chamber dismisses the Prosecution's ground of appeal 2.

<sup>584</sup> *Kalimanzira* Appeal Judgement, para. 236. See also *Setako* Appeal Judgement, para. 280; *Nshogoza* Appeal Judgement, para. 98. See also Article 23 of the Statute.

<sup>585</sup> *Munyakazi* Appeal Judgement, para. 185; *Nshogoza* Appeal Judgement, para. 98; *Rukundo* Appeal Judgement, para. 243; *Mrkšić and Šljivančanin* Appeal Judgement, para. 375.

<sup>586</sup> Trial Judgement, paras. 674, 675.

<sup>587</sup> Trial Judgement, para. 675.

<sup>588</sup> See Trial Judgement, paras. 598, 602, 603, 614, naming Ndahimana, Kayishema, Ndungutse, and Scromba.



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

**IN THE APPEALS CHAMBER**

**Before:**

Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Theodor Meron

**Registrar:**

Mr. Adama Dieng

**Judgement of:**

2 February 2009

**ICTR Appeals Chamber**

Date: 02 February 2009  
Action:  
Copied To: Concerned Judges  
Parties, Archives, LOS

**FRANÇOIS KARERA**

**v.**

**THE PROSECUTOR**

Case No. ICTR-01-74-A

12009 FEB - 2 1 P 2 31  
JUDICIAL RECORDS/ARCHIVES  
RECEIVED

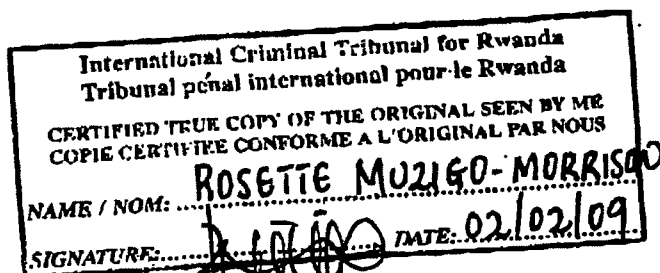
**JUDGEMENT**

**Counsel for the Appellant**

Ms. Carmelle Marchessault  
Mr. Alexandre Bergevin  
Mr. Christian Deslauriers, Assistant

**Office of the Prosecutor**

Mr. Hassan Bubacar Jallow  
Mr. Alex Obote-Odora  
Ms. Dior Sow Fall  
Mr. Abdoulaye Seye  
Mr. François-Xavier Nsanzuwera  
Mr. Alfred Orono Orono  
Ms. Florida Kabasinga  
Ms. Béatrice Chapaux



## II. STANDARDS OF APPELLATE REVIEW

7. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews only errors of law which invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.<sup>13</sup>

8. As regards errors of law, the Appeals Chamber has stated:

Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.<sup>14</sup>

9. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, the Appeals Chamber will articulate the correct legal interpretation and review the relevant factual findings of the Trial Chamber accordingly. In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.<sup>15</sup>

10. As regards errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by a Trial Chamber:

Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.<sup>16</sup>

11. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting the intervention of the Appeals Chamber.<sup>17</sup> Arguments which do not have the potential to cause the impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.<sup>18</sup>

<sup>13</sup> See *Muvunyi* Appeal Judgement, para. 8. See also *Martić* Appeal Judgement, para. 8.

<sup>14</sup> See *Muvunyi* Appeal Judgement, para. 9 citing *Ntakirutimana* Appeal Judgement, para. 11 (citations omitted).

<sup>15</sup> See *Martić* Appeal Judgement, para. 10.

<sup>16</sup> *Muvunyi* Appeal Judgement, para. 10 citing *Krstić* Appeal Judgement, para. 40 (citations omitted).

<sup>17</sup> See *Muvunyi* Appeal Judgement, para. 11. See also *Martić* Appeal Judgement, para. 14.

<sup>18</sup> See *Muvunyi* Appeal Judgement, para. 11. See also *Orić* Appeal Judgement, para. 13.



**Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Wolfgang Schomburg

**Registrar:** Mr. Adama Dieng

**Judgement of:** 21 May 2007

**MIKAELI MUHIMANA**

**v.**

**THE PROSECUTOR**

*Case No. ICTR-95-1B-A*

---

**JUDGEMENT**

---

**Counsel for Mikaeli Muhimana:**

Prof. Nyabirungu mwene Songa  
Mr. Kazadi Kabimba  
Mr. Mathias Sahinkuye

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. James Stewart  
Ms. Linda Bianchi  
Mr. Abdoulaye Seye  
Mr. François Xavier Nsanzuwera

## XIX. DISPOSITION

For the foregoing reasons, **THE APPEALS CHAMBER**,

**PURSUANT** to Article 24 of the Statute and Rule 118 of the Rules;

**NOTING** the written submissions of the parties and their oral arguments presented at the hearing on 15 January 2007;

**SITTING** in open session;

**AFFIRMS** unanimously the Appellant's conviction for genocide (Count 1); and **AFFIRMS** unanimously his sentence of imprisonment for the remainder of his life entered for that conviction;

**ALLOWS**, in part, Judge Shahabuddeen and Judge Schomburg dissenting, the Appellant's eighth ground of appeal; **REVERSES**, Judge Shahabuddeen and Judge Schomburg dissenting, the Trial Chamber's finding that he bears criminal responsibility for the rapes of Gorette Mukashyaka and Languida Kamukina; **AFFIRMS** unanimously his conviction for rape as a crime against humanity (Count 3) in all other respects; and **AFFIRMS** unanimously his sentence of imprisonment for the remainder of his life entered for that conviction;

**ALLOWS**, in part, Judge Schomburg dissenting, the Appellant's fifteenth ground of appeal; **REVERSES**, Judge Schomburg dissenting, the Trial Chamber's finding that he bears criminal responsibility for the murder of Pascasie Mukaremera; **AFFIRMS** unanimously his conviction for murder as a crime against humanity (Count 4) in all other respects; and **AFFIRMS** unanimously his sentence of imprisonment for the remainder of his life entered for that conviction;

**DISMISSES** unanimously the Appellant's appeal of his convictions and sentences in all other respects;

**RULES** that this Judgement shall be enforced immediately pursuant to Rule 119 of the Rules;

**ORDERS**, in accordance with Rule 103(B) and Rule 107 of the Rules, that Mikaeli (also known as Mika) Muhimana is to remain in the custody of the Tribunal pending his transfer to the State in which his sentence will be served.



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

**Before:** Judge Khalida Rachid Khan, Presiding  
Judge Lee Gacuiga Muthoga  
Judge Emile Francis Short

**Registrar:** Mr. Adama Dieng

**Date:** 28 April 2005

**TRIAL CHAMBER III**

**THE PROSECUTOR**

**v.**

**MIKAELI MUHIMANA**

*Case No. ICTR- 95-1B-T*

**JUDGEMENT AND SENTENCE**

**Office of the Prosecutor:**

Mr. Charles Adeogun-Philips  
Mr. Wallace Kapaya  
Ms. Renifa Madenga  
Ms. Florida Kabasinga  
Ms. Maymuchka Lauriston

**Counsel for the Defence:**

Professor Nyabirungu mwene Songa  
Me Kazadi Kabimba



the heavier the sentence will be. In assessing the gravity of the offences for which Mika Muhimana has been found guilty, the Chamber takes into account the particular circumstances of the case, the form and degree of Mika Muhimana's participation in the crimes, and the existence of any aggravating or mitigating circumstances.<sup>538</sup> The Chamber also takes into account the general practice of sentencing in the courts of Rwanda.

592. For serious offences such as murder, the Rwandan Penal Code establishes the maximum sentence as death or life imprisonment.<sup>539</sup> The sentencing range for rape ranges between five and forty years, depending on the circumstances.<sup>540</sup> The Rwandan Organic Law provides that, for genocide and crimes against humanity, the ordinary sentences of the *code pénal* shall apply; however, the heightened penalties of death and life imprisonment apply to category one and category two perpetrators, respectively.<sup>541</sup>
593. On examination of the sentencing practice of the ICTR and the ICTY, the Chamber notes that principal perpetrators convicted of genocide have received sentences ranging from fifteen years' imprisonment to imprisonment for life.<sup>542</sup> Lesser or secondary forms of participation generally receive a lower sentence. The *Ntakirutimana* Trial Chamber Judgement, recently upheld on appeal, found Elizaphan Ntakirutimana guilty of aiding and abetting genocide. That Chamber also took into account the convicted pastor's prior good work, his old age, and his frail health, in sentencing him to ten years' imprisonment.<sup>543</sup>
594. This Chamber understands its obligation to ensure that the sentence is commensurate with the individual circumstances of the offender.<sup>544</sup>

## **B. INDIVIDUAL CIRCUMSTANCES**

### **Prosecution Submissions**

595. The Prosecution calls for Mika Muhimana to be given the maximum sentence allowed under the Statute of the Tribunal on each count. It submits three main aggravating factors: the status of Mika Muhimana in the society in which he lived; the zeal with which Mika Muhimana committed his crimes; and the effect of Mika Muhimana's actions on the lives of the victims.

<sup>538</sup> *Semanza* Judgment (TC), para. 555.

<sup>539</sup> Rwandan *Code Pénal*, Articles 311-317.

<sup>540</sup> Rwandan *Code Pénal*, Articles 360-361. The Chamber will examine the particular aggravating circumstances under Rwandan law, below.

<sup>541</sup> *Code pénal rwandais*, Articles 35, 64, 89 and 311-317; article 14 de la *Loi Organique* (Rwanda) n° 08/96 du 30 août 1996 sur l'organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l'humanité, commises à partir du 1<sup>er</sup> Octobre 1990, Journal Officiel n° 17 du 1 septembre 1996; *Cyangugu* Judgement, para. 811.

<sup>542</sup> *Musema*, Judgement (TC), para. 1008; *Rutaganda*, Judgement (TC), para. 473; *Kayishema and Ruzindana*, Sentence (TC), para. 27; *Akayesu*, Sentence (TC), p.13.

<sup>543</sup> *Ntakirutimana*, Judgement (TC), paras. 919-921; *Ntakirutimana*, Judgement (AC), paras. 565-570.

<sup>544</sup> *Delalic*, Judgement (AC), paras. 717-719.



UNITED NATIONS  
NATIONS UNIES

Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda

**IN THE APPEALS CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Andrésia Vaz  
Judge Carmel Agius

**Registrar:** Mr. Adama Dieng

**Judgement of:** 28 September 2011

**THE PROSECUTOR**

**v.**

**YUSSUF MUNYAKAZI**

*Case No. ICTR-97-36A-A*

---

**JUDGEMENT**

---

**The Office of the Prosecutor:**

Hassan Bubacar Jallow  
James J. Arguin  
Alphonse Van  
François Nsanzuwera  
Lydia Mugambe  
Dennis Mabura  
Ndeye Maria Ka

**Counsel for Yussuf Munyakazi:**

Barnabé Nékuié

## II. STANDARDS OF APPELLATE REVIEW

5. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews only errors of law which have the potential to invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.<sup>13</sup>

6. Regarding errors of law, the Appeals Chamber has stated:

Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.<sup>14</sup>

7. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, the Appeals Chamber will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly.<sup>15</sup> In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, also applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.<sup>16</sup>

8. Regarding errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by the Trial Chamber:

Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.<sup>17</sup>

9. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting

<sup>13</sup> *Muvunyi II* Appeal Judgement, para. 7; *Renzaho* Appeal Judgement, para. 7. See also *Haradinaj et al.* Appeal Judgement, para. 9.

<sup>14</sup> *Ntakirutimana* Appeal Judgement, para. 11 (internal citation omitted). See also *Muvunyi II* Appeal Judgement, para. 8; *Renzaho* Appeal Judgement, para. 8; *Haradinaj et al.* Appeal Judgement, para. 10.

<sup>15</sup> *Muvunyi II* Appeal Judgement, para. 9; *Renzaho* Appeal Judgement, para. 9. See also *Haradinaj et al.* Appeal Judgement, para. 11.

<sup>16</sup> *Muvunyi II* Appeal Judgement, para. 9; *Renzaho* Appeal Judgement, para. 9. See also *Haradinaj et al.* Appeal Judgement, para. 11.

<sup>17</sup> *Krstić* Appeal Judgement, para. 40 (internal citations omitted). See also *Muvunyi II* Appeal Judgement, para. 10; *Renzaho* Appeal Judgement, para. 10; *Haradinaj et al.* Appeal Judgement, para. 12.

563

-0417

2479/A

UNITED NATIONS



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 1994  
and 31 December 1994

Case No. ICTR-96-13-A

Date: 16 November 2001

ENGLISH

Original: FRENCH

### APPEALS CHAMBER

Before Judges: Claude Jorda, presiding  
Lal Chand Vohrah  
Mohamed Shahabuddeen  
Rafael Nieto-Navia  
Fausto Pocar

Registry: Adama Dieng

Judgement of: 16 November 2001

**ALFRED MUSEMA**  
(Appellant)

v.

**THE PROSECUTOR**  
(Respondent)

10  
JUDICIAL RECORD  
RECEIVED

2002 OCT 25 A.C.S.

*Handwritten signature*  
25/10/02

### JUDGEMENT

Counsel for the Appellant:

Steven Kay, QC  
Michail Wladimiroff  
Sylvia de Bertodano

Office of the Prosecutor:

Carla Del Ponte  
Norman Farrell  
Mathias Marcussen  
Sonja Boelaert-Suominen

Translation certified by LCSS, ICTR  
MUSEMA(A)01-006/Rev.1 (E)

ICTR-96-13-A

25 Oct. 2002

(2479/A-2335(A))

564  
2354/A

individual circumstances of the convicted person; any aggravating circumstances; any mitigating circumstances, including the substantial cooperation with the Prosecutor by the convicted person before or after conviction; and 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. This list is not exhaustive; it was held by the Appeals Chamber of ICTY that it is inappropriate for it "to attempt to list exhaustively the factors that [...] should be taken into account by a Trial Chamber in determining sentence".<sup>639</sup>

381. In *Tadić*, the Appeals Chamber of ICTY also considered the relative position of a convicted person in a command structure to be a relevant factor in determining sentence. In that case, the Appeals Chamber considered that, while Tadić's criminal conduct was "incontestably heinous", his level in the command structure in comparison to his superiors was low,<sup>640</sup> and consequently, the sentence passed by the Trial Chamber was excessive.<sup>641</sup> In subsequent ICTY Appeals Chamber decisions, the need to establish a gradation of sentencing has been endorsed.<sup>642</sup> In the *Čelebići* appeal, the Appeals Chamber held that:

[e]stablishing a gradation does not entail a low sentence for all those in a low level of the overall command structure. On the contrary, a sentence must always reflect the inherent level of gravity of a crime ... the gravity of the crime may be so great that even following consideration of any mitigating factors, and despite the fact that the accused was not senior in the so-called overall command structure, a very severe penalty is nevertheless justified.<sup>643</sup>

382. It went on to state that "while the Appeals Chamber has determined that it is important to establish a gradation in sentencing, this does not detract from the finding that it is as essential that a sentence take into account all the circumstances of an individual case".<sup>644</sup> It follows that the jurisprudence of ICTY acknowledges the existence of a general principle that sentences should be graduated, that is, that the most senior levels of the command structure should attract the severest sentences, with less severe sentences for those lower down the structure. This principle is, however, always subject to the proviso that the gravity of the offence is the primary consideration for a Trial Chamber in imposing sentence.<sup>645</sup>

383. As to whether this principle should be applicable to the Trial Chambers of this Tribunal, as a general principle, this Appeals Chamber agrees with the jurisprudence of ICTY that the most senior members of a command structure, that is, the leaders and planners of a particular conflict, should bear heavier criminal responsibility than those lower down the scale, such as the foot soldiers carrying out

<sup>639</sup> *Čelebići* Appeal Judgement, para. 718; *Furundžija* Appeal Judgement, para. 238.

<sup>640</sup> *Ibid.*, para. 56.

<sup>641</sup> The sentences imposed by the Trial Chamber, which ranged from 6 to 25 years, were revised, and a sentence of 20 years' imprisonment was passed in respect of each count, to be served concurrently.

<sup>642</sup> See *Čelebići* Appeal Judgement, para. 849, and *Aleksovski* Appeal Judgement, para. 184.

<sup>643</sup> *Čelebići* Appeal Judgement, para. 847.

<sup>644</sup> *Čelebići* Appeal Judgement, para. 849.

<sup>645</sup> *Čelebići* Appeal Judgement, para. 731; *Aleksovski* Appeal Judgement, para. 182; *Krstić* Trial Judgement, para. 698; *Todorović* Trial Judgement, para. 31; *Kupreskić* Trial Judgement, para. 852; and *Čelebići* Trial Judgement, 1225.

the orders. But this principle is always subject to the crucial proviso that the gravity of the offence is the primary consideration of a Trial Chamber in imposing sentence; if the offence is serious enough, a Trial Chamber should not be precluded from imposing a severe penalty upon the accused, just because he is not at a high level of command.

384. In paragraphs 999 to 1004 of the Trial Judgement, the Trial Chamber sets out the circumstances of the case. It found that Musema was the Director of the Gisovu Tea Factory, one of the most successful tea factories in Rwanda, and that he exercised legal and financial control over his employees. He personally led certain attacks, and was perceived by individuals as a figure of authority and as someone who wielded considerable power in the region, and had powers enabling him to remove, or threaten to remove, an individual from his or her position at the tea factory. These findings show that, while no reference was made to the role played by Musema in the context of the larger political picture in Rwanda, the Trial Chamber *did* consider Musema's role in the Kibuye *préfecture*, and found him to be an influential figure of considerable importance. It follows that Musema was not a low-level figure in the overall Rwandan conflict. Taking into account all the circumstances of the case, including the fact that Musema was an influential figure of considerable importance in the Kibuye *préfecture*, it can be said that the offences were of utmost gravity. The Appellant has therefore failed to demonstrate that the Trial Chamber ventured outside its discretionary framework in imposing the maximum sentence of life imprisonment. Accordingly, the Appeals Chamber finds no error on the part of the Trial Chamber, and rejects this argument.

2. The Trial Chamber erred by failing to pass a sentence commensurate with other sentences passed by ICTR for the crime of genocide

(a) Arguments of the parties

385. The Appellant notes that a conviction for the crime of genocide does not necessarily have to attract a sentence of life imprisonment.<sup>646</sup> He submits that the sentence of life imprisonment imposed upon Musema was "out of proportion with the crimes of which he was convicted", in comparison with the sentence of 15 years' imprisonment imposed upon the Accused Omar Serushago in the case of *The Prosecutor v. Serushago*.<sup>647</sup> While acknowledging that Serushago benefited from pleading guilty and cooperating with the Prosecution, the Appellant argues that the appropriate credit gained by the plea and cooperation should not be such that Serushago received a 15-year sentence, whereas Musema received a life sentence.<sup>648</sup> In comparing the two cases, he notes that Serushago's criminal conduct spanned a three month period, whereas Musema was convicted of crimes occurring on six occasions. Further, Serushago was a leader of a group of *Interahamwe* militia, while Musema had control only over the actions of the Tea Factory workers.<sup>649</sup>

<sup>646</sup> Appellant's Brief, para. 515. At the time that the Appellant filed his brief, two persons convicted of the crime of genocide at ICTR, Ruzindana and Serushago, had received sentences of imprisonment of 25 and 15 years respectively.

<sup>647</sup> Appellant's Brief, para. 522.

<sup>648</sup> *Ibid.*, para. 521.

<sup>649</sup> *Ibid.*, para. 519.



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

Original: ENGLISH

**Trial Chamber I**

**Before Judges:**

Judge Lennart Aspegren, President  
Judge Laïty Kama  
Judge Navanethem Pillay

**Registry:** Mr. Agwu U. Okali

**Judgement of:** 27 January 2000

**THE PROSECUTOR**

**v.**

**ALFRED MUSEMA**

*Case No. ICTR-96-13-A*

---

**JUDGEMENT AND SENTENCE**

---

**Office of the Prosecutor:**

Ms Carla Del Ponte  
Ms Jane Anywar Adong  
Mr Charles Adeogun-Philips  
Ms Holo Makwaia

**Counsel for the Defence:**

Mr Steven Kay, QC  
Prof Michail Wladimiroff

---



120. The second form of participation, incitement to commit a crime, involves instigating another, directly and publicly, to commit an offence. Instigation is punishable only where it leads to the actual commission of an offence intended by the instigator, except with genocide, where an accused may be held individually criminally liable for incitement to commit genocide under Article 2(3)(c) of the Statute, even where such incitement fails to produce a result.<sup>51</sup>

121. The third form of participation, ordering, implies a superior-subordinate relationship between the person giving the order and the one executing it, with the person in a position of authority using such position to persuade another to commit a crime.

122. The fourth form of participation in which an accused incurs criminal responsibility is where he actually commits one of the crimes within the jurisdiction *ratione materiae* of the Tribunal.

123. The Chamber holds that an accused may participate in the commission of a crime either through direct commission of an unlawful act or by omission, where he has a duty to act.

124. The fifth and last form of participation where individual criminal responsibility arises under Article 6(1) is "otherwise aid[ing] and abett[ing] in the planning, preparation, or execution of a crime referred to in Articles 2 to 4".

125. The Chamber is of the view that aiding and abetting alone may be sufficient to render the accused criminally liable. In both instances, it is not necessary that the person aiding and abetting another to commit an offence be present during the commission of the crime. The relevant act of assistance may be geographically and temporally unconnected to the actual commission of the crime.

126. The Chamber holds that aiding and abetting include all acts of assistance in the form of either physical or moral support; nevertheless, it emphasizes that any act of participation must substantially

---

<sup>51</sup> *Akayesu* Judgement, para. 562.





**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

**IN THE APPEALS CHAMBER**

Before: Judge Fausto Pocar, presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Theodor Meron

Registrar: Adama Dieng

Judgement of: 28 November 2007

**Ferdinand NAHIMANA  
Jean-Bosco BARAYAGWIZA  
Hassan NGEZE  
(Appellants)**

v.

**THE PROSECUTOR  
(Respondent)**

Case No. ICTR-99-52-A

**JUDGEMENT**

Counsel for Ferdinand Nahimana  
Jean-Marie Biju-Duval  
Diana Ellis

Counsel for Jean-Bosco Barayagwiza  
Donald Herbert  
Tanoo Mylvaganam

Counsel for Hassan Ngeze  
Bharat B. Chadha  
Dev Nath Kapoor

The Office of the Prosecutor  
Hassan Bubacar Jallow  
James Stewart  
Neville Weston  
George Mugwanya  
Abdoulaye Seye  
Linda Bianchi  
Alfred Orono Orono

*Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A

478. The Appeals Chamber recalls that commission covers, primarily, the physical perpetration of a crime (with criminal intent) or a culpable omission of an act that is mandated by a rule of criminal law, but also participation in a joint criminal enterprise.<sup>1153</sup> However, it does not appear that the Prosecutor charged the Appellants at trial with responsibility for their participation in a joint criminal enterprise,<sup>1154</sup> and the Appeals Chamber does not deem it appropriate to discuss this mode of participation here.<sup>1155</sup>

479. The *actus reus* of “planning” requires that one or more persons design the criminal conduct constituting one or more statutory crimes that are later perpetrated.<sup>1156</sup> It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.<sup>1157</sup> The *mens rea* for this mode of responsibility entails the intent to plan the commission of a crime or, at a minimum, the awareness of substantial likelihood that a crime will be committed in the execution of the acts or omissions planned.<sup>1158</sup>

480. The *actus reus* of “instigating” implies prompting another person to commit an offence.<sup>1159</sup> It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused; it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.<sup>1160</sup> The *mens rea* for this mode of responsibility is the intent to instigate another person to commit a crime or at a minimum the awareness of the substantial likelihood that a crime will be committed in the execution of the act or omission instigated.<sup>1161</sup>

481. With respect to ordering, a person in a position of authority<sup>1162</sup> may incur responsibility for ordering another person to commit an offence,<sup>1163</sup> if the person who received the order actually proceeds to commit the offence subsequently. Responsibility is also incurred when an individual in a position of authority orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that

<sup>1153</sup> *Tadić* Appeal Judgement, para. 188.

<sup>1154</sup> Even if such a charge could possibly be inferred from certain paragraphs of the Indictments, for example: *Nahimana* Indictment, para. 6.27; *Barayagwiza* Indictment, para. 7.13; *Ngeze* Indictment, para. 7.15.

<sup>1155</sup> For a more detailed discussion of this form of participation, see *Brđanin* Appeal Judgement, paras. 389-432; *Stakić* Appeal Judgement, paras. 64-65; *Kvočka et al.* Appeal Judgement, paras. 79-119; *Ntakirutimana* Appeal Judgement, paras. 461-468; *Vasiljević* Appeal Judgement, paras. 94-102; *Krnjelac* Appeal Judgement, paras. 28-33, 65 *et seq.*; *Tadić* Appeal Judgement, paras. 185-229.

<sup>1156</sup> *Kordić and Čerkez* Appeal Judgement, para. 26.

<sup>1157</sup> *Kordić and Čerkez* Appeal Judgement, para. 26. Although the French version of the Judgement uses the terms “*un élément déterminant*”, the English version – which is authoritative – uses the expression “factor substantially contributing to”.

<sup>1158</sup> *Kordić and Čerkez* Appeal Judgement, paras. 29 and 31.

<sup>1159</sup> *Ndindabahizi* Appeal Judgement, para. 117; *Kordić and Čerkez* Appeal Judgement, para. 27.

<sup>1160</sup> *Gacumbitsi* Appeal Judgement, para. 129; *Kordić and Čerkez* Appeal Judgement, para. 27. Once again, although the French version of the *Kordić and Čerkez* Judgement reads “*un élément déterminant*”, the English version – which is authoritative – reads “factor substantially contributing to”.

<sup>1161</sup> *Kordić and Čerkez* Appeal Judgement, paras. 29 and 32.

<sup>1162</sup> It is not necessary to demonstrate the existence of an official relationship of subordination between the accused and the perpetrator of the crime: *Galić* Appeal Judgement, para. 176; *Gacumbitsi* Appeal Judgement, para. 182; *Kamuhanda* Appeal Judgement, para. 75; *Semanza* Appeal Judgement, para. 361; *Kordić and Čerkez* Appeal Judgement, para. 28.

<sup>1163</sup> *Galić* Appeal Judgement, para. 176; *Ntagerura et al.* Appeal Judgement, para. 365; *Kordić and Čerkez* Appeal Judgement, paras. 28-29.

*Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A

order, and if that crime is effectively committed subsequently by the person who received the order.<sup>1164</sup>

482. The *actus reus* of aiding and abetting<sup>1165</sup> is constituted by acts or omissions<sup>1166</sup> aimed specifically at assisting, furthering or lending moral support to the perpetration of a specific crime, and which substantially contributed to the perpetration of the crime.<sup>1167</sup> Contrary to the three modes of responsibility discussed above (which require that the conduct of the accused precede the perpetration of the crime itself), the *actus reus* of aiding and abetting may occur before, during or after the principal crime.<sup>1168</sup> The *mens rea* for aiding and abetting is knowledge that acts performed by the aider and abettor assist in the commission of the crime by the principal.<sup>1169</sup> It is not necessary for the accused to know the precise crime which was intended and which in the event was committed,<sup>1170</sup> but he must be aware of its essential elements.<sup>1171</sup>

483. The Appeals Chamber concludes by recalling that the modes of responsibility under Article 6(1) of the Statute are not mutually exclusive and that it is possible to charge more than one mode in relation to a crime if this is necessary in order to reflect the totality of the accused's conduct.<sup>1172</sup>

#### **B. Responsibility under Article 6(3) of the Statute**

484. The Appeals Chamber recalls that, for the liability of an accused to be established under Article 6(3) of the Statute, the Prosecutor has to show that: (1) a crime over which the Tribunal has jurisdiction was committed; (2) the accused was a *de jure* or *de facto* superior of the perpetrator of the crime and had effective control over this subordinate (*i.e.*, he had the material ability to prevent or punish commission of the crime by his subordinate); (3) the accused knew or had reason to know that the crime was going to be committed or had been

<sup>1164</sup> *Galić* Appeal Judgement, paras. 152 and 157; *Kordić and Čerkez* Appeal Judgement, para. 30; *Blaškić* Appeal Judgement, para. 42.

<sup>1165</sup> The French version of some Appeal and Trial Judgements of this Tribunal and of the ICTY mention the term "*complicité*" ("complicity") rather than "*aide et encouragement*" ("aiding and abetting"). The Appeals Chamber prefers "*aide et encouragement*" because these terms are the ones used in Article 6(1) of the Statute. Furthermore, the Statute uses the word "*complicité*" in a very specific context (see Article 2(3)(e) of the Statute); it should thus be reserved for that context.

<sup>1166</sup> *Ntagerura et al.* Appeal Judgement, para. 370; *Blaškić* Appeal Judgement, para. 47.

<sup>1167</sup> *Blagojević and Jokić* Appeal Judgement, para. 127; *Ndindabahizi* Appeal Judgement, para. 117; *Simić* Appeal Judgement, para. 85; *Ntagerura et al.* Appeal Judgement, para. 370 and footnote 740; *Blaškić* Appeal Judgement, paras. 45 and 48; *Vasiljević* Appeal Judgement, para. 102.

<sup>1168</sup> *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48. See also *Čelebići* Appeal Judgement, para. 352, citing with approval the conclusion of the Trial Chamber in that case that it is not necessary that the assistance in question be given at the time of the commission of the crime.

<sup>1169</sup> *Blagojević and Jokić* Appeal Judgement, para. 127; *Brđanin* Appeal Judgement, para. 484; *Simić* Appeal Judgement, para. 86; *Ntagerura et al.* Appeal Judgement, para. 370; *Blaškić* Appeal Judgement, paras. 45 and 49; *Vasiljević* Appeal Judgement, para. 102; *Aleksovski* Appeal Judgement, para. 162.

<sup>1170</sup> *Simić* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, para. 50.

<sup>1171</sup> *Brđanin* Appeal Judgement, para. 484; *Simić* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, para. 50; *Aleksovski* Appeal Judgement, para. 162.

<sup>1172</sup> *Ndindabahizi* Appeal Judgement, para. 122; *Kamuhanda* Appeal Judgement, para. 77.

499. Appellant Nahimana argues specifically that the Trial Chamber committed an error of fact in finding that there was a causal link between RTLM broadcasts prior to 6 April 1994 and the acts of genocide and extermination committed after that date.<sup>1200</sup> He submits that the causal link between three broadcasts prior to 6 April 1994 and killings after 6 April 1994 rests on testimonies that clearly have no probative value,<sup>1201</sup> and that the existence of a causal link between these murders and RTLM broadcasts is therefore purely hypothetical.<sup>1202</sup>

500. Appellant Ngeze submits that the Trial Chamber has not established the existence of a causal link between the issues of *Kangura* before 6 April 1994 and the crimes of genocide and extermination committed after that date.<sup>1203</sup> He asserts that an in-depth analysis of the evidence shows that no causal link can be established between the articles published in *Kangura* and the anti-Tutsi attacks committed from May 1990 to April 1994.<sup>1204</sup> With regard to the articles, “The Appeal to the Conscience of the Hutu” and “The Ten Commandments”, Appellant Ngeze recalls that these were published before 1994 and are thus excluded from the temporal jurisdiction of the Tribunal.<sup>1205</sup> As for the other articles and editorials, Appellant Ngeze takes issue with the imprecise approach adopted by the Trial Chamber, which merely asserts that “other editorials and articles published in *Kangura* echoed the contempt and hatred for Tutsi found in The *Ten Commandments*”.<sup>1206</sup>

501. The Prosecutor does not respond to Appellant Ngeze’s submissions. By contrast, he responds to Appellant Nahimana by submitting in the first place that it is not necessary that the acts charged against an accused constitute a necessary condition to the commission of the crime; it is sufficient that the accused’s conduct “substantially and directly contributed to the crime”.<sup>1207</sup> He points out that several factual findings in the Judgement examine in detail the context in which RTLM was able to exert an influence on the public and address Nahimana’s submissions on the alleged lack of causal link between RTLM and the acts of genocide. The Prosecutor concludes that the Trial Chamber examined RTLM activities in their globality and could find that its broadcasts played a primordial role in the perpetration of the genocide and other acts of violence targeting Tutsi, thereby directly and substantially contributing to the killings and other acts of violence for which Appellant Nahimana was held responsible.<sup>1208</sup>

#### (b) Analysis

502. The Appeals Chamber recalls that it suffices for *Kangura* publications, RTLM broadcasts and CDR activities to have substantially contributed to the commission of acts of genocide in order to find that those publications, broadcasts and activities instigated the commission of acts of genocide; they need not have been a pre-condition for those acts.<sup>1209</sup>

<sup>1200</sup> Nahimana Notice of Appeal, p. 16; Nahimana Appellant’s Brief, para. 572.

<sup>1201</sup> Nahimana Appellant’s Brief, paras. 237-240.

<sup>1202</sup> *Ibid.*, para. 241.

<sup>1203</sup> *Ibid.*, paras. 347 and 350.

<sup>1204</sup> *Ibid.*, para. 348.

<sup>1205</sup> *Ibid.*, para. 342.

<sup>1206</sup> *Ibid.*, para. 343, see also para. 351.

<sup>1207</sup> Respondent’s Brief, paras. 453-455 (quotation taken from para. 455; italics in original version), referring to *Kayishema and Ruzindana Appeal Judgement*, para. 198.

<sup>1208</sup> *Ibid.*, para. 456.

<sup>1209</sup> See *supra* XI. A.

*Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A

659. The Appeals Chamber notes that paragraph 975 refers back to paragraphs 276, 301 and 339 to 341 of the Judgement. Paragraphs 276 and 301 contain factual findings relating to Appellant Barayagwiza's career within CDR as founder, leader and, as of February 1994, CDR Chairman, and to CDR opposition to the Arusha Accords and its assimilation of Tutsi to the RPF and enemies of the Hutu, thereby defending the recourse to violence against them. The following are the factual findings contained in paragraphs 339 to 341 of the Judgement:

- The Appellant publicly expressed that CDR membership was open only to Hutu;<sup>1572</sup>
- During the year 1994, and in particular the period 6 April to 17 July 1994, Barayagwiza exercised effective leadership over the CDR and its members;<sup>1573</sup>
- The CDR and the Appellant promoted the killing of Tutsi, using slogans at mass rallies which openly called for their extermination;<sup>1574</sup>
- The Appellant supervised CDR militants and the party's youth wing, the *Impuzamugambi*, which became a militia;<sup>1575</sup>
- The *Impuzamugambi*, together with CDR militants, acted under the Appellant's orders when they perpetrated killings and acts of violence;<sup>1576</sup>
- The Appellant ordered the *Impuzamugambi* at roadblocks not to allow the Tutsi to pass and to kill them unless they had CDR or MRND cards;<sup>1577</sup>
- The Appellant supplied weapons to the *Impuzamugambi* to kill the Tutsi;<sup>1578</sup>
- The *Impuzamugambi*, together with the *Interahamwe*, killed large numbers of Tutsi civilians in Gisenyi *préfecture*.<sup>1579</sup>

660. The Appeals Chamber recalls that, for a defendant to be convicted of instigation to commit a crime under Article 6(1) of the Statute, it must be established that the acts charged contributed substantially to the commission of the crime, but they need not be a *sine qua non* condition for its commission. The Appeals Chamber further recalls that, contrary to what the Appellant appears to contend,<sup>1580</sup> the accused does not need to be actually present when the instigated crime is committed.

661. The Appeals Chamber notes that paragraph 975 of the Judgement relied on the following acts to find the Appellant guilty of instigation to commit genocide : (1) "the chanting of '*tubatsembatsembe*' or 'let's exterminate them' by Barayagwiza himself and by

<sup>1572</sup> *Ibid.*, para. 339.

<sup>1573</sup> *Ibid.*, para. 340.

<sup>1574</sup> *Idem.*

<sup>1575</sup> *Ibid.*, para. 341.

<sup>1576</sup> *Idem.*

<sup>1577</sup> *Idem.*

<sup>1578</sup> *Idem.*

<sup>1579</sup> *Idem.*

<sup>1580</sup> See Barayagwiza Appellant's Brief, para. 232.

1086/H



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-01-63-A  
18<sup>th</sup> March 2010  
{1086/H – 926/H}

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Carmel Agius

Registrar: Mr. Adama Dieng

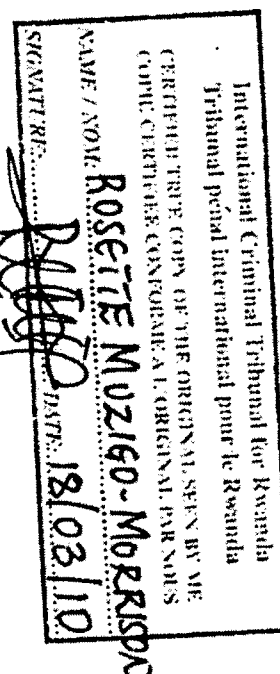
Judgement of: 18 March 2010

SIMÉON NCHAMIHIGO

v.

THE PROSECUTOR

Case No. ICTR-2001-63-A



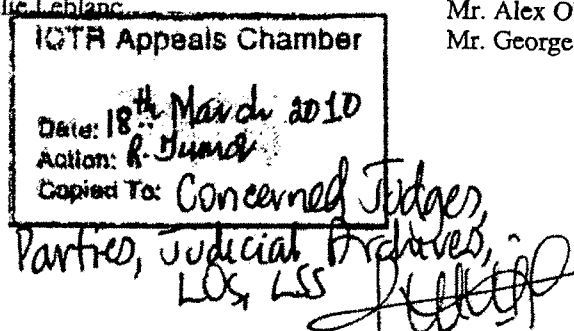
JUDGEMENT

Counsel for the Appellant

Mr. Denis Turcotte  
Ms. Nathalie Leblanc

Office of the Prosecutor

Mr. Hassan Bubacar Jallow  
Mr. Alex Obote-Odora  
Mr. George Mugwanya



### III. ALLEGED ERRORS RELATING TO THE INDICTMENT (GROUNDS OF APPEAL 1, 2, AND 3)

13. The Initial Indictment in this case was filed on 21 June 2001<sup>23</sup> and was amended several times.<sup>24</sup> The Second Revised Amended Indictment ("Indictment"),<sup>25</sup> on which the Trial Judgement is based, was filed on 11 December 2006 in response to the Trial Chamber Order of 7 December 2006.<sup>26</sup> The trial started on 25 September 2006, based on the Second Amended Indictment, filed on 18 July 2006.<sup>27</sup>

14. In his first three grounds of appeal, the Appellant submits that the Trial Chamber erred: (1) by granting, in its Decision of 17 July 2006, the Prosecution leave to amend the Amended Indictment of 26 June 2001;<sup>28</sup> (2) in ordering the commencement of the trial before rendering its decision on a pending Defence preliminary motion;<sup>29</sup> and (3) by denying him the time and facilities necessary for the preparation of his defence.<sup>30</sup>

<sup>23</sup> *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Indictment, 21 June 2001 ("Initial Indictment"). The Initial Indictment charged the Appellant with genocide, or complicity in genocide (in the alternative), extermination as a crime against humanity, or murder as a crime against humanity (in the alternative), and violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II. The Confirming Judge confirmed the Initial Indictment on 23 June 2001, ordering a number of amendments. In compliance with the order, the Prosecution filed the Amended Indictment (*see The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Amended Indictment (in Conformity with the Confirming Judge's Order Dated 23 June 2001), 26 June 2001 ("Amended Indictment")). Following *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Decision on Request for Leave to Amend the Indictment, signed on 14 July 2006, but filed on 17 July 2006 ("Decision of 17 July 2006"), granting leave to amend, the Prosecution filed a Second Amended Indictment (*see The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Amended Indictment (in Conformity with Trial Chamber I Decision Dated 14 July 2006), 18 July 2006 ("Second Amended Indictment")). On 13 September 2006, the Trial Chamber denied the Defence's request for certification to appeal the Decision of 17 July 2006. The trial commenced on 25 September 2006. On 27 September 2006, the Trial Chamber granted in part the Defence motion on defects in the form of the Second Amended Indictment, and ordered the Prosecution to make some adjustments. The Prosecution complied with the order on 29 September 2006 by filing the Revised Amended Indictment (*see The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Revised Amended Indictment (In conformity with Trial Chamber III Decision dated 27 September 2006), 29 September 2006 ("Revised Amended Indictment")). On 7 December 2006, in adjudicating a Defence motion, the Trial Chamber ordered the Prosecution to make further amendments to the Revised Amended Indictment and to provide additional information in certain instances. The Prosecution complied on 11 December 2006 by filing the Indictment (*see The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Second Revised Amended Indictment (in conformity with Trial Chamber III Decision dated 7 December 2006), 11 December 2006 ("Indictment")) on which the Trial Judgement is based.

<sup>24</sup> *See* Trial Judgement, paras. 400-410 (Annex I: Procedural History).

<sup>25</sup> *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Second Revised Amended Indictment (in conformity with Trial Chamber III Decision dated 7 December 2006), 11 December 2006.

<sup>26</sup> *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Decision on Defence Motion for Non-Conformity of the Indictment with the Trial Chamber's Decision on Defects in the Form of the Indictment, 7 December 2006.

<sup>27</sup> *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Amended Indictment (in Conformity with Trial Chamber I Decision Dated 14 July 2006), 18 July 2006 ("Second Amended Indictment").

<sup>28</sup> Notice of Appeal, para. 5, referring to Decision of 17 July 2006, Amended Indictment. *See also* AT. 29 September 2009 pp. 5-8.

<sup>29</sup> Notice of Appeal, para. 6; Appellant's Brief, paras. 18-26, referring to *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, *Requête de la Défense en Exception Préjudicielle pour vices de forme de l'Acte d'accusation*, ((Art. 50 C) du Règlement de Procédure et de Preuve), 29 August 2006 ("Motion of 29 August 2006"). *See also* AT. 29 September 2009 pp. 5-8.

<sup>30</sup> Notice of Appeal, para. 7; Appellant's Brief, paras. 29-31. *See also* AT. 29 September 2009 pp. 5-8.

The Appeals Chamber considers that, read in context, this paragraph provided the Appellant with adequate notice that he was charged with having ordered or instigated a group of people, including *Interahamwe*, to kill Tutsis and that these people subsequently acted on this order or instigation. Accordingly, the Appellant's argument is dismissed.

#### **B. Alleged Error Regarding the *Mens Rea***

58. The Appellant claims that the Trial Chamber erred in law in concluding that he "must have known that the natural consequence of addressing those men in the way that he did would be that they would go out and kill Tutsis and Tutsi sympathizers."<sup>152</sup> He contends that the Trial Chamber applied an objective standard in determining his intent to kill<sup>153</sup> while the required *mens rea* for proving "murder" is a subjective intent to kill.<sup>154</sup> He argues that the Trial Chamber should have first found the *mens rea* for "murder" before proceeding to make a finding on his *mens rea* for genocide.<sup>155</sup>

59. The Prosecution responds that the Trial Chamber did not err in concluding that the Appellant's specific intent to commit genocide was proven beyond reasonable doubt based on a holistic evaluation of the evidence.<sup>156</sup> It asserts that the Trial Chamber's approach is consistent with the jurisprudence of the Appeals Chamber, which establishes that the specific intent to commit genocide can be inferred from, among other things, the overall context in which the crime occurred.<sup>157</sup>

60. As a preliminary issue, the Appeals Chamber notes that while the English translation of the Appellant's Brief refers to "murder", in the original French version the term used is "*meurtre*".<sup>158</sup> As *meurtre* can be translated as "murder" or "killing" and the Appellant was not convicted of murder but rather of instigating genocide, with the underlying act of killing, and of instigating extermination as a crime against humanity,<sup>159</sup> the Appeals Chamber understands that the Appellant is referring to the *mens rea* for instigating the underlying act of killing, not murder.

61. The Appeals Chamber recalls that the *mens rea* for instigating is established where the perpetrator acts with either direct intent to prompt another to commit a crime, or with awareness of

<sup>152</sup> Trial Judgement, para. 95.

<sup>153</sup> Notice of Appeal, para. 24; Appellant's Brief, para. 66.

<sup>154</sup> Notice of Appeal, para. 19; Appellant's Brief, para. 65, citing *Semanza* Trial Judgement, para. 319, *Akayesu* Trial Judgement, paras. 500, 501, *Rutaganda* Trial Judgement, para. 50, *Bagilishema* Appeal Judgement, paras. 57, 58, *Kayishema and Ruzindana* Appeal Judgement, para. 15.

<sup>155</sup> Appellant's Brief, paras. 70, 71.

<sup>156</sup> Respondent's Brief, paras. 51, 52.

<sup>157</sup> Respondent's Brief, para. 51, citing *Nahimana et al.* Appeal Judgement, para. 524, *Gacumbitsi* Appeal Judgement, para. 41.

<sup>158</sup> Appellant's Brief, paras. 70, 71.



the substantial likelihood that a crime will be committed in execution of that instigation.<sup>160</sup> Furthermore, where the crime alleged is genocide, it must also be proven that the perpetrator acted with the specific intent to destroy a protected group as such in whole or in part.<sup>161</sup>

62. The Appeals Chamber rejects the Appellant's claim that the Trial Chamber was required to conclude that he possessed the *mens rea* for instigating killing before proceeding to make a finding on his genocidal intent. Provided that the Trial Chamber finds that both elements of the *mens rea* have been established, it is immaterial in which order it does so. In relation to the killings on or about 7 April 1994, the Trial Chamber concluded that the Appellant had both the *mens rea* for instigation<sup>162</sup> and the specific intent for genocide.<sup>163</sup>

63. The Appellant further submits that the Trial Chamber erred by imputing Witness LAG's subjective state of mind to him in determining whether the Appellant possessed the necessary *mens rea*.<sup>164</sup> The Appeals Chamber disagrees. The Trial Chamber did not attribute Witness LAG's state of mind to the Appellant. Rather, it relied on the language used by the Appellant, as reported by Witness LAG in his evidence, in order to make a finding regarding the Appellant's intent.<sup>165</sup> Witness LAG testified that the Appellant told the people gathered in Kamembe on the morning of 7 April 1994 that the presidential plane had been shot down by the Tutsis, the *Inyenzi*, and the RPF<sup>166</sup> and then instructed the crowd to search for Tutsis, their accomplices, and MRND opponents.<sup>167</sup> The Trial Chamber also relied on the context of the death of President Habyarimana and the aftermath of insecurity and chaos, along with the fact that the Appellant was an important figure to whom young men would defer.<sup>168</sup> On that basis, it found that the Appellant must have known that the consequence of his speech in Kamembe would be that the people who heard it would kill Tutsis and Tutsi sympathisers.<sup>169</sup> The Appeals Chamber finds that the Appellant has not demonstrated that a reasonable Trial Chamber could not have found that the only conclusion to be drawn from the evidence on the record was that he possessed the required *mens rea* for instigating killings and the specific intent to commit genocide. Therefore, this argument is dismissed.

<sup>159</sup> Trial Judgement, para. 347.

<sup>160</sup> *Kordić and Čerkez* Appeal Judgement, paras. 29, 32.

<sup>161</sup> *Seromba* Appeal Judgement, para. 175.

<sup>162</sup> Trial Judgement, para. 95.

<sup>163</sup> Trial Judgement, para. 336.

<sup>164</sup> Notice of Appeal, para. 24; Appellant's Brief, paras. 68, 69. In paragraph 68 of his Appellant's Brief, the Appellant refers to the transcript of 17 January 2007, page 39, lines 31-37 and page 40, lines 1-2 where Witness LAG stated that he interpreted the Appellant's statement to "search for the Tutsis and their accomplices" to mean that these people should be killed, and that because the Appellant was the Deputy Prosecutor, these orders could be implemented without the perpetrators suffering any consequences.

<sup>165</sup> See Trial Judgement, para. 333.

<sup>166</sup> Trial Judgement, para. 60.

<sup>167</sup> Trial Judgement, para. 60.

<sup>168</sup> Trial Judgement, para. 95.

<sup>169</sup> Trial Judgement, para. 95.

submits that the Trial Chamber erred when it found that he instigated a group of *Interahamwe*, which included Christophe Nyandwi, to kill Dr. Nagafizi because it failed to consider that there was no evidence regarding the specific identity of the *Interahamwe* group to which Nyandwi belonged.<sup>562</sup>

229. The Prosecution responds that the Appellant's argument concerning Christophe Nyandwi is unmeritorious because the Trial Chamber was not required to specifically find that he was a member of the group of *Interahamwe* that killed Dr. Nagafizi.<sup>563</sup> It submits that there is sufficient evidence to support the Trial Chamber's conclusion that the Appellant instigated others to kill Dr. Nagafizi because the Trial Chamber found that the Appellant ordered or instigated Witness LAG, *Interahamwe*, and others to search for and kill Tutsis and other civilians in Kamembe on 7 April 1994.<sup>564</sup>

230. The Appellant has not sufficiently developed his arguments to enable the Appeals Chamber to assess the alleged error. He fails to show how the lack of evidence that he was an *Interahamwe* leader contradicts the Trial Chamber's findings that he bears responsibility for instigating people to kill Dr. Nagafizi. A determination of whether the Appellant led the attack as an *Interahamwe* group leader or belonged to the same *Interahamwe* group as the perpetrators of the attack is not required under the instigation mode of liability. As previously discussed, the *actus reus* of instigating involves prompting another person to commit a crime.<sup>565</sup> Therefore, the critical issue is not the relationship between the Appellant and the perpetrators—or even the identity of the perpetrators—but whether the Appellant's words substantially contributed to the murder of Dr. Nagafizi.<sup>566</sup> Accordingly, this ground of appeal is dismissed.

### 3. The Killing of Ndayisaba's Family (Ground of Appeal 17)

231. The Appellant claims that the Trial Chamber erred when it found him guilty of genocide and extermination as a crime against humanity for the death of Trojean Ndayisaba's family because there was no evidence that he ordered or instigated Thompson Mubiligi to attack Ndayisaba's

<sup>562</sup> Notice of Appeal, Heading 10.1(b). As it was raised for the first time in the Appellant's Brief in Reply, the Appeals Chamber will not consider the Appellant's argument that the Prosecution's case was ambiguous based on a disparity between paragraphs 22 and 29 of the Indictment. See Brief in Reply, para. 54.

<sup>563</sup> Respondent's Brief, para. 100.

<sup>564</sup> Respondent's Brief, para. 98.

<sup>565</sup> *Nahimana et al.* Appeal Judgement, para. 480.

<sup>566</sup> See *Karera* Appeal Judgement, para. 318 (stating that the specific identification of the perpetrators was not required to find that the Appellant instigated a killing when the Trial Chamber found that the Appellant left the victim in the hands of *Interahamwe* and must have understood that the victim would be killed); *Gacumbitsi* Appeal Judgement, para. 107 (noting that the critical question in determining whether Gacumbitsi had instigated the rape of a victim was whether his words substantially contributed to the commission of the rape).

339. Bearing these principles in mind, the Appeals Chamber finds that the Appellant could not have known on the basis of paragraph 20(a) of the Indictment that he was being charged with instigating Yussuf Munyakazi's *Interahamwe* to kill Tutsis at Shangi parish by providing them with hospitality and encouragement the night before the attack. Paragraph 20(a) of the Indictment refers only to a request for weapons, which were allegedly provided to the Appellant and then distributed to the *Interahamwe* and makes a general reference to instigating or ordering, without specifying the Appellant's particular acts. The Indictment is therefore defective in this respect.

340. A review of the Prosecution's Pre-Trial Brief, opening statement, and other aspects of the Trial Judgement demonstrates that this defect was not cured by timely, clear, and consistent information detailing the material facts of the charge. For example, the Prosecution's Pre-Trial Brief and the opening statement focus exclusively on the Appellant's unproven role in distributing weapons and ordering the attack.<sup>857</sup> In addition, the summary of Witness BRF's anticipated testimony annexed to the Pre-Trial Brief mentions the Appellant directing an attack at Shangi parish as well as his provision of food to Munyakazi's *Interahamwe*.<sup>858</sup> However, the summary attached to the Pre-Trial Brief does not connect the two events. Instead, it suggests that the hospitality extended by the Appellant was related to an attack in Bisesero in Kibuye Prefecture.<sup>859</sup>

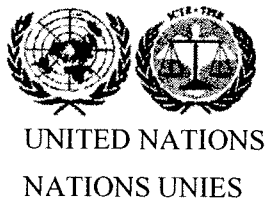
341. The Appeals Chamber notes that paragraph 37 of the Indictment does specifically allege that the Appellant provided food and drinks to Munyakazi's *Interahamwe*. However, this paragraph gives notice that this specific event is related to an attack on Bisesero between 20 and 25 June 1994, nearly two months after the attack on Shangi parish. The Prosecution also referred to this incident in its opening statement, placing it at the end of June 1994 and connecting it only to the Bisesero killings.<sup>860</sup> Accordingly, the Appeals Chamber finds that the Appellant did not receive notice of the particular acts amounting to instigating the *Interahamwe* to kill Tutsis at Shangi parish.

<sup>857</sup> See *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-I, Prosecutor's Pre-Trial Brief and Other Filings under Rule 73 bis of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda as amended on 7 June 2005, 25 August 2006 ("Prosecution Pre-Trial Brief"), p. 10 ("Shangi parish. After a security meeting held on or about 14 April 1994 on the MRND premises the Accused distributed weapons to the *Interhamwe* [sic] and ordered them to attack Shangi parish and kill all the Tutsi that had taken refuge there. During the attack, the *Interahamwe* killed many Tutsis."); T. 25 September 2006 p. 5 ("At Shangi parish, after a security meeting held on the 14th of April 1994 or thereabout in the MRND premises, at the end of the meeting the Accused distributed weapons to the *Interahamwes* and ordered them to attack the Shangi parish and kill all the Tutsis who had taken refuge there. During that attack the *Interahamwe* killed several Tutsi.").

<sup>858</sup> See Prosecution Pre-Trial Brief (Annex III), p. 6 ("BRF dira qu'il a appris que Nchamihigo était parmi ceux qui ont attaqué les paroisses de Mibilizi et Nyamasheke et qu'il a dirigé une attaque contre la paroisse de Shangi pour aider les *Interahamwe* de Bugarama. Il dira encore que quand les *Interahamwe* de Bugarama sont revenus de leur attaque de Kibuye, Nchamihigo a fait une réception en leur honneur au Groupe Scolaire de Gihundwe.").

<sup>859</sup> It is also notable that the Prosecution did not refer to Witness BRF or the provision of food to *Interahamwe* in its submissions related to the attack on Shangi parish in its Final Trial Brief. See *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Prosecutor's Closing Brief, 11 December 2007 ("Prosecution Final Trial Brief"), paras. 145-164.

<sup>860</sup> T. 25 September 2006 p. 7.



**International Criminal Tribunal for Rwanda**  
**Tribunal pénal international pour le Rwanda**

---

OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge Florence Rita Arrey, Presiding  
Judge Bakhtiyar Tuzmukhamedov  
Judge Aydin Sefa Akay

**Registrar:** Adama Dieng

**Date:** 30 December 2011

**THE PROSECUTOR**

v.

**Grégoire NDAHIMANA**

**Case No. ICTR-01-68-T**

---

**JUDGEMENT AND SENTENCE**

---

**Office of the Prosecutor:**

Holo Makwaia  
Althea Alexis Windsor  
Segun Jegede  
Lansana Dumbuya

**Defence Counsel:**

Bharat B. Chadha  
Wilfred Ngunjiri Nderitu  
Tharcisse Gatarama  
Marie-Pier Barbeau

805. The Prosecution charges Ndahimana with killing and causing serious bodily or mental harm to members of the Tutsi group. The Majority has taken judicial notice of the fact that the Tutsi ethnicity is a protected group.<sup>1468</sup> A conviction for the crime of genocide requires a showing that the principal perpetrator intentionally killed one or more members of the group.<sup>1469</sup> The Appeals Chamber has noted that the term “serious bodily or mental harm” is not defined in the Statute, and that the definition of such harm has not squarely been addressed.<sup>1470</sup> Examples of serious bodily harm are torture, rape and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs.<sup>1471</sup> Serious mental harm includes, “more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat.”<sup>1472</sup> To support a conviction for genocide, the bodily or mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction, in whole or in part.<sup>1473</sup>

### 4.3 Deliberations

#### 4.3.1 Killings at Nyange Church, 16 April 1994

806. In its factual findings, the Majority found that, based upon the corroborating evidence of Prosecution Witnesses CBK, CBY, CNJ, CDL and CBR, the Prosecution has proven beyond reasonable doubt that late in the morning on 16 April 1994, before the destruction of Nyange church began, Ndahimana met at Nyange presbytery with Father Seromba, IPJ Kayishema, Kanyarukiga and other members of the JCE. The Majority is further satisfied that Ndahimana was present during this meeting when the other participants planned and agreed to kill all the refugees at the church by destroying it (Chapter III, Section 6.3.3.3).

807. In its factual findings, the Majority further determined that the accused was present during the destruction of Nyange church and the killing of the Tutsi refugees on 16 April 1994 (Chapter III, Section 6.3.4).

808. In light of these circumstances, the Majority turns to consider the most appropriate mode or modes of liability applicable to Ndahimana’s conduct. The Majority recalls that the Appeals Chamber has highlighted the importance of unambiguously expressing the scope of a convicted person’s criminal responsibility.<sup>1474</sup> It has also affirmed that a Trial Chamber may cumulatively

<sup>1468</sup> Decision on Prosecution’s Motion for Judicial Notice, 7 April 2010.

<sup>1469</sup> *Bagosora et al.* (TC) Judgement, para. 2117 (citing *Simba* (TC) Judgement, para. 414 (referring to *Kayishema & Ruzindana* (AC) Judgement, para. 151)).

<sup>1470</sup> *Seromba* (AC) Judgement, para. 46. *See also*, *Kayishema & Ruzindana* (TC) Judgement, paras. 110, 113 (In which the Trial Chamber stated “that ‘causing serious mental harm’ should be interpreted on a case-by-case basis in light of the relevant jurisprudence.”).

<sup>1471</sup> *Seromba* (AC) Judgement, para. 46 (citing *Semanza* (TC) Judgement, para. 320 (citing *Kayishema & Ruzindana* (TC) Judgement, para. 109); *Ntagerura et al.* (TC) Judgement, para. 664).

<sup>1472</sup> *Seromba* (AC) Judgement, para. 46 (citing *Kajelijeli* (TC) Judgement, para. 815 (citing *Kayishema & Ruzindana* (TC) Judgement, para. 110); *Semanza* (TC) Judgement, para. 321).

<sup>1473</sup> *Seromba* (AC) Judgement, para. 46 (citing *Kajelijeli* (TC) Judgement, para. 184; *Krajišnik* (TC) Judgement, para. 862); Report of the International Law Commission on the Work of its Forty-Eighth Session 6 May-26 July 1996, UN GAOR International Law Commission, 51st Sess., Supp. No. 10, p. 91, UN Doc. A/51/10 (1996).

<sup>1474</sup> *See Ndinabahizi* (AC) Judgement, paras. 122 (“While an accused can be convicted for a single crime on the basis of several modes of liability, alternative convictions for several modes of liability are, in general, incompatible with the principle that a judgement has to express unambiguously the scope of the convicted person’s criminal responsibility. This principle requires, *inter alia*, that the sentence corresponds to the totality of guilt incurred by the convicted person. This totality of guilt is determined by the *actus reus* and the *mens rea* of the convicted person. The modes of liability may either augment (*e.g.*, commission of the crime with direct intent) or lessen (*e.g.*, aiding and abetting a crime with

refer to various modes of responsibility where it is necessary to fully characterise an accused's criminal conduct.<sup>1475</sup>

809. In this instance, the Majority has considered that the accused's responsibility stems from his presence at the meeting on 16 April 1994 and during the subsequent killings. Therefore, the Prosecution has not proven that the accused planned, instigated or ordered any of the crimes charged.<sup>1476</sup> However, the Majority will assess whether, by his presence, Ndahimana committed the crime of genocide through a JCE or aided and abetted the crime of genocide.

#### 4.3.2 Does Presence of Accused Constitute an Omission as Evidence of Participation in a JCE?

810. Involvement in a JCE may be proven by evidence characterised as an omission. The objective element of participation is satisfied as long as the accused has "committed an act or an omission which contributes to the common criminal purpose."<sup>1477</sup> However, the omission of the accused that forms the *actus reus* of this mode of liability cannot simply be the failure to prevent or punish.<sup>1478</sup>

811. In convictions under this mode, the act of omission is often combined with previous positive actions. Often, in order to prove the requisite *mens rea* for this mode of liability, it is necessary to combine the accused's inaction with previous positive actions that point toward the accused's shared criminal intent.<sup>1479</sup>

812. In the present case, the Majority is not convinced beyond a reasonable doubt that Ndahimana shared the requisite specific intent of the other members of the JCE. Specifically, the Prosecution failed to prove beyond reasonable doubt that the accused shared the intent to destroy the Tutsi population in whole or in part.<sup>1480</sup>

813. The Majority recalls that the evidence as to whether Ndahimana attended one or two meetings at Nyange church on 13 April 1994 and whether an attack was launched that same day is unclear. It concluded that Ndahimana attended one meeting at Nyange presbytery but it had not been proven beyond reasonable doubt that the authorities planned the extermination of the Tutsis on 13 April 1994 (Chapter III, Section 4.3.2). In addition, while the Majority found that Ndahimana went to the presbytery on 14 April 1994, the Prosecution did not prove that Ndahimana left and

---

awareness that a crime will probably be committed) the gravity of the crime. Thus, the criminal liability of a convicted person has to be established unequivocally." (Internal citations omitted).

<sup>1475</sup> See *Ndindabahizi* (AC) Judgement, para. 122 (An accused can be convicted for a single crime on the basis of several modes of liability), para. 123 (Noting that the Trial Chamber wanted to emphasise that a full characterisation of the accused's conduct had to cumulatively refer to various modes of liability); *Gacumbitsi* (AC) Judgement, para. 204 (Recalling that the accused played a central role in planning, instigating, ordering, committing and aiding and abetting genocide and extermination in his *commune* of Rusumo, where thousands of Tutsis were killed or seriously harmed).

<sup>1476</sup> Indictment, paras. 10, 35.

<sup>1477</sup> *Kvočka et al.* (AC) Judgement, para. 187.

<sup>1478</sup> *Mpambara* (TC) Judgement, para. 39 ("The Chamber emphatically rejects this approach. Failure to prevent or punish a crime *cannot* be characterised as a form of commission of that same crime.") (emphasis added).

<sup>1479</sup> *Mpambara* (TC) Judgement, para. 24; *Kvočka et al.* (AC) Judgement, para. 195 (The Appeals Chamber upheld a conviction of participation in a JCE based on the accused's failure to prevent or punish crimes that were being committed by camp guards. The Appeals Chamber considered also: "[1] that he held a high-ranking position in the camp and had some degree of authority over the guards; [2] that he had sufficient influence to prevent or halt some of the abuses but that he made use of that influence only very rarely; [3] that he carried out his tasks diligently, participating actively in the running of the camp; that through his own participation, in the eyes of other participants, he endorsed what was happening in the camp.").

<sup>1480</sup> Statute, Article 2.



**Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

**Before:** Judge Wolfgang Schomburg, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Theodor Meron

**Registrar:** Mr. Adama Dieng

**Judgement of:** 16 January 2007

**EMMANUEL NDINDABAHIZI  
(Appellant)**

**v.**

**THE PROSECUTOR  
(Respondent)**

**Case No. ICTR-01-71-A**

---

**JUDGEMENT**

---

**Counsel for the Appellant:**

Mr. Michel Konitz  
Ms. Magali Pirard

**The Office of the Prosecutor:**

|                           |                     |                        |
|---------------------------|---------------------|------------------------|
| Mr. Hassan Bubacar Jallow | Mr. George Mugwanya | Mr. Abdoulaye Seye     |
| Mr. James K. Stewart      | Ms. Inge Onsea      | Mr. Alfred Orono Orono |

## XI. GROUND OF APPEAL 12 – WITHDRAWN

## XII. ALTERNATIVE CONVICTIONS

121. The Appeals Chamber *proprio motu* raises the issue of alternative convictions arising from paragraph 485 of the Trial Judgement:<sup>265</sup>

[T]he Chamber finds that the Accused himself committed the crime of extermination. He participated in creating, and contributed to, the conditions for the mass killing of Tutsi on Gitwa Hill on 26 April 1994, by distributing weapons, transporting attackers, and speaking words of encouragement that would have reasonably appeared to give official approval for an attack. **Alternatively**, the Chamber finds that by these words and deeds, the Accused directly and substantially contributed to the crime of extermination committed by the attackers at Gitwa Hill, and is thereby guilty of both instigating, and of aiding and abetting, that crime. (emphasis added).

122. While an accused can be convicted for a single crime on the basis of several modes of liability, alternative convictions for several modes of liability are, in general, incompatible with the principle that a judgement has to express unambiguously the scope of the convicted person's criminal responsibility. This principle requires, *inter alia*, that the sentence corresponds to the totality of guilt incurred by the convicted person. This totality of guilt is determined by the *actus reus* and the *mens rea* of the convicted person. The modes of liability may either augment (e.g., commission of the crime with direct intent) or lessen (e.g., aiding and abetting a crime with awareness that a crime will probably be committed<sup>266</sup>) the gravity of the crime.<sup>267</sup> Thus, the criminal liability of a convicted person has to be established unequivocally.

123. However, the Appeals Chamber finds, by majority, Judge Güney dissenting, that the Trial Chamber did not convict the Appellant in the alternative. Rather, the Trial Chamber was seeking to provide a further characterisation of the Appellant's criminal conduct. The Trial Chamber was convinced beyond a reasonable doubt that the Appellant committed acts constituting extermination,<sup>268</sup> namely by distributing weapons, transporting attackers and speaking words of

<sup>265</sup> Upon invitation of the Appeals Chamber, this issue was discussed at the Appeals Hearing: T. 6 July 2006, pp. 53, 54, 58: the Prosecution argued that although conviction in the alternative is incorrect, it is not sufficient grounds to overturn the Trial Judgement, and suggested the term "additionally" would have been more appropriate. The Defence replied that it is not permissible to substitute language for the Trial Chamber, T. 6 July 2006, p. 67.

<sup>266</sup> See *Blaškić* Appeal Judgement, para. 50.

<sup>267</sup> In this context, the Appeals Chamber recalls that in *Krstić*, the ICTY Appeals Chamber stated that it had taken into account the sentencing practice of the courts of the former Yugoslavia applicable in that case, in particular the practice that "the sentence of a person who aided a principal perpetrator to commit a crime can be reduced to a sentence less than the one given to the principal perpetrator", *Krstić* Appeal Judgement, para. 270 (note omitted).

<sup>268</sup> The Trial Chamber stated that "[e]xtermination may be committed less directly than murder, as by participation in measures intended to bring about the deaths of a large number of individuals, but without actually committing a killing of any person" (Trial Judgement, para. 479). The words "without actually committing a killing" could mean, in the ordinary sense of the word, "without causing death". The Appeals Chamber finds, however, that the word "actually" in this context rather describes what other judgements have referred to as "indirectly" causing death, in particular as these



encouragement. Furthermore, the Trial Chamber also found that by such encouragement, the Appellant instigated and aided and abetted the crime of extermination. Therefore, the Trial Chamber wanted to emphasize that a full characterisation of the Appellant's conduct had to cumulatively refer to various modes of liability. The Appeals Chamber notes, however, that it is for a Trial Chamber to identify unambiguously the mode(s) of liability for which an accused is convicted and the relation between them. It has to be stated already here that the underlying acts and the crime itself remain the same, and no reduction or increase of the sentence is merited.

### **XIII. APPEAL AGAINST THE SENTENCE (GROUND OF APPEAL 13)**

#### **A. Submissions of the Parties**

124. The Appellant submits that the Trial Chamber erred in fact and in law in concluding that the aggravating circumstances outweighed the mitigating circumstances in his case.<sup>269</sup>

125. With respect to the aggravating circumstances, the Appellant contends first that the fact that he was well-known and influential in the region where the crimes were committed and the fact that he held an official position in the Interim Government do not constitute two separate aggravating circumstances but express the same idea, since his position in the Interim Government explains why he had become a more well-known figure than the other workers of the public administration in Kibuye Prefecture. Further, argues the Appellant, his position in the Interim Government cannot, by itself, constitute an aggravating circumstance, because the Prosecution still has to establish the causal link between this position and the influence he used in his official capacity to facilitate the commission of genocide and crimes against humanity.<sup>270</sup>

126. The Appellant also argues that the Trial Chamber erred in concluding that he supported a policy of genocide in his capacity as minister in the Interim Government, which was considered an aggravating factor by the Trial Chamber at sentencing. In his view, it has not been established that he committed any act of government relating to genocide.<sup>271</sup>

127. The Appellant further argues that the Trial Chamber erred in considering as an aggravating circumstance a summary of the substantive grounds that the Prosecutor charged in paragraph 21 of

---

judgements are referred to in para. 479 of the Trial Judgement: *Krstić* Trial Judgement, para. 498; *Vasiljević* Trial Judgement, para. 227; *Kayishema and Ruzindana* Trial Judgement, paras 143, 146.

<sup>269</sup> Appellant's Brief, paras 301-19.

<sup>270</sup> Appellant's Brief, paras 305, 311-13. Appellant's Reply, paras 90-91.

<sup>271</sup> Appellant's Brief, para. 44.

## XVI. PARTIALLY DISSENTING OPINION OF JUDGE GÜNEY

1. I agree with the Appeals Chamber's resolution of Emmanuel Ndindabahizi's appeal and with most of the reasons provided in today's Judgement. However, with respect, I am unable to accept the Appeals Chamber's affirmation *proprio motu* of the Trial Chamber's finding that Emmanuel Ndindabahizi himself committed the crime of extermination.<sup>326</sup> I therefore regret that I cannot support the findings of the Appeals Chamber with respect to paragraph 123.

2. In its Judgement, the Appeals Chamber finds *proprio motu* that "alternative convictions for several modes of liability are, in general, incompatible with the principle that a judgement has to express unambiguously the scope of the convicted person's criminal responsibility",<sup>327</sup> a statement with which I agree. In paragraph 123 of its Judgement, the Appeals Chamber also holds that "a full characterisation of the Appellant's conduct had to cumulatively refer to various modes of liability", *i.e.*, committing, instigating and aiding and abetting the crime of extermination.<sup>328</sup> The Appeal Judgement does not assess the characterisation by the Trial Chamber of the Appellant's criminal conduct; it simply upholds the Trial Judgement's finding, without considering its correctness. I have difficulty with the approach taken by the majority in this regard. More importantly, I disagree with the Trial Chamber's finding, upheld by the majority, that based on the circumstances of this case, the Appellant's conduct constitutes the "commission" of extermination. My reasons are as follows.

3. The Trial Chamber found that "[e]xtermination may be committed less directly than murder, as by participation in measures intended to bring about the deaths of a large number of individuals, but without actually committing a killing of any person."<sup>329</sup> In defining the *actus reus* for extermination, the Trial Chamber went beyond the findings of this Appeals Chamber in the *Ntakirutimana* Appeal Judgement and those of the ICTY Appeals Chamber in the *Stakić* Appeal Judgement. The Appeals Chambers in these cases defined the *actus reus* of extermination as "the act of killing on a large scale"<sup>330</sup> or the "systematical[] subject[ion of] a number of people to conditions of living that would inevitably lead to death."<sup>331</sup> If these precedents had been followed in this case, the acts of the Appellant could not have been characterised as "committing extermination".<sup>332</sup> Indeed, the Trial Chamber found that the evidence did not establish that the

<sup>326</sup> Appeal Judgement, paras 121 and 123.

<sup>327</sup> *Ibid.*, para. 122.

<sup>328</sup> See Trial Judgement, para. 485.

<sup>329</sup> Trial Judgement, para. 479.

<sup>330</sup> *Ntakirutimana* Appeal Judgement, para. 516; *Stakić* Appeal Judgement, para. 259.

<sup>331</sup> *Ntakirutimana* Appeal Judgement, para. 522; *Stakić* Appeal Judgement, para. 259.

<sup>332</sup> Except perhaps in the sense of participation in a joint criminal enterprise, but such mode of liability was not pleaded in this case.

Appellant himself killed any person by his acts at Gitwa Hill.<sup>333</sup> The Trial Chamber found that the Appellant committed the crime of extermination by distributing weapons, transporting attackers and encouraging them.<sup>334</sup> This cannot be considered as “systematically subjecting a number of people to conditions of living that would inevitably lead to death”.<sup>335</sup> Moreover, it cannot be maintained that the killing of the refugees at Gitwa Hill would have occurred without the actions of the attackers themselves.

4. The Appeal Judgement does not provide reasons for upholding the Trial Chamber’s characterisation of the Appellant’s conduct as “committing” extermination. However, in a footnote, the majority suggests that “indirectly” causing death could also constitute committing extermination.<sup>336</sup> This seems to follow the approach in the *Gacumbitsi* case, in which the majority held that committing means not only “physically perpetrating the *actus reus* of the crime [or] participating in a joint criminal enterprise”, but also “other acts of participation.”<sup>337</sup> In my Partially Dissenting Opinion in *Gacumbitsi*,<sup>338</sup> I explained that this finding departs from prior decisions of both the ICTR and the ICTY Appeals Chambers without providing cogent reasons. I also explained that it blurs the essential distinction between “committing” a crime and other forms of liability recognised by the Statute and the jurisprudence. If any act of participation in a crime amounts to committing the crime, then all modes of liability are subsumed in the expression “committed” in Article 6(1) of the Statute and become redundant. This, at the very least, runs contrary to the principle *ut res magis valeat quam pereat*, according to which all provisions in the Statute should be given effect.

5. In my view, the criminal conduct of the Appellant can only be characterised as instigating and aiding and abetting the crime of extermination; it does not constitute “committing” that crime. In the circumstances of this case, the attackers at Gitwa Hill committed the crime. Their actions directly resulted in the deaths of the refugees and there were no other agents intervening between their acts and the death of the victims. The Appellant assisted, encouraged and lent moral support to these attackers, and his acts had a substantial effect upon the perpetration of the crime.

6. I conclude that the Trial Chamber erred in finding that Mr. Ndindabahizi “himself committed the crime of extermination”.<sup>339</sup> I regret that the Appeal Judgement upholds this

<sup>333</sup> Trial Judgement, para. 481.

<sup>334</sup> *Ibid.*, para. 485.

<sup>335</sup> *Ntakirutimana* Appeal Judgement, para. 522; *Stakić* Appeal Judgement, para. 259 (emphasis added).

<sup>336</sup> Appeal Judgement, footnote 269.

<sup>337</sup> *Gacumbitsi* Appeal Judgement, paras 60-61.

<sup>338</sup> *Gacumbitsi* Appeal Judgement, Partially Dissenting Opinion of Judge Güney, paras 2-9.

<sup>339</sup> Trial Judgement, para. 485.



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

Or.: Eng.

**TRIAL CHAMBER I**

**Before :** Judge Erik Møse, presiding  
Judge Khalida Rachid Khan  
Judge Solomy Balungi Bossa

**Registrar:** Adama Dieng

**Date:** 15 July 2004

**THE PROSECUTOR**

**v.**

**EMMANUEL NDINDABAHIZI**

***Case No. : ICTR-2001-71-I***

---

**JUDGEMENT AND SENTENCE**

---

**The Prosecution**

Charles Adeogun-Phillips  
Wallace Kapaya  
Peter Tafah

**The Defence**

Pascal Besnier  
Guillaume Marçais

462. The Accused instigated, and aided and abetted, this genocide at Gitwa Hill. He expressly urged the attackers to kill the "Tutsi" assembled there. He distributed machetes and, on at least one occasion, transported armed attackers to the site. He visited Gitwa Hill on two occasions, distributing machetes and urging an attack on the Tutsi. By his words and deeds, the Accused manifested an intent that the Tutsi on Gitwa Hill, who numbered in the thousands, should be attacked and killed. Further, the Accused was well aware that his remarks and actions were part of a wider context of ethnic violence, killing and massacres in Rwanda during this period.<sup>600</sup> The Chamber finds that by urging the killing of the Tutsi on Gitwa Hill, the Accused intended to destroy, in whole or in part, the Tutsi ethnic group.

463. The words and deeds of the Accused directly and substantially contributed to the mass killing of Tutsi which subsequently took place at Gitwa Hill. When the Accused arrived, the attackers gathered around; when he spoke, they listened. His position as a Minister of Government lent his words considerable authority.<sup>601</sup> The final attack was launched as little as two days after his last visit, and smaller-scale attacks occurred shortly after his visits to the Hill.

464. By his words, the Accused is guilty of instigating genocide. By his acts of material assistance, including the distribution of weapons and the transportation of attackers, in conjunction with his words of encouragement, the Accused is guilty of aiding and abetting genocide.

*Roadblocks in Gitesi Commune (Paragraphs 11, 12 and 13 of the Indictment)*

465. The Chamber has found that the Accused stopped at roadblocks along the Gitarama-Kibuye Road in Gitesi Commune on two separate occasions during the month of May, 1994. At a place called Gaseke, in late May 1994, the Accused distributed machetes, gave out money to those manning the roadblock, and asked why Tutsi were being allowed to go through without being killed, meaning thereby that they should be killed. At the end of May, near Nyabahanga Bridge, the Accused distributed machetes to *Interahamwe* and others at a roadblock, telling them to kill Tutsi women married to Hutu men.

466. In order to be guilty of instigating, or aiding and abetting, genocide, the acts constituting the encouragement must directly and substantially contribute to the perpetration of genocide by another person. There is limited evidence of the acts committed by those at the roadblocks subsequent to the visits of the Accused. The Chamber has found, however, that a person known as Nors, alias Nturusu, was killed immediately after the departure of the Accused from the Gaseke roadblock. To be guilty of genocide for the killing of Nors, those at the roadblock must have intended to destroy, in whole or in part, the Tutsi ethnic group by targeting a person on the basis of membership in that ethnicity.<sup>602</sup>

<sup>600</sup> T. 25 November 2004 p. 14 ("Now, I knew that people were being massacred..."); T. 28 November 2004 p. 14 ("Q. Were massacres committed in Rwanda from around the 7<sup>th</sup> of April to about the middle of July?... A. The massacres were committed....").

<sup>601</sup> The Appeals Chamber has affirmed that an Accused's position of authority may be relevant to his ability to aid and abet the crime of genocide. *Rutaganda*, Judgement (AC), para. 529.

<sup>602</sup> During closing arguments, the Prosecution appears to take the position that no act of genocidal killing need take place for the Accused to be guilty of aiding and abetting genocide, and denied that the killing of Nors was relevant to its case: "We would never argue that Nors was part of our case, Your Honour, but the act of instigation was not limited to Nors. Nors just happened to be passed by the roadblock. Therefore, if you believe Witness CGC, the Accused has to be found guilty of genocide just on the basis of that event and nothing else."

470. Whether by killing Nors the attackers intended to destroy the Tutsi ethnic group, in whole or in part, must be assessed within the context of ethnic killing in Rwanda at the time. First, evidence in the present case confirms findings in many previous cases that roadblocks were places where Tutsi were identified and killed.<sup>609</sup> Second, Witness CGC testified that he could smell decomposing bodies while he was at the roadblock, and heard that many people had been killed there, both before and after the Accused's visit. Third, Witness CGC was himself taken to the roadblock and threatened with death because he was a Tutsi, before being rescued by his mentor. Fourth, Defence Witness DC testified that those at the roadblock asked him to stay there to assist in the killing of Nors, who they believed would be returning along the road in a vehicle shortly. Fifth, the killers were undoubtedly aware that Tutsi were being indiscriminately stopped, identified and killed throughout Kibuye, including at control points such as roadblocks. On the basis of these facts, the Chamber infers that, in killing Nors, the participants at this roadblock intended to destroy, in whole or in part, the Tutsi ethnic group.

471. The fact that only a single person was killed on this occasion does not negate the perpetrators' clear intent, which was to destroy the Tutsi population of Kibuye and of Rwanda, in whole or in part.<sup>610</sup> Accordingly, the killers of Nors committed genocide.

472. The Accused explicitly urged those manning the roadblock to kill Tutsi. He gave them material assistance in the form of machetes and money. Nors was apprehended at the roadblock shortly after the Accused's visit, possibly within a few minutes. Under these circumstances, the Accused directly and substantially contributed to the perpetration of the crime of genocide at the Gaseke roadblock.

473. The Chamber finds that the Accused instigated, and aided and abetted, genocide by his acts of assistance and encouragement to the killers of Nors.

474. The Chamber notes that one witness, Witness CGM, testified that after the visit of the Accused, Tutsi women married to Hutu men were killed. There is no indication of precisely when these killings occurred or where. The only specific killing mentioned by the witness was by a person named Gatwa, who killed his second wife, who was Tutsi. The witness gives no indication that Gatwa was at roadblock during the Accused's visit or was otherwise influenced in any way by the Accused's words at Nyabahanga Bridge. The Chamber finds the Accused not guilty of instigation, or aiding and abetting, as there is insufficient evidence to establish that the Accused's conduct at the roadblocks directly and substantially contributed to the killing of Tutsi women married to Hutu men, or their children.

---

'as such' to mean that the proscribed acts were committed against the victims because of their membership in the protected group, but not solely because of such membership").

<sup>609</sup> As, for example, the testimony of Witness CGE, CGF, DL and DM concerning the Gitaka Centre roadblock; Witness DN, concerning massacres at roadblocks (T. 3 November 2003 p. 2003); the expert testimony of Witness Des Forges (T. 24 September 2003) p. 35.

<sup>610</sup> Past formulations have emphasized that genocide may be committed even when there is a single victim, provided that the perpetrators possess the requisite intent: *Musema*, Judgement (TC), para. 165 ("For any of the acts charged to constitute genocide, the said acts must have been committed against one or more persons because such person or persons were members of a specific group, and specifically, because of their membership in this group"); *Rutaganda*, Judgement (TC), para. 60; *Semanza*, Judgement (TC), para. 316; William Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 234 ("No acceptable rationale can justify why an individual murder, if committed with the intent to destroy a group 'in whole or in part', should not be qualified as genocide").

attack which occurred shortly thereafter. Accordingly, the Accused contributed substantially to the mass killing of Tutsi which ensued.

484. The general requirements for a crime against humanity are also satisfied. The evidence is overwhelming that there were widespread attacks against Tutsi in Rwanda, and in Kibuye Prefecture, during this period. The Accused overtly manifested his intent to kill the civilian refugees at Gitwa Hill because they were Tutsi, knowing that ethnic massacres were occurring throughout Rwanda. At the least, he had knowledge of the widespread nature of the attacks and their discriminatory nature, and knew that an attack on Gitwa Hill would be part of those widespread attacks.

485. As to the mode of commission, the Chamber finds that the Accused himself committed the crime of extermination. He participated in creating, and contributed to, the conditions for the mass killing of Tutsi on Gitwa Hill on 26 April 1994, by distributing weapons, transporting attackers, and speaking words of encouragement that would have reasonably appeared to give official approval for an attack. Alternatively, the Chamber finds that by these words and deeds, the Accused directly and substantially contributed to the crime of extermination committed by the attackers at Gitwa Hill, and is thereby guilty of both instigating, and of aiding and abetting, that crime.

### 3. Murder as a Crime Against Humanity

#### 3.1 Applicable Law

486. Count 3 of the Indictment charges the Accused with murder as a crime against humanity. The Indictment refers generally to the modes of responsibility in Article 6(1) of the Statute, and alleges specifically that the Accused “instigated and ordered persons at roadblocks in Kibuye Prefecture to kill civilians identified as Tutsi, at times individually addressing local administrative offices and naming particular civilians to be killed.” The Prosecution seems hereby to refer to evidence of alleged encouragement to commit murder at three roadblocks along the Kibuye-Gitarama road in Gitesi, and at an alleged roadblock in Gitaka Centre.

487. Murder is the intentional killing of a person, or intentional infliction of grievous bodily harm knowing that such harm will likely cause the victim’s death or being reckless as to whether death will result, without lawful justification or excuse.<sup>618</sup> Murder, as with extermination, is punishable as a crime against humanity “when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds”, as required by Article 3 of the Statute. These requirements have been elucidated above in relation to the requirements of extermination as a crime against humanity. In particular, it is recalled that the *mens rea* for a crime against humanity requires that the perpetrator know that their act is part of the widespread or systematic attack against a

<sup>618</sup> *Akayesu*, Judgement (TC), para. 589; *Rutaganda*, Judgement (TC), para. 81; *Musema*, Judgement (TC), para. 215. See Antonio Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2003), p. 74; Kriangsak Kittichaisaree, *International Criminal Law* (Oxford: Oxford University Press, 2002), pp. 102-04. Other cases have also required that the intentional killing be “premeditated”, based upon the use of the word “*assassinat*” in the French text of the Statute. See e.g. *Semanza*, Judgement (TC), paras. 334-339. The Chamber does not consider it necessary to consider the higher threshold in this case, as the nature of the Accused’s intent is not presently in issue.

civilian population on discriminatory grounds, without necessarily sharing that discriminatory intent while committing the specific act.

488. As also discussed above, instigation, and aiding and abetting, must directly and substantially contribute to the perpetration of the crime for liability to arise.<sup>619</sup>

### 3.2 Application to Factual Findings

#### *Roadblocks in Gitesi Commune (Paragraph 25)*

489. The Chamber has discussed its findings concerning the sequence of events leading to the death of Nors at Gaseke roadblock in Section 6.1 of its Factual Findings, and in the preceding section. On the basis of that discussion, the Chamber finds that the participants at the Gaseke roadblock were part of a widespread and systematic attack against Tutsi civilians, and that the killing of Nors was part of that systematic attack. The killing occurred at, or near, the roadblock. Nors was targeted because he was Tutsi or, alternatively, because he was perceived to be Tutsi. In either event, the killers of Nors possessed the requisite specific intent, either because they intended to kill Nors as part of the widespread or systematic attack against Tutsi, or because they knew that killing Nors would further the goals of that widespread or systematic attack.

490. For the reasons discussed above in the preceding section in relation to instigation, or aiding and abetting genocide, the Chamber also finds that the Accused directly and substantially contributed to the perpetration of the crime of murder as a crime against humanity. Accordingly, in relation to the killing of Nors, the Accused is guilty under Count 3 for instigation, and aiding and abetting, of murder as a crime against humanity.

### 4. Conviction for Cumulative Charges

491. It is well-established that an accused may be charged with more than one criminal offence arising out of a single incident.<sup>620</sup> Multiple criminal convictions for different offences, but based on the same conduct, are permissible if each offence has a materially distinct element not contained in the other.<sup>621</sup> The Defence argues that there is a complete overlapping of offences between genocide and extermination as a crime against humanity. It also argues that there is a complete overlap in the elements required for conviction on the charges of genocide and murder as a crime against humanity.<sup>622</sup>

492. In *Krstic*, the ICTY Appeals Chamber recently reaffirmed established jurisprudence that genocide contains materially distinct elements from extermination, permitting cumulative convictions thereunder. In particular, it held that genocide need not be part of a “widespread or systematic attack”, as is required for crimes against humanity.<sup>623</sup> Accordingly, both

<sup>619</sup> *Kayishema and Ruzindana*, Judgement (AC), para. 198; *Krstic*, Judgement (AC), para. 137; *Bagilishema*, Judgement (TC), paras. 32-33. For present purposes, the Chamber need not explore the submission of the Prosecution to the effect that only the *actus reus* of the encouraged crime need be established. T. 1 March 2004 pp. 4-5.

<sup>620</sup> *Musema*, Judgement (AC), para. 369; *Kunarac*, Judgement (AC), para. 167.

<sup>621</sup> *Musema*, Judgement (AC), paras 361, 363; *Krstic*, Judgement (AC), para. 218; *Semanza*, Judgement (TC), para. 409.

<sup>622</sup> Defence Closing Brief, paras. 48-60.

<sup>623</sup> *Krstic*, Judgement (AC), para. 223; *Musema*, Judgement (AC), para. 366.



multiple sentences, the Chamber will determine whether the sentences shall be served consecutively or concurrently.

498. In reaching its decision on an appropriate sentence to be imposed on the Accused, the Chamber has taken due consideration of the well-established principles of retribution, deterrence, and protection of society.<sup>625</sup> Specific emphasis is placed on general deterrence, so as to demonstrate “that the international community [is] not ready to tolerate serious violations of international humanitarian law and human rights”.<sup>626</sup> The Chamber has also considered the likelihood of the Accused’s rehabilitation.<sup>627</sup>

499. The Chamber has taken due notice of the intrinsic gravity of the crimes committed by the Accused. Genocide and crimes against humanity are offences which are particularly shocking to the conscience of mankind.

500. The Chamber has also considered the principle of gradation in sentencing, according to which the highest penalties are to be imposed upon those who planned or ordered atrocities, or those who committed crimes with particular zeal or sadism. Whether an accused is found guilty of genocide, of crimes against humanity or of violations of the Geneva Conventions or Additional Protocol II thereto, the principle of gradation enables the Chamber to punish, deter, and consequently stigmatize the crimes considered at a level that corresponds to their overall magnitude and reflects the extent of suffering inflicted upon the victims.<sup>628</sup>

501. The Chamber has also found guidance in the practice of sentencing in Rwanda, as referred to in previous judgements of the Tribunal.<sup>629</sup>

502. Finally, the Chamber has taken into consideration the totality of the circumstances of the case and the individual circumstances of the Accused, in mitigation as well as in aggravation. It has borne in mind that the principle according to which only matters proved beyond a reasonable doubt are to be considered at the sentencing stage extends to the assessment of any aggravating factors, while mitigating factors are to be taken into consideration if established on a balance of probabilities. This Chamber reiterates that a particular circumstance shall not be retained as aggravating if it is included as an element of the crime in consideration.<sup>630</sup>

## 2. Submissions

503. The Prosecution addressed sentencing very briefly during its closing arguments. It submitted that the maximum sentence should “generally” be imposed for each of the three counts in the Indictment.<sup>631</sup> As regards mitigating or aggravating circumstances, the

<sup>625</sup> *Kambanda* (TC) para. 28, endorsed in *Aleksovski* (AC) para. 66; *Ntakirutimana* (TC) para. 882.

<sup>626</sup> *Kambanda* (TC) para. 28, endorsed in *Aleksovski* (AC) para. 66. See also *Kayishema* Sentence (TC) para. 2; *Ntakirutimana* (TC) para. 882.

<sup>627</sup> *Blaskic* (TC) para. 761; *Kunarac* (TC) para. 836; *Serushago* (TC) para. 39; *Kayishema* (TC) para. 2, affirmed in *Kayishema* (AC) paras. 389 and 390; *Ntakirutimana* (TC) para. 887.

<sup>628</sup> On the individualization of the sentence and the principle of gradation in sentencing, see *Ntakirutimana* (TC) paras. 883-886 and case law cited therein.

<sup>629</sup> See particularly the developments on the applicable law and the practice of sentencing in Rwanda in *Kayishema* Sentence (TC) paras. 5-7 and *Ntakirutimana* (TC) para. 885.

<sup>630</sup> See *Ntakirutimana* (TC) para. 893, and supporting case law quoted in footnotes 1183 to 1187.

<sup>631</sup> T. 2 March 2004 pp. 52-53.



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ORIGINAL: ENGLISH

**TRIAL CHAMBER II**

Before Judges: Asoka de Silva, Presiding  
Taghrid Hikmet  
Seon Ki Park

Registrar: Adama Dieng

Date: 17 May 2011

**THE PROSECUTOR**

v.

**Augustin NDINDILYIMANA**  
**Augustin BIZIMUNGU**  
**François-Xavier NZUWONEMEYE**  
**Innocent SAGAHUTU**

**Case No: ICTR-00-56-T**

*JUDGEMENT AND SENTENCE*

**For the Prosecutor:**

Alphonse Van  
Moussa Séfon  
Abubacarr Tambadou  
Lloyd Stickland  
Faria Rekkas

**For the Defence:**

For **Augustin Ndindiliyimana**:  
Christopher Black & Vincent Lurquin  
For **Augustin Bizimungu**:  
Gilles St. Laurent & Benoît Henry  
For **François-Xavier Nzuwonemeye**:  
Charles Taku & Beth Lyons  
For **Innocent Sagahutu**:  
Fabian Segatwa & Saidou Doumbia

## 1.23 Deliberations

2174. Under Article 1 of the Statute, the Tribunal is vested with the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda. The penalty imposed should reflect the aims of retribution, deterrence and, to a lesser extent, rehabilitation.<sup>3847</sup> In determining the penalty to be accorded to the Accused, the Chamber has taken into account the general practice regarding prison sentences in the courts of Rwanda, the gravity of the offences (the gravity of the crimes of which the Accused have been convicted and the form or degree of responsibility for these crimes) and the individual circumstances of the convicted person.<sup>3848</sup> The Chamber has also considered the Appeals Chamber's direction that "sentences of like individuals in like cases should be comparable."<sup>3849</sup> However, it has noted the inherent limits to this approach because "any given case contains a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual."<sup>3850</sup> Having considered sentencing practice in this Tribunal, the Chamber notes that a sentence of life imprisonment is generally reserved for those who planned or ordered atrocities as well as the most senior authorities.<sup>3851</sup>

2175. The Chamber also recalls that in determining the penalty to be accorded to the Accused, it must take into account any aggravating and mitigating circumstances.<sup>3852</sup> For this purpose, aggravating circumstances must be proved beyond reasonable doubt while mitigating circumstances must be proved on a balance of probabilities.<sup>3853</sup> The Chamber has broad discretion in determining what constitutes mitigating circumstances and the weight to be accorded to those circumstances.<sup>3854</sup> Proof of mitigating circumstances does not automatically entitle the accused to a "credit" in the determination of the sentence; it simply requires the Trial Chamber to consider such mitigating circumstances in its final determination.<sup>3855</sup>

### 1.23.1 Bizimungu

#### 1.23.1.1 Gravity of Offences

2176. The Chamber has determined that on or about 7 April 1994, Bizimungu attended a meeting at the home of Nzirorera's mother. During the meeting, Bizimungu made a speech in which he instructed those present to start killing all the Tutsi. Some of the persons present at the meeting then went to Byangabo market where, based on the contents of the meeting, they implored the gathered audience to begin killing Tutsi. As a direct result, *Interahamwe* began a killing spree including in the *secteur* of Rwankeri. The Chamber found that Bizimungu had a substantial effect on the outcome of the killings by making a speech that was acted upon by participants at the meeting. He is therefore guilty of aiding and abetting the killings in Rwankeri.

<sup>3847</sup> Media Appeal Judgement, para. 1057; *Stakić* Appeal Judgement, para. 402.

<sup>3848</sup> *Bikindi* Trial Judgement, para. 443.

<sup>3849</sup> *Kvočka et al.* Appeal Judgement, para. 681.

<sup>3850</sup> *Kvočka et al.* Appeal Judgement, para. 681.

<sup>3851</sup> *Musema* Appeal Judgement, para. 383.

<sup>3852</sup> *Serushago* Appeal Judgement, para. 23; *Ntaregura et al.* Appeal Judgement, para. 430.

<sup>3853</sup> *Kajelijeli* Appeal Judgement, para. 294; *Serugendo* Trial Judgement, para. 40; *Bisengimana* Trial Judgement, para. 111; *Simba* Trial Judgement, para. 438; *Kalimanzira* Trial Judgement, para. 748.

<sup>3854</sup> *Kalimanzira* Trial Judgement, para. 748.

<sup>3855</sup> *Niyitegeka* Appeal Judgement, para. 267.



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

300/H

ICTR-98-41A-A

8<sup>th</sup> May 2012

{300/H – 174/H}

IN THE APPEALS CHAMBER

Before:

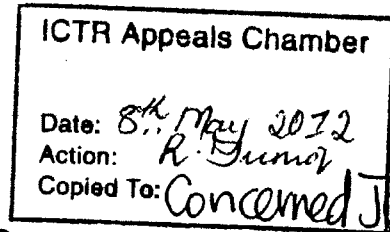
Judge Theodor Meron, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Arlette Ramaroson

Registrar:

Mr. Adama Dieng

Judgement of:

8 May 2012



Parties, JPU, LOs  
*[Signature]*

Aloys NTABAKUZE

v.

THE PROSECUTOR

Case No. ICTR-98-41A-A

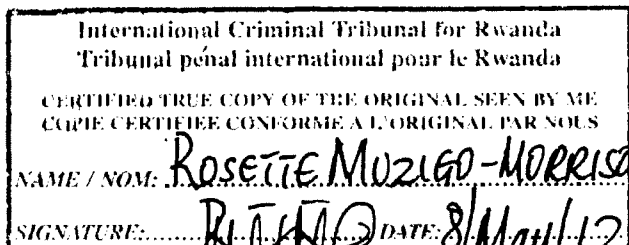
JUDGEMENT

Counsel for Aloys Ntabakuze

André Tremblay

Office of the Prosecutor

Hassan Bubacar Jallow  
James J. Arguin  
George W. Mugwanya  
Inneke Onsea  
Renifa Madenga  
Abubacarr Tambadou  
Evelyn Kamau  
William Mubiru  
Aisha Kagabo  
Ndéye Marie Ka



29. Ntabakuze also submits that the Trial Chamber erred in law in convicting him of charges that were neither pleaded in the Indictment, nor in any subsequent pre-trial communications.<sup>61</sup> He contends that the Trial Chamber disregarded the relevant applicable principles mandating that new material facts or charges can only be added to the indictment through formal amendment pursuant to Rule 50 of the Rules.<sup>62</sup> Arguing that curing a defective indictment cannot lead to a radical transformation of the Prosecution's case, Ntabakuze submits that the Trial Chamber engaged in an impermissible *de facto* amendment of the Indictment in convicting him as a superior for the crimes allegedly committed at Kabeza, Nyanza hill, the Sonatube junction, and IAMSEA.<sup>63</sup> The Appeals Chamber will address these general contentions together with Ntabakuze's specific arguments in relation to each incident for which he was convicted.

30. Before doing so, the Appeals Chamber recalls that the charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused.<sup>64</sup> Whether a fact is "material" depends on the nature of the Prosecution's case.<sup>65</sup> An indictment which fails to set forth the specific material facts underpinning the charges against the accused is defective.<sup>66</sup> The defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charge.<sup>67</sup> However, a clear distinction has to be drawn between vagueness in an indictment and an indictment omitting certain charges altogether.<sup>68</sup> While it is possible to remedy the vagueness of an indictment, omitted charges can be incorporated into the indictment only by a formal amendment pursuant to Rule 50 of the Rules.<sup>69</sup> The Appeals Chamber will address Ntabakuze's specific arguments with these principles in mind.

<sup>61</sup> Notice of Appeal, paras. 16-18, 49, 50; Appeal Brief, paras. 28, 100-103. *See also* Notice of Appeal, para. 22.

<sup>62</sup> Notice of Appeal, para. 18; Appeal Brief, para. 29. *See also* Notice of Appeal, paras. 15, 19.

<sup>63</sup> Notice of Appeal, paras. 17, 18, 50; Appeal Brief, paras. 100, 101.

<sup>64</sup> *See, e.g., Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Ntawukulilyayo* Appeal Judgement, para. 188; *Munyakazi* Appeal Judgement, para. 36.

<sup>65</sup> *See, e.g., Renzaho* Appeal Judgement, para. 53; *Karera* Appeal Judgement, para. 292; *Ntagerura et al.* Appeal Judgement, para. 23.

<sup>66</sup> *See, e.g., Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Ntawukulilyayo* Appeal Judgement, para. 189; *Kupreškić et al.* Appeal Judgement, para. 114.

<sup>67</sup> *See, e.g., Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Ntawukulilyayo* Appeal Judgement, para. 189; *Kupreškić et al.* Appeal Judgement, para. 114.

<sup>68</sup> *See, e.g., Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Ntawukulilyayo* Appeal Judgement, para. 189; *Ntagerura et al.* Appeal Judgement, para. 32.

<sup>69</sup> *See, e.g., Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Ntawukulilyayo* Appeal Judgement, para. 189; *Ntagerura et al.* Appeal Judgement, para. 32.

1. Whether the Defect was Curable

39. Ntabakuze contends that he could not have known on the basis of the Indictment that he was being charged with superior responsibility for crimes committed by Para-Commando soldiers in Kabeza.<sup>89</sup> He argues that the vagueness of paragraph 6.36 of the Indictment was not a defect “that could be ‘cured’ by anything other than a formal amendment of the Indictment, because [the] new material facts regarding Kabeza were such that they could, on their own, support separate charges”.<sup>90</sup> In Ntabakuze’s view, the Trial Chamber erroneously “expand[ed] the meaning of paragraph 6.36 to cover crimes committed at other locations and by other entities, thereby incorporating new, separate, charges”.<sup>91</sup> He submits that, in convicting him for the incident in Kabeza, the Trial Chamber engaged in an impermissible *de facto* amendment of his Indictment.<sup>92</sup>

40. The Prosecution responds that the involvement of Para-Commando soldiers in killings of civilians in Kabeza did not constitute a new charge but was a material allegation that supported an existing charge as alleged in the more generally worded paragraph 6.36 of the Indictment.<sup>93</sup>

41. Paragraph 6.36 of the Indictment clearly pleads, *inter alia*, “Kigali” as the location and “elements of the Rwandan Army” as among the perpetrators of “massacres of the civilian Tutsi population”. Given that Kabeza is located within Kigali and the Para-Commando Battalion is an element of the Rwandan army,<sup>94</sup> the Appeals Chamber rejects Ntabakuze’s contention that the killings in Kabeza by Para-Commando soldiers constitute “crimes committed at *other* locations and by *other* entities” than those pleaded at paragraph 6.36.<sup>95</sup> Rather, the Kabeza killings by Para-Commando soldiers constitute crimes committed *within* the location and by entities *within* those pleaded at paragraph 6.36 of the Indictment.

42. Furthermore, the Appeals Chamber is not persuaded by Ntabakuze’s argument that the specific reference to the involvement of elements of the Para-Commando Battalion in the murder of political opponents in paragraph 6.36 “necessarily excludes the charge that [they] were involved in killing Tutsi civilians in other places”.<sup>96</sup> Nothing in paragraph 6.36 supports Ntabakuze’s interpretation. Rather, the broad reference in paragraph 6.36 to “elements of the Rwandan Army,

<sup>89</sup> Notice of Appeal, para. 23; Appeal Brief, para. 52. *See also* Notice of Appeal, para. 33; Appeal Brief, para. 72; AT. 27 September 2011 pp. 13-16, 19-22. The Appeals Chamber notes that Ntabakuze does not raise specific arguments regarding notice of the involvement of *Interahamwe* in the Kabeza killings. The Appeals Chamber refers to its discussion regarding notice of Ntabakuze’s alleged superior responsibility over the *Interahamwe* in the sub-section dedicated to superior responsibility. *See infra*, Section IV.G.1.

<sup>90</sup> Appeal Brief, para. 53. *See also ibid.*, para. 73; AT. 27 September 2011 pp. 13-16, 19.

<sup>91</sup> Appeal Brief, para. 71 (emphasis omitted).

<sup>92</sup> Notice of Appeal, paras. 23, 24.

<sup>93</sup> Prosecution Response Brief, paras. 24, 26-30, 71-73.

<sup>94</sup> *See* Indictment, paras. 1.27 (*referring to* the “FAR military”), 3.3, 4.8, 6.8.

<sup>95</sup> Appeal Brief, para. 71 (emphasis in the original).

Gendarmerie and *Interahamwe*" in relation to the massacres of the Tutsi civilian population, in contrast with the specific reference to "elements of the Presidential Guard, Para-Commando Battalion and Reconnaissance Battalion" in relation to the murder of political opponents, merely suggests that only specific units of the Rwandan army were alleged to have been implicated in the murder of political opponents.<sup>97</sup>

43. In the same vein, the Appeals Chamber does not consider that, as submitted by Ntabakuze, paragraphs 6.37 through 6.39 of the Indictment purported to limit the broad allegation of paragraph 6.36 by making specific allegations regarding particular places in Kigali.<sup>98</sup> Even if the specific allegations described at paragraphs 6.37 through 6.39 were intended to give substance to the vague allegation framed in paragraph 6.36, nothing in the Indictment suggests that paragraph 6.36 was *limited* to the allegations contained at paragraphs 6.37 through 6.39. As a result, the fact that none of the specific incidents alleged in paragraphs 6.37 through 6.39 expressly implicates the Para-Commando Battalion is immaterial.<sup>99</sup>

44. The Appeals Chamber therefore finds that the allegation regarding Kabeza did not constitute a new charge but fell within the broader allegation relating to the massacre of the civilian Tutsi population in Kigali by elements of the Rwandan army pleaded in paragraph 6.36 of the Indictment. The material facts on the basis of which the Trial Chamber entered its convictions did not lead to a radical transformation of the Prosecution's case against Ntabakuze, nor could these facts, on their own, have supported a separate charge.<sup>100</sup> As vague as the charge set out in paragraph 6.36 was, it nonetheless clearly pleaded the involvement of elements of the Rwandan army in massacres of Tutsi civilians in Kigali starting on 7 April 1994.

45. Accordingly, the Appeals Chamber considers that the defect in the Indictment regarding the Kabeza killings could be remedied by the provision of timely, clear, and consistent information. The Appeals Chamber now turns to consider whether the Trial Chamber erred in finding that the defect was cured.

<sup>96</sup> Appeal Brief, para. 73 (emphasis omitted). See also Reply Brief, para. 55.

<sup>97</sup> Contrary to Ntabakuze's submission, the Appeals Chamber considers that the use of the word "concurrently" in the second sentence of paragraph 6.36 of the Indictment and the reference to "elements" of the Rwandan army and "elements" of the Para-Commando Battalion suggest that paragraph 6.36 contains two distinct allegations: massacres of the Tutsi civilian population on the one hand, and murder of political opponents on the other hand. See AT. 27 September 2011 p. 14.

<sup>98</sup> Appeal Brief, para. 72; Reply Brief, para. 10.

<sup>99</sup> See Appeal Brief, para. 72.

<sup>100</sup> See *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006 ("Appeal Decision on Exclusion of Evidence"), para. 30.

**X. ALLEGED ERRORS RELATING TO SENTENCING (GROUNDS 35-38)**

263. The Trial Chamber sentenced Ntabakuze to life imprisonment.<sup>607</sup> Ntabakuze submits that the Trial Chamber erred in: (i) basing the sentence upon multiple convictions for the same acts and “lesser included offenses”; (ii) engaging in impermissible double-counting; (iii) imposing a single sentence; and (iv) venturing outside the scope of its discretion in imposing a life sentence.<sup>608</sup>

264. In addressing Ntabakuze’s submissions, the Appeals Chamber bears in mind that Trial Chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualise penalties to fit the circumstances of the convicted person and the gravity of the crime.<sup>609</sup> As a rule, the Appeals Chamber will not substitute its own sentence for that imposed by the Trial Chamber unless the appealing party demonstrates that the Trial Chamber committed a discernible error in exercising its discretion, or failed to follow the applicable law.<sup>610</sup>

**A. Alleged Reliance on Multiple Convictions**

265. Ntabakuze submits that the Trial Chamber erred in “basing the sentence upon multiple convictions for the same acts and lesser included offenses”.<sup>611</sup> He argues that, since a person must not be punished more than once for his criminal conduct, the Trial Chamber was bound to adjust the sentence to reflect the fact that all of the convictions against him were based on the same set of facts.<sup>612</sup> In his view, the Trial Chamber “must have erroneously relied” on the number of convictions, rather than on the criminal conduct for which he was convicted, which led it to a “plainly unjust” sentence.<sup>613</sup>

266. The Prosecution responds that the sentence imposed on Ntabakuze was proper and should not be adjusted.<sup>614</sup>

267. The Appeals Chamber recalls that the primary goal in sentencing is to ensure that the final or aggregate sentence reflects the totality of the criminal conduct and overall culpability of the offender.<sup>615</sup> In this case, there is nothing to suggest that the Trial Chamber relied on the number of

<sup>607</sup> Trial Judgement, para. 2278.

<sup>608</sup> Notice of Appeal, paras. 139-152; Appeal Brief, paras. 285-322.

<sup>609</sup> See, e.g., *Bagosora and Nsengiyumva* Appeal Judgement, para. 419; *Ntawukulilyayo* Appeal Judgement, para. 232; *Setako* Appeal Judgement, para. 277.

<sup>610</sup> See, e.g., *Bagosora and Nsengiyumva* Appeal Judgement, para. 419; *Setako* Appeal Judgement, para. 277; *Munyakazi* Appeal Judgement, para. 166.

<sup>611</sup> Notice of Appeal, heading “Ground 35” at p. 44. See also *ibid.*, paras. 139-141.

<sup>612</sup> Appeal Brief, paras. 287-289.

<sup>613</sup> Appeal Brief, para. 290.

<sup>614</sup> Prosecution Response Brief, paras. 5, 192, 196.

<sup>615</sup> *Martić* Appeal Judgement, para. 350, referring to *Čelebići* Appeal Judgement, para. 430.

TM



convictions pronounced against Ntabakuze rather than on the totality of his criminal conduct and his overall culpability. In light of the gravity of the offences for which Ntabakuze was convicted and the individual circumstances, including aggravating and mitigating factors, relied on by the Trial Chamber, the Appeals Chamber considers that the imposition of a life sentence does not in itself suggest that the Trial Chamber erred in the exercise of its discretion. Ntabakuze does not adduce any other argument in support of his claim, which is accordingly dismissed.

268. However, the Appeals Chamber recalls that it has set aside the finding that Ntabakuze is responsible pursuant to Article 6(3) of the Statute for the commission of crimes by militiamen and has found that the Trial Chamber erred in holding Ntabakuze responsible as a superior for other inhumane acts as a crime against humanity for preventing the refugees killed at Nyanza hill from seeking sanctuary, for murder as a crime against humanity, and, Judges Pocar and Liu dissenting, for the killings perpetrated in Kabeza.<sup>616</sup> The Appeals Chamber will consider in a section below whether these findings reduce Ntabakuze's overall culpability and call for a revision of the sentence.

#### **B. Alleged Double-Counting**

269. Ntabakuze submits that the Trial Chamber erroneously relied on his role as a superior as a basis for his responsibility under Article 6(3) of the Statute, as an aspect of the gravity of the offence, and as an aggravating factor to justify his life sentence.<sup>617</sup> He claims that, by using his "senior status and stature in the Rwandan army" to discount mitigation, the Trial Chamber *de facto* considered this factor as an aggravating circumstance.<sup>618</sup> In addition, Ntabakuze contends that the Trial Chamber erred in relying on the number of victims at Nyanza hill in its determination of both the gravity of the crimes and the aggravating factors.<sup>619</sup>

270. The Prosecution responds that the Trial Chamber did not engage in any impermissible double-counting.<sup>620</sup>

271. The Appeals Chamber notes that the Trial Chamber did not refer to Ntabakuze's role as a superior in its discussion of the aggravating circumstances.<sup>621</sup> In its discussion of mitigating factors, the Trial Chamber acknowledged that Ntabakuze was "at times following superior orders in

<sup>616</sup> See *supra*, paras. 83, 128, 175, 261.

<sup>617</sup> Notice of Appeal, paras. 142, 143, 151; Appeal Brief, paras. 294-296, 317-320.

<sup>618</sup> Appeal Brief, para. 296, *citing* Trial Judgement, para. 2274. See also Appeal Brief, paras. 317, 318; Reply Brief, para. 123. In his Reply Brief, Ntabakuze recalls that a defendant may not be punished twice for the same factor and submits that, accordingly, "[w]hether that punishment is meted out as aggravation or denial of mitigation is irrelevant". See Reply Brief, para. 130.

<sup>619</sup> Appeal Brief, para. 319.

<sup>620</sup> Prosecution Response Brief, paras. 5, 198-201, 221-224.

TM

(a) Absence of Conviction Pursuant to Article 6(1) of the Statute

281. Ntabakuze asserts that nothing in the Trial Judgement suggests that the Trial Chamber took into account the fact that he was not convicted for direct responsibility under Article 6(1) of the Statute or conspiracy to commit genocide and that his only convictions arise from a failure to prevent or punish the underlying offences under Article 6(3) of the Statute.<sup>643</sup>

282. The Appeals Chamber considers that the fact that Ntabakuze was acquitted of all charges against him pursuant to Article 6(1) of the Statute and was solely convicted pursuant to Article 6(3) of the Statute is not subject to consideration as a mitigating factor. The form of liability is not an individual circumstance of the accused but the objective definition of his participation in the criminal conduct. Further, failure to prevent or punish subordinates' crimes constitutes the culpable conduct under Article 6(3) of the Statute and the absence of conviction under Article 6(1) of the Statute does not reduce that culpability.<sup>644</sup> The Appeals Chamber finds that the Trial Chamber was therefore correct in not considering in mitigation the fact that Ntabakuze was not convicted pursuant to Article 6(1) of the Statute and, accordingly, rejects Ntabakuze's argument in this respect.

(b) Military Career, Family Situation, and Background

283. Ntabakuze asserts that nothing in the Trial Judgement suggests that the following factors were taken into consideration: (i) his "exemplary" military career; (ii) the fact that he is married and has four children; and (iii) his previously unblemished professional, social, and educational background suggesting a strong likelihood of successful rehabilitation.<sup>645</sup>

284. The Appeals Chamber notes that, in determining the sentence, the Trial Chamber expressly took into account Ntabakuze's family situation and his lengthy public service to his country as a military officer, as well as his social, educational, and professional background.<sup>646</sup> The Trial Chamber, however, concluded that the gravity of the crimes and the aggravating factors greatly outweighed these mitigating factors.<sup>647</sup> The Appeals Chamber recalls that in general only little weight is afforded to the family situation of the convicted person in the absence of exceptional

<sup>643</sup> Appeal Brief, paras. 298, 300(a), 301.

<sup>644</sup> *Čelebići* Appeal Judgement, para. 737. *Cf. also* *Ntawukulilyayo* Appeal Judgement, para. 236. Moreover, the Appeals Chamber notes that the Prosecution did not charge Ntabakuze pursuant to Article 6(1) of the Statute for the crimes for which he was ultimately convicted. *See* Indictment, references to paragraphs 6.36 and 6.37 under the respective counts on pp. 45, 47-53; Trial Judgement, para. 2005.

<sup>645</sup> Appeal Brief, paras. 300(b), (e), (f), 301.

<sup>646</sup> Trial Judgement, para. 2273, *referring to ibid.*, paras. 58-63.

<sup>647</sup> Trial Judgement, para. 2275.

TM

Trial Chamber was out of reasonable proportion with those it imposed on Bagosora and Nsengiyumva.<sup>681</sup> Ntabakuze's argument in this respect is therefore rejected.

#### 4. Form and Degree of Participation in the Crimes

301. Ntabakuze submits that, as he did not participate in or order any of the crimes and was not present during their commission, his sentence does not properly reflect the degree of his participation in the crimes.<sup>682</sup> Citing the Trial Chamber's statement that "a sentence of life imprisonment is generally reserved [for] those who planned or ordered atrocities as well as the most senior authorities",<sup>683</sup> Ntabakuze argues that he was not convicted for having planned or ordered any of the crimes, as he was convicted as a superior, and that there is no evidence that he was among the most senior authorities.<sup>684</sup> In support of his contention that his sentence is too harsh, Ntabakuze also emphasises that he is the first accused before the Tribunal and the ICTY to receive the maximum sentence provided for in the Statute based solely on convictions for superior responsibility.<sup>685</sup>

302. The Appeals Chamber recalls that the sentence must reflect the gravity of the offences.<sup>686</sup> The determination of the gravity of the offences requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the convicted person in the crime.<sup>687</sup> Further, the seriousness of a superior's conduct in failing to prevent or punish crimes must be measured to some degree by the nature of the crimes to which this failure relates, *i.e.* the gravity of the crimes committed by the direct perpetrator(s).<sup>688</sup>

303. Regarding Ntabakuze's degree of responsibility by virtue of his conviction pursuant to Article 6(3) of the Statute, the Appeals Chamber observes that the Statute does not accord any "lesser" form of individual criminal responsibility to superior responsibility. While the Appeals Chamber also acknowledges that, in appropriate cases, a conviction under Article 6(3) of the Statute

<sup>680</sup> Trial Judgement, para. 2268.

<sup>681</sup> The Appeals Chamber notes that the life sentences imposed on Bagosora and Nsengiyumva by the Trial Chamber were set aside on appeal as a result of the reversal of a number of their convictions. Bagosora and Nsengiyumva were sentenced on appeal to 35 and 15 years of imprisonment, respectively. *See Bagosora and Nsengiyumva Appeal Judgement*, para. 742.

<sup>682</sup> Notice of Appeal, paras. 147, 151; Appeal Brief, paras. 314, 315.

<sup>683</sup> Appeal Brief, para. 308, *citing* Trial Judgement, para. 2270.

<sup>684</sup> Notice of Appeal, para. 147; Appeal Brief, para. 311. In his Reply Brief, Ntabakuze asserts that having acquitted him of any direct participation, the Trial Chamber was not entitled to rely on findings of ordering, authorisation, or acquiescence in determining his sentence. *See Reply Brief*, para. 126.

<sup>685</sup> Notice of Appeal, para. 147; Appeal Brief, paras. 307, 315. *See also* AT. 27 September 2011 pp. 4, 5, 72.

<sup>686</sup> *Stakić Appeal Judgement*, para. 380; *Muhimana Appeal Judgement*, para. 234; *Ndindabahizi Appeal Judgement*, para. 138.

<sup>687</sup> *See, e.g., Munyakazi Appeal Judgement*, para. 185; *Rukundo Appeal Judgement*, para. 243; *Stakić Appeal Judgement*, para. 380; *Aleksovski Appeal Judgement*, para. 182.

<sup>688</sup> *Čelebići Appeal Judgement*, para. 732.

may result in a lesser sentence as compared to that imposed in the context of an Article 6(1) conviction,<sup>689</sup> it reiterates its view that, in the circumstances of this case, superior responsibility under Article 6(3) of the Statute is not to be seen as less grave than criminal responsibility under Article 6(1) of the Statute.<sup>690</sup> The Appeals Chamber also recalls the well-established principle of gradation in sentencing, which holds that leaders and planners should bear heavier criminal responsibility than those further down the scale.<sup>691</sup>

304. In this case, the Appeals Chamber finds that Ntabakuze does not demonstrate that the sentence imposed by the Trial Chamber was disproportionate to the form and degree of his participation in the crimes of which he was convicted by the Trial Chamber. The Trial Chamber found Ntabakuze guilty of extremely serious crimes. With regard to the degree of his participation, it found that he failed to prevent the commission of crimes by his subordinates “because he in fact participated in them” through his position as a commander of a highly disciplined and elite unit.<sup>692</sup> The Trial Chamber described the assaults as “organised military operations which, in such a disciplined and elite unit, only would have occurred following Ntabakuze’s orders or with his authorisation”, illustrating Ntabakuze’s high degree of involvement in the crimes.<sup>693</sup> The Appeals Chamber dismisses as baseless Ntabakuze’s contention that the Trial Chamber could not rely on his orders or authorisation since it did not convict him pursuant to Article 6(1) of the Statute. In this regard, the Appeals Chamber observes that Ntabakuze was not charged pursuant to Article 6(1) of the Statute for his role in the events on the basis of which he was convicted.<sup>694</sup> His contention that he was acquitted of directly participating in them is therefore inaccurate.

305. In light of the foregoing, the Appeals Chamber finds no abuse of discretion in the Trial Chamber’s holding that the gravity of the crimes committed by Ntabakuze warranted similar treatment to those who planned or ordered atrocities as well as the most senior authorities.<sup>695</sup> In the same vein, the fact that Ntabakuze was the first person before the Tribunal to be sentenced to life imprisonment solely based on superior responsibility does not have any bearing on the reasonableness of the Trial Chamber’s findings on the matter. The Appeals Chamber emphasises that a sentence of life imprisonment is provided for in Rule 101(A) of the Rules irrespective of the mode of liability of which an accused is convicted. The Appeals Chamber therefore dismisses this part of Ntabakuze’s appeal.

<sup>689</sup> Milošević Appeal Judgement, para. 334. Cf. *Strugar* Appeal Judgement, paras. 353, 354.

<sup>690</sup> See *supra*, para. 300.

<sup>691</sup> *Kalimanzira* Appeal Judgement, para. 236.

<sup>692</sup> Trial Judgement, para. 2067. See also *ibid.*, para. 2268.

<sup>693</sup> Trial Judgement, para. 2268. See also *ibid.*, paras. 2062, 2065, 2067.

<sup>694</sup> See *supra*, fn. 644.

<sup>695</sup> See Trial Judgement, para. 2270.



**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

---

**APPEALS CHAMBER**

**Case No. ICTR-99-46-A**

ENGLISH  
Original: FRENCH

**Before:** Judge Fausto Pocar, presiding  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Theodor Meron  
Judge Wolfgang Schomburg

**Registrar:** Adama Dieng

**Date:** 7 July 2006

**THE PROSECUTOR**  
(Appellant and Respondent)

v.

**ANDRÉ NTAGERURA**  
(Respondent)  
**EMMANUEL BAGAMBIKI**  
(Respondent)  
**SAMUEL IMANISHIMWE**  
(Appellant and Respondent)

---

**JUDGEMENT**

---

Office of the Prosecutor  
Hassan Bubacar Jallow  
James Stewart

Counsel for André Ntagetura  
Benoît Henry  
Hamuli Rety

Counsel for Emmanuel Bagambiki  
Vincent Lurquin

Counsel for Samuel Imanishimwe  
Marie Louise Mbida  
Jean-Pierre Fofé

*The Prosecutor (Appellant and Respondent) v. André Ntagerura (Respondent), Emmanuel Bagambiki (Respondent), Samuel Imanishimwe (Appellant and Respondent)*, Case No. ICTR-99-46-A

material facts underpinning the charges in the indictment, but not the evidence by which such facts are to be proven.<sup>68</sup>

22. If an accused is not properly notified of the material facts of his alleged criminal activity until the Prosecution files its Pre-Trial Brief or until the trial itself, it will be difficult for his Defence to conduct a meaningful investigation prior to the commencement of the trial.<sup>69</sup> The question of whether an indictment is pleaded with sufficient particularity is therefore dependent upon whether it sets out the material facts of the Prosecution case with enough detail to inform an accused clearly of the charges against him so that he may prepare his defence.<sup>70</sup> An indictment which fails to plead material facts in sufficient detail is defective.<sup>71</sup>

23. Whether particular facts are “material” depends on the nature of the Prosecution case. The Prosecution’s characterization of the alleged criminal conduct and the proximity of the accused to the underlying crime are decisive factors in determining the degree of specificity with which the Prosecution must plead the material facts of its case in the indictment in order to provide the accused with adequate notice.<sup>72</sup> For example, where the Prosecution alleges that an accused personally committed the criminal acts in question, it must plead the identity of the victim, the place and approximate date of the alleged criminal acts, and the means by which they were committed “with the greatest precision”.<sup>73</sup> However, less detail may be acceptable if the “sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes”.<sup>74</sup>

24. Where the Prosecution relies on a theory of joint criminal enterprise, the Prosecution must specifically plead this mode of responsibility in the indictment; failure to do so will result in a defective indictment.<sup>75</sup> Although joint criminal enterprise is a means of “committing”, it is insufficient for an indictment to merely make broad reference to Article 6(1) of the Statute.<sup>76</sup> The Prosecution must also plead the purpose of the enterprise, the identity of the participants, the nature of the accused’s participation in the enterprise and

<sup>68</sup> *Ntakirutimana* Appeal Judgement, para. 470. See also *Semanza* Appeal Judgement, para. 85; *Kvočka et al.* Appeal Judgement, para. 27; *Kupreški et al.* Appeal Judgement, para. 88; *Naletili* and *Martinovi* Appeal Judgement, para. 23.

<sup>69</sup> *Niyitegeka* Appeal Judgement, para. 194.

<sup>70</sup> *Kupreški et al.* Appeal Judgement, para. 88; *Ntakirutimana* Appeal Judgment, para. 470.

<sup>71</sup> *Kupreški et al.* Appeal Judgement, para. 114; *Niyitegeka* Appeal Judgement, para. 195; *Kvočka et al.* Appeal Judgement, para. 28.

<sup>72</sup> *Kvočka et al.* Appeal Judgement, para. 28.

<sup>73</sup> *Kupreški et al.* Appeal Judgement, para. 89; *Blaški* Appeal Judgement, para. 213.

<sup>74</sup> *Kupreški et al.* Appeal Judgement, para. 89. The Appeals Chamber recalls that “the inability to identify victims is reconcilable with the right of the accused to know the material facts of the charges against him because, in such circumstances, the accused’s ability to prepare an effective defence to the charges does not depend on knowing the identity of every single alleged victim. The Appeals Chamber recalls that the situation is different, however, when the Prosecution seeks to prove that the accused personally killed or harmed a particular individual. [...] [T]he Prosecution cannot simultaneously argue that the accused killed a named individual yet claim that the ‘sheer scale’ of the crime made it impossible to identify that individual in the Indictment. Quite the contrary: the Prosecution’s obligation to provide particulars in the indictment is at its highest when it seeks to prove that the accused killed or harmed a specific individual”: *Ntakirutimana* Appeal Judgement, paras. 73-74.

<sup>75</sup> *Kvočka et al.* Appeal Judgement, para. 42.

<sup>76</sup> *Idem.*



**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor MERON, Presiding  
Judge Florence MUMBA  
Judge Mehmet GÜNEY  
Judge Wolfgang SCHOMBURG  
Judge Inés Mónica WEINBERG DE ROCA

**Registrar:** Mr. Adama Dieng

**Date:** 13 December 2004

**THE PROSECUTOR**

**v.**

**ELIZAPHAN NTAKIRUTIMANA AND GÉRARD NTAKIRUTIMANA**

*Cases Nos. ICTR-96-10-A and ICTR-96-17-A*

---

**JUDGEMENT**

---

**Counsel for the Prosecution**

Mr. James Stewart  
Ms. Linda Bianchi  
Ms. Michelle Jarvis  
Mr. Mathias Marcussen

**Counsel for the Defence**

Mr. David Jacobs  
Mr. David Paciocco  
Mr. Ramsey Clark

& Charles Sikubwabo, members of the National Gendarmerie, communal police, militia and civilians.

4.8 The individuals in the convoy, including Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo, participated in an attack on the men, women and children in the Mugonero Complex, which continued throughout the day.

4.9 The attack resulted in hundreds of deaths and a large number of wounded among the men, women and children who had sought refuge at the Complex.

4.10 During the months that followed the attack on the Complex, Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo, searched for an *Fsieg* attacked Tutsi survivors and others, killing and causing serious bodily or mental harm to them.<sup>52</sup>

31. Under this Indictment, the Prosecution alleged and the Trial Chamber found that Gérard Ntakirutimana “procured ammunition and gendarmes for the attack on the Complex” and “killed Charles Ukobizaba by shooting him in the chest, from a short distance, in Mugonero Hospital courtyard around midday on 16 April 1994.”<sup>53</sup> These findings supported the Trial Chamber’s conclusion that Gérard Ntakirutimana had the requisite intent for genocide and, in the case of the killing of Ukobizaba, the conclusion that Gérard Ntakirutimana was “individually criminally responsible” for his death and therefore was guilty of genocide.<sup>54</sup> The killing of Ukobizaba also grounded the conclusion that Gérard Ntakirutimana was guilty of murder as a crime against humanity.<sup>55</sup> Gérard Ntakirutimana was therefore found guilty of genocide at Mugonero because of acts committed by him personally, namely the killing of Ukobizaba and the procurement of ammunition and gendarmes. Similarly, Elizaphan Ntakirutimana was pronounced guilty of genocide because the Trial Chamber found that he “conveyed armed attackers to the Mugonero Complex in his vehicle on the morning of 16 April 1994.”<sup>56</sup>

32. Under *Kupreškić*, criminal acts that were physically committed by the accused personally must be set forth in the indictment specifically, including where feasible “the identity of the victim, the time and place of the events and the means by which the acts were committed.”<sup>57</sup> The Appeals Chamber must therefore consider whether the material facts underlying the Mugonero convictions were sufficiently pled in the Indictment and, if not, whether that failure was cured by other means.

a. The Allegation That Gérard Ntakirutimana Murdered Charles Ukobizaba

<sup>52</sup> Mugonero Indictment, paras. 4.7-4.10 (emphasis omitted).

<sup>53</sup> Trial Judgement, para. 791.

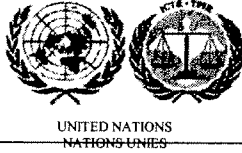
<sup>54</sup> *Id.*, paras. 793-795.

<sup>55</sup> *Id.*, paras. 806-810.

<sup>56</sup> *Id.*, paras. 788, 790.

<sup>57</sup> *Kupreškić et al.* Appeal Judgement, para. 89.





**Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda**

**Or. : Eng.**

**TRIAL CHAMBER I**

**Before Judges:** Erik Møse, Presiding  
Navanethem Pillay  
Andrésia Vaz

**Registrar:** Adama Dieng

**Judgement of:** 21 February 2003

**THE PROSECUTOR**

**V.**

**ELIZAPHAN and GÉRARD NTAKIRUTIMANA**

*Cases No. ICTR-96-10 & ICTR-96-17-T*

---

**JUDGEMENT AND SENTENCE**

---

**Counsel for the Defence:**

Ramsey Clark  
David Jacobs

**Counsel for the Prosecution:**

Charles Adeogun-Phillips  
Wallace Kapaya  
Boi-Tia Stevens

(i) That Elizaphan Ntakirutimana or Gérard Ntakirutimana killed or caused serious bodily or mental harm to members of an ethnic or racial group;<sup>1147</sup> and

(ii) That the killing or causing of serious bodily or mental harm was committed with intent to destroy, in whole or in part, that ethnic or racial group, as such.

675. The Chamber found that a large number of men, women and children, the majority unarmed Tutsi, sought shelter from violence and attacks around Mugonero in the days following 6 April 1994 and that many assembled at the Mugonero Complex for that purpose. The Chamber further found that the attack of 16 April at the Complex, which lasted throughout the day and into the night, claimed hundreds of lives among the refugees at the Complex and left many wounded. It further found that the attack specifically targeted the Tutsi population -- irrespective of age or sex -- for the sole reason of their ethnicity. In the Chamber's view, the massive and systematic character of the attack and ensuing onslaught, as described above, leaves no doubt as to the fact that the violent assault proceeded on the basis of an intent to destroy, in its whole, the Tutsi population at the Complex.<sup>1148</sup>

*Elizaphan Ntakirutimana*

676. Article 6(1) of the Statute provides that:

"A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime."

677. The elements of "aiding and abetting" within the meaning of Article 6(1) are well established.<sup>1149</sup> In order for the Chamber to enter a conviction on this count, it must find that the following three elements have been proved beyond a reasonable doubt:

(i) That Elizaphan Ntakirutimana provided to persons practical assistance ("aiding"), or facilitated the commission of the crime by being sympathetic thereto ("abetting");<sup>1150</sup>

(ii) That the act of aiding or abetting contributed substantially to the commission of the crime of genocide; and

(iii) That the Accused provided such assistance or encouragement with the intent to commit genocide, that is, the intent to destroy, in whole or in part, an ethnic or racial group, as such.

678. At para. 310 in Section II.3.8.3 (e) above (see also paras. 283-285 in II.3.8.3(c)),

<sup>1147</sup> Other acts are deliberately inflicting conditions of life calculated to bring about the group's physical destruction, preventing births within the group, and forcibly transferring children of the group to another. The Statute also includes "national" or "religious" groups, but this is not part of the Prosecution's case.

<sup>1148</sup> See in particular II.3.2 paras. 69-77, II.3.9.3 paras. 334-339, II.3.10.3 para. 350.

<sup>1149</sup> See *Akayesu* (TC) paras. 484-485; *Furundzija* (AC) paras. 124-127.

<sup>1150</sup> Either "aiding" or "abetting" alone would suffice for this count, see *Akayesu* (TC) para. 484.

the Chamber found that Elizaphan Ntakirutimana conveyed armed attackers to the Mugonero Complex in his vehicle on the morning of 16 April 1994, and that these attackers proceeded to kill Tutsi refugees at the Complex. Considering his position of authority in the community as a senior pastor, the Chamber finds that his act of personally driving armed attackers in his own vehicle to the scene of the attack, his association with these armed attackers, and his presence at the scene of the attack at the Complex, constituted practical assistance and encouragement to these attackers, which substantially contributed to the commission of the crime of genocide by these attackers.

679. From his presence and actions in relation to the attack at the Complex, from the letter he received on the eve of the attack, in which the Tutsi Pastors plead for his assistance adding, “tomorrow we shall die with our families”, Elizaphan Ntakirutimana knew that Tutsi, in particular, were being targeted for attack, and that by transporting attackers to the Complex, he would be assisting in the attack against the Tutsi. The Chamber has also taken into account his actions in Bisesero, for instance, transporting armed attackers to various parts of Bisesero and pointing out Tutsi refugees to the armed attackers who then attacked these refugees, and ordering attackers to remove the roof of Murambi Church so that it could not be used as a hiding-place for Tutsi. Based on the totality of the evidence before it, the Chamber finds that Elizaphan Ntakirutimana had the requisite intent to commit genocide, that is, the intent to destroy, in whole the Tutsi ethnic group.

680. The Chamber finds that, in conveying armed attackers to the Complex, Elizaphan Ntakirutimana is individually criminally responsible for aiding and abetting in the killing and causing of serious bodily or mental harm to the Tutsi refugees at the Complex on 16 April 1994, pursuant to Article 6(1) of the Statute. Accordingly, the Chamber finds that Elizaphan Ntakirutimana is guilty of genocide as charged in Count 1A of the Mugonero Indictment.

#### *Gérard Ntakirutimana*

681. The Chamber found, in II.3.13.3 above, that Gérard Ntakirutimana participated in attacks on 16 April 1994 at the Complex and shot at refugees. Whilst participating in the attack on the refugees at the Complex, Gérard Ntakirutimana killed Charles Ukobizaba by shooting him in his chest, from a short distance, in Mugonero Hospital courtyard around midday on 16 April 1994 (see II.3.11.5 above). Gérard Ntakirutimana also procured ammunition and gendarmes for the attack on the Complex (see II.3.7.3 above). In addition, he participated in the attack on Witness SS (a refugee in the Complex), during which time he was armed and in the company of other armed attackers (see II.3.12.3 above).

682. The Chamber recalls that Charles Ukobizaba, Witness SS, and finds that the refugees whom Gérard Ntakirutimana shot at in the Complex were of the Tutsi ethnic group.

whole or in part, an ethnic or racial group as such, and have thereby committed genocide.

715. The elements of the offence were dealt with in paragraph 784 above.

716. In Section II.4 above, the Chamber found that a large number of men, women and children, who were predominantly Tutsi, sought refuge in the area of Bisesero from April through June 1994, where there was widespread violence during that period, in the form of attacks targeting this population on an almost daily basis. Witnesses heard attackers singing songs referring to the extermination of the Tutsi. The Chamber concludes that these attacks were carried out with the specific intent to destroy in whole the Tutsi population in Bisesero, for the sole reason of its ethnicity.<sup>1160</sup>

*Elizaphan Ntakirutimana*

717. The elements of Article 6(1), in relation to aiding and abetting, have been considered in paras. 786 and 787 above.

718. The Chamber has previously made the following findings:

(i) Sometime between 17 April and early May 1994, Elizaphan Ntakirutimana conveyed attackers to Murambi Church and ordered the removal of the church roof so that it could no longer be used as a hiding place for the Tutsi, and in so doing, he facilitated the hunting down and the killing of the Tutsi refugees hiding in Murambi Church in Bisesero (see II.4.23.3 (a) above);

(ii) One day in the middle of May 1994, Elizaphan Ntakirutimana brought armed attackers in the rear hold of his vehicle to Nyarutovu Hill, and the group was searching for Tutsi refugees and chasing them. Elizaphan Ntakirutimana pointed out the fleeing refugees to the attackers who then chased these refugees singing: "Exterminate them; look for them everywhere; kill them; and get it over with, in all the forests" (see II.4.12.3 above);

(iii) At the end of May 1994, Elizaphan Ntakirutimana participated in a convoy of vehicles carrying armed attackers to Kabatwa Hill, and later the same day, at neighbouring Gitwa Hill, he pointed out the whereabouts of Tutsi refugees to attackers who attacked the refugees, causing injury to Witness KK (see II.4.13.3 above);

(iv) In mid-May, Elizaphan Ntakirutimana was present in the midst of the killing of Tutsi individuals at Mubuga, the Accused was in his vehicle transporting armed attackers as part of a convoy which included two buses, all carrying armed attackers, the attackers sang "Let us exterminate them" and proceeded to kill people until the evening. (see II. 4.14.3 above);

(v) One day in May or June 1994, Elizaphan Ntakirutimana transported armed attackers who were chasing Tutsi survivors at Murambi Hill (see II.4.10.3 above);

(vi) One day in May or June 1994, Elizaphan Ntakirutimana arrived at Ku Cyapa in a vehicle followed by two buses of attackers and he was part of a convoy, which included attackers (see II.4.20.3 above).

<sup>1160</sup> See, II.4.4 to 4.25 in conjunction with II.4.2 *supra*.

## CHAPTER V

### SENTENCING

#### 1. Applicable Provisions

769. The provisions of the Statute and the Rules relevant to the Chamber's consideration of an appropriate sentence for the Accused are Articles 22, 23 and 26 of the Statute and Rules 102, 103 and 104 of the Rules.

770. Pursuant to Article 23 of the Statute and Rule 101(A) of the Rules, the Tribunal may impose only a term of imprisonment on the person convicted, up to and including imprisonment for the remainder of that person's life, and the restitution of property or proceeds acquired by criminal conduct.

#### 2. Purposes and Principles of Sentencing

771. Both Accused have been found guilty of genocide and crimes against humanity. These crimes are of an utmost gravity; they are shocking to the conscience of mankind, in view of the fundamental human values deliberately negated by their perpetrators and the sufferings inflicted. These crimes threaten not only the foundations of the society in which they are perpetrated but also those of the international community as a whole.

772. The gravity of the offences shall therefore be reflected primarily in the Chamber's decision on the sentence to be inflicted upon the Accused, in order to serve such primary purposes as retribution, deterrence, protection of society, stigmatization and public reprobation of international crimes. General deterrence is particularly emphasized in this respect, so as to demonstrate "that the international community [is] not ready to tolerate serious violations of international humanitarian law and human rights".<sup>1178</sup>

773. Article 23 of the Statute and Rule 101(B) of the Rules also require that the individual circumstances of the Accused and the existence of any aggravating and mitigating circumstances in their case be thoroughly considered. Application of these principles allows the Chamber to fulfill its "overriding obligation to individualize [the] penalty", with the aim that the sentence be proportional to the gravity of the offence and the degree of responsibility of the offender.<sup>1179</sup>

773. The Chamber emphasizes in this context the importance of the principle of gradation in sentencing, which enables the Tribunals to distinguish between crimes which are of the most heinous nature, and those which, although reprehensible and deserving severe penalty, should not receive the highest penalties. The imposition of the highest penalties upon those at the upper end of the sentencing scale, such as those who planned

<sup>1178</sup> *Kambanda* (TC) para. 28, endorsed in *Aleksovski* (AC) para. 66.

<sup>1179</sup> *Delalic* (AC) para. 717; *Akayesu* (AC) para. 407.

or ordered atrocities, or those who committed crimes with especial zeal or sadism, enables the Chamber to punish, deter, and consequently stigmatize those crimes at a level that corresponds to their overall magnitude and reflects the extent of the suffering inflicted upon the victims.<sup>1180</sup>

774. This principle is apparent in the relevant dispositions of the Rwandan Criminal Code and the practice of the Rwandan courts in respect of sentencing, which the Chamber duly considered in its decision. Specific reference is made, in this regard, to the different categories of *génocidaires* or perpetrators of other crimes against humanity and the corresponding sentences to be imposed by the courts of Rwanda in their respect in the the Rwandan Organic Law on the Organization of Prosecutions for Offences constituting Genocide or Crimes against Humanity, committed since 1 October 1990. These range from a death sentence to life imprisonment or a term of imprisonment, depending on the criminal behaviour considered and the existence or not of aggravating circumstances such as the convicted persons' positions as leaders, the particular cruelty with which their crimes were committed, or their being found guilty of sexual violence.<sup>1181</sup>

775. Article 23 of the Statute and Rule 101(A) of the Rules are consonant with the principle of gradation in sentencing. They provide for flexibility in the determination of the sentence to be imposed. Thus, individuals convicted of genocide, of crimes against humanity or of Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Articles 2, 3 or 4 of the Statute may each face the highest sentence if the circumstances of the case, after assessment of any individual and mitigating factors, are deemed to require it. By the same token, not all persons convicted of genocide, to name but the "crime of the crimes", are bound to serve the highest sentence.

776. Bearing the above considerations in mind, regard will be had to a further purpose of the sentence, that of a possible rehabilitation of the convicted person.<sup>1182</sup>

### 3. Submissions of the Parties

<sup>1180</sup> The principle of gradation in sentencing was first acknowledged in the ICTY as reflecting the relative role of the individual accused in the overall context of the conflict. See *Delalic* (AC) para. 849 and *Aleksovski* (AC) para. 184. It was endorsed by the Appeals Chamber in the *Musema* (AC) paras. 381 and 382.

<sup>1181</sup> See Organic Law No. 8/96 of 30 August 1996, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996. The full text of the Organic Law is available on the official Website of the Embassy of the Republic of Rwanda in Washington, D.C at <<http://www.rwandemb.org/prosecution/law.htm>>. Prior to the Organic Law, including in 1994, the relevant law in force was the Rwandan Penal Code of 18 August 1977. Under the Code, the penalty for murder was life imprisonment, or death in cases involving premeditation or ambush (Article 311 and 312, respectively). While Rwanda ratified the Genocide Convention on 12 February 1975, the Code does not list genocide or crimes against humanity as separate criminal categories. See Code Pénal (18 August 1977), in Filip Reyntjens and Jan Gorus (eds.), *Codes et Lois du Rwanda* (Butare: Université Nationale du Rwanda, 1995).

<sup>1182</sup> *Blaskic* (TC) para. 761; *Kunarac* (TC) para. 836; *Serushago* (TC) para. 39; *Kayishema and Ruzindana* (TC) para. 2, upheld in *Kayishema and Ruzindana* (AC) para. 389 and 390.

life work was dedicated to saving souls and his son's, to healing the sick and saving lives. Furthermore, both Accused testified about their many years of dedication to church and community. Finally, it is submitted that neither of the Accused was in a position to prevent or stop the massacres, and that they were themselves victims who became refugees.<sup>1184</sup>

#### 4. Discussion

780. The Chamber has already noted the gravity of the crimes of which the Accused have been found guilty. It now turns to the personal and individual circumstances of the Accused, prior to reviewing the practice of the Tribunal in respect of sentences in cases with similarities to the present one.

781. The Chamber recalls at the outset the general principle that only matters proved a beyond a reasonable doubt against the Accused are to be considered against them at the sentencing stage. This principle extends to the assessment of any aggravating factors.<sup>1185</sup> Another standard applies to the Chamber's assessment of mitigating factors. These shall be taken into consideration if established on a balance of probabilities.<sup>1186</sup> Also, the Chamber agrees with the *Vasiljevic* Trial Chamber of the ICTY that a particular circumstance shall not be retained as aggravating if it is included as an element of the crime in consideration.<sup>1187</sup>

##### 4.1 Elizaphan Ntakirutimana

782. It is recalled that Elizaphan Ntakirutimana was born in 1924 in Ngoma sector, Gishyita commune, Kibuye prefecture, Rwanda.

##### (a) Mitigating Circumstances

782. The Chamber has found that the Accused was a highly respected personality within the Seventh-Day Adventist Church of the West-Rwanda Field and beyond, in the Kibuye prefecture. It heard and reviewed moving testimony from colleagues and supervisors of the Accused within the Seventh-Day Adventist Church. This evidence consistently described the Pastor's exemplary life as a church leader, a highly religious and tolerant person, who did not show ethnic bias, even in times of unrest and ethnic tension, for over half a century. Significantly, one such colleague praised "a faithful and honest worker who manifested courage in confronting irregularities with workers of

<sup>1184</sup> See T. 22 August 2002 pp. 57 and 58 and Defence Closing Brief pp. 1-12.

<sup>1185</sup> *Delalic* (AC) para. 763; *Vasiljevic* (TC) para. 272.

<sup>1186</sup> *Kunarac* (TC) para. 857, *Sikirica* (TC) para. 110; *Vasiljevic* (TC) para. 272.

<sup>1187</sup> Specifically, the *Vasiljevic* Trial Chamber ruled that the perpetrator's discriminatory intent in the commission of the crime "can only [constitute an aggravating factor] where the crime for which an accused is convicted does not include a discriminatory state of mind as an element." Hence, one's discriminatory intent was not deemed an aggravating factor in respect of a count of persecution considered as a crime against humanity (Article 5(h) of the ICTY Statute). It was however considered an aggravating factor in respect of a count of murder considered as a violation of the laws and customs of war (Article 3 of the ICTY Statute). *Vasiljevic* (TC) para. 277-278.

either tribal affiliation” while an other described Pastor Ntakirutimana as “a kind Christian gentleman”, an outstanding worker whom he found to be fair and trustworthy, whom he never saw lose his temper, who “worked well with the Hutus and the Tutsis” and whom he never saw making any distinction in their respect. As already stated, the Chamber accepts this evidence and finds that Elizaphan Ntakirutimana was essentially a person of good moral character until the events of April to July 1994 during which he was swept along with many Rwandans into criminal conduct.<sup>1188</sup>

783. The family situation of the Accused has been taken into account (Elizaphan Ntakirutimana is married with eight children of whom seven were alive in 2002).

784. In respect of his conduct during the events of 1994, the Chamber has considered that Elizaphan Ntakirutimana did not play a leading role in the attacks. He did not personally participate in these killings, nor was he found to have fired on refugees or even to have carried a weapon.

785. Finally, 78 years of age at the time of sentencing, the Accused has spent more than four years in detention. His wife, among other witnesses, has testified about his frail health, due to a condition from which he has suffered for years. His poor health was evident throughout the trial proceedings. Considered together, the Chamber finds that these are important mitigating circumstances in Elizaphan Ntakirutimana’s case.

**(b) Aggravating Circumstances:**

786. The Chamber now turns to the circumstances considered as aggravating in the Accused’s case.

787. As a highly respected personality and a man wielding certain authority within the Seventh-Day Adventist Church of the West-Rwanda Field and in the Kibuye prefecture, the Accused was deemed to have abused the trust placed in him.

788. The letter written to him by the Tutsi Pastors on behalf of the refugees at the Mugonero Complex was found, among other evidence, to be a symbol of his perceived authority among the general population. It is recalled that the Mugonero refugees trusted that, on the eve of the attack, Pastor Ntakirutimana would intercede in their favor before a municipal authority such as bourgmestre Sikubwabo, and that his intervention could prove instrumental in saving their lives.

788. Many among the refugees at the Mugonero Complex on 16 April 1994 were parishioners and pastors of the West-Rwanda Field of the Seventh Day Adventist Church for which Pastor Ntakirutimana was responsible. These persons were in his care. They

<sup>1188</sup> In the words of, respectively, Robert Peck, former President of the Union Mission of the Seventh-Day Adventist Church in Rwanda from 1984 to 1990 and Pastor De Witt S. Williams, former President of the Central Africa Union of the Church from 1979 to 1982. This correspondence is included in Defence Exhibit 1D21. See also II.6 *supra* (Character of the Accused Prior to April 1994) and particularly the Chamber’s findings at II.6.3.1.



616

9913/ABIS  
du



Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda

## IN THE APPEALS CHAMBER

Original: FRENCH

Before: Judge Theodor Meron, presiding  
Judge Fausto Pocar  
Judge Claude Jorda  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney

Registrar: Adama Dieng

Judgement of: 26 May 2003

2004 FEB - 9 P 4: 36  
[Signature]

**GEORGES ANDERSON NDERUBUMWE RUTAGANDA**

v.

**THE PROSECUTOR**

Case No. ICTR-96-3-A

ICTR-96-3-A  
9th Feb. 2004  
(9913/ABIS-9714/ABIS)

## JUDGEMENT

### Office of the Prosecutor:

Norman Farrell  
Mathias Marcussen  
Norul Rashid  
Helen Brady

### Counsel for the Appellant:

David Jacobs  
David Paciocco

- a hill on which there were armed soldiers;
- that Rutaganda ordered the *Interahamwe* to position themselves around the refugees and surround them before the killing;
- that the soldiers subsequently participated in the killing of refugees alongside the *Interahamwe*;
- that the RAF soldiers told the *Interahamwe* to kill and look for those who were not dead and finish them off;
- that the victims of the killings were persons protected under common Article 3 of the Geneva Conventions and Additional Protocol II,

no reasonable trier of fact could have failed to make the inferential leap to find beyond a reasonable doubt that there existed a nexus between Rutaganda's participation in the killings at Nyanza and the armed conflict. In the instant case, the role of RAF troops in directing the activities of the *Interahamwe* makes particularly clear the unreasonableness in failing to find the required nexus.<sup>1078</sup>

580. To have concluded that no reasonable trier of fact could have made all the factual findings reached by the Trial Chamber and yet found that the Prosecution had failed to establish beyond a reasonable doubt a nexus between Rutaganda's participation in the ETO and Nyanza killings and the armed conflict, the Appeals Chamber considers that the Trial Chamber committed an error of fact. The Trial Chamber's erroneous conclusion that a nexus had not been established is the only basis for its acquittal of Rutaganda on Counts 4 and 6. The Appeals Chamber considers that the error is thus one which has occasioned a miscarriage of justice, in that the Trial Chamber failed to discharge its obligation by not deducing all the legal implications from the evidence presented.

581. The Appeals Chamber holds that correction of the error would require entry of convictions on both counts 4 and 6 of the Indictment.<sup>1079</sup> However, before reversing the acquittal entered by the Trial Chamber, the Appeals Chamber must be satisfied that it can find the Respondent guilty of murder as violation of common Article 3 of the Geneva Conventions based on the facts already forming the basis of the convictions for genocide and extermination as crimes against humanity.

582. Although the Respondent did not raise this question, the Appeals Chamber observes that, in accordance with the principles it endorses in *Musema*, the convictions on Counts 4 and 6 of the Indictment do not constitute unlawful multiple convictions for the same crimes. In *Musema*, the Appeals Chamber, endorsing the principles adopted by the ICTY Appeals Chamber in *Celebici*, stated that:

[...] multiple convictions [...] are permissible only if each statutory provision involved has a materially distinct element not contained in the other.<sup>1080</sup>

In the instant case, the Trial Chamber found Rutaganda guilty of genocide (Count 1), and extermination and murder as crime against humanity (Counts 2 and 7, respectively). Since the Appeals Chamber quashed the conviction for the killing of Emmanuel Kayitare (Count 7), the convictions for Counts 1 and 2 rest on the Respondent's participation in separate criminal acts, namely: the killing of several people at Nyarugenge on 8, 15 and 24 April 1994; the shooting to death of 14 persons behind the Amgar garage in April 1994; the ETO and Nyanza massacres.

<sup>1078</sup> Viewing the ETO and Nyanza killings as interconnected parts of a larger sequence of events, the Appeals Chamber is of the view that the apparent authority exercised by soldiers over the *Interahamwe* during the Nyanza killings also contributes to the inescapable finding that there existed a nexus between the ETO killings and the armed conflict.

<sup>1079</sup> See Article 24 of the Statute.

<sup>1080</sup> *Musema* Appeal Judgement, paras. 361 and 363 citing the *Celebici* Appeal Judgement, paras. 412 and 413.

618

1723  
24

UNITED NATIONS



NATIONS UNIES

ICTR  
CRIMINAL REGISTRY  
RECEIVED

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

1999 DEC -6 A 9 56

Trial Chamber I

OR: FR.

Before: Judge Laity Kama, Presiding  
Judge Lennart Aspegren  
Judge Navanethem Pillay

ICTR-96-3-T  
06-DEC-1999  
(1723-1549)

Registrar: Mr. Agwu Okali

Judgement of: 6 December 1999

THE PROSECUTOR  
VERSUS  
GEORGES ANDERSON NDERUBUMWE RUTAGANDA

Case No. ICTR-96-3-T

---

## JUDGEMENT AND SENTENCE

---

The Office of the Prosecutor:

Ms. Carla Del Ponte  
Mr. James Stewart  
Mr. Udo Herbert Gehring  
Ms. Holo Makwaia

Defence Counsel:

Ms. Tiphaine Dickson



offence desired by the instigator, except with genocide, where an accused may be held individually criminally liable for incitement to commit genocide under Article 2(3)(c) of the Statute, even where such incitement fails to produce a result.<sup>13</sup>

39. In the opinion of the Chamber, ordering, which is a third form of participation, implies a superior-subordinate relationship between the person giving the order and the one executing it, with the person in a position of authority using such position to persuade another to commit an offence.

40. Fourthly, an accused incurs criminal responsibility for the commission of a crime, under Article 6(1), where he actually "commits" one of the crimes within the jurisdiction *rationae materiae* of the Tribunal.

41. The Chamber holds that an accused may participate in the commission of a crime either through direct commission of an unlawful act or by omission, where he has a duty to act.

42. A fifth and last form of participation where individual criminal responsibility arises under Article 6(1), is "[...] otherwise aid[ing] and abett[ing] in the planning or execution of a crime referred to in Articles 2 to 4".

43. The Chamber finds that aiding and abetting alone is sufficient to render the accused criminally liable. In both instances, it is not necessary that the person aiding and abetting another to commit an offence be present during the commission of the crime. The relevant act of assistance may be geographically and temporally unconnected to the actual commission of the offence. The Chamber holds that aiding and abetting include all acts of assistance in either physical form or in the form of moral support; nevertheless, it emphasizes that any act of

---

<sup>13</sup> *Akayesu Judgement*, para. 562

**UNITED  
NATIONS**



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr Adama Dieng

**Judgement of:** 20 May 2005

**LAURENT SEMANZA**

**v.**

**THE PROSECUTOR**

*Case No. ICTR-97-20-A*

**JUDGEMENT**

**The Office of the Prosecutor:**

Mr James Stewart  
Ms Amanda Reichman  
Mr Neville Weston

**Counsel for the Appellant**

Mr Charles Achaleke Taku

(Count 10), one count of torture as a crime against humanity (Count 11), and two counts of murder as a crime against humanity (Counts 12 and 14).<sup>667</sup> The Trial Chamber sentenced the Appellant to two terms of 15 years' imprisonment for complicity in genocide (Count 3) and aiding and abetting extermination as a crime against humanity (Count 5).<sup>668</sup> Because these convictions were based on identical facts – the massacres at Musha church and Mwulire hill – the Trial Chamber ordered these sentences to run concurrently.<sup>669</sup>

311. The Trial Chamber also concluded that the convictions on Counts 10, 11, 12, and 14 were based on related factual events, and that the sentences for those crimes accordingly should run concurrently.<sup>670</sup> It entered the following sentences: seven years' imprisonment for instigating rape as a crime against humanity (Count 10); ten years' imprisonment for instigating torture by rape and personally committing torture as a crime against humanity (Count 11); ten years' imprisonment for instigating one murder and personally committing one murder (Count 12); and eight years' imprisonment for instigating the murder of six persons (Count 14).<sup>671</sup> The Chamber ordered that the sentences for Counts 10, 11, 12, and 14 shall be served consecutively to the concurrent sentences for Counts 3 and 5, making a total sentence of 25 years' imprisonment.<sup>672</sup> Pursuant to the Appeals Chamber decision of 31 May 2000,<sup>673</sup> the Trial Chamber reduced the sentence by six months for violations of the Appellant's rights during his pre-trial detention in Cameroon.

## 2. Standard of Review

312. The Appellant raises a number of challenges to the sentence. Before reviewing those challenges, the Appeals Chamber first recalls the standard of review. The Appeals Chamber's review of an appeal of the sentencing portion of a judgement is not *de novo*. Trial Chambers are vested with broad discretion to tailor the penalties to fit the individual circumstances of the accused and the gravity of the crime.<sup>674</sup> As a general rule, the Appeals Chamber will not revise a sentence unless the Trial Chamber has committed a "discernible error" in exercising its discretion.<sup>675</sup> It is for the Appellant to demonstrate how the Trial Chamber ventured outside its discretionary framework

<sup>666</sup> The Appellant also claims that the Trial Chamber's judgement is invalid because it contains cumulative convictions. This argument is considered in the next section.

<sup>667</sup> Trial Judgement para. 553.

<sup>668</sup> *Ibid.*, para. 585.

<sup>669</sup> *Ibid.*

<sup>670</sup> *Ibid.*, paras 586-587.

<sup>671</sup> *Ibid.*, para. 588.

<sup>672</sup> *Ibid.*, paras 589-590.

<sup>673</sup> Semanza Appeal Decision.

<sup>674</sup> *Celebici* Appeal Judgement, para. 717.

<sup>675</sup> *Tadic* Judgement in Sentencing Appeals, para. 22; *see also Blaskic* Appeal Judgement, para. 680; *Dragan Nikolic* Appeal Judgement, para. 9.

in imposing the sentence.<sup>676</sup> A Trial Chamber's sentencing decision may therefore only be disturbed on appeal if the Appellant shows that the Trial Chamber erred in the weighing process either by taking into account what it ought not to have considered or by failing to take into account what it ought to have considered.<sup>677</sup>

### 3. Cumulative Convictions

313. The Appellant first contends that the Trial Chamber failed to apply the principles laid out in *^elebi}i* and erred in entering cumulative convictions.<sup>678</sup> Because of this failure, he contends, his cumulative convictions and sentence violate the principle of double jeopardy.<sup>679</sup> He submits that the Trial Chamber considered as aggravating factors the "effect of crimes charged cumulatively, the number of deaths, and the influence of the Accused."<sup>680</sup>

314. The Appellant advances this argument in a conclusory way. He does not identify the respects in which he believes his convictions were cumulative, and he offers little in the way of supporting arguments. Nonetheless, the Appeals Chamber will consider his contention to ensure that the proscription on cumulative convictions was not abridged.

315. The general test for cumulative convictions was recently reaffirmed in the *Krsti} Appeal Judgement*:

The established jurisprudence of the Tribunal is that multiple convictions entered under different statutory provisions, but based on the same conduct, are permissible only if each statutory provision has a materially distinct element not contained within the other. An element is materially distinct from another if it requires proof of a fact not required by the other element. Where this test is not met, only the conviction under the more specific provision will be entered. The more specific offence subsumes the less specific one, because the commission of the former necessarily entails the commission of the latter.<sup>681</sup>

316. The Appellant was convicted under Count 3 of complicity in genocide, which is proscribed by Article 2(3)(e) of the Statute.<sup>682</sup> The Trial Chamber held that "there is no material distinction between complicity in Article 2(3)(e) of the Statute and the broad definition accorded to aiding and abetting in Article 6(1)."<sup>683</sup> The Trial Chamber further noted that "the *mens rea* requirement for

<sup>676</sup> *Celebici* Appeal Judgement, para. 725; *Dragan Nikoli} Appeal Judgement*, para. 9.

<sup>677</sup> *Celebici* Appeal Judgement, para. 780; *Dragan Nikolic Appeal Judgement*, para. 9.

<sup>678</sup> *Semanza Appeal Brief*, paras 370-372.

<sup>679</sup> *Ibid.*, para. 370.

<sup>680</sup> *Ibid.*, para. 371.

<sup>681</sup> *Krsti} Appeal Judgement*, para. 218 (footnotes omitted); see also *Celebici Appeal Judgement*, para. 412-413; *Ntakirutimana Appeal Judgement*, para. 542; *Kordic and Cerkez Appeal Judgement*, paras 1032-1033.

<sup>682</sup> However, the majority of the Appeals Chamber considers that the Appellant should be convicted of genocide for his role in the massacre at Musha church and of complicity in genocide for his part in the Mwulire hill attack: see *infra* section III. A.

<sup>683</sup> *Trial Judgement*, para. 394.

Mabare mosque, and that in addition to his personal participation in the killings, he “led the attack on the refugees at Musha church”<sup>761</sup> and “directed the attacks on the refugees” at Mwulire hill and at Mabare mosque.<sup>762</sup> The Indictment adds that the Appellant had “*de facto* and/or *de jure* authority and control over militiamen, in particular *Interahamwe*, and other persons, including members of the Rwandan Armed Forces (FAR), communal police and other government agents.”<sup>763</sup> The contents of the Indictment thus put the Appellant on notice that the case against the Appellant included criminal responsibility for ordering massacres.

359. The Appeals Chamber now turns to the Prosecution’s argument that the Trial Chamber committed a legal error by making the Appellant’s liability for ordering dependent upon proof of a superior-subordinate relationship.

360. In its Judgement, the Trial Chamber considered the correct definition for ordering under Article 6(1) of the Statute to be as follows:

“Ordering” refers to a situation where an individual has a position of authority and uses that authority to order – and thus compel – another individual, who is subject to that authority, to commit a crime. Criminal responsibility for ordering the commission of a crime under the Statute implies the existence of a superior-subordinate relationship between the individual who gives the order and the one who executes it.<sup>764</sup>

361. Thus, in its definition, the Trial Chamber did not require proof of a formal superior-subordinate relationship for the Appellant to be found responsible for ordering. All that it required was the implied existence of a superior-subordinate relationship. The Trial Chamber’s approach in this case is consistent with recent jurisprudence of the Appeals Chamber. As recently clarified by the ICTY Appeals Chamber in *Kordi* and *Cerkez*, the *actus reus* of “ordering” is that a person in a position of authority instruct another person to commit an offence. No formal superior-subordinate relationship between the accused and the perpetrator is required.<sup>765</sup> It is sufficient that there is proof of some position of authority on the part of the accused that would compel another to commit a crime in following the accused’s order.<sup>766</sup> The Trial Chamber thus committed no legal error in its enunciation of the elements of ordering.

362. Bearing in mind that the Trial Chamber correctly defined the elements of ordering, the Appeals Chamber does not consider that the Trial Chamber thereafter required the Prosecution to furnish proof of a formal superior-subordinate relationship for the Appellant to be convicted of

<sup>761</sup> *Ibid.*, para. 3.11.

<sup>762</sup> *Ibid.*, paras 3.12 and 3.13.

<sup>763</sup> *Ibid.*, para. 3.16.

<sup>764</sup> Trial Judgement, para. 382.

<sup>765</sup> *Kordi* and *Cerkez* Appeal Judgement, para. 28.



ordering. That being said, in the view of the Appeals Chamber, the evidence before the Trial Chamber in relation to Musha church does not support the Trial Chamber's finding that the Appellant did not possess any form of authority over the attackers.

363. It should be recalled that authority creating the kind of superior-subordinate relationship envisaged under Article 6(1) of the Statute for ordering may be informal or of a purely temporary nature. Whether such authority exists is a question of fact. In the present case, the evidence is that the Appellant directed attackers, including soldiers and *Interahamwe*, to kill Tutsi refugees who had been separated from the Hutu refugees at Musha church. According to the Trial Chamber, the refugees "were then executed on the directions" of the Appellant.<sup>767</sup> On these facts, no reasonable trier of fact could hold otherwise than that the attackers to whom the Appellant gave directions regarded him as speaking with authority. That authority created a superior-subordinate relationship which was real, however informal or temporary, and sufficient to find the Appellant responsible for ordering under Article 6(1) of the Statute.

364. Consequently, the Appeals Chamber rejects the Prosecution submission that the Trial Chamber committed a legal error by making the legal qualification of ordering under Article 6(1) of the Statute dependent upon proof of a formal superior-subordinate relationship. The Trial Chamber presented the correct definition for ordering under Article 6(1) of the Statute. However, the Appeals Chamber finds that the Trial Chamber erred in its application of this correct legal standard to the facts. It is clear from the evidence that the Appellant had the necessary authority to render him liable for ordering the attacks and killings at Musha church. The Appeals Chamber, Judge Pocar dissenting, therefore enters a conviction for ordering genocide and for ordering extermination in relation to the massacre at Musha church.

#### **B. War Crimes (Ground 4)**

365. The Prosecution's fourth ground of appeal concerns the Trial Chamber's acquittal of the Appellant for serious violations of Common Article 3 to the Geneva Conventions and of Additional Protocol II under Article 4(a) of the Statute (Counts 7 and 13 of the Indictment). Although the Trial Chamber found that a number of the acts of the Appellant constituted serious violations of Common Article 3 to the Geneva Conventions and of Additional Protocol II (Article 4 of the Statute), the Trial Chamber declined to enter convictions for these acts due to the application of the law on cumulative convictions. The Prosecution argues that the Trial Chamber's failure to do so is against

---

<sup>766</sup> *Ibid.*

<sup>767</sup> Trial Judgement, paras 178, 196.

373. The Prosecution requests that the Appeals Chamber increase the total sentence for the Appellant from 25 years to life imprisonment. In the alternative, in line with the approach of the Trial Chamber, the Prosecution submits:

(i) that the Appellant's sentences for complicity in genocide and extermination should be increased from 15 years to concurrent sentences of 25 years each, to be served consecutively to his other sentences;

(ii) the Appellant's sentence of 7 years for instigating rape, and his sentence of 8 years for instigating the murder of six individuals, should be increased significantly, both individually and collectively, to terms of imprisonment of at least 10 years and 15 years respectively, to be imposed concurrently; and

(iii) that these sentences should be imposed consecutively with the total term of imprisonment being as a consequence a term of imprisonment of 40 years.<sup>783</sup>

374. As the Appeals Chamber has stressed above, as a general rule, the Appeals Chamber will not revise a sentence unless the Trial Chamber has committed a discernible error in exercising its discretion.<sup>784</sup> It is incumbent upon the moving party to show that the Trial Chamber went beyond the limits of its discretionary powers in imposing the sentence.<sup>785</sup> The Appeals Chamber will intervene in the sentence only if the moving party demonstrates that the Trial Chamber erred by taking into account what it ought not to have considered or by failing to take into account what it ought to have considered.<sup>786</sup>

#### 1. Due Regard for General Sentencing Practice of Rwanda

375. The Prosecution submits that in imposing the sentence, the Trial Chamber did not have proper regard to the general sentencing practice of Rwanda, as provided in Article 23 of the Statute and Rule 101 of the Rules. Although the Prosecution concedes that the Trial Chamber is not bound

<sup>783</sup> Prosecution Appeal Brief, para. 6.5. See Trial Judgement, paras 585-591. The sentences imposed by the Trial Chamber are as follows: for Count 3, complicity in genocide, and Count 5, aiding and abetting extermination as a crime against humanity, two terms of 15 years imprisonment to run concurrently. The sentences for Counts 3 and 5 are to be served consecutively with the concurrent sentences for Count 10, instigating rape as a crime against humanity - 7 years imprisonment; Count 11, instigating torture by rape and personally committing torture as a crime against humanity - 10 years imprisonment; Count 12, instigating one murder and personally committing one murder - 10 years imprisonment; Count 14, instigating murder of six persons - 8 years imprisonment. The total sentence of twenty-five years imprisonment was reduced by six months to compensate the Appellant for the violations of his rights; the final sentence was twenty-four years and six months imprisonment.

<sup>784</sup> See *supra* section II.L; see also *Tadic* Judgement in Sentencing Appeals, para. 22; see also *Blaškić* Appeal Judgement, para. 680, *Dragan Nikolić* Appeal Judgement, para. 9.

<sup>785</sup> *Celebici* Appeal Judgement, para. 717; *Dragan Nikolić* Appeal Judgement, para. 9.

<sup>786</sup> *Celebici* Appeal Judgement, para. 780; *Dragan Nikolić* Appeal Judgement, para. 9.



UNITED NATIONS

NATIONS UNIES

ICTR-97-20-T  
15-5-2003  
(7494-7261)

7494  
#171

International Criminal Tribunal for Rwanda

Tribunal Pénal International pour le Rwanda

## TRIAL CHAMBER III

Original: English

**Before Judges:** Yakov Ostrovsky, Presiding  
Lloyd G. Williams, QC  
Pavel Dolenc

**Registrar:** Adama Dieng

**Judgement of:** 15 May 2003

2003 MAY 15 11:19  
ICTR  
OFFICE OF THE REGISTRAR  
KIGALI

## THE PROSECUTOR

v.

LAURENT SEMANZA

Case No. ICTR-97-20-T

---

**JUDGEMENT AND SENTENCE**


---

**Counsel for the Prosecution:**

Chile Eboe-Osuji

**Counsel for the Defence:**

Charles Acheleke Taku  
Sadikou Ayo Alao

### VIII. SENTENCING

554. Having found the Accused guilty, the Chamber now turns to the question of sentencing. The appropriate sentence serves to further the goals of retribution, deterrence, stigmatization, rehabilitation, protection of society, and national reconciliation. Pursuant to Articles 22 and 23 of the Statute and Rule 101 of the Rules, the Chamber will take into account the gravity of the offences and the individual circumstances of the Accused, as well as any other aggravating or mitigating circumstances, and the general practice regarding prison sentences in the courts of Rwanda. The Chamber will also give credit to the Accused for the period he was detained in custody pending trial. Pursuant to the decision of the Appeals Chamber, the Trial Chamber will reduce the sentence for the violation of the Accused's rights during pre-trial detention.<sup>712</sup>

#### A. Gravity of the Offences

555. The penalty must, first and foremost, be commensurate with the gravity of the offence.<sup>713</sup> All of the crimes in the Statute are crimes of an extremely serious nature, rising to the level of international prohibition. Thus, in assessing the gravity of the offence, the Chamber ought to go beyond the abstract gravity of the crime to take into account the particular circumstances of the case, as well as the form and degree of the participation of the Accused in the crime.

556. The Chamber has found the Accused guilty of participating in genocide and extermination, murder, rape, and torture as crimes against humanity. These are, by definition, crimes of the most serious gravity, which affect the very foundations of society and shock the conscience of humanity. Through his participation in these crimes, the Accused contributed to the harming and killing of many civilian Tutsi.

557. With the exception of his personal participation in the torture and murder of Rusanganwa, the Accused was not a principal perpetrator of the other crimes for

---

<sup>712</sup> *Semanza v. Prosecutor*, Case No. ICTR-97-20-A, Decision, AC, 31 May 2000.

<sup>713</sup> Statute, art. 23(2). *Musema*, Judgement, AC, para. 382; *Akayesu*, Judgement, AC, para. 413; *Kambanda*, Judgement, AC, para. 125; *Kupreskic*, Judgement, AC, para. 442; *Celebici*, Judgement, AC, para. 731; *Aleksovski*, Judgement, AC, para. 182.



**Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Carmel Agius

**Registrar:** Mr. Adama Dieng

**Judgement of:** 28 September 2011

**Ephrem SETAKO**

**v.**

**THE PROSECUTOR**

*Case No. ICTR-04-81-A*

---

**JUDGEMENT**

---

**Counsel for the Appellant**

Prof. Lennox Hinds

**Office of the Prosecutor**

Mr. Hassan Bubacar Jallow  
Mr. James J. Arguin  
Ms. Deborah Wilkinson  
Mr. Ousman Jammeh  
Ms. Thembile Segoete  
Ms. Christina Fomenky  
Ms. Betty Mbabazi

**B. Failure to Make Legal Findings on Article 6(3) Responsibility (Ground 2)**

263. In the Legal Findings section of the Trial Judgement, the Trial Chamber stated that it would “only discuss in its legal findings, to the extent necessary, whether [Setako’s] instructions of 25 April and 11 May 1994 demonstrate his superior responsibility over [the] assailants at Mukamira camp.”<sup>600</sup> However, having found Setako guilty of ordering the 25 April and 11 May Killings pursuant to Article 6(1) of the Statute, the Trial Chamber stated that it did not need to consider his responsibility under Article 6(3) of the Statute since it would be impermissible to enter a conviction on both bases.<sup>601</sup>

264. The Prosecution submits that the Trial Chamber erred in failing to make a finding on Setako’s responsibility as a superior pursuant to Article 6(3) of the Statute in relation to the 25 April and 11 May Killings.<sup>602</sup> It contends that the evidence on the record concerning Setako’s role in the 25 April and 11 May Killings supports a finding that the requirements of superior responsibility were satisfied.<sup>603</sup> The Prosecution submits that, as a result of its error, the Trial Chamber did not fully adjudicate all allegations against Setako and was not able to consider Setako’s superior authority as an aggravating factor in sentencing.<sup>604</sup> It requests that the Appeals Chamber find that Setako bears responsibility under Article 6(3) of the Statute and that the manner in which he exercised his authority constitutes an aggravating circumstance.<sup>605</sup>

265. Setako opposes the Prosecution’s contentions. He argues that the Trial Chamber did make a finding in relation to his responsibility pursuant to Article 6(3) of the Statute and found him not guilty because the Prosecution failed to sufficiently plead or lead evidence that he was responsible as a superior for the 25 April and 11 May Killings.<sup>606</sup>

266. The Appeals Chamber recalls that it is inappropriate to convict an accused for a specific count under both Article 6(1) and Article 6(3) of the Statute.<sup>607</sup> When, for the same count and the same set of facts, the accused’s responsibility is pleaded pursuant to both provisions and the accused could be found liable under both, the Trial Chamber should enter a conviction on the basis

<sup>600</sup> Trial Judgement, para. 463.

<sup>601</sup> Trial Judgement, para. 474.

<sup>602</sup> Prosecution Notice of Appeal, paras. 7-12; Prosecution Appeal Brief, paras. 31-40.

<sup>603</sup> Prosecution Notice of Appeal, para. 10; Prosecution Appeal Brief, para. 39.

<sup>604</sup> Prosecution Notice of Appeal, para. 10; Prosecution Appeal Brief, paras. 37, 38.

<sup>605</sup> Prosecution Notice of Appeal, paras. 11, 12; Prosecution Appeal Brief, para. 40.

<sup>606</sup> Setako Response Brief, paras. 16-37.

<sup>607</sup> *Renzaho* Appeal Judgement, para. 564; *Nahimana et al.* Appeal Judgement, para. 487.

of Article 6(1) of the Statute alone and consider the superior position of the accused as an aggravating factor in sentencing.<sup>608</sup> The Trial Chamber correctly recalled these principles.<sup>609</sup>

267. Setako's convictions for the 25 April and 11 May Killings under Article 6(1) of the Statute are upheld on appeal. The Appeals Chamber need therefore only consider the Prosecution's contention that the Trial Chamber erred by failing to make a finding on Setako's responsibility under Article 6(3) of the Statute for the purpose of sentencing.<sup>610</sup>

268. The Appeals Chamber finds that, since the Amended Indictment charged Setako cumulatively under Articles 6(1) and 6(3) of the Statute, the Trial Chamber was required to make a finding as to whether Setako incurred superior responsibility for the purpose of sentencing. The Trial Chamber's failure to make such a finding constituted an error of law. The Appeals Chamber will assess whether this error has an impact on the Trial Judgement.

269. The Appeals Chamber recalls that, for liability of an accused to be established under Article 6(3) of the Statute, the Prosecution must prove that: (i) a crime over which the Tribunal has jurisdiction was committed; (ii) the accused was a *de jure* or *de facto* superior of the perpetrator of the crime and had effective control over this subordinate (*i.e.*, he had the material ability to prevent or punish commission of the crime by his subordinate); (iii) the accused knew or had reason to know that the crime was going to be committed or had been committed; and (iv) the accused did not take necessary and reasonable measures to prevent or punish the commission of the crime by the subordinate.<sup>611</sup>

270. In support of its assertion that Setako had effective control over the perpetrators of the 25 April and 11 May Killings, the Prosecution argues that he was a high-ranking military officer "whose orders were immediately and unquestioningly complied with by the soldiers and militiamen at Mukamira Camp" and that he had the power to prevent or punish the soldiers there "by initiating investigations against them for collaboration and other violations of military regulations."<sup>612</sup>

271. The Appeals Chamber notes that, at trial, the Prosecution submitted essentially the same arguments to contend that Setako bore superior responsibility for all crimes with which he had been

<sup>608</sup> *Renzaho* Appeal Judgement, para. 564; *Nahimana et al.* Appeal Judgement, para. 487.

<sup>609</sup> Trial Judgement, para. 474.

<sup>610</sup> The Prosecution has not substantiated its contention that the failure to enter findings on Setako's superior responsibility under Article 6(3) of the Statute for the 25 April and 11 May Killings has led to a miscarriage of justice. See Prosecution Notice of Appeal, paras. 10, 11.

<sup>611</sup> *Nahimana et al.* Appeal Judgement, para. 484. See also *Gacumbitsi* Appeal Judgement, para. 143; *Bagilishema* Appeal Judgement, paras. 24-62; *Halilović* Appeal Judgement, paras. 59, 210; *Blaškić* Appeal Judgement, paras. 53-85; *Čelebići* Appeal Judgement, paras. 182-314.

### **3. ICTY**



UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No.: IT-95-14/1-A  
Date: 24 March 2000  
Original: English

IN THE APPEALS CHAMBER

Before: Judge Richard May, Presiding  
Judge Florence Ndepele Mwachande Mumba  
Judge David Hunt  
Judge Wang Tieya  
Judge Patrick Robinson

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Judgement of: 24 March 2000

PROSECUTOR

v.

ZLATKO ALEKSOVSKI

---

JUDGEMENT

---

Office of the Prosecutor:

Mr. Upawansa Yapa  
Mr. William Fenrick  
Mr. Norman Farrell

Counsel for the Appellant:

Mr. Srdjan Joka for Zlatko Aleksovski

109. It is necessary to stress that the normal rule is that previous decisions are to be followed, and departure from them is the exception. The Appeals Chamber will only depart from a previous decision after the most careful consideration has been given to it, both as to the law, including the authorities cited, and the facts.

110. What is followed in previous decisions is the legal principle (*ratio decidendi*), and the obligation to follow that principle only applies in similar cases, or substantially similar cases. This means less that the facts are similar or substantially similar, than that the question raised by the facts in the subsequent case is the same as the question decided by the legal principle in the previous decision. There is no obligation to follow previous decisions which may be distinguished for one reason or another from the case before the court.

111. Where, in a case before it, the Appeals Chamber is faced with previous decisions that are conflicting, it is obliged to determine which decision it will follow, or whether to depart from both decisions for cogent reasons in the interests of justice.

## 2. Whether the Decisions of the Appeals Chamber are Binding on Trial Chambers

112. Generally, in common law jurisdictions, decisions of a higher court are binding on lower courts. In civil law jurisdictions there is no doctrine of binding precedent. However, as a matter of practice, lower courts tend to follow decisions of higher courts. As one commentator has stated:

... it is hardly an exaggeration to say that the doctrine of *stare decisis* in the Common Law and the practice of Continental courts generally lead to the same results... In fact, when a judge can find in one or more decisions of a supreme court a rule which seems to him relevant for the decision in the case before him, he will follow those decisions and the rules they contain as much in Germany as in England or France.<sup>250</sup>

113. The Appeals Chamber considers that a proper construction of the Statute requires that the *ratio decidendi* of its decisions is binding on Trial Chambers for the following reasons:

(i) the Statute establishes a hierarchical structure in which the Appeals Chamber is given the function of settling definitively certain questions of law and fact arising from

decisions of the Trial Chambers. Under Article 25, the Appeals Chamber hears an appeal on the ground of an error on a question of law invalidating a Trial Chamber's decision or on the ground of an error of fact which has occasioned a miscarriage of justice, and its decisions are final;

(ii) the fundamental mandate of the Tribunal to prosecute persons responsible for serious violations of international humanitarian law cannot be achieved if the accused and the Prosecution do not have the assurance of certainty and predictability in the application of the applicable law; and

(iii) the right of appeal is, as the Chamber has stated before,<sup>251</sup> a component of the fair trial requirement, which is itself a rule of customary international law and gives rise to the right of the accused to have like cases treated alike. This will not be achieved if each Trial Chamber is free to disregard decisions of law made by the Appeals Chamber, and to decide the law as it sees fit. In such a system, it would be possible to have four statements of the law from the Tribunal on a single legal issue - one from the Appeals Chamber and one from each of the three Trial Chambers, as though the Security Council had established not a single, but four, tribunals. This would be inconsistent with the intention of the Security Council, which, from a plain reading of the Statute and the Report of the Secretary-General, envisaged a tribunal comprising three trial chambers and one appeals chamber, applying a single, unified, coherent and rational corpus of law. The need for coherence is particularly acute in the context in which the Tribunal operates, where the norms of international humanitarian law and international criminal law are developing, and where, therefore, the need for those appearing before the Tribunal, the accused and the Prosecution, to be certain of the regime in which cases are tried is even more pronounced.

### 3. Whether the Decisions of the Trial Chambers are Binding on Each Other

114. The Appeals Chamber considers that decisions of Trial Chambers, which are bodies with coordinate jurisdiction, have no binding force on each other, although a Trial Chamber is free to follow the decision of another Trial Chamber if it finds that decision persuasive.

---

<sup>250</sup> Zweigert and Kotz, *An Introduction to Comparative Law* (1998), p. 263.

<sup>251</sup> See para. 104, *supra*.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-03-72-A  
Date: 18 July 2005  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Florence Ndepele Mwachande Mumba, Presiding  
Judge Fausto Pocar  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Wolfgang Schomburg

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 18 July 2005

**PROSECUTOR**

v.

**MILAN BABIĆ**

---

**JUDGEMENT ON SENTENCING APPEAL**

---

**Counsel for the Prosecution:**

Mr. Mark J. McKeon  
Mr. Xavier Tracol  
Ms. Kristina Carey

**Counsel for the Appellant:**

Mr. Peter Michael Müller  
Mr. Robert Fogelnest

responsibility;<sup>144</sup> (11) age;<sup>145</sup> and (12) assistance to detainees or victims.<sup>146</sup> Poor health is to be considered only in exceptional or rare cases.<sup>147</sup> This list is not exhaustive and Trial Chambers are “endowed with a considerable degree of discretion in deciding on the factors which may be taken into account”.<sup>148</sup> They are not required to “articulate every step” of their reasoning in reaching particular findings,<sup>149</sup> and failure to list in a judgement “each and every circumstance” placed before them and considered “does not necessarily mean that [they] either ignored or failed to evaluate the factor in question.”<sup>150</sup> For instance, a Trial Chamber’s express reference to the parties’ written submissions concerning mitigating circumstances is *prima facie* evidence that it was cognisant of these circumstances and took them into account.<sup>151</sup> The standard of proof with regard to mitigating circumstances is not, as with aggravating circumstances, proof beyond reasonable doubt,<sup>152</sup> but proof on a balance of probabilities: the circumstance in question must have existed or exists “more probably than not”.<sup>153</sup>

44. Proof of mitigating circumstances “does not automatically entitle [an] [a]ppellant to a ‘credit’ in the determination of the sentence; it simply requires the Trial Chamber to consider such mitigating circumstances in its final determination”.<sup>154</sup> An appellant challenging the weight given by a Trial Chamber to a particular mitigating factor thus bears “the burden of demonstrating that the Trial Chamber abused its discretion”.<sup>155</sup> The Appellant has to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber’s decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly.<sup>156</sup>

<sup>144</sup> *Čelebići* Appeal Judgement, para. 590.

<sup>145</sup> *Jokić* Sentencing Judgement, para. 100.

<sup>146</sup> *Sikirica et al.* Sentencing Judgement, paras 195 and 229.

<sup>147</sup> *Simić et al.* Trial Judgement, para. 98. All the above mentioned mitigating circumstances have been mentioned at para. 696 of the *Blaskić* Appeal Judgement.

<sup>148</sup> *Čelebići* Appeal Judgement, para. 780.

<sup>149</sup> *Ibid.*, para. 481.

<sup>150</sup> *Kupreškić et al.* Appeal Judgement, para. 458.

<sup>151</sup> *Ibid.*, para. 430.

<sup>152</sup> *Čelebići* Appeal Judgement, para. 763.

<sup>153</sup> *Ibid.*, para. 590.

<sup>154</sup> *Niyitegeka* Appeal Judgement, para. 267.

<sup>155</sup> *Kayishema and Ruzindana* Appeal Judgement, para. 366; *Niyitegeka* Appeal Judgement, para. 266. A Trial Chamber’s decision may be disturbed on appeal “if an appellant shows that the Trial Chamber either took into account what it ought not to have, or failed to take into account what it ought to have taken into account, in the weighing process involved in this exercise of the discretion.” *Čelebići* Appeal Judgement, para. 780.

<sup>156</sup> See *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-AR73.1, Decision on Interlocutory Appeal of Decision on Second Defence Motion for Adjournment, 25 April 2005, para. 7. See also *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defence Counsel, 1 November 2004, para. 9; *Prosecutor v. Slobodan Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73, and IT-01-51-AR73, Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 1 February 2002, paras 5-6.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No.: IT-95-14-A  
Date: 29 July 2004  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Florence Ndepele Mwachande Mumba  
Judge Mehmet Güney  
Judge Wolfgang Schomburg  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 29 July 2004

**PROSECUTOR**

v.

**TIHOMIR BLAŠKIĆ**

**JUDGEMENT**

**The Office of the Prosecutor:**

Mr. Norman Farrell  
Ms. Sonja Boelaert-Suominen  
Ms. Michelle Jarvis  
Ms. Marie-Ursula Kind  
Ms. Kelly Howick

**Counsel for the Appellant:**

Mr. Anto Nobile  
Mr. Russell Hayman

41. Having examined the approaches of national systems as well as International Tribunal precedents, the Appeals Chamber considers that none of the Trial Chamber's above articulations of the *mens rea* for ordering under Article 7(1) of the Statute, in relation to a culpable mental state that is lower than direct intent, is correct. The knowledge of any kind of risk, however low, does not suffice for the imposition of criminal responsibility for serious violations of international humanitarian law. The Trial Chamber does not specify what degree of risk must be proven. Indeed, it appears that under the Trial Chamber's standard, any military commander who issues an order would be criminally responsible, because there is always a possibility that violations could occur. The Appeals Chamber considers that an awareness of a higher likelihood of risk and a volitional element must be incorporated in the legal standard.

42. The Appeals Chamber therefore holds that a person who orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing liability under Article 7(1) pursuant to ordering. Ordering with such awareness has to be regarded as accepting that crime.<sup>76</sup>

## 2. Aiding and Abetting

43. The Appellant submits that liability for aiding and abetting requires, at a minimum, actual knowledge.<sup>77</sup> He submits that not only must the aider and abettor know that his acts provide support to another person's offence, but he must also know the specifics of that offence. Recklessness or negligence on his part is not sufficient, he asserts, contrary to the Trial Chamber's alleged finding on that point.<sup>78</sup> Furthermore, the Appellant submits that the *actus reus* of aiding and abetting includes a causation requirement which the Trial Chamber failed to acknowledge and to apply.<sup>79</sup> In other words, the contribution must "have a direct and important impact on the commission of the crime."<sup>80</sup> Instead, the Appellant maintains, the Trial Chamber erroneously applied a strict liability standard to find the Appellant guilty as an aider and abettor and reiterates that the Trial Chamber's conclusion that "he could be found guilty if he accepted the possibility that some unspecified crime was a 'possible or foreseeable consequence' of military action effectively eliminates the 'actual knowledge' *mens rea* of aiding and abetting, and is thus erroneous as a matter

<sup>76</sup> The French translation of this legal standard reads as follows:

Quiconque ordonne un acte ou une omission en ayant conscience de la réelle probabilité qu'un crime soit commis au cours de l'exécution de cet ordre possède la *mens rea* requise pour établir la responsabilité aux termes de l'article 7 alinéa 1 pour avoir ordonné. Le fait d'ordonner avec une telle conscience doit être considéré comme l'acceptation dudit crime.

<sup>77</sup> Appellant's Brief, p. 131.

<sup>78</sup> Appellant's Brief, pp. 131-133.

<sup>79</sup> Appellant's Brief, pp. 133-135.

<sup>80</sup> Appellant's Brief, p. 134.

UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons Responsible  
for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of The  
Former Yugoslavia since 1991

Case No. IT-95-14-T

Date: 3 March 2000

English  
Original: French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding  
Judge Almiro Rodrigues  
Judge Mohamed Shahabuddeen

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 3 March 2000

THE PROSECUTOR

v.

TIHOMIR BLA[KI]

---

JUDGEMENT

---

The Office of the Prosecutor:

Mr. Mark Harmon  
Mr. Andrew Cayley  
Mr. Gregory Kehoe

Defence Counsel:

Mr. Anto Nobile  
Mr. Russell Hayman



280. Instigating entails "prompting another to commit an offence"<sup>505</sup>. The wording is sufficiently broad to allow for the inference that both acts and omissions may constitute instigating and that this notion covers both express and implied conduct. The ordinary meaning of instigating, namely, "bring about"<sup>506</sup> the commission of an act by someone, corroborates the opinion that a causal relationship between the instigation and the physical perpetration of the crime is an element requiring proof.

281. The Akayesu Trial Chamber was of the opinion that ordering

implies a superior-subordinate relationship between the person giving the order and the one executing it. In other words, the person in a position of authority uses it to convince another to commit an offence<sup>507</sup>.

There is no requirement that the order be in writing or in any particular form; it can be express or implied. That an order was issued may be proved by circumstantial evidence.

It is not necessary that an order be given in writing or in any particular form. It can be explicit or implicit. The fact that an order was given can be proved through circumstantial evidence.

282. The Trial Chamber agrees that an order does not need to be given by the superior directly to the person(s) who perform(s) the actus reus of the offence<sup>508</sup>. Furthermore, what is important is the commander's mens rea, not that of the subordinate executing the order. Therefore, it is irrelevant whether the illegality of the order was apparent on its face.

ii) Aiding and abetting

283. As a starting point, the Trial Chamber concurs with the opinion of the Trial Chamber in the Furund`ija case which states that

the legal ingredients of aiding and abetting in international criminal law to be the following: the actus reus consists of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime. The mens rea required is the knowledge that these acts assist the commission of the offence<sup>509</sup>.

<sup>505</sup> Ibid, para. 482.

<sup>506</sup> The Concise Oxford Dictionary, 10<sup>th</sup> edition (1999), p. 734.

<sup>507</sup> Akayesu Judgement, para. 483.

<sup>508</sup> As to criminal responsibility of commanders for passing on criminal orders, the Trial Chamber notes the High Command case in which the military tribunal considered that "to find a field commander criminally responsible for the transmittal of such an order, he must have passed the order to the chain of command and the order must be one that is criminal upon its face, or one which he is shown to have known was criminal" (U.S.A. v. Wilhelm von Leeb et al., in Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, (hereinafter the "Trials of War Criminals") Vol. XI, p. 511)

<sup>509</sup> Furund`ija Judgement, para. 249.

high position within the civilian or military command structure<sup>1716</sup>. In this instance, actual authority exercised seems more decisive than command authority alone<sup>1717</sup>. The Judgements of the ICTR on the issue are of particular importance in view of the high level of command authority held by some of the accused<sup>1718</sup>. The Trial Chambers observed that the case-law of the Tribunal classifies command position as an aggravating circumstance<sup>1719</sup>. In the Judgement rendered in the *^elebi* case, the Trial Chamber nevertheless noted that command position does not necessarily entail a harsher sentence and that the accused may enjoy mitigating circumstances if he had only "constructive knowledge" of the crimes<sup>1720</sup>. However the Trial Chamber stated that:

it would constitute a travesty of justice, and an abuse of the concept of command authority, to allow the calculated dereliction of an essential duty to operate as a factor in mitigation of criminal responsibility<sup>1721</sup>.

789. Therefore, when a commander fails in his duty to prevent the crime or to punish the perpetrator thereof he should receive a heavier sentence than the subordinates who committed the crime insofar as the failing conveys some tolerance or even approval on the part of the commander towards the commission of crimes by his subordinates and thus contributes to encouraging the commission of new crimes. It would not in fact be consistent to punish a simple perpetrator with a sentence equal or greater to that of the commander. From this viewpoint, the Trial Chamber recalls that in the *Tadi* case the Appeals Chamber found that a prison sentence above twenty years would be excessive given the relatively low rank of *Du{ko Tadi}* within the command structure.<sup>1722</sup> Command position must therefore systematically increase the sentence or at least lead the Trial Chamber to give less weight to the mitigating circumstances, independently of the issue of the form of participation in the crime. The Trial Chamber observes that as commander of the Central Bosnia Operative Zone at the time of the facts, Tihomir *Bla{ki}* held a senior command position. As indicated above, the Trial Chamber is of the opinion that the accused had more than a constructive knowledge of the crimes. It is satisfied beyond all reasonable doubt that General *Bla{ki}* ordered attacks

<sup>1716</sup> *Eichmann case*, 29 May 1962, 36, ILR, 1968, p. 237: "The degree of responsibility generally increases as we draw further away from the man who uses the fatal instrument with his own hands and reach the higher level of commands".

<sup>1717</sup> *Serushago Sentence*, para. 29: "He was a de facto leader of the Interahamwe in Gisenyi. Within the scope of the activities of these militiamen, he gave orders which were followed"; *Akayesu Sentence*, para. 36(ii).

<sup>1718</sup> *Kambanda Judgement*, paras. 44, 61, 62; *Akayesu Sentence* para. 26.

<sup>1719</sup> *Kupre{ki}* Judgement, para. 862; *Furund`ija Judgement*, para. 283 and *^elebi* Judgement, paras. 1240-1243 and para. 1268.

<sup>1720</sup> *^elebi* Judgement, paras. 1219-1220.

<sup>1721</sup> *Ibid.* para. 1250.

which targeted the Muslim civilian population and thereby incurred responsibility for crimes committed during these attacks or at least made himself an accomplice thereto and, as regards those crimes not ensuing from such orders, he failed in his duty to prevent them and did not take the necessary measures to punish their perpetrators after they had been committed.

ii) Form of participation

790. Active and direct participation in the crime means that the accused committed by his own hand all or some of the crimes with which he is charged. Direct participation in the crime is accordingly an aggravating circumstance which will more often than not be held against the actual perpetrators rather than against the commanders<sup>1723</sup>. The relevant precedents set down by the Judgements delivered in the Tadić and Furundžija<sup>1724</sup> cases are quite significant. In the case in hand, the Trial Chamber points out that Tihomir Blaškić did not take a direct and active part in the crimes. Nonetheless, at the time of the facts, the accused held a command position which made him responsible for the acts of his subordinates. Accordingly, although the fact that he did not take a direct and active part does not constitute an aggravating circumstance in itself, it can in no way counterbalance the aggravation arising from the accused's command position<sup>1725</sup>.

791. Therefore, it can be concluded that command position is more of an aggravating circumstance than direct participation. This holds true insofar as, although direct participation by the commander does constitute an aggravating circumstance, the fact that he does not participate directly may not conversely justify a reduction in the sentence

792. Informed and voluntary participation means that the accused participated in the crimes fully aware of the facts. It was specified as an aggravating circumstance in the Tadić<sup>1726</sup> case and in all the Judgements rendered by the ICTR<sup>1727</sup>. The importance of this factor varies in

<sup>1722</sup> Discussion, The Prosecutor v. Duško Tadić, Case no. IT-94-1-A and IT-94-1-Abis (hereinafter the "Judgement in Sentencing Appeals"), paras. 55-57.

<sup>1723</sup> Taking into account abuse of command authority as an aggravating circumstance results in raising the sentence of a superior to at least the same level if not higher.

<sup>1724</sup> Furundžija Judgement, paras. 281-282.

<sup>1725</sup> Alebić Judgement, para. 1252.

<sup>1726</sup> Tadić Sentencing Judgement, para. 57 and Tadić Appeals Sentencing Judgment, para. 20: in determining the sentence the Chamber took into account the fact that Tadić knew of the attack upon the non-Serb civilian population and his enthusiastic support for the attack.

<sup>1727</sup> Kambanda Sentence, para. 61(B)(vi); Akayesu Sentence, para. 36(i); Serushago Sentence, para. 30; Kayishema-Ruzindana Sentence, para. 13.

IT-04-82-A  
A2374 - A2250  
19 May 2010

2374  
SMS

UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-04-82-A  
Date: 19 May 2010  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Andrésia Vaz  
Judge Theodor Meron

**Registrar:** Mr. John Hocking

**Judgement of:** 19 May 2010

**PROSECUTOR**

v.

**LJUBE BOŠKOSKI  
JOHAN TARČULOVSKI**

***PUBLIC***

**JUDGEMENT**

**The Office of the Prosecutor:**

Mr. Paul Rogers      Mr. François Boudreault      Ms. Nadia Shihata  
Ms. Elena Martin Salgado      Ms. Laurel Baig

**Counsel for Ljube Bošković:**

Ms. Edina Rešidović  
Mr. Guénaél Mettraux

**Counsel for Johan Tarčulovski:**

Mr. Alan M. Dershowitz  
Mr. Nathan Z. Dershowitz  
Mr. Antonio Apostolski  
Mr. Jordan Apostolski

fourth grounds of appeal, the Appeals Chamber will consider further whether the totality of the Trial Chamber's factual findings in relation to the status of the victims are reasonable.<sup>195</sup>

68. With respect to Tarčulovski's *mens rea*, the Appeals Chamber recalls that he was convicted of planning, instigating and ordering crimes including those under Common Article 3. Hence, Tarčulovski was required to have the direct intent or the awareness of the substantial likelihood that the crimes would be committed in the execution of his plan, instigation and order.<sup>196</sup> Indeed the Trial Chamber found that Tarčulovski was responsible for planning, instigating and ordering the "deliberate but indiscriminate attack against the residents of Ljuboten of Albanian ethnicity".<sup>197</sup> Given the indiscriminate nature of the attack, the Appeals Chamber is satisfied that the Trial Chamber reasonably concluded that Tarčulovski possessed the requisite *mens rea* for these modes of liability.<sup>198</sup> His argument in this regard is dismissed.

<sup>195</sup> See *infra* paras 86, 95, 102 and 119.

<sup>196</sup> See *Kordić and Čerkez* Appeal Judgement, paras 29-32, and *infra* paras 132 and 174.

<sup>197</sup> Trial Judgement, para. 573. See also *ibid.*, para. 574; *infra* paras 135, 153-154, 157 and 161.

<sup>198</sup> Trial Judgement, para. 576. See also the Appeals Chamber's findings relevant to this matter in *infra* paras 132, 135, 150 and 174. Cf. *Milošević* Appeal Judgement, para. 273.

finding that it can encompass the planning, instigating or ordering of conduct that does not constitute a crime.<sup>458</sup>

170. The Prosecution responds that this argument ignores and misrepresents the Trial Chamber's findings that the predominant object of the operation was to commit the crimes and that "ordering, planning or instigating an operation primarily designed to commit crimes is the same as ordering planning or instigating the crimes themselves."<sup>459</sup> The Prosecution further contends that "the plan, instigation or order need not be explicitly to commit crimes" and that an accused can be held responsible when planning, instigating or ordering an act or omission with the awareness of the substantial likelihood that it will result in a crime.<sup>460</sup>

171. The Trial Chamber reasonably found that the predominant purpose of the operation in Ljuboten was to indiscriminately attack Albanian villagers and their property and that the evidence established that Tarčulovski planned, instigated and ordered this operation.<sup>461</sup> In other words, the Trial Chamber found that Tarčulovski planned, instigated and ordered conduct *which constituted crimes*.<sup>462</sup> In so doing, the Trial Chamber did not expand the *actus reus* of planning, instigating and ordering. Tarčulovski's arguments misinterpret the Trial Chamber's findings and are thus dismissed.<sup>463</sup>

172. Furthermore, the Appeals Chamber notes that the legitimate character of an operation does not exclude an accused's criminal responsibility for planning, instigating and ordering crimes committed in the course of this operation. In other words, even if the goal of an operation is to root

<sup>458</sup> Tarčulovski Appeal Brief, paras 127 and 129 (citing Trial Judgement, para. 576); Tarčulovski Amended Notice of Appeal, para. 39 (citing Trial Judgement, para. 576). See also Tarčulovski Reply Brief, paras 47-49. Tarčulovski further argues that requiring that an accused solely planned, instigated or ordered an act or omission, including a legitimate operation, with the awareness of the substantial likelihood that it will result in a crime, effectively turns into criminals "commanding officers of any country whose troops have gone to war, especially against terrorists who hide among civilians". According to Tarčulovski, "in wartime, there is a substantial likelihood – if not a near certainty – that some soldiers will behave improperly and engage in behaviour that IHL law proscribes" (Tarčulovski Reply Brief, para. 46). See also AT. 95-96.

<sup>459</sup> Prosecution Response Brief, paras 70 (citing Trial Judgement, paras 572-573) requesting summarily dismissal and 97 (citing Trial Judgement, paras 572-573). See also Prosecution Response Brief, Section V (in particular, paras 63-65).

<sup>460</sup> Prosecution Response Brief, paras 98-99 (referring to *Nahimana et al.* Appeal Judgement, paras 479-481; *Karera* Appeal Judgement, para. 211; *Blaškić* Appeal Judgement, paras 41-42 and 471; *Kordić and Čerkez* Appeal Judgement, paras 30-32; *Martić* Appeal Judgement para. 261, and citing Trial Judgement, para. 577 and fn. 2502).

<sup>461</sup> See *supra* paras 135, 153-154, 157 and 161.

<sup>462</sup> See Planning: *Kordić and Čerkez* Appeal Judgement, paras 26; *Nahimana et al.* Appeal Judgement, para. 479. Instigating: *Kordić and Čerkez* Appeal Judgement, paras 27; *Nahimana et al.* Appeal Judgement, para. 480. Ordering: *Galić* Appeal Judgement, para. 176; *Kordić and Čerkez* Appeal Judgement, para. 28; *Nahimana et al.* Appeal Judgement, para. 481; *Semanza* Appeal Judgement, para. 361. See also Trial Judgement, paras 398-400.

<sup>463</sup> Consequently, the Appeals Chamber dismisses Tarčulovski's arguments that even if the jurisprudence of the Appeals Chamber had expanded the *actus reus* of ordering, planning or instigating, their holdings must not be applied "retroactively" to the charged crimes in August 2001 (Tarčulovski Appeal Brief, paras 134-135; Prosecution Response Brief, paras 100-101).

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-04-82-T  
Date: 10 July 2008  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Kevin Parker, Presiding  
Judge Christine Van Den Wyngaert  
Judge Krister Thelin

**Registrar:** Mr Hans Holthuis

**Judgement of:** 10 July 2008

**PROSECUTOR**

v.

**LJUBE BOŠKOSKI  
JOHAN TARČULOVSKI**

---

*PUBLIC*

**JUDGEMENT**

---

**The Office of the Prosecutor:**

Mr Dan Saxon  
Ms Antoinette Issa  
Ms Joanne Motoike  
Mr Gerard Dobbyn

Ms Meritxell Regue  
Ms Nisha Valabhji  
Mr Matthias Neuner

**Counsel for the Accused:**

Ms Edina Rešidović and Mr Guénaél Mettraux for Ljube Boškosi

Mr Antonio Apostolski and Ms Jasmina Živković for Johan Tarčulovski

August was given by Bliznakovski to Krstevski. Even if this evidence were reliable its tenor could also suggest that it was thought that the army called the meeting. In the Chamber's finding the evidence presented falls well short of establishing that either Petre Stojanovski or Ljupčo Bliznakovski were members of the JCE.

583. The Chamber has found that on the evening of 10 August 2001, Johan Tarčulovski participated in a meeting held at the command post of the 3<sup>rd</sup> Guardist Battalion in Ljubanci. The meeting was attended by key representatives in the area of the army and the police, including the commander of the 3<sup>rd</sup> Battalion of the 1<sup>st</sup> Guardist Brigade Major Despodov and the senior police officer, the Head of OVR Čair Ljube Krstevski. Other less senior police attending were the commander of Mirkovci police station, Slavko Ivanovski and the head of the sector of analysis at OVR Čair Borce Pesevski.<sup>2063</sup> At the meeting, Johan Tarčulovski discussed with other participants an operation to enter the village of Ljuboten.<sup>2064</sup>

584. None of the individuals, who, the evidence establishes, attended the meeting with Johan Tarčulovski on 10 August in Ljubanci is specifically alleged to have been a member of the JCE charged in the Indictment. While the allegation is not confined to those specifically identified, the Prosecution made it explicitly clear that members of the Macedonian army were not included in the JCE alleged in the Indictment.<sup>2065</sup> It was not the Prosecution's case that the Head of OVR Čair was a participant in the JCE. Indeed the Prosecution submitted he did not want to attend the meeting. The evidence does not identify any particular role of other police attending.

585. In the Chamber's finding, it has not been proved that Johan Tarčulovski acted in concert with members of the JCE alleged in the Indictment to commit the crimes charged. Rather, in the Chamber's finding, the evidence establishes that he planned, instigated and ordered the crimes that were committed in Ljuboten on 12 August 2001 and his responsibility should be engaged on that basis. While the circumstances indicate that in turn, Johan Tarčulovski, acted under orders, the evidence does not enable a finding to be made as to whose orders or the terms of the orders. The allegations of Johan Tarčulovski's participation in a joint criminal enterprise are, therefore, dismissed.

<sup>2063</sup> See *supra*, para 108.

<sup>2064</sup> See *supra*, para 111.

<sup>2065</sup> *Prosecutor v Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-PT, "Decision on Prosecution's Motion to Amend the Indictment and Submission of Proposed Second Amended Indictment and Submission of Amended Pre-Trial Brief," 26 May 2006, para 64.



capricious or excessive, *i.e.* it should not be out of reasonable proportion with a line of sentencing passed in similar circumstances for the same offences.<sup>2072</sup>

#### A. The gravity of the offence

588. The gravity of the offence is a factor of primary importance in the determination of the sentence.<sup>2073</sup> In assessing the gravity of the offence the Chamber may consider the nature of the crimes, the scale and brutality of the crime, the role of the accused and the overall impact of the crimes upon the victims and their families.<sup>2074</sup> Factors that a Trial Chamber takes into account as aspects of the gravity of the crime should not be additionally taken into account separately as aggravating or mitigating circumstances, and *vice versa*.<sup>2075</sup> A sentence must reflect the inherent gravity or the totality of the criminal conduct of an accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused.<sup>2076</sup> It is an established principle in the jurisprudence of the Tribunal that war crimes are not inherently less serious than crimes against humanity.<sup>2077</sup>

589. The Chamber has found Johan Tarčulovski guilty of Murder (Count 1), Wanton Destruction (Count 2), and Cruel Treatment (Count 3). These offences all occurred on 12 August 2001 in the village of Ljuboten in the Former Yugoslav Republic of Macedonia. The victims were all residents of the village and were of Albanian ethnicity.

590. A force of at least 60-70 well armed reserve police, led by Johan Tarčulovski, entered the village that morning, supported by opening mortar fire from army positions. While in the village the police shot and killed three men (Count 1), deliberately destroyed or damaged by fire the houses of 12 residents, in some cases also causing damage by gunfire and grenades, (Count 2), and very cruelly beat, injured or threatened with knives and guns and by kicking, over a protracted period and in some cases at two locations, 13 men who had taken shelter in the basements of two houses (Count 3).

591. Two of the men who were subjected to cruel treatment were later shot and killed and their murders are also the subject of Count 1. Another of the 13 men was also shot, but was not killed,

<sup>2072</sup> *Momir Nikolić* Appeals Judgement para 39, referring to *Jelisić* Appeals Judgement, para 96; see also *Babić* Appeals Judgement, para 33.

<sup>2073</sup> *Momir Nikolić* Appeals Judgement, para 11; *Aleksovski* Appeals Judgement, para 182; *Čelebići* Appeals Judgement, para 731; *Kupreškić* Appeals Judgement, para 442; *Jelisić* Appeals Judgement, para 101; *Blaškić* Appeals Judgement, para 683.

<sup>2074</sup> See *Rajić* Sentencing Judgement, paras 83-95.

<sup>2075</sup> *Deronjić* Sentencing Appeals Judgement, para 106; *Momir Nikolić* Appeals Judgement, para 58; *Limaj* Appeals Judgement, para 143.

<sup>2076</sup> *Furundžija* Appeals Judgement, para 249; *Blaškić* Appeals Judgement, para 683.

<sup>2077</sup> *Tadić* Sentencing Appeals Judgement, para 69; *Furundžija* Appeals Judgement, para 247; *Rajić* Sentencing Judgement, para 83.

and another had a cross carved on his back with a knife. In some cases the beatings and injuries inflicted were so severe that the victims lost consciousness.

592. The men who were shot and killed and who were cruelly treated in the village that day were all unarmed and offered no physical threat or resistance to the police. In most cases the police were masked.

593. For the victims who died, the consequences of the conduct of the police were absolute. Close family members must carry the burden of the loss of their loved ones. For the victims who survived, it is apparent that the physical and mental suffering has often been considerable and prolonged. Obviously 12 families suffered the financial and personal loss of their homes and possessions.

594. While Johan Tarčulovski was the leader of the police in Ljuboten on 12 August 2001, and of the police operation that day, the Chamber notes again its finding that in these things Johan Tarčulovski was carrying out the orders of a person or persons unknown, who were more senior to him in the Ministry of the Interior or perhaps, as his Defence suggests, of the President of FYROM who has since died. Johan Tarčulovski is not to be sentenced, therefore, as the person who originated the police operation in Ljuboten. He was a relatively junior person in the Ministry of the Interior, carrying out orders. It is also to be noted that he was not the actual perpetrator of any of the offences. The role of Johan Tarčulovski was to plan the offences, incite the reserve police he had assembled to carry out the offences, and to order them to do so. His role in ordering the commission of the offences fully and adequately reflects the real gravity of his conduct. No additional punishment is warranted in the circumstances of this case for his planning and incitement. It is also relevant to his sentence that it has not been established that he participated in a Joint Criminal Enterprise to commit the offences, as was alleged against him in the Indictment.

**B. Individual circumstances of the Accused: aggravating and mitigating circumstances**

595. The Statute and the Rules do not endeavour to exhaustively define factors which may appropriately constitute aggravating and mitigating circumstances with a view of determining a sentence. Rule 101(B) only refers to substantial cooperation with the Prosecutor as a mitigating circumstance. The jurisprudence of the Tribunal has identified further factors which a Chamber might take into account.<sup>2078</sup> These are not exhaustive. Necessarily, what constitutes aggravating

---

<sup>2078</sup> *Blaškić Appeals Judgement*, paras 686 and 696.

## IX. DISPOSITION

605. For the foregoing reasons, having considered all of the evidence and the submissions of the parties, the Chamber decides as follows:

606. The Chamber finds the Accused Ljube Boškosi **NOT GUILTY** on all counts in the Indictment. Pursuant to Rule 99(A) of the Rules, the Chamber orders that Ljube Boškosi be released from the United Nations Detention Unit immediately on the completion of the necessary modalities.

607. The Chamber finds the Accused Johan Tarčulovski **GUILTY**, pursuant to Article 7(1) of the Statute, of the following counts:

- Count 1: Murder, a violation of the laws or customs of war, under Article 3 of the Statute, for having ordered, planned and instigated the murder of Rami Jusufi, Sulejman Bajrami and Muharem Ramadani;
- Count 2: Wanton destruction, a violation of the laws or customs of war, under Article 3 of the Statute, for having ordered, planned and instigated the wanton destruction of the houses or other property of Alim Duraki, Agim Jusufi, Qenan Jusufi, Sabit Jusufi, Xhevshet Jusufovski, Abdullah Luftiu, Harun Rexhepi (Redžepi), Ismet Rexhepovski (Rexhepi, Redžepi), Nazim Murtezani, Qani Jashari, Afet Jashari and Ramush Jashari;
- Count 3: Cruel treatment, a violation of the laws or customs of war, under Article 3 of the Statute, for having ordered, planned and instigated the cruel treatment at Adem Ametovski's house of M012, Hamdi Ametovski, Adem Ametovski, Aziz Bajrami, M017, Nevaip Bajrami, Vehbi Bajrami, Atulla Qaili, Beqir Ramadani, Ismail Ramadani, Muharem Ramadani, Osman Ramadani, and Sulejman Bajrami; and the cruel treatment at Braca's house of M012, Hamdi Ametovski, Adem Ametovski, M017, Nevaip Bajrami, Vehbi Bajrami, Atulla Qaili, Beqir Ramadani, Ismail Ramadani, and Osman Ramadani;

608. The Chamber hereby sentences Johan Tarčulovski to a single sentence of twelve years imprisonment. Johan Tarčulovski has been in custody since 16 March 2005. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention so far. Pursuant to Rule 103(C) of the Rules, Johan Tarčulovski shall remain in custody of the Tribunal pending the finalisation of arrangements for his transfer to a State where he shall serve his sentence.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-99-36-A  
Date: 3 April 2007  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Christine Van Den Wyngaert

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 3 April 2007

**PROSECUTOR**

v.

**RADOSLAV BRĐANIN**

**JUDGEMENT**

**The Office of the Prosecutor:**

Mr. Peter Kremer  
Ms. Helen Brady  
Ms. Kristina Carey  
Ms. Katharina Margetts

**Counsel for the Accused:**

Mr. John Ackerman

### C. Findings on persecution

#### 1. Introduction

290. The Trial Chamber found that Brđanin aided and abetted the crime of persecution with respect to the following acts: wilful killing;<sup>577</sup> torture;<sup>578</sup> destruction of property and religious buildings;<sup>579</sup> deportation and forcible transfer;<sup>580</sup> physical violence;<sup>581</sup> rapes;<sup>582</sup> sexual assault;<sup>583</sup> constant humiliation and degradation;<sup>584</sup> denial of the right to freedom of movement;<sup>585</sup> and denial of the right to proper judicial process.<sup>586</sup> The Trial Chamber also found that Brđanin instigated the crime of persecution with respect to deportation and forcible transfer<sup>587</sup> and ordered the crime of persecution with respect to the denial of the right of employment.<sup>588</sup>

291. Brđanin submits factual and legal challenges to these finding of the Trial Chamber.<sup>589</sup> The Appeals Chamber will respond to each of these allegations in turn.

#### 2. Legal challenges to underlying acts of persecution

292. Brđanin submits that the acts of physical violence and the denial of the rights of employment, freedom of movement, proper medical care, and proper judicial process do not amount to crimes of torture or persecution.<sup>590</sup> He also claims that these acts do not fall under the jurisdiction of the Tribunal because they do not rise to the level of “serious violations” of international humanitarian law (Alleged Errors 154-158).<sup>591</sup>

---

<sup>577</sup> Trial Judgement, para. 1054.

<sup>578</sup> Trial Judgement, para. 1054.

<sup>579</sup> Trial Judgement, para. 1054.

<sup>580</sup> Trial Judgement, para. 1054.

<sup>581</sup> Trial Judgement, para. 1061.

<sup>582</sup> Trial Judgement, para. 1061.

<sup>583</sup> Trial Judgement, para. 1061.

<sup>584</sup> Trial Judgement, para. 1061.

<sup>585</sup> Trial Judgement, para. 1071.

<sup>586</sup> Trial Judgement, para. 1075.

<sup>587</sup> Trial Judgement, para. 1054.

<sup>588</sup> Trial Judgement, para. 1067.

<sup>589</sup> The Appeals Chamber notes that in his Appeal Brief (paras 301-302), Brđanin alleges numerous errors, stating that “[t]he findings in many of these paragraph [*sic*] have been discussed separately in this brief.” However, in respect of the alleged errors 124-125, 130-132, 136-139, and 141-147, it is not clear to which paragraphs Brđanin is referring. Furthermore, in his 21 August 2006 Response to the Appeals Chamber’s 24 July 2006 Order to File a Table, Brđanin did not include these alleged errors of fact among those he asserts provided the basis for a conviction and could not properly have made beyond a reasonable doubt. The Appeals Chamber therefore considers that these Alleged Errors fall to be dismissed summarily pursuant to Category 1. The Appeals Chamber further considers that Alleged Error 140 is addressed in its treatment of Alleged Errors 30, 31, and 61 since Brđanin’s elaboration of the former alleged errors is limited to a cross-reference to the discussion of the latter (Brđanin Appeal Brief, para. 301).

<sup>590</sup> Brđanin Appeal Brief, para. 311.

<sup>591</sup> Brđanin Appeal Brief, para. 311. In Alleged Error 152 (Brđanin Appeal Brief, para. 308) Brđanin also submits that the threat of rape is neither sexual assault nor torture, and that the Trial Chamber committed an error of law in reaching

courts would be three months. However, he added that, when an organ of the court would be addressed directly, a hearing would be scheduled immediately.<sup>614</sup> The witness noted that this did not happen in any of the cases he mentioned.<sup>615</sup> He finally testified that he had received no response from the court in respect of any of the appeals he had filed.<sup>616</sup>

303. For the foregoing reasons, the Appeals Chamber finds that Brđanin has failed to show why no reasonable trier of fact could have reached the conclusion, beyond reasonable doubt, that Bosnian Muslims and Croats in the municipalities of the ARK were denied the right to proper judicial process on discriminatory grounds. Alleged Error 122 is therefore dismissed.

---

he was not aware of any successful attempt by Bosnian Muslims and Bosnian Croats to complete legal proceedings against their former employers).

<sup>614</sup> Amir Džonić, T. 2335.

<sup>615</sup> Amir Džonić, T. 2335.

<sup>616</sup> Amir Džonić, T. 2335.

#### **D. Findings on deportation and forcible transfer**

304. The Trial Chamber found that Br|anin was responsible for aiding and abetting and instigating the crimes against humanity of deportation pursuant to Article 5(d) of the Statute, and forcible transfer pursuant to Article 5(i) of the Statute.<sup>617</sup> Brdanin appeals against those findings (Alleged Errors 101-109).<sup>618</sup>

##### **1. Finding that Br|anin aided and abetted deportation and forcible transfer**

305. Br|anin submits that the Trial Chamber erred in finding that he aided and abetted the crimes of deportation and forcible transfer.<sup>619</sup> Br|anin claims that no reasonable Trial Chamber could have arrived at these conclusions beyond reasonable doubt based on the evidence presented in this case.<sup>620</sup>

306. These Alleged Errors are dismissed summarily under categories 3 and 6, above.

##### **2. Finding that Br|anin instigated deportation and forcible transfer**

307. Br|anin submits that the Trial Chamber's finding that he instigated the crimes of deportation and forcible transfer was unsupported by any evidence and was unreasonable, because the Trial Chamber failed to refer to any evidence of instigation or to explain why the forcible transfer and deportation occurred before the ARK Crisis Staff became active.<sup>621</sup> Br|anin also submits that the Trial Chamber erred when it found that he intended to induce the commission of the crimes of deportation and forcible transfer through his espousal, implementation, and coordination of the

<sup>617</sup> Trial Judgement, para. 583; *see also* paras 571-582. Due to the precision of the charges pleaded in the Indictment, the Trial Chamber did not consider incidents "where the transfer destination was to locations other than to Travnik or Karlovac" and limited itself to considering only deportation in the case of transfers to Karlovac, and forcible transfer in the case of transfers to Travnik (Trial Judgement, para. 546).

<sup>618</sup> Regarding Alleged Errors 101 and 107, related to the Agency for the Movement of People, Brdanin merely refers to his discussion of the Agency as part of his challenges regarding the resettlement of the population (Alleged Error 40, Brdanin Appeal Brief, paras 183-195). These arguments have been dismissed by the Appeals Chamber in a different part of this judgement. *See supra*, para. 212.

<sup>619</sup> Br|anin Appeal Brief, paras 283-288. The Appeals Chamber notes that Alleged Error 102, as described in Br|anin's Notice of the Appeal (no evidentiary basis for the finding beyond reasonable doubt that the ARK Crisis Staff's decisions of 28 and 29 May 1992 prompted the municipal authorities and the police, who implemented them, to commit the crimes of deportation and forcible transfer after those dates) was not pursued in his Appeal Brief. Alleged Error 102 is therefore considered together with Alleged Error 101. Moreover, in his Appeal Brief, Brdanin does not distinguish between the remaining errors, but considers them all together.

<sup>620</sup> Br|anin Appeal Brief, para. 284.

<sup>621</sup> Br|anin Appeal Brief, paras 283-284, 287, referring to Trial Judgement, para. 577.

Strategic Plan, which he knew could only be implemented through force and fear.<sup>622</sup> He claims that none of these findings could have been made beyond reasonable doubt.<sup>623</sup>

308. Brđanin argues that the Trial Chamber erred in concluding that the ARK Crisis Staff Decisions of 28 and 29 May 1992 prompted the municipal authorities and the police who implemented them to commit and instigate the crimes of deportation and forcible transfers after that date.<sup>624</sup> Brđanin suggests instead that the Decisions of 28 and 29 May did not order deportation or forcible transfer, but rather a “simple and fair exchange” of people who wished to leave.<sup>625</sup> He points out that non-Serbs were leaving the territory of the ARK well before the dates of these pronouncements. He questions whether the departures of non-Serbs would have ended on 27 May 1992 were it not for the Decisions of 28 and 29 May.<sup>626</sup> He claims that it would be impossible to separate the departures that were caused by the Decisions of 28 and 29 May from those that occurred for other reasons, and that the Trial Chamber’s failure to provide a reasoned explanation for these departures renders its finding unreasonable.<sup>627</sup>

309. The Prosecution responds that the Trial Chamber examined the Decisions of 28 and 29 May in the context of other evidence – including the intolerable conditions non-Serbs endured and the propaganda campaign organized by Brđanin himself – and correctly concluded that the decisions were a conscious incitement to deportation and forcible transfer.<sup>628</sup> The Prosecution points out that the Trial Chamber made findings only with respect to deportations that took place after the Decisions of 28 and 29 May were issued,<sup>629</sup> or that were specifically caused by the ARK Crisis Staff.<sup>630</sup> Therefore, the Prosecution claims it is irrelevant to the Trial Chamber’s findings whether certain non-Serbs had already left the territory of the ARK before the Decisions of 28 and 29 May were announced,<sup>631</sup> or whether certain other individuals left the territory of the ARK for other reasons.<sup>632</sup>

310. The Prosecution generally interprets Brđanin’s argument as a contention that there was no instigation on the basis that the whole series of deportations and forcible transfers were some sort of

<sup>622</sup> Brđanin Appeal Brief, paras 283-284, 286, referring to Trial Judgement, para. 575.

<sup>623</sup> Brđanin Appeal Brief, para. 284.

<sup>624</sup> Brđanin Appeal Brief, paras 283-285, referring to Trial Judgement, paras 574, 575, 577-580, 582.

<sup>625</sup> Brđanin Appeal Brief, paras 283-285 (argument under Alleged Error 102).

<sup>626</sup> Brđanin Appeal Brief, para. 285.

<sup>627</sup> Brđanin Appeal Brief, paras 285, 287.

<sup>628</sup> Prosecution Response Brief, para. 6.275, referring to Trial Judgement, paras 255, 574.

<sup>629</sup> Prosecution Response Brief, para. 6.276. The Trial Chamber limited itself to pronouncing only on those forced removals of non-Serbs that occurred *after* the decisions were issued (Trial Judgement, para. 576, fn. 1480).

<sup>630</sup> Prosecution Response Brief, para. 6.276.

<sup>631</sup> Prosecution Response Brief, paras 6.276-6.277.

<sup>632</sup> Prosecution Response Brief, para. 6.277.



“indivisible crime” because they were preceded by other deportations and forcible transfers from the territory of the ARK.<sup>633</sup> The Prosecution argues that the fact that similar crimes were committed or instigated at different times by other people is irrelevant to the determination of liability surrounding a particular displacement, and for this reason, transfers before the decisions of May 1992 do not prevent a finding of instigation by Brđanin during and after May 1992.<sup>634</sup>

311. The Trial Chamber found that Brđanin instigated the crimes of forcible transfers to Travnik, and deportations to Karlovac, that occurred after the dates of the Decisions of 28 and 29 May.<sup>635</sup>

312. The Trial Chamber considered that the ARK Crisis Staff decisions – attributable to Brđanin – were “a direct incitement to deport and forcibly transfer non-Serbs from the territory of the ARK.”<sup>636</sup> This finding meets the requirement for the objective element of instigating (prompting another person to commit an offence);<sup>637</sup> the Trial Chamber expressly stated that the ARK Crisis Staff decisions prompted the commission of these crimes.<sup>638</sup> Furthermore, the Trial Chamber expressly stated that Brđanin intended to induce the commission of these crimes, thereby finding that the subjective element requirement had been met.<sup>639</sup>

313. The Trial Chamber found that the Decisions of 28 and 29 May prompted the municipal authorities and the police to commit the crimes of deportation and forcible transfer after those dates.<sup>640</sup> The municipal authorities and the police were found to have implemented the decisions.<sup>641</sup>

<sup>633</sup> Prosecution Response Brief, para. 6.279.

<sup>634</sup> Prosecution Response Brief, para. 6.280.

<sup>635</sup> Trial Judgement, paras 360, 576-577. The Trial Chamber was not satisfied that any other decisions of the ARK Crisis Staff constituted instigation of deportation or forcible transfer (Trial Judgement, para. 581). The Trial Chamber also found that Brđanin was responsible for instigating persecution on account of the underlying acts of deportation and forcible transfer (Trial Judgement, para. 1054). The Trial Chamber did not find Brđanin responsible for instigating the other crimes alleged in the Indictment (Trial Judgement, paras 467 (extermination and wilful killing), 526 (torture), 661 (wanton destruction of cities, towns, and villages, or devastation not justified by military necessity), and 671 (destruction or wilful damage done to institutions dedicated to religion)).

<sup>636</sup> Trial Judgement, para. 574.

<sup>637</sup> *Kordić and Čerkez* Appeal Judgement, paras 27, 32.

<sup>638</sup> Trial Judgement, para. 574.

<sup>639</sup> Trial Judgement, para. 575.

<sup>640</sup> Trial Judgement, para. 574. Ex. P211 is the ARK Crisis Staff Decision of 28 May 1992 (no. 03-361/92), signed by Brđanin on 29 May 1992, stating: “If Muslims and Croats, or members of the SDA or HDZ wish to leave or move out of the Autonomous Region of Krajina ... they must enable endangered Serbian people, against whom unprecedented genocide is being conducted, to move collectively into their places, i.e. they must facilitate an exchange based on reciprocity.” Ex. P227 contains an extract from the Official ARK Gazette of 5 June 1992, and Decision no. 03-364/92 of 29 May 1992 contains the conclusion reached by the ARK Crisis Staff *inter alia* that “[i]t has been decided that all Muslims and Croats, who so wish, should be able to move out of the area of the Autonomous Region of Krajina, but on condition that Serbs living outside the Serbian autonomous districts and regions are allowed to move into the territories of the Serbian Republic of Bosnia and Herzegovina and the Autonomous Region of Krajina. In this manner, an exchange of population, or, more precisely, a resettlement of people from one part of the former SR BiH [Socialist Republic of Bosnia and Herzegovina] to another would be carried out in an organised manner.” (See Trial Judgement, para. 249).

314. Brđanin advances two arguments, namely: (1) that the Trial Chamber erred in relying on the Decisions of 28 and 29 May, and (2) that the Trial Chamber's reasoning fails to account for the non-Serbs who left the territory of the ARK before the decisions were issued. The Appeals Chamber addresses these arguments in turn.<sup>642</sup>

315. The Trial Chamber did not find that the Decisions of 28 and 29 May initiated a mere exchange of people who wished to leave.<sup>643</sup> Instead, it considered the context within which those decisions were promulgated, and found that the non-Serbs who left the territory of the ARK had "no option but to escape" and otherwise faced "intolerable living conditions imposed by the Bosnian Serb authorities" including shelling, looting, dismissal, the destruction of their homes and towns, and the other crimes carried out against them.<sup>644</sup> Non-Serbs were required to seek authorization to leave, and more often than not had to relinquish their property without compensation.<sup>645</sup> This occurred when Brđanin was issuing inflammatory and discriminatory public statements advocating the departure from the territory of the ARK of its non-Serb population,<sup>646</sup> which the Trial Chamber considered to be direct threats to the non-Serb population.<sup>647</sup>

316. Seen in the context of these events (and of the evidence establishing them), the Appeals Chamber considers that Brđanin has not demonstrated how the Trial Chamber erred in finding that the Decisions of 28 and 29 May prompted the authorities who implemented them to commit the crimes of deportation and forcible transfer after those dates. Brđanin's argument is, therefore, rejected.

---

<sup>641</sup> Trial Judgement, para. 574. As evidence that these decisions were implemented by municipal organs, the Trial Chamber considered Ex. P1869 ("Minutes of the 24<sup>th</sup> Session of the Crisis Staff of Petrovac Municipality", dated 3 June 1992); Ex. P957 ("Statement of the Ključ Municipal Assembly of 4 June 1992"); Ex. P690 ("Conclusions of the Sanski Most Crisis Staff adopted at a session held on 23 June 1992"). The Trial Chamber further considered a report submitted to the CSB by the Commission for the Inspection of the municipalities and the Prijedor, Bosanski Novi, and Sanski Most SJBs (Ex. P717) which concluded that the resettlement of Bosnian Muslims and Bosnian Croats from the Bosnian Krajina occurred in furtherance of both the ARK Crisis Staff decisions on resettlement, and the subsequent municipal decisions implementing this policy (Trial Judgement, para. 251). Ex. P380, a report on "current political and security situation from the 1<sup>st</sup> KK to the Command", dated 1 June 1992, likewise confirmed the implementation of these decisions.

<sup>642</sup> Regarding Brđanin's claim that the Trial Chamber erred when it found that he intended to induce the commission of the crimes of deportation and forcible transfer through his espousal, implementation, and co-ordination of the Strategic Plan, which he knew could only be implemented through force and fear (Brđanin Appeal Brief, paras 283-284, 286 (Alleged Error 103), referring to Trial Judgement, para. 575), the Appeals Chamber notes that this claim is a mere assertion, not supported by any arguments. It is therefore rejected without further analysis.

<sup>643</sup> The Appeals Chamber has already considered Brđanin's arguments contesting the Decisions of 28 and 29 May, in relation to Alleged Error 40, *supra*, para. 212.

<sup>644</sup> Trial Judgement, paras 255, 551.

<sup>645</sup> Trial Judgement, para. 254.

<sup>646</sup> Trial Judgement, paras 323-332, 574.

<sup>647</sup> Trial Judgement, para. 578.

317. As to Brđanin's submission that the Trial Chamber's reasoning fails to account for the non-Serbs who left the territory of the ARK before the decisions were issued, the Appeals Chamber considers this argument to be without merit. The Trial Chamber expressly found Brđanin responsible for acts of deportation (in the case of transfers to Karlovac) and forcible transfer (in the case of transfers to Travnik) that occurred after the dates of the Decisions of 28 and 29 May.<sup>648</sup> In so doing, the Trial Chamber considered the Decisions of 28 and 29 May, and their imputability to Brđanin.<sup>649</sup> In addition, it considered Brđanin's public statements,<sup>650</sup> his espousal of the Strategic Plan,<sup>651</sup> his role in the establishment of the Agency,<sup>652</sup> and the previous ARK Crisis Staff decisions on disarmament.<sup>653</sup>

318. The Trial Chamber's reasoning does not permit the postulate that Brđanin advances, namely that the departures of non-Serbs would have ended on 27 May 1992 but for Decisions of 28 and 29 May. Rather, the Trial Chamber found Brđanin responsible for these crimes due to a number of factors. One of these factors was constituted by those decisions, which it considered prompted departures after they were issued, and which – together with other factors – show Brđanin's criminal responsibility. Departures of non-Serbs did occur before the decisions were issued, but these earlier departures are immaterial to Brđanin's conviction for deportation and transfers that occurred after the Decisions of 28 and 29 May. The Trial Chamber therefore was under no obligation to refer to them.

319. The Appeals Chamber concludes that the occurrence of non-Serbs leaving the territory of the ARK before the Decisions of 28 and 29 May is not incompatible with Brđanin's responsibility for instigating those crimes after that time. The Trial Chamber did not err in not addressing departures preceding the Decisions of 28 and 29 May. Brđanin's argument is therefore rejected.

### 3. Conclusion

320. The Appeals Chamber concludes that Brđanin has failed to demonstrate that no reasonable trier of fact could have found him responsible for instigating and aiding and abetting the crimes against humanity of deportation pursuant to Article 5(d) of the Statute and forcible transfer pursuant to Article 5(i) of the Statute.

---

<sup>648</sup> Trial Judgement, para. 576.

<sup>649</sup> Trial Judgement, para. 572.

<sup>650</sup> Trial Judgement, paras 574, 578.

<sup>651</sup> Trial Judgement, para. 575.

<sup>652</sup> Trial Judgement, para. 580.

<sup>653</sup> Trial Judgement, para. 579.

**UNITED  
NATIONS**

International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-99-36-T

Date: 1 September 2004

Original: English

**IN THE TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Ivana Janu  
Judge Chikako Taya

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 1 September 2004

**PROSECUTOR**

v.

**RADOSLAV BRĐANIN**

---

**JUDGEMENT**

---

**The Office of the Prosecutor:**

Ms. Joanna Korner  
Ms. Anna Richterova  
Ms. Ann Sutherland  
Mr. Julian Nicholls

**Counsel for the Accused:**

Mr. John Ackerman  
Mr. David Cunningham

the instigation was a factor clearly contributing to the conduct of other persons committing the crime in question.<sup>714</sup> It has further to be demonstrated that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts.<sup>715</sup>

(c) Ordering

270. Responsibility for ordering requires proof that a person in a position of authority uses that authority to instruct another to commit an offence.<sup>716</sup> It is not necessary to demonstrate the existence of a formal superior-subordinate relationship between the accused and the perpetrator; it is sufficient that the accused possessed the authority to order the commission of an offence and that that authority can be reasonably implied.<sup>717</sup> The order does not need to be given in any particular form,<sup>718</sup> nor does it have to be given by the person in a position of authority directly to the person committing the offence.<sup>719</sup> The person ordering must have the required *mens rea* for the crime with which he or she is charged<sup>720</sup> and he or she must also have been aware of the substantial likelihood that the crime committed would be the consequence of the execution or implementation of the order.<sup>721</sup>

(d) Aiding and abetting

271. An accused will incur individual criminal responsibility for aiding and abetting a crime under Article 7(1) where it is demonstrated that the accused carried out an act that consisted of practical assistance, encouragement or moral support to the principal offender of the crime.<sup>722</sup> The acts of the principal offender that the accused is alleged to have aided and abetted must be established.<sup>723</sup> The act of assistance need not have caused the act of the principal offender, but it must have had a substantial effect on the commission of the crime by the principal offender.<sup>724</sup> The assistance may consist of an act or omission, and it may occur before, during, or after the act of the principal offender.<sup>725</sup> An individual's position of superior authority does not suffice to conclude from his mere presence at the scene of the crime that he encouraged or supported the crime. However, the presence of a superior can be perceived as an important *indiciu*m of encouragement or

<sup>720</sup> *Blaškić* Trial Judgement, para. 282.

<sup>721</sup> *Blaškić* Appeal Judgement, paras 41-42.

<sup>722</sup> *Tadić* Appeal Judgement, para. 229; *Aleksovski* Appeal Judgement, paras 163-164; *Čelebići* Appeal Judgement, para. 352; *Furundžija* Trial Judgement, para. 235, para. 249; *Vasiljević* Trial Judgement, paras 70-71; *Vasiljević* Appeal Judgement, para. 102; *Naletilić* Trial Judgement, para. 63; *Simić* Trial Judgement, para. 161.

<sup>723</sup> *Aleksovski* Appeal Judgement, para. 165. The Appeals Chamber held that the principal offender may not even be aware of the accomplice's contribution: *Tadić* Appeal Judgement, para. 229.

<sup>724</sup> *Vasiljević* Appeal Judgement, para. 102; *Furundžija* Trial Judgement paras 223, 224, 249; *Aleksovski* Trial Judgement, para. 61; *Kunarac* Trial Judgement, para. 391; *Kordić* Trial Judgement, para. 399, *Vasiljević* Trial Judgement, para. 70.

the commission of a particular crime. Causality needs to be established between all acts of instigation and the acts committed by the physical perpetrators, even where the former are the public utterances of the Accused.

360. The Trial Chamber has found that decisions of the ARK Crisis Staff regarding the disarmament, dismissal and resettlement of non-Serbs were systematically implemented by the municipal Crisis Staffs, the local police, and the military. Moreover, it has been abundantly proved that the Accused made several inflammatory and discriminatory statements, *inter alia*, advocating the dismissal of non-Serbs from employment, and stating that only a few non-Serbs would be permitted to stay on the territory of the ARK. In light of the various positions of authority held by the Accused throughout the relevant time, these statements could only be understood by the physical perpetrators as a direct invitation and a prompting to commit crimes. Against this background, the Trial Chamber is satisfied that the Accused instigated the commission of some crimes charged in the Indictment.

361. The relation of this mode of liability to individual crimes will be analysed below in the sections dealing with the responsibility of the Accused for the specific crimes.

#### 4. Ordering

362. The Trial Chamber has already found that the ARK Crisis Staff became the highest organ of civilian authority in the ARK, to which the municipal authorities were *de facto* subordinated. Municipal authorities maintained a clear line of communication with the ARK Crisis Staff commensurate with such a relationship: ARK Crisis Staff meetings were attended on a weekly basis by the Presidents of the member municipalities or their representatives.

363. The ARK Crisis Staff repeatedly stated that its decisions were binding on all municipalities. In addition, the municipal authorities accepted the authority of the ARK Crisis Staff to issue decisions that were directly binding on them.

364. That a number of municipalities had started implementing certain aspects of the Strategic Plan even before the ARK Crisis Staff issued instructions does not detract from the fact that, following its establishment, the ARK Crisis Staff had the authority to issue binding decisions and in fact did so, and that the municipal authorities acted pursuant to these decisions. Furthermore, the Trial Chamber is satisfied that these decisions were binding on municipal authorities even if there was no *formally* established mechanism for imposing sanctions on the municipalities in case of failure to implement ARK Crisis Staff decisions, and even if in some occasions municipal

---

<sup>892</sup> See, C.1, *supra*, "The Accused's espousal of the Strategic Plan".

authorities disregarded these decisions and acted independently, because the municipal authorities did not challenge the authority of the ARK Crisis Staff to issue these decisions or their binding nature.

365. The Trial Chamber has also found that the ARK Crisis Staff, as the highest civilian authority of the ARK, exercised *de facto* authority over the police in the ARK, and that through its decisions it in fact issued orders which the CSB passed down to the SJBs with the instruction to implement them.

366. As shown, ARK Crisis Staff decisions were systematically implemented by the municipal authorities and by the police in three key areas: a) the disarmament of “paramilitary groups” and confiscation of weapons; b) the dismissals of non-loyal/non-Serb professionals; and c) the resettlement of the non-Serb population. The Trial Chamber has also found that the decisions of the ARK Crisis Staff can be attributed to the Accused. Whether the ARK Crisis Staff decisions in these key areas amounted to orders to commit crimes charged in the Indictment is analysed for each crime under the heading of the responsibility of the Accused.

##### 5. Aiding and abetting

367. The Trial Chamber is satisfied that the ARK Crisis Staff practically assisted the commission of crimes by the army, the police and paramilitary organisations by, *inter alia*, demanding the disarmament of non-Serbs through announcements and decisions setting deadlines concerning the surrender of weapons and providing for the eventual forceful confiscation of weapons. These announcements and decisions not only facilitated the Bosnian Serb armed take-over of individual municipalities but on many occasions were used as the pretext for such take-overs. The Trial Chamber has also found that the decisions of the ARK Crisis Staff can be attributed to the Accused.

368. In addition, some of the inflammatory and discriminatory statements made by the Accused, in light of the positions of authority that he held, amount to encouragement and moral support to the physical perpetrators of crimes. Moreover, the Accused made threatening public statements which had the effect of terrifying non-Serbs into wanting to leave the territory of the ARK, thus paving the way for their deportation and/or forcible transfer by others. The establishment by the ARK Crisis Staff of an Agency for the Movement of People and Exchange of Properties in Banja Luka further assisted in this regard.

369. The Trial Chamber is thus satisfied that the Accused carried out acts that consisted of practical assistance, encouragement or moral support to the principal offenders of the crimes, and that he did so in his capacity as member of the SerBiH Assembly and the ARK Assembly before the

576. The Trial Chamber is satisfied that, with the exception of the failed attempt at displacing the Bosnian Muslim population of Gornji Agići, Donji Agići and Crna Rijeka in Bosanski Novi on 24 May 1992, the deportations to Karlovac and forcible transfers to Travnik originating in the ARK and described earlier all took place after the dates of the ARK Crisis Staff's decisions.<sup>1480</sup>

577. The Trial Chamber finds that the Accused instigated these forcible transfers and deportations.

578. In addition, the Trial Chamber is satisfied that the Accused also aided and abetted the execution of these crimes. In the first place, the Trial Chamber is satisfied that the Accused's inflammatory and discriminatory public statements, issued repeatedly from his several positions of authority, could only be and were understood by non-Serbs as direct threats to leave the areas under Bosnian Serb occupation.<sup>1481</sup> By making non-Serbs want to leave, these statements had a substantial effect in facilitating their subsequent deportation and forcible transfer by the municipal authorities, the police and the army.

579. In the second place, the Trial Chamber is satisfied that the Accused aided and abetted the crimes which rendered the displacement of non-Serbs forcible and permanent. The Trial Chamber has already found that, through the ARK Crisis Staff's decisions on disarmament mentioned earlier, the Accused aided and abetted the commission of wilful killing, torture, and the destruction of homes and of religious buildings.<sup>1482</sup>

580. Finally, the Trial Chamber is satisfied that the Accused aided and abetted the crime of forcible transfer of non-Serbs, by setting up through the ARK Crisis Staff's decision of 12 June 1992,<sup>1483</sup> the Agency for the Movement of People and Exchange in Banja Luka, which, *inter alia*, arranged bus travel to Travnik, and about which it has already found that it constituted an integral part of the plan to ethnically cleanse the region.<sup>1484</sup>

581. Having said this, the Trial Chamber is not satisfied that any other decisions of the ARK Crisis Staff instigated or aided and abetted in the commission of any of the crimes charged under Counts 8 and 9 of the Indictment.

<sup>1480</sup> See paras 557-570 *supra*.

<sup>1481</sup> See VIII.C.5., "The Accused's propaganda campaign", *supra*.

<sup>1482</sup> See IX.A., "Extermination and Wilful Killing" and B., "Torture", *supra*.

<sup>1483</sup> Ex. P241, "Decision of the ARK Crisis Staff", 12 June 1992. See also Ex. P227, "Conclusions of the ARK Crisis Staff", 26 May 1992. See also VI.D. *supra*.

<sup>1484</sup> See para. 552 *supra*. See also VI.D., "The Role of the ARK Crisis Staff in the Implementation of the Strategic Plan", *supra*.



582. The Trial Chamber is satisfied that the Accused was aware that his public statements and the decisions of the ARK Crisis Staff on disarmament and on setting up the Agency substantially assisted in the commission of deportation and forcible transfer of non-Serbs. The crimes of deportation and forcible transfer were an integral part of the Strategic Plan, which the Accused espoused throughout in the awareness that it could only be implemented through force and fear, and the implementation of which he coordinated in his position as President of the ARK Crisis Staff.<sup>1485</sup> He was also aware of the intent of the municipal authorities, the police and the army to deport and forcibly transfer the non-Serb population.

583. The Trial Chamber therefore finds that the Accused also aided and abetted the crimes of forcible transfer and deportation.

#### **D. Destructions**

##### **1. The Law**

##### **(a) Unlawful and wanton extensive destruction and appropriation of property not justified by military necessity**

584. The Prosecution has charged the Accused with the offence of unlawful and wanton extensive destruction and appropriation of property not justified by military necessity under Count 10.<sup>1486</sup> The extensive destruction and appropriation of property not justified by military necessity carried out unlawfully and wantonly constitutes a grave breach under Article 2 (d) of the Statute. This single article combines two separate acts: the (i) destruction of property and (ii) appropriation of property.<sup>1487</sup>

585. Article 2 (d) is based on Article 147 of Geneva Convention IV, which sanctions as a grave breach the extensive destruction and appropriation of property protected by the Convention, not justified by military necessity and carried out unlawfully and wantonly.<sup>1488</sup>

586. Two types of property are protected under Article 2 (d):

<sup>1485</sup> See V.I.D., "The Role of the ARK Crisis Staff in the Implementation of the Strategic Plan", *supra*.

<sup>1486</sup> Indictment, paras 61-64.

<sup>1487</sup> Although appropriation of property under Article 2 (d) has never been dealt with by this Tribunal, "unlawful appropriation of property in armed conflicts" has been referred to and proscribed as in the *Naletilić* Trial Judgements as (i) plunder (ii) pillage and (iii) spoliation. See *Naletilić* Trial Judgement, para. 612, fn. 1499. The Commentary to the Geneva Conventions does not define the concept of appropriation, See p. 601.

<sup>1488</sup> See, e.g., Article 50 of Geneva Convention I; Article 51 of Geneva Convention II and Article 130 of Geneva Convention III.

### 3. The Responsibility of the Accused

1051. The Trial Chamber has already dismissed JCE, 'planning' and superior criminal responsibility under Article 7(3) of the Statute as possible modes of liability to describe the individual criminal responsibility of the Accused.<sup>2635</sup>

#### (a) Wilful killing, torture, destruction of property, religious buildings, deportation and forcible transfer as persecution

1052. The Trial Chamber has previously established the responsibility of the Accused for aiding and abetting certain crimes of wilful killing,<sup>2636</sup> torture,<sup>2637</sup> destruction of property and religious buildings<sup>2638</sup> as well as deportation and forcible transfer.<sup>2639</sup> The Accused has also been found responsible for instigating certain incidents of deportation and forcible transfer.<sup>2640</sup> For the purposes of persecution, the Trial Chamber has also found that these acts were committed with the requisite intent by the physical perpetrators.<sup>2641</sup> To hold the Accused responsible for these crimes under persecution, it needs to be demonstrated that the Accused also acted with discriminatory intent.

1053. The essence of the utterances made by the Accused are, in the Trial Chamber's view, instructive of his attitude towards Bosnian Muslims and Bosnian Croats. The Trial Chamber recalls that the Accused repeatedly used derogatory and abusive language when referring to Bosnian Muslims and Bosnian Croats in public.<sup>2642</sup> Moreover, he openly labelled these people 'second rate',<sup>2643</sup> or 'vermin',<sup>2644</sup> and stated that in a new Serbian state, the few Bosnian Muslims and Bosnian Croats allowed to stay would be used to perform menial work.<sup>2645</sup> The Trial Chamber is thus satisfied that not only the physical perpetrators, but also the Accused possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims.

1054. The Trial Chamber finds that the Accused aided and abetted persecution with respect to wilful killing, torture, destruction of properties, religious and cultural buildings as well as deportation and forcible transfer. The Accused also instigated persecution with respect to deportation and forcible transfer.

<sup>2635</sup> See VIII.D., "The Accused's criminal responsibility in general".

<sup>2636</sup> Count 5, *see* para. 476 *supra*.

<sup>2637</sup> Counts 6 and 7, *see* paras 535-538 *supra*.

<sup>2638</sup> Counts 11-12, *see* paras 669, 677-678 *supra*.

<sup>2639</sup> Counts 8 and 9, *see* paras 576-583 *supra*.

<sup>2640</sup> *Ibid.*

<sup>2641</sup> *See* "The facts and findings" earlier in this chapter.

<sup>2642</sup> See VIII.C.5., "The Accused's Propaganda Campaign".

<sup>2643</sup> BT-9, T. 3204 (closed session).

<sup>2644</sup> BT-7, T. 2834 (closed session).

<sup>2645</sup> BT-11, T. 3990 (closed session).

1060. The Trial Chamber is satisfied that not only the physical perpetrators of the crimes, but also the Accused possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims.<sup>2659</sup>

1061. The Trial Chamber finds that the Accused aided and abetted persecution with respect to physical violence, rapes, sexual assaults as well as constant humiliation and degradation.

(c) Denial of fundamental rights as persecution

1062. With regard to the denial of fundamental rights, the Trial Chamber recalls its previous finding that Bosnian Muslims and Bosnian Croats were denied the right to employment, the right to freedom of movement, the right to proper judicial process and the right to proper medical care.<sup>2660</sup>

(i) Right to employment

1063. The Trial Chamber is satisfied that the Accused, who can be held personally responsible for the decisions issued by the ARK Crisis Staff,<sup>2661</sup> ordered the municipal Crisis Staffs of the ARK to lay off non-Serbs *en masse*.

1064. The Trial Chamber recalls that the Accused had been publicly calling for the dismissal of non-Serbs from key positions as early as April 1992.<sup>2662</sup> On 8 May 1992, the ARK Crisis Staff issued a decision to the effect that "only personnel absolutely loyal to the Serbian Republic of Bosnia and Herzegovina may hold managerial posts."<sup>2663</sup> The ARK Crisis Staff decision of 22 June 1992 went one step further in providing that "[a]ll leading positions, positions involving the access to information, protection of public property and other positions of importance for the functioning of the economy can be occupied exclusively by personnel of Serbian nationality".<sup>2664</sup> The 22 June 1992 decision was subsequently implemented by the municipalities<sup>2665</sup> and resulted in the dismissal of almost all Bosnian Muslims and Bosnian Croats in the ARK.<sup>2666</sup>

1065. The Trial Chamber finds that the ARK Crisis Staff decision dated 22 June 1992, especially when considered in light of the earlier action taken by the Accused, provided concrete instructions

<sup>2659</sup> See VIII.C.5., "The Accused's propaganda campaign".

<sup>2660</sup> See *supra*, para. 1049 *supra*.

<sup>2661</sup> See para. 319 *supra*.

<sup>2662</sup> See para. 326 *supra*.

<sup>2663</sup> Ex. P227, "ARK Official Gazette, Conclusions of 8 May 1992".

<sup>2664</sup> Ex. P254/P255, "Decision of the ARK Crisis Staff of 22 June 1992".

<sup>2665</sup> Ex. P1282, a note by the Prijedor SJB on implementation; ex. P1837, a decision by the Petrovac Executive Committee on dismissal; ex. P1879, a note by the Petrovac Crisis Staff on implementation.

<sup>2666</sup> See *supra*, paras 1032-1041. The Trial Chamber finds it immaterial whether or not a municipal Crisis Staff was legally entitled to terminate employment, as long as the employer of the concerned Bosnian Muslim or Bosnian Croat obeyed the decision of a municipal Crisis Staff.

to the municipal Crisis Staffs throughout the ARK to proceed with the dismissal of Bosnian Muslims and Bosnian Croats from basically all areas of employment. The evidence shows that the ARK municipalities accepted the authority of the ARK Crisis Staff.<sup>2667</sup> The Trial Chamber is also satisfied that the Accused intended the dismissal of Bosnian Muslims and Bosnian Croats to the largest possible extent, and that he was well aware that this would be the consequence of the implementation of the 22 June 1992 decision.

1066. The Trial Chamber is further satisfied that not only the physical perpetrators, but also the Accused possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims.<sup>2668</sup>

1067. The Trial Chamber finds that the Accused ordered persecution with respect to denying the fundamental right to employment.

(ii) Right to freedom of movement

1068. The Trial Chamber is satisfied that the Accused, who can be held personally responsible for the decisions issued by the ARK Crisis Staff,<sup>2669</sup> aided and abetted the restriction of freedom of movement to Bosnian Muslims and Bosnian Croats.

1069. The Trial Chamber finds that the Accused actively aided and abetted the setting up of impediments for Bosnian Muslims and Bosnian Croats to move around freely. This includes decisions of the ARK Crisis Staff dealing with curfew and with special permits to leave the territory of the ARK.<sup>2670</sup> The Trial Chamber has already found that these restrictions were applied against non-Serbs only.<sup>2671</sup>

1070. The Trial Chamber is satisfied that the Accused was aware that his conduct would substantially contribute to restrict the freedom of movement of Bosnian Muslims and Bosnian Croats. The Trial Chamber is satisfied that not only the physical perpetrators, but also the Accused possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims.<sup>2672</sup>

<sup>2667</sup> Ex. P1282; ex. P1837; ex. P1879.

<sup>2668</sup> See VIII.C.5., "The Accused's propaganda campaign".

<sup>2669</sup> See para. 319 *supra*.

<sup>2670</sup> See ex. P173, "Glas newspaper article", dated 6 May 1992, "No abandonment of Krajina": "All male persons between 28 and 60 years of age are forbidden to leave the territory of the ARK without a special permit ...". See also ex. P179, "Conclusion" by the War Staff of the ARK: "In the future, tickets for flights to Belgrade may not be sold to persons without the approval of the National Defence Councils...". Regarding curfews, see ex. P227, "Official Gazette of the ARK" ("Hotel and catering establishments found open after 2200 hours, that is, during the curfew, will be closed down ... The strictest measures will also be taken against persons found to be moving about without proper permits during curfew and the vehicles they use will be taken away. ...")

<sup>2671</sup> See para. 1043 *supra*.

<sup>2672</sup> See VIII.C.5., "The Accused's propaganda campaign".

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-05-87/1-T  
Date: 23 February 2011  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Kevin Parker, Presiding  
Judge Christoph Flügge  
Judge Melville Baird

**Registrar:** John Hocking

**Judgement of:** 23 February 2011

**PROSECUTOR**

v.

**VLASTIMIR ĐORĐEVIĆ**

---

**PUBLIC JUDGEMENT  
WITH CONFIDENTIAL ANNEX**

**VOLUME I of II**

---

**The Office of the Prosecutor:**

|                    |                    |
|--------------------|--------------------|
| Mr Chester Stamp   | Ms Paige Petersen  |
| Ms Daniela Kravetz | Ms Silvia D'Ascoli |
| Ms Priya Gopalan   | Mr Elliott Behar   |

**Counsel for the Accused:**

Mr Dragoljub Đorđević  
Mr Veljko Đurđić

Article 7(3) for the crimes established in this Judgement. However, by virtue of its adverse finding under Article 7(1) it is not open to the Chamber to also convict the Accused under Article 7(3).

### C. Conclusion

2193. The Chamber is satisfied and finds the Accused Vlastimir Đorđević guilty pursuant to Article 7(1) of the Statute for having participated in a joint criminal enterprise with the purpose of modifying the ethnic balance in Kosovo. The Chamber is satisfied and finds that the crimes established in this Judgement were the means by which the purpose of this joint criminal enterprise was to be achieved.

2194. The Chamber is further satisfied and finds the Accused guilty of having aided and abetted the crimes that have been established, pursuant to Article 7(1). The modes of responsibility under Article 7(1) of the Statute are not mutually exclusive, and it is possible to convict on more than one mode in relation to a crime if this better reflects the totality of the accused's conduct.<sup>7385</sup> In this case, the Accused's leading role in the MUP efforts to conceal the killings of Kosovo Albanian civilians and other persons taking no active part in the hostilities by organising for the clandestine transportation of the bodies of persons killed by Serbian forces in Kosovo to secret mass grave sites on MUP property in Serbia, together with his active steps to prevent any investigation into the circumstances of these killings, and his failure to ensure that all offences by MUP forces were reported and investigated, taking into account his position as Chief of the RJB, substantially assisted the commission of these crimes. These facts are sufficiently compelling to also maintain the conviction for aiding and abetting, as well as the conviction for participating as a member of the JCE, in order to fully encapsulate the Accused's criminal conduct.

2195. In addition, the Chamber is satisfied and finds that it has been established that the Accused is criminally responsible pursuant to Article 7(3) of the Statute for his failure in respect of the members of the MUP under his authority, to prevent the crimes and to punish the perpetrators. However, pursuant to the jurisprudence of this Tribunal,<sup>7386</sup> the Chamber will enter a conviction on the basis of Article 7(1) only. The Accused's position of command of many of the actual perpetrators will be considered as an aggravating factor in sentencing as required by the jurisprudence of the Tribunal.

<sup>7385</sup> *Nahimana* Appeal Judgement, para 483; *Ndindabahizi* Appeal Judgement, paras 122-123; *Kamuhanda* Appeal Judgement, para 77.

<sup>7386</sup> *See supra*, para 1891.



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-95-17/1-A  
Date: 21 July 2000  
Original: English

### IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Presiding  
Judge Lal Chand Vohrah  
Judge Rafael Nieto-Navia  
Judge Patrick Lipton Robinson  
Judge Fausto Pocar

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Judgement of: 21 July 2000

PROSECUTOR

v.

ANTO FURUND@IJA

---

JUDGEMENT

---

#### Counsel for the Prosecutor:

Mr. Upawansa Yapa  
Mr. Christopher Staker  
Mr. Norman Farrell

#### Counsel for the Accused:

Mr. Luka S. Misić  
Mr. Sheldon Davidson

From this the Appellant deduces that violations which do not result in death should receive a sentence three years less than for those from which death results. In view of the above, the Appellant submits that an appropriate benchmark sentence for a violation of the laws or customs of war that does not result in the death of the victim is six years.

246. The reasoning behind this proposed benchmark of six years depends in part on the view that crimes resulting in loss of life are to be punished more severely than those not leading to the loss of life. The Appeals Chamber considers this approach to be too rigid and mechanistic.

247. Since the Tadić Sentencing Appeals Judgement, the position of the Appeals Chamber has been that there is no distinction in law between crimes against humanity and war crimes that would require, in respect of the same acts, that the former be sentenced more harshly than the latter. It follows that the length of sentences imposed for crimes against humanity does not necessarily limit the length of sentences imposed for war crimes.

248. The argument implicitly advanced by the Appellant in support of a six-year benchmark sentence is that all war crimes should attract similar sentences. The reasoning may be summarised as follows: because war crimes not resulting in death received sentences of six years in Tadić, it stands to reason that war crimes not resulting in death in this case should receive the same or a similar sentence. The Appeals Chamber does not agree with this logic, or with the imposition of a restriction on sentencing which does not have any basis in the Statute or the Rules.

249. In deciding to impose different sentences for the same type of crime, a Trial Chamber may consider such factors as the circumstances in which the offence was committed and its seriousness. While acts of cruelty that fall within the meaning of Article 3 of the Statute will, by definition, be serious, some will be more serious than others. The Prosecutor submits that sentences must be individualised according to the circumstances and gravity of the particular offence. The Appeals Chamber agrees with the statement of the Prosecutor that "the sentence imposed must reflect the inherent gravity of the accused's criminal conduct",<sup>362</sup> which conforms to the statement of the Trial Chamber in the Kupreškic Judgement:

The sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused. The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.<sup>363</sup>

<sup>362</sup> Prosecutor's Response, para. 7.32.

<sup>363</sup> Kupreškic Judgement, para. 852.



This statement has been endorsed by the Appeals Chamber in the Aleksovski Appeals Judgement,<sup>364</sup> and there is no reason for this Chamber to depart from it.

250. The sentencing provisions in the Statute and the Rules provide Trial Chambers with the discretion to take into account the circumstances of each crime in assessing the sentence to be given. A previous decision on sentence may indeed provide guidance if it relates to the same offence and was committed in substantially similar circumstances; otherwise, a Trial Chamber is limited only by the provisions of the Statute and the Rules. It may impose a sentence of imprisonment for a term up to and including the remainder of the convicted person's life.<sup>365</sup> As a result, an individual convicted of a war crime could be sentenced to imprisonment for a term up to and including the remainder of his life, depending on the circumstances.

251. The Appellant's submission regarding the appropriate length of benchmark sentences is contradicted by recent Appeals Chamber practice. In the Tadic Sentencing Appeals Judgement, the Appeals Chamber pronounced sentences of twenty years for wilful killings under Article 2 of the Statute and for murders under Article 3 of the Statute,<sup>366</sup> both of which surpass the nine-year benchmark which the Appellant argues is appropriate for war crimes resulting in death.

252. The Appellant further relies upon the judgement of the Trial Chamber in the Aleksovski case in order to establish a benchmark for sentencing. In that case, the convicted person was sentenced to two and a half years in prison for outrages upon personal dignity. However, in the recent Aleksovski Appeals Judgement, the Appeals Chamber found that there was a discernible error on the part of the Trial Chamber in the exercise of its discretion, namely:

giving insufficient weight to the gravity of the conduct of the Appellant and failing to treat his position as commander as an aggravating feature in relation to his responsibility under Article 7(1) of the Statute.<sup>367</sup>

The Appeals Chamber went on to sentence Zlatko Aleksovski to seven years, stating that, had it not been for an element of double jeopardy involved in the process, "the sentence would have been considerably longer."<sup>368</sup>

### 3. Additional arguments

253. The Appellant submits that "there are substantive issues that hang over the case" that suggest innocence is a possibility and that this should be considered in sentencing.<sup>369</sup> The Appeals

<sup>364</sup> Aleksovski Appeals Judgement, para. 182.

<sup>365</sup> Article 24 of the Statute and Rule 101(A) of the Rules.

<sup>366</sup> Noted by the Prosecutor at T. 154 (2 March 2000).

<sup>367</sup> Aleksovski Appeals Judgement, para. 187.

<sup>368</sup> Ibid., para. 190.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-98-29-A  
Date: 30 November  
2006  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Theodor Meron  
Judge Wolfgang Schomburg

**Registrar:** Mr. Hans Holthuis

**PROSECUTOR**

v.

**STANISLAV GALIĆ**

**JUDGEMENT**

**The Office of the Prosecutor:**

Ms. Helen Brady  
Mr. Mark Ierace  
Ms. Michelle Jarvis  
Ms. Shelagh Mc Call  
Ms. Anna Kotzeva

**Counsel for Stanislav Galić:**

Ms. Mara Pilipović  
Mr. Stéphane Piletta-Zanin

149. The Appeals Chamber has previously held that murder can be committed through an act or an omission.<sup>447</sup> Further, as previously held by the Appeals Chamber regarding Article 7(1) of the Statute<sup>448</sup> and as demonstrated by Article 7(3) of the Statute, the Appeals Chamber reiterates that the commission of a positive act is not an absolute requirement of criminal responsibility.

150. With respect to Galić's second argument, the Appeals Chamber notes that the Statute expressly contemplates attaching criminal responsibility to an accused for the acts of another, and the International Tribunal has done so on numerous occasions. Even if the physical perpetration of the act of murder was committed by another person, Article 7 of the Statute attaches criminal liability for all the crimes articulated in Articles 2 to 5 of the Statute, including murder, to those who did not actually perpetrate the physical act, but either "planned, instigated, ordered [...] or otherwise aided and abetted in the planning, preparation or execution",<sup>449</sup> or, in the case of superiors, "knew or had reason to know that the subordinate was 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".<sup>450</sup> Galić's argument is therefore rejected.

151. Regarding the *mens rea* requirement of murder, Galić contends that an action cannot be murder if death is a consequence of the infliction of serious injury and the consequence is due to the perpetrator's negligence.<sup>451</sup> In response, the Prosecution contends that specific intent to kill is not part of the *mens rea* for murder<sup>452</sup> and that the Trial Chamber did not apply a negligence standard.<sup>453</sup> In that respect, it argues that the Trial Chamber required a finding of "an intention [...] to kill, or to inflict serious injury, in reckless disregard of human life".<sup>454</sup> It further claims that Stanislav Galić has confused negligence and recklessness, and that recklessness is an appropriate *mens rea* for ordering murder, as held in the *Blaškić* Appeal Judgement.<sup>455</sup>

152. The Appeals Chamber notes that Galić was not convicted for committing murder, but for ordering murder under Article 7(1) of the Statute, which only requires that he was aware of the substantial likelihood that murder would be committed in the execution of his orders.<sup>456</sup>

<sup>447</sup> *Kvočka et al.* Appeal Judgement, para. 261. Although this holding was made for murder under Article 3 of the Statute, the Appeals Chamber sees no reason why it would be any different for murder under Article 5 of the Statute.

<sup>448</sup> *Blaškić* Appeal Judgement, para. 663.

<sup>449</sup> Article 7(1) of the Statute.

<sup>450</sup> Article 7(3) of the Statute.

<sup>451</sup> Defence Appeal Brief, para. 92.

<sup>452</sup> Prosecution Response Brief, para. 8.16.

<sup>453</sup> Prosecution Response Brief, para. 8.17.

<sup>454</sup> Prosecution Response Brief, para. 8.17.

<sup>455</sup> Prosecution Response Brief, para. 8.18.

<sup>456</sup> *Blaškić* Appeal Judgement, para. 42; *Kordić and Čerkez* Appeal Judgement, para. 30.

Consequently, there is no reason for the Appeals Chamber to consider on their merits Galić's arguments pertaining to the *mens rea* required for committing murder.<sup>457</sup>

153. For the foregoing reasons, this part of Galić's ground of appeal is dismissed.

### C. Inhumane acts

154. Galić submits that the Trial Chamber erred in its definition of "other inhumane acts" pursuant to Article 5(i) of the Statute.<sup>458</sup> His arguments concern both the *actus reus* and the *mens rea* required for the crime of inhumane acts.

155. As regards the *actus reus*, Galić contends that an omission cannot constitute an inhumane act.<sup>459</sup> The Prosecution responds that the jurisprudence of the International Tribunal establishes that inhumane acts can consist of omissions.<sup>460</sup> In that regard, the Appeals Chamber adopts *mutatis mutandis* its above discussion on an accused's criminal responsibility for an act of omission regarding the crime of murder.<sup>461</sup> This part of Galić's ground of appeal is therefore dismissed.

156. As regards the *mens rea* of the crime of inhumane acts, Galić argues that the Prosecution must prove that the perpetrator had the "will to directly produce the consequence".<sup>462</sup> He contends that "[c]onsent to the consequence excludes the intention" and that merely accepting the consequence does not make a person responsible for crimes.<sup>463</sup> The Prosecution responds that Galić is positing a standard of specific intent as the minimum *mens rea* required for the crime of other inhumane acts, without proposing any authority for this view. The Prosecution argues that the jurisprudence of the International Tribunal has required lesser mental states in order to prove other inhumane acts.<sup>464</sup>

157. The Appeals Chamber notes that Galić was not convicted for committing inhumane acts, but for ordering inhumane acts under Article 7(1) of the Statute, which only requires that he was aware of the substantial likelihood that inhumane acts would be committed in the execution of his

<sup>457</sup> When an error has no chance of changing the outcome of a decision, it may be rejected on that ground. See *Stakić* Appeal Judgement, para. 8; *Kvočka et al.* Appeal Judgement para. 16; *Krnjelac* Appeal Judgement, para. 10.

<sup>458</sup> Defence Appeal Brief, para. 93.

<sup>459</sup> Defence Appeal Brief, para. 94.

<sup>460</sup> Prosecution Response Brief, para. 8.19.

<sup>461</sup> See also the definition of inhumane acts given at paragraph 234 of the *Vasiljević* Trial Judgement, confirmed at paragraph 165 of the *Vasiljević* Appeal Judgement. See *supra* para. 149.

<sup>462</sup> Defence Appeal Brief, para. 95.

<sup>463</sup> Defence Appeal Brief, para. 96.

<sup>464</sup> Prosecution Response Brief, paras 8.21-8.22.

orders.<sup>465</sup> Consequently, there is no reason for the Appeals Chamber to consider Galić's arguments pertaining to the *mens rea* required for committing inhumane acts.

158. The Appeal Chamber further notes that the Trial Chamber did not expressly determine which acts constituted other inhumane acts (the *actus reus*). Although the Trial Chamber did not do so, the Appeals Chamber finds that it did point, in its analysis of the scheduled incidents, to numerous acts that qualify as such. For the scheduled sniping incidents, the Trial Chamber pointed to the serious injuries inflicted and held that those injuries were the result of deliberate sniping by members of the SRK forces for whose acts Galić bore criminal responsibility.<sup>466</sup> The same applies to the scheduled shelling incidents, for which the Trial Chamber made specific findings related to serious injuries and found that the shells were deliberately fired at areas where civilians would be seriously injured as a result.<sup>467</sup>

159. The Appeals Chamber accordingly dismisses Galić's eighth ground of appeal.

---

<sup>465</sup> *Blaškić* Appeal Judgement, para. 42; *Kordić and Čerkez* Appeal Judgement, para. 30.

<sup>466</sup> See, e.g., Trial Judgement, paras 258, 271, 276, 289, 317, 321, 360, 367, 518, 537, 551, 555.

<sup>467</sup> See, e.g., Trial Judgement, paras 397, 496.

months, he was in charge of continuing the planning and execution of the military encirclement of Sarajevo.<sup>1339</sup> The Trial Chamber particularly found:

The gravity of the offences committed by General Galić is established by their scale, pattern and virtually continuous repetition, almost daily, over many months. Inhabitants of Sarajevo – men, women, children and elderly persons – were terrorized and hundreds of civilians were killed and thousands wounded during daily activities such as attending funerals, tending vegetable plots, fetching water, shopping, going to hospital, commuting within the city, or while at home. The Majority of the Trial Chamber also takes into consideration the physical and psychological suffering inflicted on the victims. Sarajevo was not a city where occasional random acts of violence against civilians occurred or where living conditions were simply hard. This was an anguishing environment in which, at a minimum hundreds of men, women, children, and elderly people were killed, and thousands were wounded and more generally terrorized.<sup>1340</sup>

455. Taking into account the above findings of the Trial Chamber, the Appeals Chamber, by majority, Judge Pocar partially dissenting and Judge Meron dissenting, finds that the Trial Chamber committed a discernible error in assessing the factors in relation to the gravity of the crime, the role and participation of Galić, the aggravating circumstance of abuse of Galić's position of authority, and the single mitigating circumstance regarding his behaviour throughout the proceedings. Although the Trial Chamber did not err in its factual findings and correctly noted the principles governing sentencing, it committed an error in finding that the sentence imposed adequately reflects the level of gravity of the crimes committed by Galić and his degree of participation. The sentence rendered was taken from the wrong shelf. Galić's crimes were characterized by exceptional brutality and cruelty, his participation was systematic, prolonged and premeditated and he abused his senior position of VRS Corps commander. In the Appeals Chamber's view, the sentence imposed on Galić by the Trial Chamber falls outside the range of sentences available to it in the circumstances of this case. The Appeals Chamber considers that the sentence of only 20 years was so unreasonable and plainly unjust, in that it underestimated the gravity of Galić's criminal conduct, that it is able to infer that the Trial Chamber failed to exercise its discretion properly.

456. Accordingly, the Appeals Chamber finds that the Trial Chamber abused its discretion in imposing a sentence of only 20 years and allows the Prosecution's appeal.

---

<sup>1339</sup> Trial Judgement, para. 609.

<sup>1340</sup> Trial Judgement, para. 764.

IT-01-47-T  
D689 - 1/21623 BIS  
05/12/2006

689/21623 BIS

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-01-47-T  
Date: 15 March 2006  
Original: ENGLISH  
French

**IN THE TRIAL CHAMBER**

**Before:** Judge Jean-Claude Antonetti  
Judge Vonimbolana Rasoazanany  
Judge Bert Swart

**Registrar:** Mr Hans Holthuis

**Judgement of:** 15 March 2006

**THE PROSECUTOR**

v.

**ENVER HADŽIHASANOVIĆ  
AMIR KUBURA**

**JUDGEMENT**

**The Office of the Prosecutor:**

Mr Daryl A. Mundis  
Ms Tecla Henry-Benjamin  
Mr Stefan Waespi  
Mr Matthias Neuner

**Counsel for the Defence:**

Ms Edina Rešidović and Mr Stéphane Bourgon for Enver Hadžihasanović  
Mr Fahrudin Ibrišimović and Mr Rodney Dixon for Amir Kubura

religious or ethnic group<sup>4887</sup> and that he worked to enforce the rules of international humanitarian law to protect Croatian people and property, be it through his calls to respect the law,<sup>4888</sup> or through the training sessions on the principles of international humanitarian law that he organised for 3<sup>rd</sup> Corps soldiers and officers.<sup>4889</sup> The value of these considerations has been assessed in view of the fact that when he assumed command of the 3<sup>rd</sup> Corps, he had not yet completed the theoretical and practical training required to hold such a post.<sup>4890</sup>

(ii) Factual Mitigating Circumstances

2081. The case law of this Tribunal has, on several occasions, considered that the overall context in which the incriminating acts took place may be taken into account in determining which sentence to impose.<sup>4891</sup> In this case, the Chamber notes that when he became commander of the 3<sup>rd</sup> Corps, the Accused Hadžihasanović was faced with a generally difficult situation. Hadžihasanović assumed command of the ABiH 3<sup>rd</sup> Corps on 18 November 1992,<sup>4892</sup> only nine days after the Corps had been set up on 9 November 1993.<sup>4893</sup> Furthermore, he assumed command of the 3<sup>rd</sup> Corps at the very time the ABiH was forced to engage in an unforeseen battle with the armed forces of the HVO.<sup>4894</sup> Lastly, the difficulties Hadžihasanović had in exercising command were compounded by the mass arrival of refugees into Central Bosnia<sup>4895</sup> and by the problem of the foreign combatants. Although it does not justify the causes or consequences, that particular context casts the Accused Hadžihasanović's failures in a light which leads the Chamber to show leniency.

(b) Aggravating Circumstances Accepted by the Chamber

2082. The time span over which the criminal acts took place may be considered as an aggravating circumstance in that it is indicative of the scope of the crimes committed.<sup>4896</sup> In this case, the Chamber notes that the cruel treatment at the Zenica Music School took place over approximately a seven-month period, and that the cruel treatment in the other detention centres created in Bugojno was inflicted over a period of about three and a half months. In the view of the Chamber, the prolonged period over which these crimes were committed warrants a more severe sentence.

<sup>4887</sup> See for example: Witness HE, T(F) p. 17098.

<sup>4888</sup> See for example: P 293; P 288; P 323; P 316; P 284; P 161; P 197; Edib Zlotrg, T(F) p. 14982; Witness HF, T(F) pp. 17200-17201. See *supra* paras. 1161-1167 and 2024.

<sup>4889</sup> See for example: P 255; P 324; P 335. See *supra* paras. 856-859.

<sup>4890</sup> See for example: DH 2088, paras. 320-321.

<sup>4891</sup> See in this regard *Čelebići* Trial Judgement, para. 1248.

<sup>4892</sup> P 245.

<sup>4893</sup> P 123.

<sup>4894</sup> Mark Bower, T(F) pp. 5207-5208.

<sup>4895</sup> Witness ZJ, T(F) p. 4184; Rudy Gerritsen, T(F) p. 7182.

<sup>4896</sup> See in this regard *Blaškić* Trial Judgement, para. 784; *Kunarac* Trial Judgement para. 865.



**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-95-14/2-A  
Date: 17 December 2004  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Wolfgang Schomburg, Presiding  
Judge Fausto Pocar  
Judge Florence Ndepele Mwachande Mumba  
Judge Mehmet Güney  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Hans Holthuis

**Judgement of:** 17 December 2004

**PROSECUTOR**

**v.**

**DARIO KORDIĆ  
AND  
MARIO ČERKEZ**

**JUDGEMENT**

**The Office of the Prosecutor:**

Mr. Norman Farrell  
Ms. Helen Brady  
Ms. Marie-Ursula Kind and Ms. Michelle Jarvis

**Counsel for Dario Kordić:**

Mr. Mitko Naumovski, Mr. Turner T. Smith, Jr. and Mr. Stephen M. Sayers

**Counsel for Mario Čerkez:**

Mr. Božidar Kovačić and Mr. Goran Mikuličić

### III. APPLICABLE LAW

#### A. Planning, instigating and ordering pursuant to Article 7(1) of the Statute

25. The Appeals Chamber notes that the Trial Chamber convicted Kordić for planning, instigating, and ordering crimes pursuant to Article 7(1) of the Statute.<sup>18</sup> The Trial Chamber's legal definitions of these modes of responsibility have not been appealed by any of the Parties. However, the Appeals Chamber deems it necessary to set out and clarify the applicable law in relation to these modes of responsibility insofar as it is necessary for its own decision.

26. The *actus reus* of "planning" requires that one or more persons design the criminal conduct constituting one or more statutory crimes that are later perpetrated.<sup>19</sup> It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.

27. The *actus reus* of "instigating" means to prompt another person to commit an offence.<sup>20</sup> While it is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused, it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.<sup>21</sup>

28. The *actus reus* of "ordering" means that a person in a position of authority instructs another person to commit an offence.<sup>22</sup> A formal superior-subordinate relationship between the accused and the perpetrator is not required.<sup>23</sup>

29. The *mens rea* for these modes of responsibility is established if the perpetrator acted with direct intent in relation to his own planning, instigating, or ordering.

30. In addition, the Appeals Chamber has held that a standard of *mens rea* that is lower than direct intent may apply in relation to ordering under Article 7(1) of the Statute. The Appeals Chamber held that a person who orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing responsibility under Article 7(1) of the Statute pursuant to ordering. Ordering with such awareness has to be regarded as accepting that crime.<sup>24</sup>

<sup>18</sup> Trial Judgement, paras 829, 834.

<sup>19</sup> See Trial Judgement, para. 386.

<sup>20</sup> See Trial Judgement, para. 387.

<sup>21</sup> Cf. Trial Judgement, para. 387.

<sup>22</sup> Trial Judgement, para. 388.

<sup>23</sup> Trial Judgement, para. 388.

<sup>24</sup> *Blaškić* Appeal Judgement, para. 42.

cumulative convictions, which has been consistently followed by the International Tribunal<sup>1433</sup> and the International Criminal Tribunal for Rwanda.<sup>1434</sup> It held that:

reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.

Where this test is not met, the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.<sup>1435</sup>

1033. When applying the *Čelebići* test, what must be considered are the legal elements of each offence, not the acts or omissions giving rise to the offence. What each offence requires, as a matter of law, is the pertinent inquiry. The Appeals Chamber will permit multiple convictions for the same act or omission where it clearly violates multiple distinct provisions of the Statute, where each statutory provision contains a materially distinct element not contained in the other(s), and which element requires proof of a fact which the elements of the other statutory provision(s) do not.<sup>1436</sup> The cumulative convictions test serves twin aims: ensuring that the accused is convicted only for distinct offences, and at the same time, ensuring that the convictions entered fully reflect his criminality.

1034. The Appeals Chamber now turns to the question of the permissibility of cumulative convictions with regard to the specific crimes at issue in this case when applying the above test.

#### 1. The law applicable to cumulative convictions under Articles 2, 3 and 5

1035. With regard to cumulative convictions under Article 2 (grave breaches of the Geneva Conventions of 1949) and Article 3 (violations of the laws or customs of war) of the Statute, the Appeals Chamber has specifically held that wilful killing under Article 2(a) of the Statute contains a materially distinct element not present in the crime of murder under Article 3 of the Statute,<sup>1437</sup> namely that the victim be a protected person, an element which requires proof of a fact not required by the elements of murder under Article 3. The definition of a protected person includes and goes

<sup>1433</sup> See e.g., *Jelisić* Appeal Judgement, para. 82; *Kupreškić et al.* Appeal Judgement, paras 387-388; *Kunarac et al.* Appeal Judgement, para. 176.

<sup>1434</sup> See *Musema* Appeal Judgement, paras 358-370. In *Musema*, the Appeals Chamber held that convictions for genocide under Article 2 of the Statute and for extermination as a crime against humanity under Article 3 of the Statute, based on the same set of facts, are permissible under the *Čelebići* test. *Ibid.*, paras 369-370.

<sup>1435</sup> *Čelebići* Appeal Judgement, paras 412-3.

<sup>1436</sup> *Kunarac et al.* Appeal Judgement, para. 173. Whether the same conduct violates two distinct statutory provisions is a question of law, *ibid.*, para. 174.

### 3. Conclusion

1092. For the foregoing reasons, the Appeals Chamber sentences Čerkez to 6 years of imprisonment.

## **XI. DISPOSITION**

For the foregoing reasons,

### **THE APPEALS CHAMBER**

**PURSUANT** to Article 25 of the Statute and Rule 117 of the Rules;

**NOTING** the respective written submissions of the parties and the arguments they presented at the hearing of 17, 18, and 19 May 2004;

**SITTING** in open session;

### **WITH RESPECT TO THE PROSECUTION'S GROUNDS OF APPEAL:**

**NOTES** that the Prosecution's first ground of appeal has become moot as it has been withdrawn;

**REJECTS** the Prosecution's remaining four grounds of appeal;

### **WITH RESPECT TO KORDIĆ'S GROUNDS OF APPEAL:**

**REJECTS** Kordić's first, second, fifth and sixth grounds of appeal;

**ALLOWS** the ground of appeal concerning his responsibility for crimes committed in Novi Travnik in October 1992, **AND REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 38 and 39;

**ALLOWS**, in part, the ground of appeal concerning his responsibility for crimes committed in Busovača in January 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 10 and 12, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 3 (unlawful attack on civilians, a violation of the laws or customs of war), 4 (unlawful attack on civilian objects, a violation of the laws or customs of war), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949), 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war) and 39 (plunder of public or private property, a violation of the laws or customs of war);

**ALLOWS** the ground of appeal concerning his responsibility for crimes committed in Vitez and Stari Vitez in April 1993, **AND REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 3, 4, 7, 8, 10, 12, 38, 39 and 43 (Stari Vitez);

**ALLOWS** the ground of appeal concerning his responsibility for crimes committed in the Vitez Veterinary Station and the Vitez Chess Club, **AND REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 21 and 22;

**ALLOWS**, in part, the ground of appeal concerning his responsibility for crimes committed in Večeriska/Donja Večeriska in April 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 3, 7, 8, 10, 12, and 39, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 4 (unlawful attack on civilian objects, a violation of the laws or customs of war) and 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war);

**REJECTS** the ground of appeal concerning his responsibility for crimes committed in Ahmići in April 1993, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 3 (unlawful attack on civilians, a violation of the laws or customs of war), 4 (unlawful attack on civilian objects, a violation of the laws or customs of war), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949), 10 (inhumane acts, a crime against humanity), 12 (inhuman treatment, a grave breach of the Geneva Conventions of 1949), 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war), 39 (plunder of public or private property, a violation of the laws or customs of war) and 43 (destruction or wilful to institutions dedicated to religion or education, a violation of the laws or customs of war);

**ALLOWS**, in part, the ground of appeal concerning his responsibility for crimes committed in Nadioci and Pirići in April 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 4, 10, 12, and 38, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 3 (unlawful attack on civilians, a violation of the laws or customs of war), 7 (murder, a crime against humanity) and 8 (wilful killing, a grave breach of the Geneva Conventions of 1949);

**ALLOWS**, in part, the ground of appeal concerning his responsibility for crimes committed in Šantići in April 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 10 and 12, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 3 (unlawful attack on civilians, a violation of the laws or customs of war), 4 (unlawful attack on civilian objects, a violation of the laws or customs of

war), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949) and 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war);

**ALLOWS**, in part, the ground of appeal concerning his responsibility for crimes committed in Rotilj in April through September 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 4 and 38, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 3 (unlawful attack on civilians, a violation of the laws or customs of war), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949), 10 (inhumane acts, a crime against humanity), 12 (inhuman treatment, a grave breach of the Geneva Conventions of 1949), and 39 (plunder of public or private property, a violation of the laws or customs of war), and 21 (imprisonment, a crime against humanity), 22 (unlawful confinement of civilians, a grave breach of the Geneva Conventions of 1949);

**ALLOWS**, in part, the ground of appeal concerning his responsibility for crimes committed in Han Ploča-Grahovci in June 1993, **REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 10 and 12; **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949), 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war), 39 (plunder of public or private property, a violation of the laws or customs of war) and 43 (destruction or wilful damage to institutions dedicated to religion or education, a violation of the laws or customs of war);

**REJECTS** the ground of appeal concerning his responsibility for crimes committed in Tulica in June 1993, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 7 (murder, a crime against humanity), 8 (wilful killing, a grave breach of the Geneva Conventions of 1949), 10 (inhumane acts, a crime against humanity), 12 (inhuman treatment, a grave breach of the Geneva Conventions of 1949), 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war) and 39 (plunder of public or private property, a violation of the laws or customs of war);

**ALLOWS**, in part, the ground of appeal concerning his responsibility for crimes committed in the town of Kiseljak in April 1993, **AND REVERSES** his convictions pursuant to Article 7(1) of the Statute under Counts 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war), 39 (plunder of public or private property, a violation of the laws or customs of war);

**REJECTS** the ground of appeal concerning his responsibility for crimes committed in the Kiseljak municipal building (June 1993), the Kiseljak barracks (April through June 1993), Kaonik (January through May 1993), Vitez Cinema (April 1993), SDK building (April 1993) and the Dubravica Elementary School (April 1993), **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 21 (imprisonment, a crime against humanity) and 22 (unlawful confinement of civilians, a grave breach of the Geneva Conventions of 1949);

**ALLOWS**, in part, the ground of appeal concerning his responsibility for crimes committed in Svinjarevo in April 1993, **REVERSES** his conviction pursuant to Article 7(1) of the Statute under Count 39, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity) and 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war);

**REJECTS** the ground of appeal concerning his responsibility for crimes committed in Gomionica in April 1993, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity), 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war), and 39 (plunder of public or private property, a violation of the laws or customs of war);

**REJECTS** the ground of appeal concerning his responsibility for crimes committed in Očehnići, Behrići, Gromiljak, Polje Višnjica, Višnjica and Gačice in April 1993, **AND AFFIRMS** his convictions pursuant to Article 7(1) of the Statute under Counts 1 (persecutions, a crime against humanity) and 38 (wanton destruction not justified by military necessity, a violation of the laws or customs of war);

**ALLOWS** the ground of appeal concerning his responsibility for crimes committed in Merdani in January 1993, **AND REVERSES** his conviction pursuant to Article 7(1) of the Statute under Count 38;

**ALLOWS** the ground of appeal concerning his responsibility for crimes committed in Lončari in April 1993, **AND REVERSES** his convictions pursuant to Article 7(1) of the Statute under Count 39; and

**REVERSES** all his remaining convictions under Count 1; and

**AFFIRMS** the sentence of 25 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period he has spent in detention for the purposes of this case; and

*p. 309*

UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-95-14/2-T  
Date: 26 February 2001  
Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding  
Judge Mohamed Bennouna  
Judge Patrick Robinson  
  
Registrar: Mr. Hans Holthuis  
  
Date: 26 February 2001

PROSECUTOR

v.

DARIO KORDI]  
&  
MARIO ^ERKEZ

JUDGEMENT

The Office of the Prosecutor:

Mr. Geoffrey Nice, Q.C.  
Mr. Patrick Lopez-Terres  
Mr. Kenneth R. Scott  
Ms. Susan Somers  
Mr. Fabricio Guariglia

Counsel for the Accused:

Mr. Mitko Naumovski, Mr. Turner T. Smith, Jr., Mr. Stephen M. Sayers,  
Mr. Robert Stein and Mr. Christopher G. Browning, Jr., for Dario Kordi]

Mr. Božidar Kova~i} and Mr. Goran Mikuli~i}, for Mario ^erkez



found to have committed a crime will not be found responsible for planning the same crime. Moreover, an accused will only be held responsible for planning, instigating or ordering a crime if he directly or indirectly intended that the crime be committed.<sup>530</sup>

387. The Bla{ki} Trial Chamber held that instigating "entails 'prompting another to commit an offence'."<sup>531</sup> Both positive acts and omissions may constitute instigation,<sup>532</sup> but it must be proved that the accused directly intended to provoke the commission of the crime. Although a causal relationship between the instigation and the physical perpetration of the crime needs to be demonstrated (i.e., that the contribution of the accused in fact had an effect on the commission of the crime), it is not necessary to prove that the crime would not have been perpetrated without the accused's involvement.

388. The Trial Chamber is of the view that no formal superior-subordinate relationship is required for a finding of "ordering" so long as it is demonstrated that the accused possessed the authority to order.<sup>533</sup> The Trial Chamber agrees with the Bla{ki} finding that there is no requirement that an order be given in writing or in any particular form, and that the existence of an order may be proven through circumstantial evidence.<sup>534</sup> In relation to ordering, the Bla{ki} Trial Chamber further held that the order "does not need to be given by the superior directly to the person(s) who perform(s) the actus reus of the offence. Furthermore, what is important is the commander's mens rea, not that of the subordinate executing the order."<sup>535</sup>

#### 4. Aiding and Abetting and Participation in a Common Purpose or Design<sup>536</sup>

##### (a) Arguments of the parties

##### (i) Aiding and abetting

389. In the Prosecution's opinion, these two concepts are distinct in that aiding means giving assistance to someone while abetting implies facilitating the commission of an offence. Either one suffices to render an accused criminally responsible under Article 7(1).<sup>537</sup> The Prosecution

<sup>529</sup> Bla{ki} Trial Judgement, para. 279.

<sup>530</sup> Bla{ki} Trial Judgement, para. 278.

<sup>531</sup> Bla{ki} Trial Judgement, para. 280, endorsing Akayesu Trial Judgement, para. 482.

<sup>532</sup> Bla{ki} Trial Judgement, para. 280.

<sup>533</sup> The Trial Chamber disagrees with the Bla{ki} and Akayesu Trial Chambers in this respect. See Bla{ki} Trial Judgement, para. 281, citing Akayesu Trial Judgement, para. 483.

<sup>534</sup> Bla{ki} Trial Judgement, para. 281.

<sup>535</sup> Bla{ki} Trial Judgement, para. 282.

<sup>536</sup> Aiding and abetting and participation in a common purpose are addressed in the same section in light of the Tadić Appeal Judgement which, in setting out the elements of the latter, compared it to aiding and abetting.

<sup>537</sup> Prosecution Final Brief, Annex 4, p. 18.

B. Counts 3 – 44: Unlawful Attacks, Wilful Killing, Inhuman Treatment, Detention and Destruction

832. The prosecution case on these counts is that Kordi} was responsible for planning and ordering the crimes which were committed by HVO units implementing his commands and instructions. The coordinated fashion and number of crimes is an indication of the existence of an organised scheme. Kordi} had the necessary mens rea since he intended the crimes or accepted the risk that they would be committed.<sup>1771</sup> On the other hand the Kordi} Final Brief begins by asserting that the case deals with crimes committed by soldiers whereas Dario Kordi} was a local political leader who helped his community organise itself for defence: the core issue is the "lack of linkage" of any credible evidence that the accused had any criminal responsibility for crimes by soldiers.<sup>1772</sup>

833. The prosecution case against ^erkez is that he planned and ordered these crimes, intending that they should be committed or instigated them by failing to prevent or punish them; alternatively, he was an aider and abetter.<sup>1773</sup> The defence case is that there is no evidence implicating the accused in any of these offences.<sup>1774</sup>

834. The Trial Chamber finds that in those cases where Kordi} participated in the HVO attacks he intended to commit the crimes associated with them and did so. His role was as political leader and his responsibility under Article 7(1) was to plan, instigate and order the crimes. In making this finding the Trial Chamber relies on the evidence already referred to in relation to persecution. As a result the Trial Chamber finds the accused Dario Kordi} liable under Article 7(1) on the following counts:

(a) Count 3 (unlawful attacks on civilians) and Count 4 (unlawful attacks on civilian objects), Count 7 (murder) and Count 8 (wilful killing), Count 10 (inhumane acts) and Count 12 (inhuman treatment) in relation to the following locations and dates as set out in the Indictment: Busova-a (January 1993); Vitez, Stari Vitez, Ve-eriska-Donja Ve-eriska, Ahmi}i, Nadioci, Piri}i, [anti}i, and Rotilj (April 1993); Tulica<sup>1775</sup> and Han Plo-a-Grahovci (June 1993).<sup>1776</sup>

(b) On Count 21 (imprisonment) and Count 22 (unlawful confinement of civilians) in the following locations: Kaonik Prison, Vitez Cinema Complex, Veterinary Station, SDK

<sup>1771</sup> Prosecution Final Brief, para. 444.

<sup>1772</sup> Kordi} Final Brief, pp. 1-3.

<sup>1773</sup> Prosecution Final Brief, paras. 454-57.

<sup>1774</sup> ^erkez Final Brief, p. 49.

<sup>1775</sup> Counts 7, 8, 10, 12 (only).

<sup>1776</sup> Counts 7, 8, 10, 12 (only).

offices, Chess Club, Dubravica Elementary School, Kiseljak municipal buildings and barracks and Rotilj village.

(c) On Count 38 (wanton destruction not justified by military necessity) and Count 39 (plunder of public or private property) in relation to the following locations: Novi Travnik (October 1992); Busova-a (January 1993); Kiseljak, Svinjarevo, Gomionica, Polje Vi{nijca, Rotilj (April 1993); Tulica, Han Plo-a-Grahovci (June 1993); and Vitez, Stari Vitez, Ahmi}i and Ve-eriska-Donja Ve-eriska (April 1993). And on Count 38, alone, in the following locations: Merdani (January 1993); and O-ehni}i, Vi{nijca, Behri}i, Gromiljak, Nadioci, Piri}i, [anti}i and Ga}ice (April 1993). And on Count 39, alone, in Lon-ari (April 1993).

(d) On Count 43 (destruction or wilful damage to institutions dedicated to religion or education) in the following locations: Ahmi}i and Stari Vitez (April 1993) and Han Plo-a (June 1993).

835. In relation to the remaining locations in which offences are alleged to have been committed in the above Counts and on Counts 9, 11, 13, 23, 24, 25, 26, 27, 28 and 37, the Trial Chamber finds Dario Kordi} not liable under Article 7(1).

836. The Trial Chamber finds that in those cases where ^erkez participated in attacks as Commander of the Vite{ka Brigade, he committed the crimes associated with them, intending to commit the crimes. His responsibility as Commander of the Brigade was as a co-perpetrator in crimes which he committed. As a result the Trial Chamber finds the accused, Mario ^erkez, liable under Article 7(1) on the following counts:

(a) Count 5 (unlawful attacks on civilians) and Count 6 (unlawful attacks on civilian objects), Count 14 (murder), and Count 15 (wilful killing), Count 17 (inhumane acts), Count 19 (inhuman treatment) in relation to the following locations Vitez, Stari Vitez, Stari Vitez and Ve-eriska-Donja Ve-eriska; and Count 41 (wanton destruction not justified by military necessity) and Count 42 (plunder of public or private property) in relation to the following locations: Vitez, Stari Vitez and Donja Ve-eriska;

(b) on Count 29 (imprisonment), Count 30 (unlawful confinement of civilians), Count 31 (inhuman treatment), Count 33 (taking civilians as hostages) and Count 35 (inhuman treatment) in relation to the following locations: Vitez Cinema Complex, Veterinary Station, SDK offices and Chess Club);

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-00-39-A  
Date: 17 March 2009  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andrésia Vaz  
Judge Theodor Meron

**Acting Registrar:** Mr. John Hocking

**Judgement of:** 17 March 2009

**PROSECUTOR**

**v.**

**MOMČILO KRAJIŠNIK**

***PUBLIC***

**JUDGEMENT**

**The Office of the Prosecutor:**

Mr. Peter M. Kremer QC  
Ms. Shelagh McCall  
Ms. Barbara Goy  
Ms. Katharina Margetts  
Mr. Steffen Wirth  
Ms. Anna Kotzeva  
Mr. Matteo Costi  
Ms. Julia Thibord

**Momčilo Krajišnik *pro se***

**Counsel for Momčilo Krajišnik on JCE:**

Mr. Alan M. Dershowitz  
Mr. Nathan Z. Dershowitz

**Amicus Curiae:**

Mr. Colin Nicholls QC

for any appellant claiming an error of law on the basis of the lack of a reasoned opinion to identify the specific issues, factual findings, or arguments which an appellant submits the Trial Chamber omitted to address and to explain why this omission invalidated the decision.<sup>42</sup>

13. The Appeals Chamber reviews the Trial Chamber's findings of law to determine whether or not they are correct.<sup>43</sup> Where the Appeals Chamber finds an error of law in the Trial Judgement arising from the application of the wrong legal standard, the Appeals Chamber will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly.<sup>44</sup> In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by an appellant before the finding is confirmed on appeal.<sup>45</sup> The Appeals Chamber will not review the entire trial record *de novo*. Rather, it will in principle only take into account evidence referred to by the Trial Chamber in the body of the judgement or in a related footnote, evidence contained in the trial record and referred to by the parties, and additional evidence admitted on appeal.<sup>46</sup>

14. When considering alleged errors of fact, the Appeals Chamber will apply a standard of reasonableness. In reviewing the findings of the Trial Chamber, the Appeals Chamber will only substitute its own findings for that of the Trial Chamber when no reasonable trier of fact could have reached the original decision.<sup>47</sup> The Appeals Chamber applies the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.<sup>48</sup> Further, only an error of fact which has occasioned a miscarriage of justice will cause the Appeals Chamber to overturn a decision by the Trial Chamber.<sup>49</sup>

15. Furthermore, when factual errors are alleged on the basis of additional evidence proffered during the appellate proceedings, Rule 117 of the Rules provides that the Appeals Chamber shall pronounce judgement "on the basis of the record on appeal together with such additional evidence as has been presented to it." The Appeals Chamber recalls the standard of review to be applied on appeal in relation to findings challenged only by the Defence, in the absence of a Prosecution

<sup>42</sup> *Martić* Appeal Judgement, para. 9; *Halilović* Appeal Judgement, para. 7; *Brdanin* Appeal Judgement, para. 9.

<sup>43</sup> *Martić* Appeal Judgement, para. 10; *Strugar* Appeal Judgement, para. 12; *Halilović* Appeal Judgement, para. 8.

<sup>44</sup> *Martić* Appeal Judgement, para. 10; *Orić* Appeal Judgement, para. 9; *Hadžihasanović and Kubura* Appeal Judgement, para. 9.

<sup>45</sup> *Martić* Appeal Judgement, para. 10; *Strugar* Appeal Judgement, para. 12; *Orić* Appeal Judgement, para. 9.

<sup>46</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 9; *Brdanin* Appeal Judgement, para. 15; *Galić* Appeal Judgement, para. 8.

<sup>47</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 10; *Halilović* Appeal Judgement, para. 9; *Limaj et al.* Appeal Judgement, para. 12.

<sup>48</sup> *Martić* Appeal Judgement, para. 11; *Strugar* Appeal Judgement, para. 13; *Hadžihasanović and Kubura* Appeal Judgement, para. 10.

<sup>49</sup> *Martić* Appeal Judgement, para. 11; *Strugar* Appeal Judgement, para. 13; *Orić* Appeal Judgement, para. 10.

**UNITED  
NATIONS**



International Tribunal for the Prosecution  
of Persons Responsible for Serious  
Violations of International Humanitarian  
Law Committed in the Territory of the  
Former Yugoslavia since 1991

Case No.: IT-97-25-A  
Date: 17 September 2003  
Original: English  
French

**IN THE APPEALS CHAMBER**

**Before:** Judge Claude Jorda, Presiding  
Judge Wolfgang Schomburg  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Carmel Agius

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 17 September 2003

**PROSECUTOR**

**v.**

**MILORAD KRNOJELAC**

---

**JUDGEMENT**

---

**The Office of the Prosecutor:**

Mr Christopher Staker  
Ms Helen Brady  
Mr Anthony Carmona  
Ms Norul Rashid

**Defence Counsel:**

Mr Mihajlo Bakrač  
Mr Miroslav Vasić

present arguments in support of its claim and explain how the error invalidates the decision. An allegation of an error of law which has no chance of resulting in an impugned decision being quashed or revised is not *a priori* legitimate and may therefore be rejected on that ground.

11. As regards errors of fact, the party alleging this type of error in support of an appeal against a conviction must provide evidence both that the error was committed and that this occasioned a miscarriage of justice. The Appeals Chamber has regularly pointed out that it does not lightly overturn findings of fact reached by a Trial Chamber. This approach is explained principally by the fact that only the Trial Chamber is in a position to observe and hear the witnesses testifying and is thus best able to choose between two diverging accounts of the same event. First instance courts are in a better position than the Appeals Chamber to assess witnesses' reliability and credibility and determine the probative value of the evidence presented at trial.

12. Thus, when considering this type of error the Appeals Chamber applies the "reasonable nature" criterion to the impugned finding. Only in cases where it is clear that no reasonable person would have accepted the evidence on which the Trial Chamber based its finding or when the assessment of the evidence is absolutely wrong can the Appeals Chamber intervene and substitute its own finding for that of the Trial Chamber. Thus, the Appeals Chamber will not call the findings of fact into question where there is reliable evidence on which the Trial Chamber might reasonably have based its findings. It is accepted moreover that two reasonable triers of fact might reach different but equally reasonable findings. A party suggesting only a variation of the findings which the Trial Chamber might have reached therefore has little chance of a successful appeal, unless it establishes beyond any reasonable doubt that *no* reasonable trier of fact *could have* reached a guilty finding.

13. When a party succeeds in establishing that an error of fact was committed in accordance with those criteria, the Appeals Chamber still has to accept that the error occasioned a miscarriage of justice such that the impugned finding should be revoked or revised. The party alleging a miscarriage of justice must, in particular, establish that the error strongly influenced the Trial Chamber's decision and resulted in a flagrant injustice, such as where an accused is convicted despite lack of evidence pertaining to an essential element of the crime.

14. In the *Bagilishema* case, the ICTR Appeals Chamber held that the standard of unreasonableness and the same deference to factual findings of the Trial Chamber apply when the Prosecution appeals against an acquittal. The Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the challenged finding. However, since the Prosecution must establish the guilt of the accused at trial, the

UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons Responsible  
for Serious Violations of International  
Humanitarian Law Committed in the  
Territory of the Former Yugoslavia  
Since 1991

Case No.: IT-97-25-T

Date: 15 March 2002

Original: English

IN TRIAL CHAMBER II

Before: Judge David Hunt, Presiding  
Judge Florence Ndepele Mwachande Mumba  
Judge Liu Daqun

Registrar: Mr Hans Holthuis

Judgment of: 15 March 2002

PROSECUTOR

v.

MILORAD KRNOJELAC

JUDGMENT

Counsel for the Prosecutor:

Ms Hildegard Uertz-Retzlaff  
Ms Peggy Kuo  
Mr William Smith

Counsel for the Accused:

Mr Mihajlo Bakrac  
Mr Miroslav Vasi}



intent).<sup>227</sup> In determining the relevant category, the Trial Chamber said, the greater the level of participation, the safer it is to draw an inference that the particular accused shared the intent of the joint criminal enterprise.<sup>228</sup>

77. This Trial Chamber does not hold the same view as Trial Chamber I as to the need to fit the facts of the particular case into specific categories for the purposes of sentencing. There are, for example, circumstances in which a participant in a joint criminal enterprise will deserve greater punishment than the principal offender deserves. The participant who plans a mass destruction of life, and who orders others to carry out that plan, could well receive a greater sentence than the many functionaries who between them carry out the actual killing. Categorising offenders may be of some assistance, but the particular category selected cannot affect the maximum sentence which may be imposed and it does not compel the length of sentences which will be appropriate in the particular case. This Trial Chamber, moreover, does not, with respect, accept the validity of the distinction which Trial Chamber I has sought to draw between a co-perpetrator and an accomplice.<sup>229</sup> This Trial Chamber prefers to follow the opinion of the Appeals Chamber in *Tadic*, that the liability of the participant in a joint criminal enterprise who was not the principal offender is that of an accomplice.<sup>230</sup> For convenience, however, the Trial Chamber will adopt the expression "co-perpetrator" (as meaning a type of accomplice) when referring to a participant in a joint criminal enterprise who was not the principal offender.

#### 1. Joint criminal enterprise

78. The *Tadic* Appeal Judgment identified three categories of criminal liability pursuant to a joint criminal enterprise. The first category is where all the participants in the joint criminal enterprise share the same criminal intent. The second category is similar but relates to the concentration camp cases. Neither the existence of this second category nor

<sup>227</sup> *Prosecutor v Kvočka and Others*, IT-98-30/1-T, Judgment, 2 Nov 2001 ("Kvočka Trial Judgment"), pars 249, 284.

<sup>228</sup> *Kvočka Trial Judgment*, pars 287-289.

<sup>229</sup> The jurisprudence of the post-World War II cases surveyed by Trial Chamber I in *Kvočka* drew no distinction between the categories of co-perpetrator and aider and abettor in determining the criminal responsibility of the accused, as Trial Chamber I conceded: *Kvočka and Others Trial Judgment*, par 282, see also fn 488.

<sup>230</sup> An accomplice to a joint criminal enterprise refers to a person who shares the intent of that enterprise and carries out acts to facilitate the commission of the agreed crime: *Furundžija Trial Judgment*, pars 245, 249;

UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-98-33-T  
Date: 02 August 2001  
Original: English

IN THE TRIAL CHAMBER

Before: Judge Almiro Rodrigues, Presiding  
Judge Fouad Riad  
Judge Patricia Wald

Registrar: Mr. Hans Holthuis

PROSECUTOR

v.

RADISLAV KRSTIC

---

JUDGEMENT

---

The Office of the Prosecutor:

Mr. Mark Harmon  
Mr. Peter McCloskey  
Mr. Andrew Cayley  
Ms. Magda Karagiannakis

Counsel for the Accused:

Mr. Nenad Petrušić  
Mr. Tomislav Višnjić

## I. INTRODUCTION

1. The events surrounding the Bosnian Serb take-over of the United Nations ("UN") "safe area" of Srebrenica in Bosnia and Herzegovina, in July 1995, have become well known to the world.<sup>1</sup> Despite a UN Security Council resolution declaring that the enclave was to be "free from armed attack or any other hostile act", units of the Bosnian Serb Army ("VRS") launched an attack and captured the town. Within a few days, approximately 25,000 Bosnian Muslims,<sup>2</sup> most of them women, children and elderly people who were living in the area, were uprooted and, in an atmosphere of terror, loaded onto overcrowded buses by the Bosnian Serb forces and transported across the confrontation lines into Bosnian Muslim-held territory. The military-aged<sup>3</sup> Bosnian Muslim men of Srebrenica, however, were consigned to a separate fate. As thousands of them attempted to flee the area, they were taken prisoner, detained in brutal conditions and then executed. More than 7,000 people were never seen again.

2. The events of the nine days from July 10-19 1995 in Srebrenica defy description in their horror and their implications for humankind's capacity to revert to acts of brutality under the stresses of conflict. In little over one week, thousands of lives were extinguished, irreparably rent or simply wiped from the pages of history. The Trial Chamber leaves it to historians and social psychologist to plumb the depths of this episode of the Balkan conflict and to probe for deep-seated causes. The task at hand is a more modest one: to find, from the evidence presented during the trial, what happened during that period of about nine days and, ultimately, whether the defendant in this case, General Krstic, was criminally responsible, under the tenets of international law, for his participation in them. The Trial Chamber cannot permit itself the indulgence of expressing how it feels about what happened in Srebrenica, or even how individuals as well as national and international groups not the subject of this case contributed to the tragedy. This defendant, like all others, deserves individualised consideration and can be convicted only if the evidence presented in court shows, beyond a reasonable doubt, that he is guilty of acts that constitute crimes covered by the Statute of the Tribunal ("Statute"). Thus, the Trial Chamber concentrates on setting forth, in detail, the facts surrounding this compacted nine days of hell and avoids expressing rhetorical

<sup>1</sup> See e.g., Prosecution exhibit (hereafter "P") 30, Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The fall of Srebrenica, UN Doc. A/54/549, 15 November 1999 (hereafter "Secretary-General's Report").

<sup>2</sup> See Mr. Nesib Mandzi}, Transcript at page (hereafter "T.") 963 (testifying that some 25,000 Bosnian Muslim refugees had gathered in Poto-ari); P 404/88 (Report of Karremans dated 12 July 1995 stating that, as of that date, 17,500 people had gathered in and around Poto-ari); P 77/26 (UNMO fax dated 13 July 1995 reporting that 10,000 refugees had been already transported with a further 20,000-25,000 to follow).

<sup>3</sup> Throughout this Judgement, the term "military aged" is used to describe the group of men who were captured and executed following the take-over of Srebrenica. It is a misnomer to the extent that some boys who were several years younger and some men who were several years older than would generally be considered "military aged" were included

indignation that these events should ever have occurred at all. In the end, no words of comment can lay bare the saga of Srebrenica more graphically than a plain narrative of the events themselves, or expose more poignantly the waste of war and ethnic hatreds and the long road that must still be travelled to ease their bitter legacy.

3. In July 1995, at the time the atrocities occurred, General Krstic was first the Chief of Staff and, subsequently, the Commander of the Drina Corps, a formation of the Bosnian Serb Army (hereafter "VRS"). All of the crimes committed following the take-over of Srebrenica were committed in the zone of responsibility of the Drina Corps. The Prosecution has charged General Krstic with genocide (or alternatively, complicity to commit genocide). General Krstic is further charged with crimes against humanity, including extermination, murder, persecution and deportation (or alternatively, inhumane acts (forcible transfer)) and murder, as a violation of the laws or customs of war. The Indictment charges General Krstic with responsibility for these acts, as a result of his individual participation (pursuant to Article 7 (1) of the Statute). The Prosecution also seeks to attribute criminal responsibility to General Krstic for these acts, pursuant to the doctrine of command responsibility (under Article 7(3) of the Statute) because, allegedly, troops under his command were involved in the commission of the crimes.

4. The Trial Chamber draws upon a mosaic of evidence that combines to paint a picture of what happened during those few days in July 1995. In all, the Trial Chamber heard more than 110 witnesses over 98 days of trial and viewed in the vicinity of 1,000 exhibits. A large number of former residents of Srebrenica who survived the events came to The Hague to testify. The Trial Chamber considers that the essence of their testimony was highly credible. The accounts given by the survivors of the execution sites are corroborated by forensic evidence (such as shell casings and explosive and tissue residues) at some of the execution sites, expert analysis of the contents of mass graves and aerial reconnaissance photographs taken in 1995. The Trial Chamber has also considered the testimony of UN military personnel who were in Srebrenica, records of VRS radio communications that were intercepted by the Army of Bosnia Herzegovina ("ABiH") in July and August 1995, records seized from the ABiH, records seized from the VRS, the analysis of military experts called by both the Prosecution and the Defence and the testimony of General Krstic himself, as well as other witnesses who testified for the Defence. In addition, the Trial Chamber called two witnesses of its own accord, both of whom formerly held senior positions in the ABiH and were closely monitoring the unfolding events in Srebrenica in July 1995.

---

within this group. Consequently, the term should be understood in its broadest, non-technical sense as including the men and boys who were broadly defined by the Bosnian Serb authorities as being within the vicinity of military age.

document is a useful key to the *opinio juris* of the States. Finally, the Trial Chamber also looked for guidance in the legislation and practice of States, especially their judicial interpretations and decisions.

542. Article 4 of the Statute characterises genocide by two constitutive elements:

- the *actus reus* of the offence, which consists of one or several of the acts enumerated under Article 4(2);
- the *mens rea* of the offence, which is described as the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

#### 1. Actus reus

543. The Trial Chamber has discussed above the murders and serious bodily and mental harm alleged by the Prosecution and has concluded they have been proved. It has been established beyond all reasonable doubt that Bosnian Muslim men residing in the enclave were murdered, in mass executions or individually. It has also been established that serious bodily or mental harm was done to the few individuals who survived the mass executions.

#### 2. Mens rea

544. The critical determination still to be made is whether the offences were committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

545. The Prosecution contends that the Bosnian Serb forces planned and intended to kill all the Bosnian Muslim men of military age at Srebrenica and that these large scale murders constitute genocide.<sup>1199</sup> The Defence does not challenge that the Bosnian Serb forces killed a significant number of Bosnian Muslim men of military age but disagrees a genocidal intent within the meaning of Article 4 has been proved.

546. The Trial Chamber is ultimately satisfied that murders and infliction of serious bodily or mental harm were committed with the intent to kill all the Bosnian Muslim men of military age at Srebrenica. The evidence shows that the mass executions mainly took place between 13 and 16 July, while executions of smaller scale continued until 19 July. All of the executions systematically targeted Bosnian Muslim men of military age, regardless of whether they were civilians or soldiers.

---

<sup>1198</sup> PCNICC/2000/INF/3/Add. 2, 6 July 2000.

<sup>1199</sup> Prosecution Opening Statement, T. 461.

The military aged men who fled to Poto-ari were systematically separated from the other refugees. They were gathered in the "White House" and were forced to leave their identification papers and personal belongings outside the house. While opportunistic killings occurred in Poto-ari on 12 and 13 July,<sup>1200</sup> most of the men detained in the White house were bussed to Bratunac, from the afternoon of 12 July throughout 13 July,<sup>1201</sup> and were subsequently led to execution sites. Additionally, the VRS launched an artillery attack against the column of Bosnian Muslim men marching toward Tuzla soon after it became aware of its existence.<sup>1202</sup> A relentless search for the men forming the column started on 12 July and continued throughout 13 July. The few survivors qualified the search as a "man hunt" that left hardly any chance of escape.<sup>1203</sup> Attack resumed on 14 and 15 July against the third of the column that had managed to cross the asphalt road between Konjevic Polje and Nova Kasaba on 11-12 July.<sup>1204</sup> As the pressures on the VRS mounted during the fatal week of 11-16 July, negotiations were undertaken between the Bosnian Muslim and Bosnian Serb sides and a portion of the Bosnian Muslim column was eventually let through to government-held territory.<sup>1205</sup> The most logical reason for this was that most of the VRS troops had been relocated to @epa by this time and, due to lack of manpower to stop the column, the Zvornik brigade was forced to let them go.<sup>1206</sup> Overall, however, as many as 8,000 to 10,000 men from the Muslim column of 10,000 to 15,000 men were eventually reported as missing.<sup>1207</sup>

547. The VRS may have initially considered only targeting the military men for execution.<sup>1208</sup> Some men from the column were in fact killed in combat and it is not certain that the VRS intended at first to kill all the captured Muslim men, including the civilians in the column.<sup>1209</sup> Evidence shows, however, that a decision was taken, at some point, to capture and kill all the Bosnian Muslim men indiscriminately. No effort thereafter was made to distinguish the soldiers from the civilians. Identification papers and personal belongings were taken away from both Bosnian Muslim men at Poto-ari and from men captured from the column; their papers and belongings were piled up and eventually burnt.<sup>1210</sup> The strength of the desire to capture all the Bosnian Muslim men was so great that Bosnian Serb forces systematically stopped the buses transporting the women,

<sup>1200</sup> Supra, paras. 43-47, 58.

<sup>1201</sup> Supra, para. 59, 66.

<sup>1202</sup> An intercept submitted into evidence indicates that the Bosnian Serbs were aware of the column as of 12 July at 0300 hours. Supra, para. 162.

<sup>1203</sup> Supra, para. 62.

<sup>1204</sup> Supra, para. 65.

<sup>1205</sup> Supra, para. 65.

<sup>1206</sup> Supra, para. 85.

<sup>1207</sup> Supra, para. 83.

<sup>1208</sup> A list of criminals of war was drawn upon @ivanovi}'s order dated 13 July; an intercepted conversation between Cerovi} and Beara on 16 July (P335) also indicates that the prisoners should be screened.

<sup>1209</sup> Supra, paras. 77, 80.

<sup>1210</sup> Supra, para. 171.

## H. Criminal Responsibility of General Krsti}

### 1. Introduction

600. The Prosecution alleges that General Krsti} is criminally responsible for his participation in the crimes charged in the indictment, pursuant to Article 7(1) of the Statute,<sup>1339</sup> which states that:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

601. The Trial Chambers of the ICTY and the ICTR and the Appeals Chamber of the ICTY have identified the elements of the various heads of individual criminal responsibility in Article 7(1) of the Statute.<sup>1340</sup> The essential findings in the jurisprudence may be briefly summarised as follows:

- "Planning" means that one or more persons design the commission of a crime at both the preparatory and execution phases;<sup>1341</sup>
- "Instigating" means prompting another to commit an offence;<sup>1342</sup>
- "Ordering" entails a person in a position of authority using that position to convince another to commit an offence;<sup>1343</sup>
- "Committing" covers physically perpetrating a crime or engendering a culpable omission in violation of criminal law;<sup>1344</sup>
- "Aiding and abetting" means rendering a substantial contribution to the commission of a crime;<sup>1345</sup> and
- "Joint criminal enterprise" liability is a form of criminal responsibility which the Appeals Chamber found to be implicitly included in Article 7(1) of the Statute. It entails individual responsibility for participation in a joint criminal enterprise to commit a crime;<sup>1346</sup>

<sup>1339</sup> Para. 18 of the Indictment. In its Final Trial Brief (para. 27), the Prosecution makes reference to each head - except "committing" - mentioned in Article 7(1) as well as the "common purpose doctrine" (discussed below) as a basis for General Krsti}'s guilt.

<sup>1340</sup> Cf. Article 6(1) of the Statute of the ICTR. In its Final Trial Brief (para. 3), the Prosecution incorporates by reference its submissions on Article 7 in its Pre-Trial Brief (paras 13-86). Likewise, the Defence's submissions on Article 7 in its Pre-Trial Brief (paras 13-29) are incorporated in its Final Trial Brief (para. 2).

<sup>1341</sup> Akayesu Judgement, para. 480; Blaškić Judgement, para. 279; Kordić and Cerkez Judgement, para. 386.

<sup>1342</sup> Akayesu Judgement, para. 482; Blaškić Judgement, para. 280; Kordić and Cerkez Judgement, para. 387.

<sup>1343</sup> Akayesu Judgement, para. 483; Blaškić Judgement, para. 281; Kordić and Cerkez Judgement, para. 388.

<sup>1344</sup> Tadić Appeal Judgement, para. 188; Kunarac et al. Judgement, para. 390.

<sup>1345</sup> Aleksovski Appeal Judgement, paras. 162-164.

military professional, General Krsti} was well aware of the extent of his obligations laid out in the military codes of the former JNA and then of the VRS. He was congratulated for the manner in which he launched the military attack on Srebrenica. On 2 December 1998, when he was arrested by SFOR, he was in command of the VRS 5th Corps in Sokolac. Since that date, he has been detained in the UN Detention Unit in Scheveningen at The Hague in the Netherlands.

719. The Trial Chamber found that General Krsti} participated in two criminal plans, initially to ethnically cleanse the Srebrenica enclave of all Muslim civilians and later to kill the military aged men of Srebrenica. For his participation in these crimes, General Krsti} has been found guilty of murder (under Article 3), persecutions (under Article 5) and genocide (under Article 4). The commission of those crimes would have justified the harshest of sentences in the former Yugoslavia.

720. The extreme gravity of the crimes committed by General Krsti} is established by their scale and organisation and the speed with which they were perpetrated in a ten day period. The Trial Chamber has already described in detail how all Bosnian Muslims in Srebrenica were uprooted, how up to 25,000 Bosnian Muslim women, children and elderly persons were expelled toward Bosnian Muslim controlled territory and how 7,000 to 8,000 Bosnian Muslim men and boys were executed in the most cruel manner. The Trial Chamber notes the physical and psychological suffering inflicted on the victims and the obvious psychological suffering of the survivors. The survivors lost their male family members; three generations of Muslim men from the Srebrenica area disappeared in a single week. To date, most of the women and children survivors have not been able to return to their homes and many suffer what is now known as the "Srebrenica Syndrome": an inability to get on with their lives because of the lack of definite news on the fate of their lost sons, husbands and fathers.<sup>1517</sup>

---

<sup>1516</sup> ^elebi}i Judgement, para. 1270.

<sup>1517</sup> Supra, paras. 90-94. See also Witness I, T. 2420-22: "And 8.000 Srebrenica inhabitants are missing, and we must all know that. We must all know that there must have been children, poor people, between 16.000 and 20.000, and one needs to feed them all, to bring them up. There are so many fathers without sons and sons without fathers. I had two sons, and I don't have them any more. Why is that? And I lived and I worked in my own home, nobody else's, and that was -- that same held true for my father and my grandfather, but what they seized, what they took away, what they grabbed. I had two houses. One they burnt down. It could burn. They burnt it down, but the other one they couldn't burn, so they came and put a mine to it because the house was new and I hadn't finished it yet. The roof was still missing, but it was all made of concrete and bricks, so it wouldn't burn. And I thought. Well, it will survive at least. But no, they came and planted mines, and it just went down; nothing but bust. But, right. Never mind that. I had it, so it's gone. They took it. They seized it. But why did they have to kill my sons? "And I stand today as dried as that tree in the forest. I could have lived with my sons and with my own land, and now I don't have either. And how am I supposed to live today? I don't have a pension or anything. Before that, I relied on my sons. They wouldn't have left me. They wouldn't have let me go hungry. And today, without my sons, without land, I'm slowly starving."



UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No.: IT-96-23&  
IT-96-23/1-A  
Date: 12 June 2002  
Original: French

IN THE APPEALS CHAMBER

Before: Judge Claude Jorda, Presiding  
Judge Mohamed Shahabuddeen  
Judge Wolfgang Schomburg  
Judge Mehmet Güney  
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Judgement of: 12 June 2002

PROSECUTOR  
V  
DRAGOLJUB KUNARAC  
RADOMIR KOVAC  
AND  
ZORAN VUKOVIC

JUDGEMENT

Counsel for the Prosecutor:

Mr. Anthony Carmona  
Ms. Norul Rashid  
Ms. Susan Lamb  
Ms. Helen Brady

Counsel for the Accused:

Mr. Slaviša Prodanovic and Mr. Dejan Savatic for the accused Dragoljub Kunarac  
Mr. Momir Kolesar and Mr. Vladimir Rajic for the accused Radomir Kovac  
Mr. Goran Jovanovic and Ms. Jelena Lopovic for the accused Zoran Vukovic

## II. STANDARD OF REVIEW

35. Article 25 of the Statute sets out the circumstances in which a party may appeal from a decision of the Trial Chamber. The party invoking a specific ground of appeal must identify an alleged error within the scope of this provision, which states:

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

- (a) an error on a question of law invalidating the decision; or
- (b) an error of fact which has occasioned a miscarriage of justice [...]

36. The overall standard of review was summarised as follows by the Appeals Chamber in the Kupre{ki} Appeal Judgement:<sup>10</sup>

As has been held by the Appeals Chamber on numerous occasions, an appeal is not an opportunity for the parties to reargue their cases. It does not involve a trial *de novo*. On appeal, parties must limit their arguments to matters that fall within the scope of Article 25 of the Statute. The general rule is that the Appeals Chamber will not entertain arguments that do not allege legal errors invalidating the judgement, or factual errors occasioning a miscarriage of justice, apart from the exceptional situation where a party has raised a legal issue that is of general significance to the Tribunal's jurisprudence. Only in such a rare case may the Appeals Chamber consider it appropriate to make an exception to the general rule.

37. The Statute and settled jurisprudence of the Tribunal provide different standards of review with respect to errors of law and errors of fact.

38. Where a party contends that a Trial Chamber has made an error of law, the Appeals Chamber, as the final arbiter of the law of the Tribunal, must determine whether such an error of substantive or procedural law was in fact made. However, the Appeals Chamber is empowered only to reverse or revise a Trial Chamber's decision when there is an error of law "invalidating the decision". Therefore, not every error of law leads to a reversal or revision of a decision of a Trial Chamber.

39. Similarly, only errors of fact which have "occasioned a miscarriage of justice" will result in the Appeals Chamber overturning the Trial Chamber's decision.<sup>11</sup> The appealing party alleging an error of fact must, therefore, demonstrate precisely not only the alleged error of fact but also that the

<sup>10</sup> Kupre{ki} Appeal Judgement, para 22 (footnotes omitted).

<sup>11</sup> Ibid., para 29.

error caused a miscarriage of justice,<sup>12</sup> which has been defined as “a grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential element of the crime.”<sup>13</sup> The responsibility for the findings of facts and the evaluation of evidence resides primarily with the Trial Chamber. As the Appeals Chamber in the Kupre{ki} Appeal Judgement held:<sup>14</sup>

Pursuant to the jurisprudence of the Tribunal, the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is “wholly erroneous” may the Appeals Chamber substitute its own finding for that of the Trial Chamber. It must be borne in mind that two judges, both acting reasonably, can come to different conclusions on the basis of the same evidence.

40. In the Kupre{ki} Appeal Judgement it was further held that:<sup>15</sup>

The reason that the Appeals Chamber will not lightly disturb findings of fact by a Trial Chamber is well known. The Trial Chamber has the advantage of observing witnesses in person and so is better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence. Accordingly, it is primarily for the Trial Chamber to determine whether a witness is credible and to decide which witness’ testimony to prefer, without necessarily articulating every step of the reasoning in reaching a decision on these points.

41. Pursuant to Article 23(2) of the Statute, the Trial Chamber has an obligation to set out a reasoned opinion. In the Furund`ija Appeal Judgement, the Appeals Chamber held that Article 23 of the Statute gives the right of an accused to a reasoned opinion as one of the elements of the fair trial requirement embodied in Articles 20 and 21 of the Statute. This element, *inter alia*, enables a useful exercise of the right of appeal available to the person convicted.<sup>16</sup> Additionally, only a reasoned opinion allows the Appeals Chamber to understand and review the findings of the Trial Chamber as well as its evaluation of evidence.

42. The rationale of a judgement of the Appeals Chamber must be clearly explained. There is a significant difference from the standard of reasoning before a Trial Chamber. Article 25 of the Statute does not require the Appeals Chamber to provide a reasoned opinion such as that required of the Trial Chamber. Only Rule 117(B) of the Rules calls for a “reasoned opinion in writing.” The purpose of a reasoned opinion under Rule 117(B) of the Rules is not to provide access to all the

<sup>12</sup> Ibid.

<sup>13</sup> Furund`ija Appeal Judgement, para 37, quoting Black’s Law Dictionary (7<sup>th</sup> ed., St. Paul, Minn. 1999). See additionally the 6<sup>th</sup> edition of 1990.

<sup>14</sup> Kupre{ki} Appeal Judgement, para 30.

<sup>15</sup> Ibid., para 32.

<sup>16</sup> See *Hadjianastassiou v Greece*, European Court of Human Rights, no. 69/1991/321/393, [1992] ECHR 12945/87, Judgement of 16 December 1992, para 33.

## VI. CUMULATIVE CHARGING

167. The Appellants argue that they were inappropriately cumulatively charged. The Appeals Chamber has consistently rejected this argument and it is not necessary to rehearse this settled jurisprudence here.<sup>225</sup> These grounds of appeal are, hereby, rejected.

## VII. CUMULATIVE CONVICTIONS

### A. General Principles

168. The Appeals Chamber accepts the approach articulated in the Celebici Appeal Judgement, an approach heavily indebted to the Blockburger decision of the Supreme Court of the United States.<sup>226</sup> The Appeals Chamber held that:<sup>227</sup>

fairness to the accused and the consideration that only distinct crimes justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.

Where this test is not met, the Chamber must decide on the basis of the principle that the conviction under the more specific provision should be upheld.

169. Care, however, is needed in applying the Celebici test for, as Judges Hunt and Bennouna observed in their separate and dissenting opinion in the same case, cumulative convictions create "a very real risk of ... prejudice" to the accused.<sup>228</sup> At the very least, such persons suffer the stigma inherent in being convicted of an additional crime for the same conduct. In a more tangible sense, there may be such consequences as losing eligibility for early release under the law of the state enforcing the sentence.<sup>229</sup> Nor is such prejudice cured, as the U.S. Supreme Court warned in

---

<sup>223</sup> Ibid., para 512.

<sup>224</sup> Ibid.

<sup>225</sup> ^elebi}i Appeal Judgement, para 400.

<sup>226</sup> Blockburger v United States, 284 U.S. 299, 304 (1931) ("The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not.").

<sup>227</sup> ^elebi}i Appeal Judgement, paras 412-13. Hereinafter referred to as the ^elebici test.

<sup>228</sup> Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, ^elebici Appeal Judgement, para 23.

<sup>229</sup> Ibid.

Rutledge v U.S.,<sup>230</sup> by the fact that the second conviction's concomitant sentence is served concurrently.<sup>231</sup> On the other hand, multiple convictions serve to describe the full culpability of a particular accused or provide a complete picture of his criminal conduct.<sup>232</sup>

170. Typically, the issue of multiple convictions or cumulative convictions arises in legal systems with a hierarchy of offences in which the more serious offences within a category require proof of an additional element or even require a specific *mens rea*. It is, however, an established principle of both the civil and common law that punishment should not be imposed for both a greater offence and a lesser included offence. Instead, the more serious crime subsumes the less serious (*lex consumens derogat legi consumptae*). The rationale here, of course, is that the greater and the lesser included offence constitute the same core offence, without sufficient distinction between them, even when the same act or transaction violates two distinct statutory provisions.<sup>233</sup> Indeed, it is not possible to commit the more serious offence without also committing the lesser included offence.<sup>234</sup>

171. In national laws, this principle is easier to apply because the relative gravity of a crime can normally be ascertained by the penalty imposed by the law. The Statute, however, does not provide a scale of penalties for the various crimes it proscribes. Nor does the Statute give other indications as to the relative gravity of the crimes. Indeed, the Tribunal has explicitly rejected a hierarchy of crimes, concluding instead that crimes against humanity are not inherently graver than war crimes.<sup>235</sup>

172. The Blockburger test serves to identify distinct offences within this constellation of statutory provisions.<sup>236</sup> While subscribing to this test, the Appeals Chamber is aware that it is

<sup>230</sup> Rutledge v United States, 517 U.S. 292, 116 S. Ct. 1241, 1248 (1996).

<sup>231</sup> Ibid., citing Ball v United States, 470 U.S. 856, 865 (1985).

<sup>232</sup> See, e.g., Partial Dissenting Opinion of Judge Shahabuddeen, Jelisić Appeal Judgement, para 34: "To record the full criminality of his conduct, it may be necessary to convict of all the crimes, overlapping in convictions being adjusted through penalty".

<sup>233</sup> See supra n 226.

<sup>234</sup> Black's Law Dictionary, s.v. lesser included offense: "One which is composed of some, but not all elements of a greater offense and which does not have any element not included in greater offense so that it is impossible to commit greater offense without necessarily committing the lesser offense." (6<sup>th</sup> ed., St. Paul, Minn. 1990)

<sup>235</sup> Tadić Sentencing Appeal Judgement, para 69: "After full consideration, the Appeals Chamber takes the view that there is in law no distinction between the seriousness of a crime against humanity and that of a war crime. The Appeals Chamber finds no basis for such a distinction in the Statute or the Rules of the International Tribunal construed in accordance with customary international law; the authorized penalties are also the same, the level in any particular case being fixed by reference to the circumstances of the case".

<sup>236</sup> With regard to Articles 3 and 5 of the Statute, the Appeals Chamber held in the Jelisić Appeal Judgement that, as each has an element of proof of fact not required by the other, neither was a lesser included offence of the other (para 82).

UNITED  
NATIONS

International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No.: IT-95-16-A  
Date: 23 October 2001  
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patricia Wald, Presiding  
Judge Lal Chand Vohrah  
Judge Rafael Nieto-Navia  
Judge Fausto Pocar  
Judge Liu Daqun

Registrar: Mr. Hans Holthuis

Judgement of: 23 October 2001

## PROSECUTOR

v

ZORAN KUPRE[KI]  
MIRJAN KUPRE[KI]  
VLATKO KUPRE[KI]  
DRAGO JOSIPOVI  
VLADIMIR ŠANTIC

APPEAL JUDGEMENTThe Office of the Prosecutor:

Mr. Upawansa Yapa  
Mr. Anthony Carmona  
Mr. Fabricio Guariglia  
Ms. Sonja Boelaert-Suominen  
Ms. Norul Rashid

Counsel for the Defendants:

Mr. Ranko Radovi}, Mr. Tomislav Pasari} for Zoran Kupre{ki}  
Ms. Jadranka Slokovi}-Glumac, Ms. Desanka Vranjican for Mirjan Kupre{ki}  
Mr. Anthony Abell, Mr. John Livingston for Vlatko Kupre{ki}  
Mr. William Clegg Q.C., Ms. Valerie Charbit for Drago Josipovi}  
Mr. Petar Pavkovi} for Vladimir [anti}

## B. Reconsideration of factual findings made by the Trial Chamber

### 1. General principles

28. Under this heading, the Appeals Chamber will discuss the standard that applies with respect to the reconsideration of factual findings by the Trial Chamber. The vast majority of the grounds of appeal raised by the Defendants in this case concerns alleged errors of fact. Several of the parties to the present appeal have also raised questions of a more general nature relating to the Appeals Chamber's review of errors of fact under Article 25(1)(b) of the Statute.<sup>36</sup> In light thereof, the Appeals Chamber considers it appropriate to elaborate upon this matter.

29. In order for the Appeals Chamber to overturn a factual finding by the Trial Chamber, an appellant must demonstrate that the Trial Chamber committed a factual error and the error resulted in a miscarriage of justice.<sup>37</sup> The appellant must establish that the error of fact was critical to the verdict reached by the Trial Chamber, thereby resulting in a "grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential element of the crime."<sup>38</sup> Consequently, it is not each and every error of fact that will cause the Appeals Chamber to overturn a decision of the Trial Chamber, but only one that has occasioned a miscarriage of justice.<sup>39</sup>

30. Pursuant to the jurisprudence of the Tribunal, the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is "wholly erroneous" may the Appeals Chamber substitute its own finding for that of the Trial Chamber. It must be borne in mind that two judges, both acting reasonably, can come to different conclusions on the basis of the same evidence.<sup>40</sup>

31. As stated above, it is initially the Trial Chamber's task to assess and weigh the evidence presented at trial. In that exercise, it has the discretion to "admit any relevant evidence which it

<sup>36</sup> See, e.g., Josipovi} Appeal Brief, 8 and 20; Zoran Kupre{ki} Appeal Brief, para. 42 (questioning the probative value of a single identification witness); Zoran Kupre{ki} Appeal Brief, para. 83 (questioning acceptability of evidence in light of factors such as the passage of time between the events and the testimony, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place); Zoran Kupre{ki} Appeal Brief, para. 12 (arguing that the Trial Chamber is obliged to refer to all pieces of evidence relied upon or to refer to all pieces of possibly contradictory evidence); Zoran Kupre{ki} Appeal Brief, paras 23 and 50 (questioning reasoning as to why the evidence of one witness is preferred but not the evidence of another).

<sup>37</sup> Furundzija Appeal Judgement, para. 37 (citing Serushago Sentencing Appeal Judgement, para. 22).

<sup>38</sup> Furundzija Appeal Judgement, para. 37 (quoting Black's Law Dictionary (7<sup>th</sup> ed., 1999)).

<sup>39</sup> Furundzija Appeal Judgement, para. 37.

<sup>40</sup> Tadi} Appeal Judgement, para. 64; Aleksovski Appeal Judgement, para. 63; ^elebi}i Appeal Judgement, paras 434 and 491; Tadi} Appeal Judgement, Separate Opinion of Judge Shahabuddeen, para. 30.

at the scene of the crime and thus [could not] draw any inferences as to [their] possible participation in these events.”<sup>146</sup>

87. In order to address the complaint raised by Zoran and Mirjan Kupre{ki}, the Appeals Chamber has to determine (i) whether the Trial Chamber returned convictions on the basis of material facts not pleaded in the Amended Indictment; and (ii) if the Appeals Chamber finds that the Trial Chamber did rely on such facts, whether the trial of Zoran and Mirjan Kupre{ki} was thereby rendered unfair. The first aspect of this determination begins with a discussion of the statutory framework relating to indictments and how this body of law has been interpreted in the jurisprudence of the Tribunal.

1. Were the convictions based on material facts not pleaded in the Amended Indictment?

88. An indictment shall, pursuant to Article 18(4) of the Statute, contain “a concise statement of the facts and the crime or crimes with which the accused is charged”. Similarly, Rule 47(C) of the Rules provides that an indictment, apart from the name and particulars of the suspect, shall set forth “a concise statement of the facts of the case”. The Prosecution’s obligation to set out concisely the facts of its case in the indictment must be interpreted in conjunction with Articles 21(2) and (4)(a) and (b) of the Statute. These provisions state that, in the determination of any charges against him, an accused is entitled to a fair hearing and, more particularly, to be informed of the nature and cause of the charges against him and to have adequate time and facilities for the preparation of his defence. In the jurisprudence of the Tribunal, this translates into an obligation on the part of the Prosecution to state the material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven.<sup>147</sup> Hence, the question whether an indictment is pleaded with sufficient particularity is dependent upon whether it sets out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence.

89. The Appeals Chamber must stress initially that the materiality of a particular fact cannot be decided in the abstract. It is dependent on the nature of the Prosecution case. A decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in the indictment is the nature of the alleged criminal conduct charged to the

---

<sup>145</sup> Trial Judgement, paras 426 and 779.

<sup>146</sup> Trial Judgement, paras 786 and 793. The Trial Chamber also rejected the evidence of Witness C who testified with regard to Zoran and Mirjan Kupre{ki}’s presence as HVO members in the Ahmi{i} village on 16 April 1993, see Trial Judgement, para. 774.

<sup>147</sup> Furund{i}ja Appeal Judgement, para. 147. See also Krnojelac Decision of 24 February 1999, paras 7 and 12; Krnojelac Decision of 11 February 2000, paras 17 and 18; and Br|anin Decision of 20 February 2001, para.18.



accused. For example, in a case where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events and the means by which the acts were committed, have to be pleaded in detail.<sup>148</sup> Obviously, there may be instances where the sheer scale of the alleged crimes "makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes".<sup>149</sup>

90. Such would be the case where the Prosecution alleges that an accused participated, as a member of an execution squad, in the killing of hundreds of men. The nature of such a case would not demand that each and every victim be identified in the indictment.<sup>150</sup> Similarly, an accused may be charged with having participated as a member of a military force in an extensive number of attacks on civilians that took place over a prolonged period of time and resulted in large numbers of killings and forced removals. In such a case the Prosecution need not specify every single victim that has been killed or expelled in order to meet its obligation of specifying the material facts of the case in the indictment. Nevertheless, since the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so.<sup>151</sup>

91. Despite the broad-ranging allegations in the Amended Indictment, the case against Zoran and Mirjan Kupre{ki} was not one that fell within the category where it would have been impracticable for the Prosecution to plead, with specificity, the identity of the victims and the dates for the commission of the crimes. On the contrary, the nature of the Prosecution case at trial was confined mainly to showing that Zoran and Mirjan Kupre{ki} were present as HVO members in Ahmi}i on 16 April 1993 and personally participated in the attack on two different houses resulting, inter alia, in the killing of six people. Clearly, in such circumstances, an argument that the sheer scale of the alleged crimes prevented the Prosecution from setting out the details of the alleged criminal conduct is not persuasive.

92. It is of course possible that an indictment may not plead the material facts with the requisite degree of specificity because the necessary information is not in the Prosecution's possession. However, in such a situation, doubt must arise as to whether it is fair to the accused for the trial to proceed.<sup>152</sup> In this connection, the Appeals Chamber emphasises that the Prosecution is expected to know its case before it goes to trial. It is not acceptable for the Prosecution to omit the material

<sup>148</sup> See generally Krnojelac Decision of 11 February 2000, para. 18; Brđanin Decision of 20 February 2001, para. 22.

<sup>149</sup> Kvo-ka Decision of 12 April 1999, para 17; Brđanin Decision of 26 June 2001, para. 61.

<sup>150</sup> See Prosecutor v Erdemović, Case No.: IT-96-22, Indictment, 22 May 1996, para. 12 (identifying the victims as "hundreds of Bosnian Muslim male civilians").

<sup>151</sup> Kvo-ka Decision of 12 April 1999, para. 23.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-98-30/1-A  
Date: 28 February 2005  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Mohamed Shahabuddeen, Presiding  
Judge Fausto Pocar  
Judge Florence Ndepele Mwachande Mumba  
Judge Mehmet Güney  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr. Hans Holthuis

**PROSECUTOR**

v.

**MIROSLAV KVOČKA  
MLAĐO RADIĆ  
ZORAN ŽIGIĆ  
DRAGOLJUB PRCAĆ**

**JUDGEMENT**

**The Office of the Prosecutor:**

Mr. Anthony Carmona  
Ms. Helen Brady  
Ms. Norul Rashid  
Mr. David Re  
Ms. Kelly Howick

**Counsel for the Accused:**

Mr. Krstan Simić for Miroslav Kvočka  
Mr. Toma Fila for Mlađo Radić  
Mr. Slobodan Stojanović for Zoran Žigić  
Mr. Goran Rodić for Dragoljub Prcać

committed by the accused, as well as from the necessity to provide information, to the extent possible, about the identity of the victims, the perpetrators and the manner in which the crimes were committed.

63. The Trial Chamber made further reference to the Schedules in its Decision on Defence Motions for Acquittal rendered on 15 December 2000. The Trial Chamber seems to have considered clearly that the Accused would be held responsible for certain crimes in the final judgement only if the events described in the Schedules to which the crimes refer could be established by the Prosecution beyond reasonable doubt. The Trial Chamber first recalled that the "Prosecution is required to present evidence not only that incidents or events occurred that constitute violations of the Statute, but also of the exact role each accused played in those incidents or events".<sup>169</sup> It then went on to emphasize "that the Defence will not be expected to call evidence concerning alleged victims about whom no evidence at all has been produced by the Prosecutor".<sup>170</sup> As a result, the Trial Chamber ordered that allegations in respect of nine individuals, whose names were contained in a confidential annex to that decision, be removed, as no evidence in their respect was produced by the Prosecution. The Trial Chamber entered a judgement of acquittal in favour of each accused in respect of those parts of the Indictment which concerned those nine individuals.<sup>171</sup>

64. The Prosecution chose to provide information as to the identity of the victims, the place and approximate date of the alleged offence in the Schedules and not to clutter the Indictment itself.<sup>172</sup> The precise issue before the Appeals Chamber is whether this information contained in the Schedules amounts to material facts that have to be pleaded in the indictment and established beyond reasonable doubt by the Prosecution.

65. It is well established that an indictment is required to plead the material facts upon which the Prosecution relies, but not the evidence by which those material facts are to be proved.<sup>173</sup> The Appeals Chamber has taken the view that whether or not a fact is material depends upon the proximity of the accused person to the events for which that person is alleged to be criminally

<sup>168</sup> See Decision on Prosecution Motion to Join Trials, 14 April 2000; Decision on Prosecution Request for Leave to File a Consolidated Indictment and to Correct Confidential Schedules, 13 October 2000.

<sup>169</sup> Decision on Defence Motions for Acquittal, para. 30.

<sup>170</sup> *Ibid.*, para. 38.

<sup>171</sup> *Ibid.*, paras 46 and 63.

<sup>172</sup> The Indictment reads for example that each accused is alleged to have "instigated, committed or otherwise aided and abetted the persecutions of Bosnian Muslims, Bosnian Croats and other non-Serbs ... through his direct participation in crimes and through his approval, encouragement, acquiescence and assistance in the development and continuation of the conditions in the camp and the on-going commission of crimes as described in paragraph 25 *against the prisoners in the Omarska camp, including those set forth*" in Schedule A through to E for example under count 1 to 3 of the Indictment (emphasis added). Similarly, Radić is alleged to have "participated in the murder of prisoners at the Omarska camp *including those listed*" in Schedule C (emphasis added).

<sup>173</sup> *Furundžija* Appeal Judgement, para. 147; *Kupreškić et al.* Appeal Judgement, para. 88; see also above, para. 27.

responsible.<sup>174</sup> “As the proximity of the accused person to those events becomes more distant, less precision is required in relation to those particular details, and greater emphasis is placed upon the conduct of the accused person himself upon which the Prosecution relies to establish his responsibility as an accessory or a superior to the persons who personally committed the acts giving rise to the charges against him”.<sup>175</sup> In the present case, the Trial Chamber was correct to direct the Prosecution to provide in the Indictment, to the extent possible, information about the identity of the victims, the perpetrators and the manner in which the crimes were committed. An indictment pleaded in very general terms would not have given adequate notice to the accused of the nature of the case they had to meet.<sup>176</sup> The Schedules completed the Indictment by giving further information which was sufficiently specific to give notice to the accused of the nature of the case they had to meet.

66. The Appellant Žigić argues that the use of the Schedules to plead crimes not charged in the Indictment is contrary to the approach of the *Čelebići* Trial Chamber, which was endorsed by the Appeals Chamber, that only those criminal acts specifically enumerated in the Indictment should be considered.<sup>177</sup> The reference to the *Čelebići* Appeal Judgement is misconceived. In that case, the Prosecution based its appeal on the submission that the Trial Chamber had not considered certain facts not set out in the Indictment. The Appeals Chamber found that:

Given the generality with which those other incidents were alleged in the Indictment, the Indictment itself did not impose an obligation on the Trial Chamber to make findings on those incidents. It was incumbent upon the Prosecution, if it did in fact seek findings as to those matters, to identify them clearly to the Trial Chamber and to request it to make findings upon them.<sup>178</sup>

The Appeals Chamber did not state that such facts have to be incorporated in the body of the indictment. It clearly did not prevent the Prosecution from identifying them in the form of annexes or schedules to the indictment.

67. In a recent case, the Appeals Chamber held that “an indictment must necessarily, in the absence of a special order, consist of one document”,<sup>179</sup> that “schedules to an indictment form an integral part of the indictment”, and that they can contain essential material facts omitted from the

<sup>174</sup> *Galić* Decision on Leave to Appeal, para. 15, citing *Prosecutor v. Brdanin & Talić*, Case No. IT-99-36-PT, Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001, para. 18, as well as *Kupreškić et al.* Appeal Judgement, paras 88-90; see also above, para. 28.

<sup>175</sup> *Galić* Decision on Leave to Appeal, para. 15.

<sup>176</sup> *Ibid.*, para. 16.

<sup>177</sup> Žigić Appeal Brief, para. 68.

<sup>178</sup> *Čelebići* Appeal Judgement, para. 765.

<sup>179</sup> *Galić* Decision on Leave to Appeal, para. 14.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-03-66-A  
Date: 27 September 2007  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Andrésia Vaz  
Judge Theodor Meron  
Judge Wolfgang Schomburg

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 27 September 2007

**PROSECUTOR**

v.

**FATMIR LIMAJ  
HARADIN BALAJ  
ISAK MUSLIU**

**PUBLIC**

**JUDGEMENT**

**The Office of the Prosecutor:**

|                    |                    |                        |
|--------------------|--------------------|------------------------|
| Ms. Helen Brady    | Mr. Steffen Wirth  | Ms. Katharina Margetts |
| Ms. Shelagh McCall | Ms. Kristina Carey | Ms. Barbara Goy        |

**Counsel for Fatmir Limaj: Counsel for Haradin Bala: Counsel for Isak Musliu:**

|                            |                         |                           |
|----------------------------|-------------------------|---------------------------|
| Mr. Michael Mansfield Q.C. | Mr. Gregor D. Guy-Smith | Mr. Michael Topolski Q.C. |
| Mr. Karim A.A. Khan        | Mr. Richard Harvey      | Mr. Steven Powles         |

Trial Chamber accordingly.<sup>10</sup> In so doing, the Appeals Chamber not only corrects the legal error, but applies the correct legal standard to the evidence contained in the trial record, where necessary, and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the Defence before that finding is confirmed on appeal.<sup>11</sup> The Appeals Chamber will not review the entire trial record *de novo*. Rather, it will in principle only take into account evidence referred to by the Trial Chamber in the body of the judgement or in a related footnote, evidence contained in the trial record and referred to by the parties, and additional evidence admitted on appeal.<sup>12</sup>

11. In relation to allegations of errors on a question of law, the Appeals Chamber considers that the standards of review are the same for appeals by the Defence and Prosecution. The appealing party, which alleges that the Trial Chamber committed an error on a question of law, must establish that the error invalidates the judgement.<sup>13</sup>

12. When considering alleged errors of fact on appeal from the Defence, the Appeals Chamber will determine whether no reasonable trier of fact could have reached the verdict of guilt beyond reasonable doubt.<sup>14</sup> The Appeals Chamber applies the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.<sup>15</sup> In determining whether or not a Trial Chamber's finding was one that no reasonable trier of fact could have reached, the Appeals Chamber "will not lightly disturb findings of fact by a Trial Chamber".<sup>16</sup> The Appeals Chamber recalls, as a general principle, the approach adopted by the Appeals Chamber in *Kupreškić*, which stated:

<sup>10</sup> *Blagojević and Jokić* Appeal Judgement, para. 8; *Brđanin* Appeal Judgement, para. 10; *Galić* Appeal Judgement, para. 8; *Stakić* Appeal Judgement, para. 9; *Kvočka et al.* Appeal Judgement, para. 17; *Kordić and Čerkez* Appeal Judgement, para. 17; *Blaškić* Appeal Judgement, para. 15.

<sup>11</sup> *Blagojević and Jokić* Appeal Judgement, para. 8; *Brđanin* Appeal Judgement, para. 10; *Galić* Appeal Judgement, para. 8; *Stakić* Appeal Judgement, para. 9; *Kvočka et al.* Appeal Judgement, para. 17; *Kordić and Čerkez* Appeal Judgement, para. 17; *Blaškić* Appeal Judgement, para. 15.

<sup>12</sup> *Brđanin* Appeal Judgement, para. 15; *Galić* Appeal Judgement, para. 8; *Stakić* Appeal Judgement, para. 9; *Blaškić* Appeal Judgement, para. 13; *Kordić and Čerkez* Appeal Judgement, para. 21, fn. 12.

<sup>13</sup> See *Bagilishema* Appeal Judgement, para. 9.

<sup>14</sup> *Blagojević and Jokić* Appeal Judgement, para. 9; *Brđanin* Appeal Judgement, para. 13; *Galić* Appeal Judgement, para. 9; *Stakić* Appeal Judgement, para. 10; *Kvočka et al.* Appeal Judgement, para. 18; *Kordić and Čerkez* Appeal Judgement, para. 18; *Blaškić* Appeal Judgement, para. 16; *Čelebići* Appeal Judgement, para. 435; *Furundžija* Appeal Judgement, para. 37; *Aleksovski* Appeal Judgement, para. 63; *Tadić* Appeal Judgement, para. 64.

<sup>15</sup> *Blagojević and Jokić* Appeal Judgement, para. 226; *Brđanin* Appeal Judgement, para. 13; *Galić* Appeal Judgement, para. 9; *Stakić* Appeal Judgement, para. 220; *Čelebići* Appeal Judgement, para. 458. Similarly, the type of evidence, direct or circumstantial, is irrelevant to the standard of proof at trial, where the accused may only be found guilty of a crime if the Prosecution has proved each element of that crime and the relevant mode of liability beyond a reasonable doubt. See *Stakić* Appeal Judgement, para. 219; *Čelebići* Appeal Judgement, para. 458.

<sup>16</sup> *Blagojević and Jokić* Appeal Judgement, para. 9; *Galić* Appeal Judgement, para. 9; *Stakić* Appeal Judgement, para. 10; *Furundžija* Appeal Judgement, para. 37, referring to *Tadić* Appeal Judgement, para. 64. See also *Kvočka et al.* Appeal Judgement, para. 19; *Krnojelac* Appeal Judgement, para. 11; *Aleksovski* Appeal Judgement, para. 63; *Musema* Appeal Judgement, para. 18.

Pursuant to the jurisprudence of the Tribunal, the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is “wholly erroneous” may the Appeals Chamber substitute its own finding for that of the Trial Chamber.<sup>17</sup>

13. The ICTR Appeals Chamber in *Rutaganda* and *Bagilishema* held that the same standard of reasonableness and the same deference to factual findings of the Trial Chamber apply when the Prosecution appeals against an acquittal. The Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding.<sup>18</sup> Under Article 25(1)(b) of the Statute, the Prosecution, like the accused, must demonstrate “an error of fact that occasioned a miscarriage of justice”. For the error to be one that occasioned a miscarriage of justice, it must have been “critical to the verdict reached”.<sup>19</sup> Considering that it is the Prosecution that bears the burden at trial of proving the guilt of the accused beyond a reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal than for a defence appeal against conviction. An accused must show that the Trial Chamber’s factual errors create a reasonable doubt as to his guilt. The Prosecution must show that, when account is taken of the errors of fact committed by the Trial Chamber, all reasonable doubt of the accused’s guilt has been eliminated.<sup>20</sup>

14. On appeal, a party may not merely repeat arguments that did not succeed at trial, unless the party can demonstrate that the Trial Chamber’s rejection of them constituted such an error as to warrant the intervention of the Appeals Chamber.<sup>21</sup> Arguments of a party which do not have the potential to cause the impugned judgement to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.<sup>22</sup>

15. In order for the Appeals Chamber to assess a party’s arguments on appeal, the appealing party is expected to provide precise references to relevant transcript pages or paragraphs in the Trial

<sup>17</sup> *Blagojević and Jokić* Appeal Judgement, para. 9; *Brđanin* Appeal Judgement, para. 14; *Galić* Appeal Judgement, para. 9; *Stakić* Appeal Judgement, para. 10; *Kvočka et al.* Appeal Judgement, para. 19, quoting *Kupreškić et al.* Appeal Judgement, para. 30. See also *Kordić and Čerkez* Appeal Judgement, para. 19, fn. 11; *Blaškić* Appeal Judgement, paras 17-18.

<sup>18</sup> *Blagojević and Jokić* Appeal Judgement, para. 9.

<sup>19</sup> *Kupreškić* Appeal Judgement, para. 29.

<sup>20</sup> *Rutaganda* Appeal Judgement, para. 24; *Bagilishema* Appeal Judgement, paras 13-14. See also *Blagojević and Jokić* Appeal Judgement, para. 9; *Brđanin* Appeal Judgement, para. 14.

<sup>21</sup> *Blagojević and Jokić* Appeal Judgement, para. 10; *Brđanin* Appeal Judgement, para. 16; *Galić* Appeal Judgement, para. 10; *Stakić* Appeal Judgement, para. 11; *Gacumbitsi* Appeal Judgement, para. 9; *Kajelijeli* Appeal Judgement, para. 6, citing *Niyitegeka* Appeal Judgement, para. 9. See also *Blaškić* Appeal Judgement, para. 13; *Rutaganda* Appeal Judgement, para. 18.

<sup>22</sup> *Blagojević and Jokić* Appeal Judgement, para. 10; *Brđanin* Appeal Judgement, para. 16; *Galić* Appeal Judgement, para. 10; *Stakić* Appeal Judgement, para. 11; *Gacumbitsi* Appeal Judgement, para. 9; *Ntagerura* Appeal Judgement, para. 13; *Kajelijeli* Appeal Judgement, para. 6, citing *Blaškić* Appeal Judgement, para. 13; *Niyitegeka* Appeal Judgement, para. 9; *Rutaganda* Appeal Judgement, para. 18.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-95-11-A  
Date: 8 October 2008  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andrésia Vaz  
Judge Wolfgang Schomburg

**Registrar:** Mr Hans Holthuis

**Judgement of:** 8 October 2008

**PROSECUTOR**

v.

**MILAN MARTIĆ**

---

*PUBLIC*

**JUDGEMENT**

---

**The Office of the Prosecutor:**

Ms Michelle Jarvis  
Mr Paul Rogers  
Ms Laurel Baig  
Ms Kristina Carey  
Ms Nicole Lewis  
Ms Najwa Nabti

**Counsel for Milan Martić:**

Mr Predrag Milovančević  
Mr Nikola Perović



## II. APPELLATE REVIEW

### A. Standard for appellate review

8. On appeal, the parties must limit their arguments to legal errors that invalidate the decision of the Trial Chamber and to factual errors that result in a miscarriage of justice. These criteria are set forth in Article 25 of the Statute and are well established in the jurisprudence of the *ad hoc* Tribunals.<sup>14</sup> In exceptional circumstances, the Appeals Chamber will also hear appeals where a party has raised a legal issue that would not lead to the invalidation of the Trial Judgement but that is nevertheless of general significance to the Tribunal's jurisprudence.<sup>15</sup> Article 25 of the Statute also states that the Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.

9. Any party alleging an error of law must identify the alleged error, present arguments in support of its claim and explain how the error invalidates the decision. An allegation of an error of law which has no chance of changing the outcome of a decision may be rejected on that ground. However, even if the party's arguments are insufficient to support the contention of an error, the Appeals Chamber may still conclude for other reasons that there was an error of law.<sup>16</sup> It is necessary for any appellant claiming an error of law on the basis of the lack of a reasoned opinion to identify the specific issues, factual findings or arguments which an appellant submits the Trial Chamber omitted to address and to explain why this omission invalidated the decision.<sup>17</sup>

10. The Appeals Chamber reviews the Trial Chamber's findings of law to determine whether or not they are correct.<sup>18</sup> Where the Appeals Chamber finds an error of law in the Trial Judgement arising from the application of the wrong legal standard, the Appeals Chamber will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly.<sup>19</sup> In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself

<sup>14</sup> *Strugar* Appeal Judgement, para. 10; *Orić* Appeal Judgement, para. 7; *Hadžihasanović and Kubura* Appeal Judgement, para. 7; *Halilović* Appeal Judgement, para. 6. For jurisprudence under Article 24 of the Statute of the ICTR, see *Ndindabahizi* Appeal Judgement, paras 8-10; *Ntagerura et al.* Appeal Judgement, paras 11-12; *Gacumbitsi* Appeal Judgement, paras 6-9.

<sup>15</sup> *Orić* Appeal Judgement, para. 7; *Hadžihasanović and Kubura* Appeal Judgement, para. 7; *Halilović* Appeal Judgement, para. 6.

<sup>16</sup> *Strugar* Appeal Judgement, para. 11; *Hadžihasanović and Kubura* Appeal Judgement, para. 8; *Brdanin* Appeal Judgement, para. 9; *Kvočka et al.* Appeal Judgement, para. 16. See also *Ntagerura et al.* Appeal Judgement, para. 11; *Semanza* Appeal Judgement, para. 7.

<sup>17</sup> *Strugar* Appeal Judgement, para. 11; *Halilović* Appeal Judgement, para. 7.

<sup>18</sup> *Strugar* Appeal Judgement, para. 12; *Orić* Appeal Judgement, para. 9; *Hadžihasanović and Kubura* Appeal Judgement, para. 9; *Halilović* Appeal Judgement, para. 8.

<sup>19</sup> *Strugar* Appeal Judgement, para. 12; *Orić* Appeal Judgement, para. 9; *Hadžihasanović and Kubura* Appeal Judgement, para. 9; *Halilović* Appeal Judgement, para. 8.

convinced beyond a reasonable doubt as to the factual finding challenged by an appellant before the finding is confirmed on appeal.<sup>20</sup>

11. When considering alleged errors of fact, the Appeals Chamber will determine whether no reasonable trier of fact could have reached the verdict of guilt beyond reasonable doubt.<sup>21</sup> The Appeals Chamber bears in mind that, in determining whether or not a Trial Chamber's finding was reasonable, it "will not lightly disturb findings of fact by a Trial Chamber."<sup>22</sup> The Appeals Chamber applies the same standard of reasonableness to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.<sup>23</sup> Furthermore, the Appeals Chamber recalls, as a general principle, the approach adopted in *Kupreškić et al.*, wherein it was stated that:

Pursuant to the jurisprudence of the Tribunal, the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is "wholly erroneous" may the Appeals Chamber substitute its own finding for that of the Trial Chamber.<sup>24</sup>

Only an error of fact which has occasioned a miscarriage of justice will cause the Appeals Chamber to overturn a decision by the Trial Chamber.<sup>25</sup>

12. The same standard of reasonableness and the same deference to factual findings applies when the Prosecution appeals against an acquittal. Thus, when considering an appeal by the Prosecution, the Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding.<sup>26</sup> Under Article 25(1)(b) of the Statute, the Prosecution, like the accused, must demonstrate "an error of fact that occasioned a miscarriage of justice." Considering that it is the Prosecution that bears the burden at trial of proving the guilt of an accused beyond a reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against

<sup>20</sup> *Strugar* Appeal Judgement, para. 12; *Orić* Appeal Judgement, para. 9; *Hadžihasanović and Kubura* Appeal Judgement, para. 9; *Halilović* Appeal Judgement, para. 8; see also *Ntagerura et al.* Appeal Judgement, para. 136.

<sup>21</sup> *Strugar* Appeal Judgement, para. 13; *Hadžihasanović and Kubura* Appeal Judgement, para. 10; *Halilović* Appeal Judgement, para. 9; *Stakić* Appeal Judgement, para. 10.

<sup>22</sup> *Strugar* Appeal Judgement, para. 13; *Hadžihasanović and Kubura* Appeal Judgement, para. 11; *Blagojević and Jokić* Appeal Judgement, para. 9; *Limaj et al.* Appeal Judgement, para. 12; *Bagilishema* Appeal Judgement, para. 11; *Musema* Appeal Judgement, para. 18.

<sup>23</sup> *Strugar* Appeal Judgement, para. 13; *Hadžihasanović and Kubura* Appeal Judgement, para. 10; *Limaj et al.* Appeal Judgement, para. 12; *Blagojević and Jokić* Appeal Judgement, para. 226; *Brdanin* Appeal Judgement, para. 13. Similarly, the type of evidence, direct or circumstantial, is irrelevant to the standard of proof at trial, where the accused may only be found guilty of a crime if the Prosecution has proved each element of that crime and the relevant mode of liability beyond a reasonable doubt. See *Stakić* Appeal Judgement, para. 219; *Čelebići* Appeal Judgement, para. 458.

<sup>24</sup> *Kupreškić et al.* Appeal Judgement, para. 30.

<sup>25</sup> *Strugar* Appeal Judgement, para. 13; *Orić* Appeal Judgement, para. 10; *Hadžihasanović and Kubura* Appeal Judgement, para. 10; *Halilović* Appeal Judgement, para. 9; *Simić* Appeal Judgement, para. 10; *Kvočka et al.* Appeal Judgement, para. 18; *Vasiljević* Appeal Judgement, para. 8.

<sup>26</sup> *Strugar* Appeal Judgement, para. 14; *Hadžihasanović and Kubura* Appeal Judgement, para. 12; *Halilović* Appeal Judgement, para. 11; *Limaj et al.* Appeal Judgement, para. 13.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-98-29/1-A  
Date: 12 November 2009  
Original: English

**IN THE APPEAL CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Andrésia Vaz  
Judge Theodor Meron

**Registrar:** Mr John Hocking

**Judgement of:** 12 November 2009

**PROSECUTOR**

v.

**DRAGOMIR MILOŠEVIĆ**

***PUBLIC***

**JUDGEMENT**

**The Office of the Prosecutor:**

Mr Paul Rogers

**Counsel for the Accused:**

Mr Branislav Tapušković  
Ms Branislava Isailović

## II. STANDARD OF REVIEW

12. On appeal, parties must limit their arguments to legal errors that invalidate the decision of the Trial Chamber and to factual errors that result in a miscarriage of justice. These criteria are set forth in Article 25 of the Statute and are well established in the jurisprudence of both the Tribunal and the International Criminal Tribunal for Rwanda (“ICTR”).<sup>34</sup> In exceptional circumstances, the Appeals Chamber will also hear appeals in which a party has raised a legal issue that would not lead to the invalidation of the Trial Judgement, but is nevertheless of general significance to the Tribunal’s jurisprudence.<sup>35</sup> Article 25 of the Statute also states that the Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.

13. A party alleging an error of law must identify the alleged error, present arguments in support of its claim, and explain how the error invalidates the decision. An allegation of an error of law that has no chance of changing the outcome of a decision may be rejected on that ground. However, even if the party’s arguments are insufficient to support the contention of an error, the Appeals Chamber may still conclude, for other reasons, that there is an error of law.<sup>36</sup> It is necessary for any appellant claiming an error of law on the basis of the lack of a reasoned opinion to identify the specific issues, factual findings, or arguments that an appellant submits the Trial Chamber omitted to address and to explain why this omission invalidated the decision.<sup>37</sup>

14. The Appeals Chamber reviews the Trial Chamber’s findings of law to determine whether or not they are correct.<sup>38</sup> Where the Appeals Chamber finds an error of law in the Trial Judgement arising from the application of the wrong legal standard, the Appeals Chamber will articulate the

<sup>34</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 10; *Krajišnik* Appeal Judgement, para. 11; *Martić* Appeal Judgement, para. 8; *Hadžihasanović and Kubura* Appeal Judgement, para. 7; *Halilović* Appeal Judgement, para. 6; *Seromba* Appeal Judgement, para. 9; *Nahimana et al.* Appeal Judgement, para. 11.

<sup>35</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 10; *Krajišnik* Appeal Judgement, para. 11; *Martić* Appeal Judgement, para. 8; *Orić* Appeal Judgement, para. 7; *Hadžihasanović and Kubura* Appeal Judgement, para. 7; *Nahimana et al.* Appeal Judgement, para. 12.

<sup>36</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 11; *Krajišnik* Appeal Judgement, para. 12; *Martić* Appeal Judgement, para. 9; *Strugar* Appeal Judgement, para. 11; *Hadžihasanović and Kubura* Appeal Judgement, para. 8. See also *Ntagerura et al.* Appeal Judgement, para. 11; *Muvunyi* Appeal Judgement, para. 9, quoting *Ntakirutimana* Appeal Judgement, para. 11; *Seromba* Appeal Judgement, para. 10; *Nahimana et al.* Appeal Judgement, para. 12.

<sup>37</sup> *Krajišnik* Appeal Judgement, para. 12; *Martić* Appeal Judgement, para. 9; *Halilović* Appeal Judgement, para. 7; *Brđanin* Appeal Judgement, para. 9.

<sup>38</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 12; *Krajišnik* Appeal Judgement, para. 13; *Martić* Appeal Judgement, para. 10; *Strugar* Appeal Judgement, para. 12; *Halilović* Appeal Judgement, para. 8.

correct legal standard and review the relevant factual findings of the Trial Chamber accordingly.<sup>39</sup> In so doing, the Appeals Chamber not only corrects the legal error, but when necessary applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by an appellant before the finding is confirmed on appeal.<sup>40</sup> The Appeals Chamber will not review the entire trial record *de novo*. Rather, it will in principle only take into account evidence referred to by the Trial Chamber in the body of the judgement or in a related footnote, evidence contained in the trial record and referred to by the parties, and, where applicable, additional evidence admitted on appeal.<sup>41</sup>

15. When considering alleged errors of fact, the Appeals Chamber will apply the standard of reasonableness. As a general principle, in reviewing the findings of the Trial Chamber, the Appeals Chamber will only substitute its own findings for that of the Trial Chamber when no reasonable trier of fact could have reached the original decision.<sup>42</sup> In determining whether or not a Trial Chamber's finding was one that no reasonable trier of fact could have reached, the Appeals Chamber "will not lightly disturb findings of fact by a Trial Chamber".<sup>43</sup> Further, only an error of fact that has occasioned a miscarriage of justice will cause the Appeals Chamber to overturn a decision by the Trial Chamber.<sup>44</sup>

16. The Appeals Chamber recalls that it has inherent discretion to determine which of the parties' submissions merit a reasoned opinion in writing and that it may dismiss arguments which are evidently unfounded without providing detailed reasoning.<sup>45</sup> Indeed, the Appeals Chamber's mandate cannot be effectively and efficiently carried out without focused contributions by the parties. In order for the Appeals Chamber to assess a party's arguments on appeal, the party is

<sup>39</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 12; *Krajišnik* Appeal Judgement, para. 13; *Martić* Appeal Judgement, para. 10; *Orić* Appeal Judgement, para. 9; *Hadžihasanović and Kubura* Appeal Judgement, para. 9; *Karera* Appeal Judgement, para. 9.

<sup>40</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 12; *Krajišnik* Appeal Judgement, para. 13; *Martić* Appeal Judgement, para. 10; *Strugar* Appeal Judgement, para. 12; *Orić* Appeal Judgement, para. 9.

<sup>41</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 12; *Krajišnik* Appeal Judgement, para. 13; *Hadžihasanović and Kubura* Appeal Judgement, para. 9; *Brđanin* Appeal Judgement, para. 15; *Galić* Appeal Judgement, para. 8.

<sup>42</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 13; *Krajišnik* Appeal Judgement, para. 14; *Hadžihasanović and Kubura* Appeal Judgement, para. 10; *Halilović* Appeal Judgement, para. 9; *Limaj et al.* Appeal Judgement, para. 12; *Muvunyi* Appeal Judgement, para. 10.

<sup>43</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 14; *Martić* Appeal Judgement, para. 10; *Strugar* Appeal Judgement, para. 13; see also *Kupreškić et al.* Appeal Judgement, para. 30.

<sup>44</sup> *Krajišnik* Appeal Judgement, para. 14; *Martić* Appeal Judgement, para. 11; *Strugar* Appeal Judgement, para. 13; *Orić* Appeal Judgement, para. 10.

on the basis of the case record, establish beyond reasonable doubt that Milošević ordered sniping and shelling of the civilian population in Sarajevo during the Indictment period.

(a) Ordering and planning the campaign

265. The Trial Chamber has adopted a very general approach in that it did not analyse whether Milošević ordered every sniping or shelling incident, but rather concluded that those incidents could only take place if ordered by him in the framework of the campaign directed against the civilian population of Sarajevo. In principle, this approach is not erroneous as such, given that both the *actus reus* and the *mens rea* of ordering can be established through inferences from circumstantial evidence, provided that those inferences are the only reasonable ones. The Appeals Chamber underlines, however, that when applying such an approach to the facts of the case, great caution is required.

266. First, the Appeals Chamber emphasizes that, as the Trial Chamber correctly held in its discussion of the widespread or systematic attack, “[a] campaign is a military strategy; it is not an ingredient of any of the charges in the Indictment, be that terror, murder or inhumane acts”.<sup>780</sup> The Appeals Chamber notes, however, that in other parts of the Trial Judgement, the Trial Chamber appears to hold Milošević responsible for planning and ordering a campaign of crimes.<sup>781</sup> The Appeals Chamber understands these references as illustrating that the crimes at stake formed a pattern comprised by the SRK military campaign in Sarajevo. Therefore, the “campaign” in the present Appeal Judgement shall be understood as a descriptive term illustrating that the attacks against the civilian population in Sarajevo, in the form of sniping and shelling, were carried out as a pattern forming part of the military strategy in place.

267. Second, the Appeals Chamber notes that the Trial Chamber did not rely on any evidence that would identify a specific order issued by Milošević with respect to the campaign of shelling and sniping in Sarajevo as such. Rather, it relied on the nature of the campaign carried out in the context of a tight command to conclude that it could only “have been carried out on [Milošević’s] instructions and orders”.<sup>782</sup> The Appeals Chamber recalls that the *actus reus* of ordering cannot be established in the absence of a prior positive act because the very notion of “instructing”, pivotal to the understanding of the question of “ordering”, requires “a positive action by the person in a

---

<sup>780</sup> Trial Judgement, para. 927.

<sup>781</sup> Trial Judgement, paras 910-913, 927-928, 932, 938, 953, 966, 975, 978.

<sup>782</sup> Trial Judgement, para. 966.

position of authority”.<sup>783</sup> The Appeals Chamber accepts that an order does not necessarily need to be explicit in relation to the consequences it will have.<sup>784</sup> However, the Appeals Chamber is not satisfied that the Trial Chamber established beyond reasonable doubt that Milošević instructed his troops to perform a campaign of sniping and shelling of the civilian population in Sarajevo as such.

268. Although Milošević does not explicitly challenge his responsibility for planning the crimes under this ground of appeal, the Appeals Chamber takes note of his relevant submissions under other grounds<sup>785</sup> and decides to address the issue within the present Section of the Judgement. In this regard, the Appeals Chamber recalls that the *actus reus* of “planning” requires that one or more persons design the criminal conduct constituting one or more statutory crimes that are later perpetrated.<sup>786</sup> It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.<sup>787</sup> The *mens rea* for this mode of responsibility entails the intent to plan the commission of a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the acts or omissions planned.<sup>788</sup>

269. The Appeals Chamber reiterates that the campaign of sniping and shelling civilians in Sarajevo was already in place when Milošević took the SRK command over from Galić.<sup>789</sup> Although this cannot be determinative in the present case, the Appeals Chamber finds it instructive to note that Galić was held responsible for ordering the indicted crimes, but not for planning them. Conversely, Milošević, although found not having “devise[d] a strategy for Sarajevo on his own”<sup>790</sup>

<sup>783</sup> *Galić* Appeal Judgement, para. 176. See also, *Nahimana et al.* Appeal Judgement, para. 481, referring to *Gacumbitsi* Appeal Judgement, para. 182; *Kamuhanda* Appeal Judgement, para. 75; *Semanza* Appeal Judgement, para. 361; *Ntagerura et al.* Appeal Judgement, para. 365; *Kordić and Čerkez* Appeal Judgement, paras 28-30.

<sup>784</sup> *Cf. Nahimana et al.* Appeal Judgement, para. 481: “Responsibility is also incurred when an individual in a position of authority orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, and if that crime is effectively committed subsequently by the person who received the order.” See also, *Galić* Appeal Judgement, paras 152 and 157; *Kordić and Čerkez* Appeal Judgement, para. 30; *Blaškić* Appeal Judgement, para. 42.

<sup>785</sup> See e.g., Defence Appeal Brief, paras 41, 42-99 and p. 94.

<sup>786</sup> *Nahimana et al.* Appeal Judgement, para. 479, referring to *Kordić and Čerkez* Appeal Judgement, para. 26.

<sup>787</sup> *Kordić and Čerkez* Appeal Judgement, para. 26. Although the French version of the Judgement uses the terms “*un élément déterminant*”, the English version – which is authoritative – uses the expression “factor substantially contributing to”.

<sup>788</sup> *Nahimana et al.* Appeal Judgement, para. 479, referring to *Kordić and Čerkez* Appeal Judgement, paras 29, 31.

<sup>789</sup> *Galić* Trial Judgement, paras 746-747. The findings remained undisturbed on appeal.

<sup>790</sup> Trial Judgement, para. 960.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
the former Yugoslavia since 1991

Case No. IT-05-87-T  
Date: 26 February 2009  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Iain Bonomy, Presiding  
Judge Ali Nawaz Chowhan  
Judge Tsvetana Kamenova  
Judge Janet Nosworthy, Reserve Judge

**Acting Registrar:** Mr. John Hocking

**Judgement of:** 26 FEBRUARY 2009

**PROSECUTOR**

v.

**MILAN MILUTINOVIĆ  
NIKOLA ŠAINOVIĆ  
DRAGOLJUB OJDANIĆ  
NEBOJŠA PAVKOVIĆ  
VLADIMIR LAZAREVIĆ  
SRETEN LUKIĆ**

**PUBLIC**

**JUDGEMENT**

**Volume 1 of 4**

**The Office of the Prosecutor:**

Mr. Thomas Hannis  
Mr. Chester Stamp

**Counsel for the Accused:**

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović  
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović  
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić  
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković  
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević  
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić



## II. APPLICABLE LAW

### A. LEGAL STANDARDS FOR INDIVIDUAL CRIMINAL RESPONSIBILITY

#### 1. Introduction

75. Each of the six Accused is charged with responsibility for the crimes alleged in the Indictment pursuant to Article 7(1) and 7(3) of the Statute. The text of Article 7 is quoted in full below:

#### **Article 7** **Individual criminal responsibility**

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.
2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was 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.
4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

76. Because the Prosecution alleges all possible forms of responsibility in respect of each charge, the Chamber has the discretion, and indeed the obligation, to choose under which form or forms of responsibility to assess the evidence in respect of each Accused.<sup>73</sup> A Chamber is not obliged to make exhaustive factual findings on each and every charged form of responsibility, and may opt to examine only those that describe the conduct of the accused most accurately.<sup>74</sup> Nevertheless, the Chamber is bound in the exercise of its discretion by certain guiding principles on concurrent convictions and forms of responsibility.<sup>75</sup>

<sup>73</sup> *Krstić* Trial Judgement, para. 602; *Furundžija* Trial Judgement, para. 189; *Semanza* Trial Judgement, para. 397.

<sup>74</sup> See *Krstić* Trial Judgement, para. 602; *Kunarac et al.* Trial Judgement, paras. 388–389.

<sup>75</sup> The Chamber will follow the practice of the Appeals Chamber in using the term “concurrent convictions” to describe simultaneous convictions pursuant to different forms of responsibility enshrined in Articles 7(1) and 7(3), reserving the term “cumulative convictions” to describe simultaneous convictions for more than one substantive crime in respect of the same conduct. See *Jokić* Judgement on Sentencing Appeal, para. 24; *Kordić* Appeal Judgement, paras. 35, 1030; *Blaškić* Appeal Judgement, paras. 89–93; *Kajelijeli* Appeal Judgement, para. 81; but see *Gacumbtsi* Trial Judgement, para. 266 (using the term “cumulative convictions” when referring to simultaneous convictions pursuant to different

#### 4. Ordering

85. The Prosecution establishes the physical and mental elements of ordering by proving that the accused intentionally instructed another to carry out an act or engage in an omission,<sup>94</sup> with the intent that a crime or underlying offence be committed in the execution of those instructions, or with the awareness of the substantial likelihood that a crime or underlying offence would be committed in the execution of those instructions.<sup>95</sup>

86. While the Prosecution need not prove that there existed a formal superior-subordinate relationship between the accused and the physical perpetrator or intermediary perpetrator,<sup>96</sup> it must provide “proof of some position of authority on the part of the accused that would compel another to commit a crime in following the accused’s order.”<sup>97</sup> Such authority may be informal and of a temporary nature,<sup>98</sup> and as a consequence the order issued by the accused need not be legally binding upon the physical perpetrator or intermediary perpetrator.

87. The order need not take any particular form; it need not be in writing.<sup>99</sup> However, ordering requires a positive act; it cannot be committed by omission.<sup>100</sup> Because the Appeals Chamber has held that the accused need merely “instruct another person to commit an offence”,<sup>101</sup> it is clear that liability for ordering may ensue where the accused issues, passes down, or otherwise transmits the order, and that he need not use his position of authority to “convince” the physical perpetrator or intermediary perpetrator to commit the crime or underlying offence.<sup>102</sup> Furthermore, the accused need not give the order directly to the physical perpetrator,<sup>103</sup> and an intermediary lower down than the accused on the chain of command who passes the order on to the physical perpetrator may also be held responsible as an orderer for the perpetrated crime or underlying offence, as long as he has the requisite state of mind.<sup>104</sup>

<sup>94</sup> The accused need only instruct another to carry out an act or engage in an omission—and not necessarily a crime or underlying offence *per se*—if he has the intent that a crime or underlying offence be committed in the execution of the order, or if he is aware of the substantial likelihood that a crime or underlying offence will be committed. *Semanza* Appeal Judgement, paras. 359–364.

<sup>95</sup> *Kordić* Appeal Judgement, paras. 28, 30; *Martić* Appeal Judgement, paras. 221–222.

<sup>96</sup> *Kordić* Appeal Judgement, para. 28; *Semanza* Appeal Judgement, para. 361.

<sup>97</sup> *Semanza* Appeal Judgement, para. 361; *see also* *Kordić* Appeal Judgement, para. 28.

<sup>98</sup> *Semanza* Appeal Judgement, paras. 363, 364 (finding that the accused—a civilian mayor with no formal position in the Rwandan military hierarchy—had the necessary authority over Interahamwe fighters to render him liable for ordering them to kill Tutsis at Musha church, and that the Trial Chamber had erred in not convicting him under this form of responsibility).

<sup>99</sup> *Strugar* Trial Judgement, para. 331; *Blaškić* Trial Judgement, para. 281.

<sup>100</sup> *Galić* Appeal Judgement, para. 176.

<sup>101</sup> *Kordić* Appeal Judgement, para. 28.

<sup>102</sup> *See* *Krstić* Trial Judgement, para. 601; *Blaškić* Trial Judgement, para. 281.

<sup>103</sup> *Kordić* Trial Judgement, para. 388; *Blaškić* Trial Judgement, para. 282.

<sup>104</sup> *Kupreškić et al.* Trial Judgement, paras. 827, 862.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
the former Yugoslavia since 1991

Case No. IT-05-87-T  
Date: 26 February 2009  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Iain Bonomy, Presiding  
Judge Ali Nawaz Chowhan  
Judge Tsvetana Kamenova  
Judge Janet Nosworthy, Reserve Judge

**Acting Registrar:** Mr. John Hocking

**Judgement of:** 26 FEBRUARY 2009

**PROSECUTOR**

v.

**MILAN MILUTINOVIĆ  
NIKOLA ŠAINOVIĆ  
DRAGOLJUB OJDANIĆ  
NEBOJŠA PAVKOVIĆ  
VLADIMIR LAZAREVIĆ  
SRETEN LUKIĆ**

**PUBLIC**

**JUDGEMENT**

**Volume 3 of 4**

**The Office of the Prosecutor:**

Mr. Thomas Hannis  
Mr. Chester Stamp

**Counsel for the Accused:**

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović  
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović  
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić  
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković  
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević  
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

crimes committed by his subordinates, pursuant to Article 7(3) of the Statute.<sup>1485</sup> The Ojdanić Defence responds that the Prosecution has not established that he participated in any of the crimes alleged in the Indictment, nor that he knew that they had occurred or were about to occur.<sup>1486</sup>

613. According to the Prosecution, Ojdanić was a member of the joint criminal enterprise and significantly contributed to its implementation. The Prosecution submits that Ojdanić shared the intent to carry out this common plan, and that his actions—such as his commanding, ordering, and directing of VJ operations in Kosovo, including joint operations with the MUP—demonstrate that he intended to further the plan, through criminal means.<sup>1487</sup> The Ojdanić Defence, on the other hand, argues that he did not participate in a joint criminal enterprise and that it has not been established that he shared the intent to participate in such an enterprise.<sup>1488</sup>

614. The Chamber notes that it is not obliged to make exhaustive factual findings on each and every charged form of responsibility, and rather may examine only those that describe the conduct of the accused most accurately.<sup>1489</sup> In response to the Prosecution's allegation that Ojdanić was a member of a joint criminal enterprise aimed at the perpetration of crimes in Kosovo, the Chamber first addresses his liability under this form of responsibility. Specific references are provided in relation to issues addressed, but the Chamber notes that these findings are based on all the relevant evidence.

a. Commission through participation in a joint criminal enterprise

615. For Ojdanić's liability to arise pursuant to the first category of joint criminal enterprise, the evidence must show that he participated in at least one aspect of the common purpose to ensure continued control by the FRY and Serbian authorities over Kosovo, through crimes of forcible displacement, which the Chamber has already found existed.<sup>1490</sup> In order to fulfil this element, Ojdanić need not have physically committed the crimes through which the goal was achieved, or any other offence for that matter.<sup>1491</sup> Indeed, he need not even have been present at the time and place of the physical perpetration of these crimes.<sup>1492</sup> His contribution, however, to the plan must

<sup>1485</sup> Indictment, paras. 11, 40–44.

<sup>1486</sup> Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 5.

<sup>1487</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 8, 725–729, 783.

<sup>1488</sup> Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 4–5.

<sup>1489</sup> See *Krstić* Trial Judgement, para. 602; *Kunarac et al.* Trial Judgement, paras. 388–389.

<sup>1490</sup> *Brđanin* Appeal Judgement, para. 427; *Vasiljević* Appeal Judgement, paras. 100, 119; *Tadić* Appeal Judgement, paras. 197, 227.

<sup>1491</sup> *Brđanin* Appeal Judgement, para. 427; *Kvočka et al.* Appeal Judgement, para. 99.

<sup>1492</sup> *Krnjelac* Appeal Judgement, para. 81; see also *Simić et al.* Trial Judgement, para. 158.

from the MUP to discuss a common approach to the investigation of crimes. This evidence runs counter to the allegation that he shared the intent to commit the crimes that were encompassed by the joint criminal enterprise.

618. In light of this evidence, the Chamber finds that the Prosecution has not proved beyond reasonable doubt that Ojdanić shared the intent of the joint criminal enterprise members to maintain control over Kosovo through the forcible displacement of Kosovo Albanians. Because of this finding, the Chamber does not address whether Ojdanić made a significant contribution to the joint criminal enterprise.

619. Recalling that a Chamber need only address those forms of responsibility under Article 7(1) that describe the conduct of the accused most accurately, the Chamber makes the general observation of the physical elements of the other forms of responsibility under Article 7(1) that planning primarily applies to those who design crimes, that instigating primarily applies to those who prompt others to commit crimes, and that ordering primarily applies to those who instruct others to commit crimes; whereas aiding and abetting applies to those who provide practical assistance, encouragement, or moral support to the perpetration of a crime.<sup>1495</sup> On this basis, the Chamber does not consider that planning, instigating, or ordering most accurately describe the conduct of Ojdanić and dismisses these modes of liability to describe his individual criminal responsibility. Accordingly, the Chamber now addresses his responsibility for aiding and abetting the commission of the crimes proved to have occurred.

#### b. Aiding and abetting

620. In order for Ojdanić to be held responsible for aiding and abetting any of the crimes that have been proved, it must be shown that he provided practical assistance, encouragement, or moral support to the perpetrator of a crime or underlying offence and also that such practical assistance, encouragement, or moral support had a substantial effect upon the commission of a crime or underlying offence.<sup>1496</sup> Furthermore, it must be shown that he intentionally provided this assistance and that he was aware of the essential elements of that crime or underlying offence, including the mental state of the physical or intermediary perpetrator.<sup>1497</sup> The lending of practical assistance, encouragement, or moral support may occur before, during, or after the crime occurs.<sup>1498</sup> An accused may aid and abet through an omission, where (a) there is a legal duty to act, (b) the accused

<sup>1495</sup> For the complete descriptions of the elements of these forms of responsibility, see Section II.

<sup>1496</sup> *Blaškić* Appeal Judgement, paras. 45, 46; *Vasiljević* Appeal Judgement, para. 102.

<sup>1497</sup> *Simić et al.* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, para. 49; *Vasiljević* Appeal Judgement, para. 102; *Aleksovski* Appeal Judgement, para. 162.

## UNITED NATIONS



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-95-13/1-A

Date: 5 May 2009

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Andréia Vaz

**Acting Registrar:** Mr. John Hocking

**Judgement of:** 5 May 2009

**PROSECUTOR  
V.  
MILE MRKŠIĆ  
VESELIN ŠLJIVANČANIN**

***PUBLIC***

**JUDGEMENT****The Office of the Prosecutor:**

Ms. Helen Brady  
Mr. Paul Rogers  
Mr. Marwan Dalal  
Ms. Kristina Carey  
Ms. Najwa Nabti  
Ms. Kyle Wood  
Ms. Nicole Lewis

**Counsel for Veselin Šljivančanin:**

Mr. Novak Lukić and Mr. Stéphane Bourgon

**Counsel for Mile Mrkšić:**

Mr. Miroslav Vasić and Mr. Vladimir Domazet

## II. STANDARD OF REVIEW ON APPEAL

10. On appeal, the Parties must limit their arguments to legal errors that invalidate the judgement of the Trial Chamber and to factual errors that result in a miscarriage of justice within the scope of Article 25 of the Statute. These criteria are well established by the Appeals Chambers of both the International Tribunal<sup>23</sup> and the International Criminal Tribunal for Rwanda (“ICTR”).<sup>24</sup> In exceptional circumstances, the Appeals Chamber will also hear appeals where a party has raised a legal issue that would not lead to invalidation of the judgement, but is nevertheless of general significance to the International Tribunal’s jurisprudence.<sup>25</sup>

11. A party alleging an error of law must identify the alleged error, present arguments in support of its claim and explain how the error invalidates the judgement. An allegation of an error of law which has no chance of changing the outcome of a judgement may be rejected on that ground.<sup>26</sup> However, even if the party’s arguments are insufficient to support the contention of an error, the Appeals Chamber may find for other reasons that there is an error of law.<sup>27</sup>

12. The Appeals Chamber reviews the Trial Chamber’s findings of law to determine whether or not they are correct.<sup>28</sup> Where the Appeals Chamber finds an error of law in the Trial Judgement arising from the application of the wrong legal standard by the Trial Chamber, the Appeals Chamber will articulate the correct legal standard and review the relevant factual findings of the

<sup>23</sup> *Strugar* Appeal Judgement, para. 10; *Orić* Appeal Judgement, para. 7; *Halilović* Appeal Judgement, para. 6; *Limaj et al.* Appeal Judgement, para. 8; *Blagojević and Jokić* Appeal Judgement, para. 6; *Brđanin* Appeal Judgement, para. 8; *Galić* Appeal Judgement, para. 6; *Stakić* Appeal Judgement, para. 7; *Kvočka et al.* Appeal Judgement, para. 14; *Vasiljević* Appeal Judgement, paras 4-12; *Kunarac et al.* Appeal Judgement, paras 35-48; *Kupreškić et al.* Appeal Judgement, para. 29; *Čelebići* Appeal Judgement, paras 434-435; *Furundžija* Appeal Judgement, paras 34-40; *Tadić* Appeal Judgement, para. 64.

<sup>24</sup> *Seromba* Appeal Judgement, para. 9; *Nahimana et al.* Appeal Judgement, para. 11; *Muhimana* Appeal Judgement, para. 6; *Kajelijeli* Appeal Judgement, para. 5; *Semanza* Appeal Judgement, para. 7; *Musema* Appeal Judgement, para. 15; *Akayesu* Appeal Judgement, para. 178; *Kayishema and Ruzindana* Appeal Judgement, paras 177, 320. Under the Statute of the ICTR, the relevant provision is Article 24.

<sup>25</sup> *Orić* Appeal Judgement, para. 7; *Halilović* Appeal Judgement, para. 6; *Limaj et al.* Appeal Judgement, para. 8; *Blagojević and Jokić* Appeal Judgement, para. 6; *Brđanin* Appeal Judgement, para. 8; *Galić* Appeal Judgement, para. 6; *Stakić* Appeal Judgement, para. 7; *Kupreškić et al.* Appeal Judgement, para. 22; *Tadić* Appeal Judgement, para. 247. See also *Nahimana et al.* Appeal Judgement, para. 12.

<sup>26</sup> *Strugar* Appeal Judgement, para. 11; *Orić* Appeal Judgement, para. 8; *Halilović* Appeal Judgement, para. 7; *Limaj et al.* Appeal Judgement, para. 9; *Blagojević and Jokić* Appeal Judgement, para. 7; *Brđanin* Appeal Judgement, para. 9; *Galić* Appeal Judgement, para. 7; *Stakić* Appeal Judgement, para. 8; *Kvočka et al.* Appeal Judgement para. 16, citing *Krnojelac* Appeal Judgement, para. 10.

<sup>27</sup> *Strugar* Appeal Judgement, para. 11; *Orić* Appeal Judgement, para. 8; *Halilović* Appeal Judgement, para. 7; *Limaj et al.* Appeal Judgement, para. 9; *Blagojević and Jokić* Appeal Judgement, para. 7; *Brđanin* Appeal Judgement, para. 9; *Galić* Appeal Judgement, para. 7; *Stakić* Appeal Judgement, para. 8; *Kvočka et al.* Appeal Judgement, para. 16; *Kordić and Čerkez* Appeal Judgement, para. 16; *Vasiljević* Appeal Judgement, para. 6; *Kupreškić et al.* Appeal Judgement, para. 26. See also *Seromba* Appeal Judgement, para. 10; *Nahimana et al.* Appeal Judgement, para. 12; *Muhimana* Appeal Judgement, para. 7; *Gacumbitsi* Appeal Judgement, para. 7; *Ntagerura et al.* Appeal Judgement, para. 11; *Semanza* Appeal Judgement, para. 7; *Kambanda* Appeal Judgement, para. 98.

<sup>28</sup> *Strugar* Appeal Judgement, para. 12; *Orić* Appeal Judgement, para. 9; *Halilović* Appeal Judgement, para. 8; *Limaj et al.* Appeal Judgement, para. 10; *Blagojević and Jokić* Appeal Judgement, para. 8; *Brđanin* Appeal Judgement, para. 10; *Galić* Appeal Judgement, para. 8; *Stakić* Appeal Judgement, para. 9; *Krnojelac* Appeal Judgement, para. 10.

Trial Chamber accordingly.<sup>29</sup> In so doing, the Appeals Chamber not only corrects the legal error, but applies the correct legal standard to the evidence contained in the trial record, where necessary, and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding is confirmed on appeal.<sup>30</sup> The Appeals Chamber will not review the entire trial record *de novo*. Rather, it will in principle only take into account evidence referred to by the Trial Chamber in the body of the judgement or in a related footnote, evidence contained in the trial record and referred to by the parties, and additional evidence admitted on appeal.<sup>31</sup>

13. When considering alleged errors of fact, the Appeals Chamber will apply a standard of reasonableness. Only an error of fact which has occasioned a miscarriage of justice will cause the Appeals Chamber to overturn a decision by the Trial Chamber.<sup>32</sup> In reviewing the findings of the Trial Chamber, the Appeals Chamber will only substitute its own finding for that of the Trial Chamber when no reasonable trier of fact could have reached the original decision.<sup>33</sup> The Appeals Chamber applies the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.<sup>34</sup>

14. In determining whether or not a Trial Chamber's finding was one that no reasonable trier of fact could have reached, the Appeals Chamber "will not lightly disturb findings of fact by a Trial

<sup>29</sup> *Strugar* Appeal Judgement, para. 12; *Orić* Appeal Judgement, para. 9; *Halilović* Appeal Judgement, para. 8; *Limaj et al.* Appeal Judgement, para. 10; *Blagojević and Jokić* Appeal Judgement, para. 8; *Brđanin* Appeal Judgement, para. 10; *Galić* Appeal Judgement, para. 8; *Stakić* Appeal Judgement, para. 9; *Kvočka et al.* Appeal Judgement, para. 17; *Kordić and Čerkez* Appeal Judgement, para. 17; *Blaškić* Appeal Judgement, para. 15. See also *Nahimana et al.* Appeal Judgement, para. 13.

<sup>30</sup> *Strugar* Appeal Judgement, para. 12; *Orić* Appeal Judgement, para. 9; *Halilović* Appeal Judgement, para. 8; *Limaj et al.* Appeal Judgement, para. 10; *Blagojević and Jokić* Appeal Judgement, para. 8; *Brđanin* Appeal Judgement, para. 10; *Galić* Appeal Judgement, para. 8; *Stakić* Appeal Judgement, para. 9; *Kvočka et al.* Appeal Judgement, para. 17; *Kordić and Čerkez* Appeal Judgement, para. 17; *Blaškić* Appeal Judgement, para. 15. See also *Nahimana et al.* Appeal Judgement, para. 13.

<sup>31</sup> *Strugar* Appeal Judgement, para. 15; *Brđanin* Appeal Judgement, para. 15; *Galić* Appeal Judgement, para. 8; *Stakić* Appeal Judgement, para. 9; *Blaškić* Appeal Judgement, para. 13; *Kordić and Čerkez* Appeal Judgement, para. 21, fn. 12.

<sup>32</sup> *Strugar* Appeal Judgement, para. 13; *Orić* Appeal Judgement, para. 10; *Halilović* Appeal Judgement, para. 9; *Simić* Appeal Judgement, para. 10; *Kvočka et al.* Appeal Judgement, para. 18; *Vasiljević* Appeal Judgement, para. 8. See also *Seromba* Appeal Judgement, para. 11; *Muhimana* Appeal Judgement, para. 6; *Kamuhanda* Appeal Judgement, para. 6; *Kajelijeli* Appeal Judgement, para. 5.

<sup>33</sup> *Strugar* Appeal Judgement, para. 13; *Orić* Appeal Judgement, para. 10; *Halilović* Appeal Judgement, para. 9; *Limaj et al.* Appeal Judgement, para. 12; *Blagojević and Jokić* Appeal Judgement, para. 9; *Brđanin* Appeal Judgement, para. 13; *Galić* Appeal Judgement, para. 9; *Stakić* Appeal Judgement, para. 10; *Kvočka et al.* Appeal Judgement, para. 18; *Kordić and Čerkez* Appeal Judgement, para. 18; *Blaškić* Appeal Judgement, para. 16; *Čelebići* Appeal Judgement, para. 435; *Furundžija* Appeal Judgement, para. 37; *Aleksovski* Appeal Judgement, para. 63; *Tadić* Appeal Judgement, para. 64. See also *Seromba* Appeal Judgement, para. 11; *Nahimana et al.* Appeal Judgement, para. 14.

<sup>34</sup> *Strugar* Appeal Judgement, para. 13; *Orić* Appeal Judgement, para. 10; *Limaj et al.* Appeal Judgement, para. 12; *Blagojević and Jokić* Appeal Judgement, para. 226; *Brđanin* Appeal Judgement, para. 13; *Galić* Appeal Judgement, para. 9; *Stakić* Appeal Judgement, para. 220; *Čelebići* Appeal Judgement, para. 458. Similarly, the type of evidence, direct or circumstantial, is irrelevant to the standard of proof at trial, where the accused may only be found guilty of a crime if the Prosecution has proved each element of that crime and the relevant mode of liability beyond a reasonable doubt. See *Stakić* Appeal Judgement, para. 219; *Čelebići* Appeal Judgement, para. 458.



**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No.: IT-97-24-A  
Date: 22 March 2006  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Theodor Meron

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 22 March 2006

**PROSECUTOR**

v.

**MILOMIR STAKIĆ**

---

**JUDGEMENT**

---

**The Office of the Prosecutor:**

Mr. Mark J. McKeon  
Ms. Helen Brady  
Mr. Xavier Tracol  
Ms. Barbara Goy  
Ms. Katharina Margetts

**Counsel for the Appellant:**

Mr. Branko Lukić  
Mr. John Ostojić

378. The Appellant submits that the principle of proportionality requires that the sentences imposed against the other “indirect” perpetrators be analysed in order to harmonise his sentence with theirs.<sup>786</sup> In particular, he observes that the sentences given to defendants Kvočka, Krnojelac, Mučić, Todorović, and Plavšić ranged between seven and eleven years even though, he contends, those individuals’ culpability was the same or greater than his own; he also cites the 35 year sentence given to defendant Krstić.<sup>787</sup> The Appellant also maintains that indirect perpetration is a lesser form of culpability equivalent to aiding and abetting, and cites the *Vasiljević* Appeal Judgement’s holding that “aiding and abetting is a form of responsibility which generally warrants lower sentences than responsibility as a co-perpetrator.”<sup>788</sup>

379. The Prosecution contends that the Trial Chamber based its reasoning on both the Appellant’s role and the gravity of the offences<sup>789</sup> and that it therefore did consider the principle of proportionality.<sup>790</sup> It notes how the Trial Chamber referred to the Appeals Chamber’s jurisprudence<sup>791</sup> in support of its position that the final sentence imposed in other cases can be of little assistance in this case<sup>792</sup> and argues that the Appellant has failed to establish that the Trial Chamber erred in characterising this case as “unique”.<sup>793</sup>

380. The Appeals Chamber wishes to clarify that, as noted by the Trial Chamber,<sup>794</sup> the fact that an accused is found guilty as an “indirect co-perpetrator” does not in itself entitle him to a lower sentence. It is settled in the jurisprudence of the Tribunal that the length of the sentence depends first of all on the gravity of the crime and that “[t]he determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the *form* and *degree* of the participation of the accused in the crime.”<sup>795</sup> Moreover, the Appeals Chamber notes that the role of the “indirect co-perpetrators” can be very significant, particularly in cases of large scale crimes which could not be committed without the help of the indirect co-perpetrators in such ways as planning, instigating, co-ordinating or organising. Such is the case of the Appellant. In finding that the Appellant was an “indirect co-perpetrator”, the Trial Chamber did not suggest that the Appellant had a limited role in the events unfolding in the Municipality of Prijedor. Quite to the contrary, throughout its judgement the Trial Chamber took care to explain the relevance of the role

<sup>786</sup> Stakić Appeal Brief, para. 425.

<sup>787</sup> Stakić Appeal Brief, paras 426-429; Stakić Reply Brief, paras 132-133.

<sup>788</sup> *Vasiljević* Appeal Judgement, para. 182.

<sup>789</sup> Prosecution Response Brief, para. 7.5.

<sup>790</sup> Prosecution Response Brief, para. 7.12.

<sup>791</sup> Trial Judgement, para. 928, citing *Čelebići* Appeal Judgement, para. 821; *Kupreškić* Appeal Judgement, para. 443.

<sup>792</sup> Prosecution Response Brief, para. 7.16.

<sup>793</sup> Prosecution Response Brief, para. 7.18.

<sup>794</sup> Trial Judgement, para. 918.

<sup>795</sup> *Aleksovski* Appeal Judgement, para. 182, citing *Kupreškić* Trial Judgement, para. 852 (emphasis added).

of the Appellant in the implementation of the common criminal goal. For instance, the Trial Chamber found that the Appellant

...played a unique pivotal role in co-ordinating the persecutory campaign carried out by the military, police and civilian government in Prijedor.<sup>796</sup>

Furthermore, the Appeals Chamber has clarified above that the role of the Appellant was in fact that of a participant in the joint criminal enterprise<sup>797</sup> and that his role in the commission of the crimes underlying the Common Purpose was by no means minimal. For this reason, the Appeals Chamber concludes that the role the Appellant played as an “indirect co-perpetrator” did not justify the imposition of a lower sentence.

381. As to the comparison the Appellant draws with other cases, the Appeals Chamber recalls that “[a] previous decision on sentence may provide guidance if it relates to the same offence and was committed in substantially similar circumstances”.<sup>798</sup> However, the Appeals Chamber also reiterates that “while [it] does not discount the assistance that may be drawn from previous decisions rendered, it also concludes that this may be limited.”<sup>799</sup> The reason for this limitation is set out in Article 24(2) of the Statute which requires the Trial Chamber to take into account the gravity of the offence and the individual circumstances of the convicted person in imposing a sentence.

382. The Trial Chamber did take into account the Appellant’s argument pertaining to a comparison with other cases.<sup>800</sup> It compared all the cases mentioned by the Appellant, apart from the *Krstić* case, but found that comparisons with such cases were inappropriate as the Appellant’s case was of a “unique” nature.<sup>801</sup> The Appeals Chamber notes that the *Krstić* case can be distinguished from the instant case: Krstić was found guilty for aiding and abetting a joint criminal enterprise, while the Appellant participated in the common plan of a joint criminal enterprise, was aware that the crimes were a possible consequence of the execution of the Common Purpose and nevertheless acted in furtherance thereof.

383. In view of the foregoing, the Appeals Chamber finds that the Appellant has failed to show that the Trial Chamber committed a discernible error in concluding that his case could not be compared with other cases. Accordingly, this sub-ground of appeal is dismissed.

<sup>796</sup> Trial Judgement, para. 906.

<sup>797</sup> See Section V *supra*.

<sup>798</sup> *Furundžija* Appeal Judgement, para. 250; *Čelebići* Appeal Judgement, para. 720.

<sup>799</sup> *Čelebići* Appeal Judgement, para. 721.

<sup>800</sup> Trial Judgement, para. 933.

<sup>801</sup> Trial Judgement, para. 931.

UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No.: IT-94-1-A and IT-94-1-Abis

Date: 26 January 2000

Original: English

IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Presiding  
Vice-President Florence Ndepele Mwachande Mumba  
Judge Antonio Cassese  
Judge Wang Tieya  
Judge Rafael Nieto-Navia

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Judgement of: 26 January 2000

PROSECUTOR

v.

DU[KO TADI]

---

JUDGEMENT IN SENTENCING APPEALS

---

The Office of the Prosecutor:

Mr. Upawansa Yapa

Counsel for the Appellant:

Mr. William Clegg  
Mr. John Livingston

(b) The Respondent

53. The Respondent submits that the Appellant has failed to provide any basis in fact or law to support his contention that the Trial Chamber erred in its determination of an appropriate sentence or that the sentence was manifestly excessive. Specifically, the Respondent contends that the Appellant has failed to offer any real comparison between the circumstances of his own case and those of other cases determined by the International Tribunal, or to provide any indication from the Sentencing Judgment of 11 November 1999 to demonstrate that the Trial Chamber did not give appropriate consideration to the full range of sentences available. Contrary to the Appellant's submissions, the Respondent contends that the sentence imposed upon the Appellant is entirely consistent with the sentences given to other persons convicted by the International Tribunal.<sup>66</sup>

54. The Respondent further argues that the Appellant's reference to the case law of the Second World War is inapposite, as the sentences handed down by those tribunals were imposed in an entirely different context, and reflect the views on sentencing of that time. The Respondent submits that the appropriate sentence in respect of the Appellant must reflect the values and principles of the international community as they exist today.<sup>67</sup>

## 2. Discussion

55. In the opinion of the Appeals Chamber, the Trial Chamber's decision, when considered against the background of the jurisprudence of the International Tribunal and the International Criminal Tribunal for Rwanda,<sup>68</sup> fails to adequately consider the need for sentences to reflect the relative significance of the role of the Appellant in the broader context of the conflict in the former Yugoslavia.

56. Although the criminal conduct underlying the charges of which the Appellant now stands convicted was incontestably heinous, his level in the command structure, when

<sup>66</sup> Response to Appellant's Brief Against Sentencing Judgment of 11 November 1999, p. 9, para. 11; T. 494 (14 January 2000).

<sup>67</sup> Ibid., p. 9, para. 11; T. 496-497 (14 January 2000).

<sup>68</sup> More fully, 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 1994 and 31 December 1994.

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No.: IT-98-32-A  
Date: 25 February 2004  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Wolfgang Schomburg  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr. Hans Holthuis

**Date:** 25 February 2004

**PROSECUTOR**

**v.**

**MITAR VASILJEVIĆ**

**JUDGEMENT**

**The Office of the Prosecutor:**

Ms. Helen Brady  
Ms. Michelle Jarvis  
Mr. Steffen Wirth

**Counsel for the Accused:**

Mr. Vladimir Domazet  
Mr. Geert-Jan Knoops

## I. INTRODUCTION

1. The municipality of Višegrad is located in south-eastern Bosnia and Herzegovina. Its main town, Višegrad, is situated on the eastern bank of the Drina River. In 1991, about 63% of the population was Muslim and 33% was Serb. Elections were held in the municipality in November 1990; the result, which closely matched the ethnic composition of the municipality, led to mounting tensions. In early April 1991, after requests from the Serb politicians to divide the police along ethnic lines, both groups raised barricades around Višegrad, and over the following months random acts of shooting and shelling occurred. The Yugoslav National Army (JNA) arrived on 14 April 1992, and this at first had a calming effect. However, on 19 May 1992, the JNA withdrew from Višegrad and various Serb para-military units took control. One such group, with a reputation for being particularly violent, was led by Milan Lukić (Milan Lukić group). Although Mitar Vasiljević (Appellant) was not part of the Milan Lukić group, the Trial Chamber found that he was associated with the group and acted as an informant to it. Sometime in May 1992, the Appellant was present when Milan Lukić and his men searched the village of Musići. The Trial Chamber found that on 7 June 1992, the Appellant, together with Milan Lukić and two unidentified men, forcibly transported seven Muslim men to the eastern bank of the Drina River, where they were shot. Five of the seven men died as a result of the shooting and two survived by falling into the river, pretending to be dead. This incident is referred to as the Drina River incident.

2. On 29 November 2002, the Trial Chamber found the Appellant guilty, in relation to the Drina River incident, as a co-perpetrator of persecution as a crime against humanity pursuant to Article 5(h) of the Statute, for the murders of the five Muslim men and the inhumane acts inflicted on the two surviving Muslim men (Count 3) and murder as a violation of the laws or customs of war pursuant to Article 3 of the Statute, for the murder of the five Muslim men (Count 5). The Trial Chamber, however, acquitted the Appellant on the remaining counts, either because it found the evidence to be insufficient or because the convictions would have been cumulative. For the convictions on Counts 3 and 5, the Trial Chamber imposed a prison sentence of twenty years.

3. The Appellant is now appealing both the convictions and sentence. His arguments, raising eight grounds of appeal, are spread out in two separate documents - the Defence Appeal Brief and the Defence Additional Appeal Brief. The Appeals Chamber finds these arguments to be repetitive and unstructured and has, therefore, regrouped them. An overview of the arguments of the Appellant as set out in his submissions is found in the procedural background of these appellate proceedings, set forth in Annex A.

55; and VG-59; and v) lack of clear evidence that the Appellant knew prior to 7 June 1992 about killings committed by Milan Lukić.

54. The Appeals Chamber will consider whether this error led to a miscarriage of justice in the context of the alleged error relating to the Appellant's *mens rea* to kill the seven men (*see* discussion paragraphs 128-132 below).

**C. Alleged error in finding that the Appellant pointed a gun at the seven Muslim men while at the Vilina Vlas Hotel**

55. The Appellant argues that the Trial Chamber erred in finding that he was armed at the hotel and that he pointed his gun at the seven Muslim men.<sup>90</sup> He submits that the evidence relied on by the Trial Chamber (witnesses VG-14 and VG-32) does not support such a finding.<sup>91</sup>

56. The Prosecution submits that witness VG-14 testified that the Appellant had a gun, did not testify that the Appellant actually pointed it at the victims inside the hotel, and that witness VG-32 testified that it was one of the unidentified perpetrators, not the Appellant, who was pointing a rifle at the victims in the hotel.<sup>92</sup> The Prosecution further submits that it was open to a reasonable trier of fact to conclude that the Appellant was present at the hotel with a rifle contributing to preventing the victims from fleeing the hotel.

57. The issue of whether the Appellant was armed has been dealt with above and the Appeals Chamber concluded that it was reasonable of the Trial Chamber to find that the Appellant was armed at the Vilina Vlas Hotel.<sup>93</sup> Therefore, the issue to be considered at this stage is limited to whether it was reasonable of the Trial Chamber to find that the Appellant pointed his gun at the seven Muslim men at the hotel in paragraph 209 of the Judgement. This conclusion is not supported by the Trial Chamber's own finding in paragraph 100 of the Judgement where it found that "[o]ne of the unidentified armed men guarded them [the seven Muslim men], pointing his automatic rifle at them, preventing any of them from leaving the lobby of the hotel." Further, the evidence presented at trial does not support, as admitted by the Prosecution, a finding that the Appellant pointed his gun at the seven Muslim men. The Appeals Chamber considers that no reasonable trier of fact could have found that the Appellant pointed a gun at the seven Muslim men at this stage. However, this finding was only one of several relating to the actions of the Appellant from which the Trial Chamber inferred that the Appellant shared the intent to

<sup>90</sup> Defence Appeal Brief, paras 191-194 (under fourth ground of appeal). Further the Appellant argues in the Defence Additional Appeal Brief, para. 58, that the Trial Chamber made an error of fact by accepting criminal responsibility of murder on the basis of inferences stemming from the testimony of witnesses VG-14 and VG-32.

<sup>91</sup> Defence Appeal Brief, para. 193.

<sup>92</sup> Prosecution Response Brief, para. 5.12, referring to the testimony of witness VG-32, T. 268.

<sup>93</sup> *See* paras 33-45 above.



kill. It is therefore in the context of the alleged error relating to the *mens rea* of the Appellant to kill the seven Muslim men that the Appeals Chamber will determine whether the error made by the Trial Chamber, when it found that the Appellant pointed a gun at the men in the hotel, led to a miscarriage of justice.<sup>94</sup>

**D. Alleged error in dismissing the Appellant's argument that he attempted to dissuade Milan Lukić from killing**

58. The Appellant challenges the fact that the Trial Chamber dismissed his assertion that he attempted to dissuade Milan Lukić from killing the Muslim men, arguing that this was not confirmed by witnesses VG-14 and VG-32, who were, in any event of the view that no one could have influenced Milan Lukić.<sup>95</sup> On this point, the Prosecution responds that the Trial Chamber, in paragraph 107 of the Judgement, expressly rejected the Appellant's submission that he could not have dissuaded Milan Lukić from pursuing his criminal purpose. The Prosecution considers that this is an irrelevant question since the Trial Chamber found the Appellant shared the criminal purpose.<sup>96</sup>

59. The Trial Chamber's findings on this point are as follows:

[t]he Trial Chamber rejects as wholly untrue the evidence of the Accused that he tried to persuade Milan Lukić to spare the life of Meho Džafić or any other man in that group. The Trial Chamber accepts the evidence of VG-32 that the Accused said nothing in response to the pleas of Meho Džafić as the men were marched towards the bank of the Drina River.<sup>97</sup>

[t]he Trial Chamber also rejects the evidence of the Accused that, in any event, he was powerless to stop Milan Lukić from killing the Muslim men. VG-32 and VG-14 gave evidence of their impression that throughout the entire incident there was no one around Milan Lukić who could have affected him or his decisions and orders in a meaningful way. However, the Accused's claim of duress is inconsistent with the evidence that, one week prior to the shooting at the Drina River and during the Musići incident, he had successfully pleaded with Milan Lukić not to mistreat and harass the people in that house. He asserted that he was the only person who could help on that occasion, and that he had prevented the people living in that house from being mistreated and harassed by Milan Lukić. The Trial Chamber has already rejected that claim, but the inconsistent claims by the Accused as to his relationship with Milan Lukić has persuaded the Trial Chamber that the Accused is prepared to give false versions of that relationship according to the benefit he seeks to obtain at the time each version is given. There was no other acceptable evidence that the Accused was under duress vis-à-vis Milan Lukić. The Trial Chamber is satisfied that the Accused willingly accompanied Milan Lukić and his group with the seven Muslim men to the Drina River<sup>98</sup>.

60. The Appeals Chamber finds that the Appellant has not demonstrated how the Trial Chamber's rejection of his assertion that he had attempted to dissuade Milan Lukić from carrying out the killings was unreasonable. The Appellant has also failed to demonstrate how the fact that none of the persons

<sup>94</sup> See, paras 115-132 below.

<sup>95</sup> Defence Appeal Brief, paras 83-85 (under first ground of appeal); Defence Additional Appeal Brief, paras 43-45 (under seventh ground of appeal); Judgement, paras 82-86.

<sup>96</sup> Prosecution Response, para. 2.16.

<sup>97</sup> Judgement, para. 106 (footnotes omitted).

<sup>98</sup> *Ibid*, para. 107 (emphasis added, footnotes omitted).

crime other than the one which was part of the common design arises “only if, under the circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused *willingly took that risk*”<sup>179</sup> – that is, being aware that such crime was a possible consequence of the execution of that enterprise, and with that awareness, the accused decided to participate in that enterprise.

2. Differences between participating in a joint criminal enterprise as a co-perpetrator or as an aider and abettor

102. Participation in a joint criminal enterprise is a form of “commission” under Article 7(1) of the Statute. The participant therein is liable as a co-perpetrator of the crime(s). Aiding and abetting the commission of a crime is usually considered to incur a lesser degree of individual criminal responsibility than committing a crime. In the context of a crime committed by several co-perpetrators in a joint criminal enterprise, the aider and abettor is always an accessory to these co-perpetrators, although the co-perpetrators may not even know of the aider and abettor’s contribution. Differences exist in relation to the *actus reus* as well as to the *mens rea* requirements between both forms of individual criminal responsibility:

(i) The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial effect upon the perpetration of the crime. By contrast, it is sufficient for a participant in a joint criminal enterprise to perform acts that in some way are directed to the furtherance of the common design.

(ii) In the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist the commission of the specific crime of the principal. By contrast, in the case of participation in a joint criminal enterprise, i.e. as a co-perpetrator, the requisite *mens rea* is intent to pursue a common purpose.

**B. Alleged errors of law**

1. Alleged errors of law related to the concept of joint criminal enterprise

103. Before turning to the alleged errors of law of the Trial Chamber concerning the concept of joint criminal enterprise and persecution, the Appeals Chamber will first determine under which category of joint criminal enterprise the Drina River incident falls.

<sup>178</sup> *Ibid*, paras 202, 220 and 228.

<sup>179</sup> *Ibid*, para. 228. See also paras 204 and 220.

stopped in Sase that the seven Muslim men were to be killed; vi) the behaviour of the soldiers changed drastically from the moment Milan Lukić ordered them to leave the car;<sup>219</sup> vii) that throughout the entire incident the impression of the two survivors was that no one around Milan Lukić could have influenced him or his decisions;<sup>220</sup> and viii) that the Appellant willingly accompanied Milan Lukić and his group with the seven Muslim men to the Drina River.<sup>221</sup>

131. The Appeals Chamber recalls that the question before it is whether no reasonable tribunal could find that the only reasonable inference available on the evidence cited above was that the Appellant shared the intent to commit murder. The Appeals Chamber considers that when a Chamber is confronted with the task of determining whether it can infer from the acts of an accused that he or she shared the intent to commit a crime, special attention must be paid to whether these acts are ambiguous, allowing for several reasonable inferences. The Appeals Chamber is satisfied that no reasonable tribunal could have found that the only reasonable inference available on the evidence, as cited above, is that the Appellant had the intent to kill the seven Muslim men. The Trial Chamber found that the Appellant assisted Milan Lukić and his men by preventing the seven Muslim men from fleeing.<sup>222</sup> It did not find, however, that the Appellant shot at the Muslim men himself, nor that he exercised control over the firing. Compared to the involvement of Milan Lukić and potentially one or both of the other men, the participation of the Appellant in the overall course of the killings did not reach the same level. The above-mentioned acts of the Appellant were ambiguous as to whether or not the Appellant intended that the seven Muslim men be killed. This conclusion is further supported by the relatively short period of time between the change of attitude of Milan Lukić and the shooting, the strong personality of Milan Lukić compared to the Appellant, as well as the factors mentioned in paragraph 130. The Appeals Chamber, therefore, concludes that the Trial Chamber erred by finding that the only reasonable inference from the evidence was that the Appellant shared the intent to kill the seven Muslim men.

132. The error made by the Trial Chamber led to a miscarriage of justice since, without the proof the Appellant's intent, the Appellant would not be responsible as a co-perpetrator in the joint criminal enterprise. The Appeals Chamber will now consider whether the Appellant is, nevertheless, responsible as an aider and abettor.

<sup>219</sup> T. 274-275, testimony of witness VG-32.

<sup>220</sup> Judgement, para. 107. Testimony of witnesses VG-14 and VG-32.

<sup>221</sup> *Ibid*, para. 107.

<sup>222</sup> Cf. for a comparable situation in a national jurisdiction *Prosecutor v. Novislav Djajić*, 3St 20/96, Supreme Court of Bavaria, 23 May 1997. In this case, the accused was found guilty of, *inter alia*, aiding and abetting 14 murders by standing with a gun in the middle of a semi-circle that Serbs had formed around a group of Muslims who were then shot.

### 3. Aiding and abetting

133. The Appeals Chamber has found above that the Trial Chamber erred by finding that the only reasonable inference from the evidence was that the Appellant shared the intent to kill the seven Muslim men. The Appellant argues under his fourth ground of appeal that his actions do not in fact amount to aiding and abetting, as he did not facilitate the commission of the crime. He submits that Milan Lukić and the two unidentified men did not need any help from the Appellant at the Vilina Vlas Hotel or at the Drina River,<sup>223</sup> since they had managed to detain the seven Muslim men on the hill of Bikavac by themselves, despite the fact that the seven Muslim men could have resisted.<sup>224</sup> The Appellant infers from this that it would not be logical to conclude that Milan Lukić and his men needed the assistance of the Appellant at the Vilina Vlas Hotel or at the Drina River as the risk that the seven Muslim men might resist was less important at this stage.<sup>225</sup>

134. The Appeals Chamber has already found that the Appellant knew that the seven Muslim men were to be killed; that he walked armed with the group from the place where they had parked the cars to the Drina River; that he pointed his gun at the seven Muslim men; and that he stood behind the Muslim men with his gun together with the other three offenders shortly before the shooting started. The Appeals Chamber believes that the only reasonable inference available on the totality of evidence is that the Appellant knew that his acts would assist the commission of the murders. The Appeals Chamber finds that in preventing the men from escaping on the way to the river bank and during the shooting, the Appellant's actions had a "substantial effect upon the perpetration of the crime."<sup>226</sup>

135. The Appeals Chamber finds that the acts of the Appellant were specifically directed to assist the perpetration of the murders and the inhumane acts and his support had a substantial effect upon the perpetration of the crimes. The Appeals Chamber therefore finds the Appellant guilty for aiding and abetting murder pursuant to Article 3 of the Statute (Count 5). Further, the Appeals Chamber finds the Appellant guilty as an aider and abettor for murder as a crime against humanity pursuant to Article 5(a) of the Statute (Count 4) and inhumane acts as a crime against humanity pursuant to Article 5(i) of the Statute (Count 6). However, the Appellant is not convicted of the murder as a crime against humanity pursuant to Article 5(a) of the Statute (Count 4) and inhumane acts as a crime against humanity pursuant to Article 5(i) of the Statute (Count 6) in accordance with the Tribunal's jurisprudence on cumulative convictions.<sup>227</sup>

<sup>223</sup> Defence Appeal Brief, para. 216, which refers to the Appellant's arguments in paras 205-212.

<sup>224</sup> *Ibid*, para. 206.

<sup>225</sup> *Ibid*, paras 206-212.

<sup>226</sup> *Tadić* Appeals Judgement, para. 229.

<sup>227</sup> See paras 145-147 below.

finds that the Appellant has not shown a discernable error in the exercise of the Trial Chamber's discretion. This sub-ground of appeal is dismissed.

### **B. The Appeals Chamber's considerations**

181. The Trial Chamber imposed a prison sentence of twenty years on the Appellant. The Appeals Chamber has not found in favour of any of the Appellant's alleged errors in relation to the sentence. However, the Appeals Chamber is of the view that the sentence needs to be adjusted due to the Appeals Chamber's finding that the Appellant was responsible as an aider and abettor with respect to murder as a violation of the laws or customs of war under Article 3 of the Statute (Count 5) and persecution by way of murder and inhumane acts as a crime against humanity pursuant to Article 5(h) of the Statute (Count 3), instead of being responsible as a co-perpetrator as was found by the Trial Chamber. The Appeals Chamber considers that it has the mandate to revise the sentence by itself without remitting it to the Trial Chamber.<sup>290</sup>

182. The Appeals Chamber is of the view that aiding and abetting is a form of responsibility which generally warrants a lower sentence than is appropriate to responsibility as a co-perpetrator.<sup>291</sup> The Appeals Chamber recalls that the sentence to be imposed must reflect the inherent gravity of the criminal conduct of an accused. The Appeals Chamber is of the view that the Appellant committed very serious crimes. Therefore, taking into account the particular circumstances of this case as well as the form and degree of the participation of the Appellant in the crimes, the Appeals Chamber finds that a sentence of 15 years is appropriate.

---

matters which may be taken into account in mitigation unless such co-operation is "substantial." Nevertheless, the co-operation which was given by the Accused was indeed modest, and it has been given very little weight," Judgement, para. 299.

<sup>290</sup> See *Krnjelac* Appeals Judgement, paras 263-264; *Jelisić* Appeal Judgement, para. 99; *Aleksovski* Appeal Judgement, para. 99. The Appeals Chamber of the ICTR has in several cases determined that quashing a conviction would not necessarily affect the imposed sentence and may be determined by the Appeal Chamber without remitting it back to the Trial Chamber. See *Musema* Appeals Judgement, paras 372-373.

<sup>291</sup> Cf. *R. v. Price* (2000), 144 C.C.C. (3d) 343 at 358 (Ont. C.A.)(Can.); §3B1.2 of the 2003 United States Sentencing Guidelines, applicable to aiding and abetting through §2X2.1 of the Guidelines: "Based on the defendant's role in the offense, decrease the offense level as follows: (a) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels. (b) If the defendant was a minor participant in any criminal activity, decrease by 2 levels. In cases falling between (a) and (b), decrease by 3 levels"; *Regina v. Dwayne Gordon*, CA (Crim Div), [2002] EWCA Crim 1637, 11 June 2002 (England); Article 27 (2) of the 1997 Chinese Penal Code ("An accomplice shall, in comparison with a principal offender, be given a lesser punishment or a mitigated punishment or be exempted from punishment"; Articles 32 (2) and 55 of the 1988 Penal Code of South Korea (Article 32 [2]: "The punishment of accessories shall be mitigated to less than that of the principals"; Article 55 [1] no. 2: "When penal servitude for life or imprisonment for life is to be mitigated, it shall be reduced to limited penal servitude, or limited imprisonment, for not less than seven years; no. 3: When limited penal servitude or limited imprisonment is to be mitigated, it shall be reduced by one-half of the term of the punishment"); Sections 27 (2), 49 of the German Penal Code (Section 27 [2]: "The punishment for the accessory corresponds to the punishment threatened for the perpetrator. It shall be mitigated pursuant to Section 49 subsection [1]"; Section 49 [1]: "If mitigation is prescribed or permitted under this provision, then the following shall apply to such mitigation: 1. Imprisonment for not less than three years shall take the place of imprisonment for life; 2. In cases of imprisonment for a fixed term, at most three-fourths of the maximum term provided may be imposed [...]"); Section 34 (1) no. 6 of the Austrian Penal Code: "it is true that accomplices are normally less blameworthy than principals and therefore deserve less severe sentences".

## VII. DISPOSITION

For the foregoing reasons, **THE APPEALS CHAMBER**

**PURSUANT** to Article 25 of the Statute and Rules 117 and 188 of the Rules of Procedure and Evidence;

**NOTING** the respective written submissions of the parties and the arguments they presented at the hearing of 18 November 2003;

**SITTING** in open session;

**ALLOWS**, Judge Shahabuddeen dissenting, Mitar Vasiljević's appeal in so far as it relates to his convictions as a co-perpetrator of persecution, a crime against humanity (murder and inhumane acts) under Count 3 of the Indictment, and of murder, a violation of the laws or customs of war, under Count 5 of the Indictment;

**SETS ASIDE**, Judge Shahabuddeen dissenting, these convictions, and **FINDS**, Judge Shahabuddeen dissenting, Mitar Vasiljević guilty of Counts 3 and 5 of the Indictment as an aider and abettor to persecution, a crime against humanity (murder and inhumane acts), and as an aider and abettor to murder, a violation of the laws or customs of war, pursuant to Article 7(1) of the Statute;

**DISMISSES** Mitar Vasiljević's appeal against convictions in all other respects;

**DISMISSES** Mitar Vasiljević's appeal against sentence and **IMPOSES**, Judge Shahabuddeen dissenting, a new sentence, taking into account his responsibility established on the basis of the new convictions entered on appeal;

**SENTENCES** Mitar Vasiljević to fifteen years' imprisonment to run as of this day, subject to credit being given under Rule 101(C) of the Rules for the period Mitar Vasiljević has already spent in detention, that is from 25 January 2000 to the present day;

## 4. Other



**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

**អង្គជំនុំជម្រះតុលាការកំពូល**

Supreme Court Chamber

Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០១/១៨ កក្កដា ២០០៧/អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 001/18-07-2007-ECCC/SC

**Before:**

**Judge KONG Srim, President**

**Judge Motoo NOGUCHI**

**Judge SOM Sereyvuth**

**Judge Agnieszka KLONOWIECKA-MILART**

**Judge SIN Rith**

**Judge Chandra Nihal JAYASINGHE**

**Judge YA Narin**

**Greffiers:**

**SEA Mao, Christopher RYAN,**

**PHAN Theoun, Paolo LOBBA**

**Date:**

**3 February 2012**

**Original Language(s):**

**Khmer/English**

**Classification:**

**PUBLIC**

**APPEAL JUDGEMENT**

**Co-Prosecutors**

CHEA Leang

Andrew CAYLEY

**Accused**

KAING Guek Eav *alias*

'DUCH'

**Lawyers for the Accused**

KAR Savuth

KANG Ritheary

**Lawyers for Civil Parties**

**Group 1**

TY Srinna

Karim KHAN

Alain WERNER

Brianne McGONIGLE

**Lawyers for Civil Parties**

**Group 2**

KONG Pisey

HONG Kimsuon

YUNG Phanit

Silke STUDZINSKY

**Lawyers for Civil Parties**

**Group 3**

KIM Mengkhy

MOCH Sovannary

Martine JACQUIN

Annie DELAHAIE

Philippe CANONNE

Elizabeth RABESANDRATANA

Fabienne TRUSSES-NAPROUS

Christine MARTINEAU



criminal tribunals addressing similar or comparable facts and issues. This Chamber is aware of the need to take into account the circumstances of individual cases and accused persons, and the risk of relying on dissimilar cases. Nevertheless, the Chamber finds it useful to consider sentences in similar or comparable cases as a source of guidance.<sup>795</sup>

375. It is well established in international jurisprudence that the primary factor to be weighed at sentencing is the gravity of the convicted person's crimes.<sup>796</sup> While all crimes falling within the ECCC's jurisdiction are serious violations of Cambodian and international criminal law, a number of factors are relevant to assessing the gravity of a particular offense.<sup>797</sup> Such elements, which revolve around the particular circumstances of the case together with the form and degree of participation of the convicted person, include the number and the vulnerability of victims, the impact of the crimes upon them and their relatives, the discriminatory intent of the convicted person when it is not already an element of the crime, the scale and brutality of the offenses, and the role played by the convicted person.<sup>798</sup> International tribunals have rendered heightened sentences, including life imprisonment, for cases involving particularly grave crimes.<sup>799</sup> The Supreme Court Chamber further observes that the *ad*

<sup>795</sup> See, e.g. *Čelebići* Appeal Judgement, para. 756 (generally affirming that consistency in punishment is "an important reflection of the notion of equal justice"), and paras 759 and 851 (finding the penalty imposed by the Trial Chamber inadequate in part on account of its disparity with a case involving similar circumstances).

<sup>796</sup> See, e.g. *Nahimana* Appeal Judgement, para. 1060 (finding that "the effective gravity of the offences committed is the deciding factor in the determination of the sentence"); *Prosecutor v. Mucić et al.*, IT-96-21, "Judgement", Trial Chamber, 16 November 1998, para. 1225 ("[b]y far the most important consideration [...] is the gravity of the offence"); *Aleksovski* Appeal Judgement, para. 182 ("[c]onsideration of the gravity of the conduct of the accused is normally the starting point for consideration of an appropriate sentence"); *Kambanda* Appeal Judgement, para. 125; *Kupreškić* Appeal Judgement, para. 442; *Čelebići* Appeal Judgement, para. 731.

<sup>797</sup> See, e.g. *Semanza* Trial Judgement and Sentence, para. 555 ("[a]ll of the crimes in the [ICTR] Statute are crimes of an extremely serious nature", thereby making it important to go "beyond the abstract gravity of the crime" to evaluate any relevant circumstance of the case); *Prosecutor v. Karera*, ICTR-01-74-T, "Judgement and Sentence", Trial Chamber, 7 December 2007, para. 574.

<sup>798</sup> See *Milutinović* Trial Judgement, para. 1147; *Lukić and Lukić* Trial Judgement, para. 1050, citing *Čelebići* Appeal Judgement, para. 1260; *Blaškić* Appeal Judgement, para. 683; *Kunarac* Appeal Judgement, paras 352, 357; *Tadić* Appeal Judgement, para. 305; *Prosecutor v. Delić*, IT-04-83-A, "Judgement", Trial Chamber, 15 September 2008, para. 563; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, "Judgement", Trial Chamber, 10 July 2008, para. 588.

<sup>799</sup> See, e.g. *Galić* Appeal Judgement, para. 455 (issuing a sentence of life imprisonment as the Trial Chamber's 20-year sentence did not reflect the especially grave nature of the convicted person's crimes of organising shelling and sniper attacks that killed hundreds of civilians); *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, "Sentence", Trial Chamber, 21 May 1999, paras 15-16, 26-27 (issuing four life imprisonment sentences for one of the two convicted persons based on his contribution to four massacres killing thousands of men, women and children in Rwanda, his position of authority, and the particular zeal with which he administered the crimes), affirmed on appeal, *Prosecutor v. Kayishema*

*hoc* Tribunals have issued sentences of life imprisonment mostly in cases in which the convicted person(s) abused a position of leadership by planning or ordering the alleged crimes,<sup>800</sup> as well as exhibited particular cruelty or zeal in their commission.<sup>801</sup> In determining the appropriate sentence, the Supreme Court Chamber will therefore consider the gravity of the crimes, as well as any aggravating factors that are established in the present case, such as the leadership role of KAING Guek Eav and the particular cruel or zealous commission of his crimes.

376. In the present case, the Trial Chamber determined that the crimes of KAING Guek Eav were of a “particularly shocking and heinous character” based on the proven number of people who were killed, at least 12,272 victims, as well as the systematic torture and deplorable conditions of the detention which they suffered.<sup>802</sup> The Co-Prosecutors demonstrated that the instant case is among the gravest in terms of the number of victims killed and the duration of killing when compared to seven other cases, two from the ICTY<sup>803</sup> and five from the ICTR,<sup>804</sup> in which the sentence of

---

and Ruzindana, ICTR-95-1-A, “Judgement (Reasons)”, Appeals Chamber, 1 June 2001, (“*Kayishema and Ruzindana* Appeal Judgement”), para. 371.

<sup>800</sup> See, e.g. *Galić* Appeal Judgement, paras 411-12, 455-456 (increasing the convicted person’s sentence from 20 years to life imprisonment to reflect his leadership position as a senior military officer); *Musema* Trial Judgement, paras 1002-1003 (sentencing an influential director of a tea factory who diverted workers to attack Tutsi refugees to life imprisonment); *Prosecutor v. Kambanda*, ICTR-97-23-S, “Judgement”, Trial Chamber, 4 September 1998, paras 61-62 (issuing life imprisonment because the convicted person abused his authority as Prime Minister of the Interim Government of Rwanda by inciting genocide); *Prosecutor v. Niyitegeka*, ICTR-96-14-T, “Judgement”, Trial Chamber, 16 May 2003, para. 499 (issuing life imprisonment because the convicted person abused his position as Minister of Information by inciting genocide); *Prosecutor v. Ndindabahizi*, ICTR-2001-71-T, “Judgement”, Trial Chamber, 15 July 2004, para. 508 (issuing life imprisonment because the convicted person advocated a policy of genocide as Minister of Finance in his native prefecture); *Prosecutor v. Nchamihigo*, ICTR-01-63-T, “Judgement and Sentence”, Trial Chamber, 12 November 2008, (“*Nchamihigo* Trial Judgement and Sentence”), paras 391 and 396 (issuing life imprisonment because as “Deputy Prosecutor, [the convicted person] was expected to uphold the rule of law and principles of morality”).

<sup>801</sup> See, e.g. *Lukić and Lukić* Trial Judgement, paras 1060-1069 (considering the convicted person’s particular cruelty in savagely beating prisoners, burning victims alive and in one instance laughing as he shot a woman twice); *Bagosora* Trial Judgement and Sentence, paras 2265-2267 (considering the convicted person’s particular brutality in cutting off limbs and mutilating sexual organs of his victims); *Kayishema and Ruzindana* Appeal Judgement, para. 361 (considering the convicted person’s zeal in committing his crimes and the degree of harm caused, especially the irreparable damage of mutilation); *Nchamihigo* Trial Judgement and Sentence, para. 391 (considering the convicted person’s particular cruelty in looting a house as its victims burned, as well as his zeal displayed in travelling large distances to numerous locations to intervene in killings); *Muhimana* Trial Judgement and Sentence, para. 612 (considering the particular heinous nature of the convicted person’s crimes including one instance of mutilating a pregnant woman).

<sup>802</sup> Trial Judgement, para. 597.

<sup>803</sup> Annex to the Co-Prosecutors’ Oral Submissions on Sentencing at the Appeal Hearing for Kaing Guek Eav alias Duch, 31 March 2011, F1/3.1, with attached documents, F1/3/1.1. *Galić* Appeal Judgement, paras 455-456 (in which the ICTY Appeals Chamber sentenced the convicted person to life

life imprisonment was imposed. The Supreme Court Chamber notes additional cases in which crimes of gravity comparable to the present case have resulted in life imprisonment.<sup>805</sup> The high number of deaths for which KAING Guek Eav is responsible, along with the extended period of time over which the crimes were committed (more than three years), undoubtedly place this case among the gravest before international criminal tribunals.

377. As to aggravating factors, KAING Guek Eav held a central leadership role at S-21, which he abused by training, ordering, and supervising staff in the systematic torture and execution of prisoners deemed to be enemies of the DK,<sup>806</sup> and showed “dedication to refining the operations of S-21.”<sup>807</sup> The fact that he was not at the top of the chain of command in the DK regime does not justify a lighter sentence. Indeed, there is no rule that dictates reserving the highest penalty for perpetrators at the top of the chain of command.<sup>808</sup> Rather, international jurisprudence reserves the maximum

---

imprisonment for the gravity of a campaign of sniping and shelling which occurred over several months and resulted in hundreds of deaths and thousands of wounded civilians); *Lukić and Lukić* Trial Judgement, paras 1063-1069 (sentencing one of the two convicted persons to life imprisonment for the particularly brutal way he committed persecutions on political, racial and religious grounds, murder, inhumane acts and extermination, including the murder of at least 132 Bosnian Muslims).

<sup>804</sup> Annex to the Co-Prosecutors’ Oral Submissions. *Akayesu* Appeal Judgement (sentencing the convicted person to life imprisonment for the totality of his criminal conduct, including charges of genocide, crimes against humanity, incitement to commit genocide, torture, rape, and the murder of at least 2,000 Tutsis in the town where he served as bourgmestre); *Karera* Appeal Judgement, paras 393, 398 (sentencing the convicted person to life imprisonment for the crimes of genocide, extermination, and murder as crimes against humanity, including an attack at a church which killed hundreds of Tutsi refugees); *Kayishema and Ruzindana* Appeal Judgement, paras 299, 371-372 (sentencing one of the two convicted persons to life imprisonment for contributing to four massacres that resulted in thousands of deaths); *Bagosora* Trial Judgement and Sentence, paras 41, 2259 (sentencing three of the four convicted persons to life imprisonment for crimes of genocide, crimes against humanity and war crimes, including killings of thousands of Tutsi civilians); *Renzaho* Appeal Judgement, paras 621-622 (sentencing the convicted person to life imprisonment for genocide, murder, including ordering the killing of hundreds of Tutsi refugees, as well as crimes against humanity).

<sup>805</sup> See, e.g. *Gacumbitsi v. Prosecutor*, ICTR-2001-64-A, “Judgement”, Appeals Chamber, 7 July 2006, (“*Gacumbitsi* Appeal Judgement”), paras 204, 206 (in sentencing the convicted person to life imprisonment for crimes which included an attack where thousands of people were killed, attaching weight to his “central role in planning, instigating, ordering, committing, and aiding and abetting” the crimes committed); *Prosecutor v. Kajelijeli*, ICTR-98-44A-A, “Judgement”, Appeals Chamber, 23 May 2005, (“*Kajelijeli* Appeal Judgement”), para. 324 (sentencing the convicted person to life imprisonment based on the gravity of the crimes, though ultimately reducing the sentence to 45 years as a remedy for violating the convicted person’s fundamental rights during his unlawful pre-trial detention).

<sup>806</sup> Trial Judgement, para. 602.

<sup>807</sup> Trial Judgement, para. 607.

<sup>808</sup> *Lukić and Lukić* Trial Judgement, para. 1055 (confirming previous Appeals Chamber rulings which refused to justify a low sentence by reason of the convicted person’s low level of command, since “a sentence must always reflect the inherent level of gravity of a crime”, which may justify a heightened penalty even where “the accused was not senior in the so-called overall command structure”); Jens David Ohlin, “Proportional Sentences at the ICTY”, in *The Legacy of the International Criminal*

available sentence to the “most serious offenders,”<sup>809</sup> identified as those who assumed a remarkable profile during the criminal transaction, most especially by ordering, planning or leading such acts, and/or by accomplishing their received instructions with zeal, enthusiasm, or efficiency in a manner which leaves no doubt as to a convicted person’s willingness to actively participate in the commission of crimes.<sup>810</sup> Despite KAING Guek Eav’s final plea of acquittal based on the fact that he was not a senior leader of the DK,<sup>811</sup> his sentence must be proportionate to the crimes for which he was responsible, regardless of whether others may have committed more serious offenses.

378. In the Supreme Court Chamber’s view, KAING Guek Eav’s leadership role and particular enthusiasm in the commission of his crimes are aggravating factors that should be given significant weight in the determination of his sentence in contrast to the limited weight of the mitigating circumstances.

379. The Supreme Court Chamber further notes the many instances at the *ad hoc* Tribunals where an appeals chamber increased a sentence on appeal,<sup>812</sup> including to

---

*Tribunal for the Former Yugoslavia*, Bert Swart, Göran Sluiter, Alexander Zahar (eds.), Oxford University Press, 2011, pp. 2-3 (explaining that when a tribunal’s sentencing is based on “offense-gravity proportionality,” as was seemingly the practice of the ICTR, a defendant receives a sentence proportional to his crime. Thus, grave offenses receive severe punishments, perhaps the tribunal’s most severe punishment, regardless of whether other individuals committed even more serious crimes. This sentencing model is opposed to “defendant-relative proportionality,” seemingly followed by the ICTY, whereby less culpable defendants receive less severe sentences than more culpable defendants, regardless of the gravity of their offenses).

<sup>809</sup> *Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, “Judgement and Sentence”, Trial Chamber, 25 February 2004, (“*Ntagerura* Trial Judgement and Sentence”), para. 815. *See also Semanza* Judgement and Sentence, para. 559 (“the penalty of life imprisonment, the highest penalty available at this Tribunal, should be reserved for the most serious offenders”).

<sup>810</sup> *Ntagerura* Trial Judgement and Sentence, para. 815; *Semanza* Judgement and Sentence, paras 557 and 559 (rejecting the Prosecutor’s request of life imprisonment primarily on the basis that, bearing the Accused responsibility mostly as indirect perpetrator, he does not fall within the “most serious offenders” category); *Nchamihigo* Trial Judgement and Sentence, para. 388 (“At this Tribunal, a sentence of life imprisonment is generally reserved for those who planned or ordered atrocities and those who participated in the crimes with especial zeal or sadism”).

<sup>811</sup> T. (EN), 30 March 2011, FI/4.1, p. 123 (lines 8-10).

<sup>812</sup> *See, e.g. Semanza v. Prosecutor*, ICTR-97-20-A, “Judgement”, Appeals Chamber, 20 May 2005, (“*Semanza* Appeal Judgement”), paras 388-39 (increasing the Trial Chamber’s sentence from 15 to 25 years, holding that it did not reflect the gravity of the convicted person’s crimes of genocide and extermination); *Aleksovski* Appeal Judgement, paras 187, 191 (issuing a seven-year sentence after finding that the Trial Chamber’s 2 and a half year sentence was “manifestly inadequate” and giving insufficient weight to the gravity of the convicted person’s conduct); *Čelebići* Appeal Judgement, para. 851 (finding that in the case of one of the three convicted persons found guilty, the Trial Chamber failed to give sufficient regard to the gravity of his crimes and remitting the case to the Reconstituted Trial Chamber to increase the sentence).

life imprisonment.<sup>813</sup> While trial chambers enjoy an ample margin of appreciation when it comes to sentencing, an appeals chamber is under a duty to substitute a new penalty where, like in the present case, “the one given by the Trial Chamber simply cannot be reconciled with the principles governing sentencing,”<sup>814</sup> duly considering the gravity of the crimes and particular circumstances of the case.

380. Among a number of recognised purposes of criminal punishment, the Supreme Court Chamber is of the view that retribution and deterrence are particularly relevant to this case in light of the gravity of KAING Guek Eav’s crimes.<sup>815</sup> The penalty must be sufficiently harsh to respond to the crimes committed and prevent the recurrence of similar crimes. The crimes committed by KAING Guek Eav were undoubtedly among the worst in recorded human history. They deserve the highest penalty available to provide a fair and adequate response to the outrage these crimes caused in victims, their families and relatives, the Cambodian people, and all human beings. The Co-Prosecutors did not exaggerate when they referred to S-21 as the “factory of death.”<sup>816</sup> KAING Guek Eav commanded and operated this factory of death for more than three years. He mercilessly terminated the lives of at least 12,272 individuals, including women and children.

381. The lapse of more than 30 years since the commission of the crimes does not weaken the necessity of a high punishment. The sufferings of victims and their families and relatives are not in the past, but are continuing and will continue

<sup>813</sup> See, e.g. *Galić* Appeal Judgement, paras 455-456 (issuing life imprisonment after finding that the sentence of 20 years issued by the Trial Chamber did not adequately reflect the gravity of the crimes and the convicted person’s degree of participation); *Gacumbitsi* Appeal Judgement, para. 206 (issuing a sentence of life imprisonment after determining that the Trial Chamber’s sentence of thirty years failed “to give proper weight to the gravity of the crimes committed by the Appellant and to his central role in those crimes”).

<sup>814</sup> *Gacumbitsi* Appeal Judgement, para. 205.

<sup>815</sup> See generally *Nahimana* Appeal Judgement, para. 1057 (“in view of the gravity of the crimes in respect of which the Tribunal has jurisdiction, the two main purposes of sentencing are retribution and deterrence”); *Prosecutor v. Rutaganda*, ICTR-96-3-T, “Judgement and Sentence”, Trial Chamber, 6 December 1999, para. 456 (“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 to dissuade for ever, others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of international humanitarian law and human rights”); *Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, “Judgement”, Trial Chamber, 17 June 2004, paras 335-336 (“[i]n view of the gravity of the offences committed in Rwanda in 1994, it is of the utmost importance that the international community condemn the said offences in a manner that will prevent a repetition of those crimes either in Rwanda or elsewhere”).

<sup>816</sup> Co-Prosecutors’ Appeal, para. 210.

**C. *Taylor* Trial Record  
(Trial Transcripts,  
Exhibits, Pleadings)**

# **1. Trial Transcripts**



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

Monday, 4 June 2007  
10:30 a.m.  
PROSECUTION OPENING STATEMENT

TRIAL CHAMBER II

Before the Judges:

Julia Sebutinde, Presiding Judge  
Richard Lussick  
Teresa Doherty  
El Hadji Malick Sow

For the Registry:

Mr Herman von Hebel

For the Prosecution:

Mr Stephen Rapp  
Ms Wendy van Tongeren  
Ms Ann Sutherland  
Mr Alain Werner  
Ms Leigh Lawrie

For the accused Charles Ghankay Taylor: Mr Karim Khan

For the Office of the Principal Defender: Mr Charles Jalloh



CHARLES GHANKAY TAYLOR  
04 JUNE 2007

Page 305  
OPEN SESSION

1 Town - a distance of over 70 miles following narrow bush paths.

2 In Kono, diamond miners were often forced to work without  
3 food. Those who were too tired to work were stripped and beaten  
4 and, in some instances, killed. Diamonds mined under these

14:17:10 5 conditions were given to senior AFRC/RUF commanders and were then  
6 sent to the accused in exchange for arms, ammunition and  
7 supplies. Evidence will show that the accused sent his  
8 subordinates from Liberia to provide advice to Sam Bockarie and  
9 Issa Sesay on the Kono mining operations, thus protecting his own  
14:17:33 10 economic interests.

11 You will hear evidence that in an effort to strengthen the  
12 rebel forces and to sow the seeds of the common plan, AFRC/RUF  
13 commanders ordered the training of captured civilians and then  
14 forcibly conscripted them into the ranks of the fighting force.

14:17:54 15 In Kailahun and Kono, abducted civilians were trained at  
16 Bayama, Pendembu, Bunumbu, Koinadugu and Yengema.

17 The training often involved severe beatings of those who  
18 were uncooperative and sometimes resulted in deaths of the  
19 trainees. Your Honours will hear evidence that from Liberia, the  
14:18:18 20 accused provided arms and ammunition, rice and food for these  
21 trainees -- for these training camps where abducted civilians and  
22 children were forcibly trained.

23 Your Honours, let me move to another diamond-rich area,  
24 which is Kenema District.

14:18:41 25 This district is home to the famous Tongo Fields. As we  
26 already saw in Kono, such wealth attracted much violence. In  
27 1997 and 1998, these fields produced a bitter harvest which  
28 resulted in counts 1, 2, 3, and 10 being charged for this  
29 district in the indictment.



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

TUESDAY, 8 JANUARY 2008  
9.00 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Julia Sebutinde, Presiding  
Justice Teresa Doherty  
Justice Richard Lussick  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Mr Simon Meisenberg

For the Registry:

Ms Rosette Muzigo-Morrison  
Ms Rachel Irura  
Mr Vincent Tishekwa

For the Prosecution:

Ms Brenda Hollis  
Mr Mohamed A Bangura  
Mr Alain Werner  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard  
Mr Andrew Cayley

CHARLES TAYLOR  
08 JANUARY 2008

Page 729  
OPEN SESSION

1 Q. Can you tell this Court what happened when you got to  
2 Burkina again on this occasion?

3 A. Yes, sir.

4 Q. Please go on?

15:00:40 5 A. At that time we met Mosquito. He said I should stand  
6 before him. He had so many bodyguards together with some other  
7 commanders and he said to me, "Gentleman, you said you are a  
8 pastor and they have told me you are a pastor. The question  
9 I asked you last, if you don't give me the answer today I will  
15:01:18 10 kill you and nobody will bury you. The more you are there when  
11 you rot the more will be blessed with the glory of God." So  
12 I bowed down my head.

13 Q. Continue, please?

14 A. I bowed down my head and I took my head up again. I said,  
15:02:01 15 "It is not the case that I don't want to join your rebel group,  
16 but the idea is the position given to me is too small for me as a  
17 man of God." He asked me, "What position do you want?" And then  
18 I bowed down my head again. I told him I want him to make me  
19 field marshal. He burst laughing. The whole group around him  
15:02:46 20 burst laughing. They were all laughing in the whole area. Then  
21 he moved from the bench where he was seated and came to the  
22 ground, himself Mosquito. Later he was up again and he sat back  
23 to his bench and he said, "No" and all the commanders answered  
24 "Boots shaking" and everybody went into silence.

15:03:31 25 Q. What happened after that?

26 A. And then he turned around and told all of his commanders  
27 that this man indeed we should free him. "You are saying that  
28 I should make you field marshal when I am not yet a five star  
29 general - a one star general, sorry. My boss Ghankay Taylor is

CHARLES TAYLOR  
08 JANUARY 2008

Page 730  
OPEN SESSION

1 not yet a five star general. How can I make you field marshall?"  
2 He said to them, "Please, leave that man. He doesn't even know  
3 what he is talking about."

4 Q. After this exchange with Mosquito did anything happen?

15:04:35 5 A. Yes, sir.

6 Q. Please tell the Court?

7 A. From that point they took me and the other civilians and  
8 they said we should go to Dawa. It was seven miles away from  
9 Buedu which is called Burkina. They said we should go for arms  
10 and ammunition.

15:05:10 11 Q. D-A-W-A. Mr Witness, before we get onto Dawa I want you to  
12 give us a idea of what the atmosphere was at Buedu, Burkina, at  
13 this time when you got there. You have said that you went with a  
14 group of civilians who came from Superman Ground as well as  
15 commanders. Did you meet any people in Buedu apart from Mosquito  
16 whom you went to see?

17 A. Yes, sir.

18 Q. Can you describe the people that you met there?

19 A. Yeah, I met some other civilians who were taken from all  
15:06:06 20 different areas.

21 Q. Do you know why they were there?

22 A. Yes.

23 Q. Why were they there?

24 A. Because they told all of us that we should go to Dawa for  
15:06:25 25 arms and ammunition. For that reason I knew that that was why  
26 they were there.

27 Q. And the civilians who came from Superman Ground, could you  
28 say why they also came to Buedu on this occasion?

29 A. Yes.

CHARLES TAYLOR  
08 JANUARY 2008

Page 763  
OPEN SESSION

# I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                    |     |
|------------------------------------|-----|
| TF1-015                            | 679 |
| EXAMINATION-IN-CHIEF BY MR BANGURA | 680 |
| CROSS-EXAMINATION BY MR CAYLEY     | 741 |

## EXHIBITS:

|                              |     |
|------------------------------|-----|
| Exhibit P10 admitted         | 661 |
| Exhibits P11 to P16 admitted | 666 |
| Exhibit P17 admitted         | 667 |
| Exhibit P18 admitted         | 671 |
| Exhibit P19 admitted         | 674 |
| Exhibit P20 admitted         | 676 |
| Exhibit P21 A-D admitted     | 677 |
| Exhibit P22 admitted         | 678 |
| Exhibit P23 admitted         | 678 |
| Exhibit P24 admitted         | 678 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

WEDNESDAY, 9 JANUARY 2008  
9.00 A.M  
TRIAL

TRIAL CHAMBER II

---

|                                           |                                                                                                                                   |
|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Before the Judges:                        | Justice Julia Sebutinde, Presiding<br>Justice Teresa Doherty<br>Justice Richard Lussick<br>Justice Al Hadji Malick Sow, Alternate |
| For Chambers:                             | Mr Simon Meisenberg<br>Ms Doreen Kiggundu                                                                                         |
| For the Registry:                         | Ms Rosette Muzigo-Morrison<br>Ms Rachel Irura<br>Mr Vincent Tishekwa                                                              |
| For the Prosecution:                      | Ms Brenda J Hollis<br>Mr Mohamed A Bangura<br>Mr Alain Werner<br>Ms Maja Dimitrova                                                |
| For the accused Charles Ghankay Taylor:   | Mr Courtenay Griffiths QC<br>Mr Terry Munyard<br>Mr Andrew Cayley                                                                 |
| For the Office of the Principal Defender: | Mr Vincent Nmehielle<br>Mr Silas Chekera                                                                                          |

CHARLES TAYLOR  
09 JANUARY 2008

Page 866  
OPEN SESSION

1 Q. Now, you said that you heard about this attack on Freetown  
2 and that that was when Sam Bockarie was talking over the radio.  
3 Would you tell us what you mean by that?

4 A. Yes, when we heard him talking about the BBC, when he was  
15:26:11 5 saying that he will not retreat except his father tells him to  
6 retreat, and the journalists were asking him, "Who is your father  
7 that you are referring to?", and he said, "Charles Taylor". And  
8 when that happened I think amongst the bodyguards of Mr Taylor,  
9 who we are all together, we are all annoyed about that news, why  
15:26:35 10 he had to publicly involve the man's name, because he said nobody  
11 would tell him to retreat except Taylor tells him to retreat.  
12 And that happened and it was Sam Bockarie who said that over the  
13 BBC.

14 Q. Now speaking of Sam Bockarie, you talked about a trip where  
15:26:54 15 you brought him to see Charles Taylor. Now from that time, that  
16 trip to see Charles Taylor, and the attack on Freetown in January  
17 1999, between those two time periods did you see Sam Bockarie  
18 again in Monrovia?

19 A. Yes.

15:27:18 20 Q. How often did you see him?

21 A. I saw him over two times. I met him at Martina Johnson's  
22 house and I also met him at Robert international airport.

23 Q. Okay, now let us take those one at a time. First of all  
24 you said you saw him at Martina, M-a-r-t-i-n-a, Johnson's house.  
15:27:46 25 Who is Martina Johnson?

26 A. Martina Johnson was one of the junior commandos of NPFL.  
27 He was a terrorist artillery chief of staff.

28 Q. He was the artillery chief of staff in the NPFL?

29 A. Yes.

CHARLES TAYLOR  
09 JANUARY 2008

Page 884  
OPEN SESSION

I N D E X

WITNESSES FOR THE PROSECUTION:

|                                   |     |
|-----------------------------------|-----|
| TF1-015                           | 764 |
| CROSS-EXAMINATION BY MR CAYLEY    | 764 |
| RE-EXAMINATION BY MR BANGURA      | 789 |
| TF1-406                           | 791 |
| EXAMINATION-IN-CHIEF BY MS HOLLIS | 791 |





Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

THURSDAY, 10 JANUARY 2008  
9.00 A.M  
TRIAL

TRIAL CHAMBER II

---

|                                         |                                                                                                                                   |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Before the Judges:                      | Justice Julia Sebutinde, Presiding<br>Justice Teresa Doherty<br>Justice Richard Lussick<br>Justice Al Hadji Malick Sow, Alternate |
| For Chambers:                           | Mr Simon Meisenberg<br>Ms Doreen Kiggundu                                                                                         |
| For the Registry:                       | Ms Rosette Muzigo-Morrison<br>Ms Rachel Irura<br>Mr Vincent Tishekwa                                                              |
| For the Prosecution:                    | Ms Brenda J Hollis<br>Mr Stephen Rapp<br>Mr Alain Werner<br>Ms Maja Dimitrova                                                     |
| For the accused Charles Ghankay Taylor: | Mr Courtenay Griffiths QC<br>Mr Terry Munyard<br>Mr Andrew Cayley                                                                 |

CHARLES TAYLOR  
10 JANUARY 2008

Page 925  
OPEN SESSION

1 Q. And who was the father and who was the son?

2 A. Mr Taylor is the father and Benjamin Yeaten is the son.

3 Q. What do you mean when you say that?

4 A. He himself, Mr Taylor, made it clear to all of us, the SS  
11:10:25 5 members, that Benjamin Yeaten is like his son.

6 Q. And did you - what did you observe about Benjamin Yeaten's  
7 demeanour towards Charles Taylor?

8 A. It was very cordial, because Benjamin Yeaten he did  
9 anything. If he did anything, he would not be questioned.  
11:10:54 10 Sometimes in fact he did certain things before taking instruction  
11 from Mr Taylor and, even when Mr Taylor got to know about it, he  
12 would just forget about it and nothing went out of it.

13 Q. Now, when you say "If he did anything, he would not be  
14 questioned", what do you mean? Could you explain that?

11:11:19 15 A. On one occasion when Special Court wanted to arrest  
16 Mr Taylor in Ghana, in less than one hour Benjamin Yeaten  
17 executed two of the ministers in Liberia. He arrested the  
18 Vice-President and he went and had him in jail, and when  
19 Mr Taylor came he explained on the radio publicly that the  
11:11:50 20 Liberian people should now consider that it is a mistake and that  
21 was all.

22 Q. Now, how would you characterise Charles Taylor's  
23 relationship with the RUF?

24 A. It is also that he was the father of RUF for the fact that  
11:12:18 25 Sam Bockarie made it clear to me that when they were going on a  
26 mission and Mr Taylor was sending him, Sam Bockarie, on a  
27 mission, he was small. So, the instruction had been between  
28 Mr Taylor and Foday Sankoh at the time, but now he had come and  
29 had seen Mr Taylor so he had talked to his father and he

CHARLES TAYLOR  
10 JANUARY 2008

Page 926  
OPEN SESSION

1 receiving well in his body and anything they are supposed to do  
2 now to carry on his mission everything will go on successfully.  
3 He made that clear to me when I was taking him back to Sierra  
4 Leone.

11:13:00 5 Q. And when he told you that he was receiving well in his body  
6 and anything they are supposed to do now to carry on his mission,  
7 did he explain what that mission was?

8 A. I didn't ask him for further questions. He was just  
9 explaining to me.

11:13:23 10 Q. And did he say who, if anyone, had given him the mission?

11 A. He only said, "I have spoken with my father". That was  
12 Mr Taylor he was referring to, the Godfather. So, he was  
13 receiving well. He was feeling fine.

14 Q. Now, when you testified yesterday, you testified that you  
11:13:54 15 fought as a member of ULIMO against the RUF and NPFL in Sierra  
16 Leone. For what period of time did you fight against the RUF and  
17 NPFL in Sierra Leone?

18 A. I said when ULIMO broke through to get to Lofa, that is  
19 from Zorzor, they continued to attack and captured Voinjama.

11:14:25 20 Also, later they advanced to get to Kolahun and they advanced to  
21 get to Foya. The remnant NPFL that were trapped all fled to  
22 Sierra Leone. They joined forces with the RUF and started  
23 attacking ULIMO positions - I said that yesterday - and also on  
24 the other side at Gbange the NPFL were there and later organised  
11:14:57 25 the Lofa defence forces and they were also attacking us from that  
26 position. That was from Gbange route.

27 Q. Mr Witness, I apologise. Perhaps my question was not  
28 clear. Yesterday you testified that as a member of ULIMO you  
29 fought against the RUF and the NPFL in Sierra Leone. During what

CHARLES TAYLOR  
10 JANUARY 2008

Page 1021  
OPEN SESSION

I N D E X

WITNESSES FOR THE PROSECUTION:

|                                   |     |
|-----------------------------------|-----|
| TF1-406                           | 886 |
| EXAMINATION-IN-CHIEF BY MS HOLLIS | 886 |
| CROSS-EXAMINATION BY MR GRIFFITHS | 937 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

THURSDAY, 7 FEBRUARY 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Ms Sidney Thompson  
Ms Doreen Kiggundu

For the Registry:

Ms Rachel Irura

For the Prosecution:

Mr Mohamed A Bangura  
Mr Alain Werner  
Mr Nicholas Koumjian  
Mr Christopher Santora  
Ms Kirsten Keith

For the accused Charles Ghankay  
Taylor:

Mr Terry Munyard  
Mr Andrew Cayley  
Mr Morris Anyah

CHARLES TAYLOR  
7 FEBRUARY 2008

Page 3317  
OPEN SESSION

1 A. Yes.

2 Q. And all of the radio stations are in different places, do  
3 you follow me?

4 A. Yes.

09:57:04 5 Q. How does Bravo know which Alpha he is speaking to if there  
6 are four different Alphas?

7 A. Well, this example does not match with what I have been  
8 saying. I have not spoken about four or five people. I spoke  
9 about two people and two operators.

09:57:29 10 Q. So, you are saying that it was normal for there to be two  
11 operators with the same code name within the RUF?

12 A. It is possible.

13 Q. Now, you have stated in your evidence that Mr Taylor was  
14 known by which code name?

09:57:49 15 A. Mr Taylor we knew him as Ebony. We knew him as Father.

16 Q. But you stated previously to the OTP that he was also known  
17 as Chief, right?

18 A. Oh, yes. One thing in using code names, or in guerilla  
19 operations, they will refer to you according to your area of  
09:58:18 20 exercise as a leader, and when I say "Chief" you will understand  
21 that I am referring to the Commander In Chief and if I say  
22 "Father" you will know that I am talking to Taylor.

23 Q. Let me put to you for a moment the evidence of another  
24 Prosecution witness who has already given evidence, by the name  
09:58:34 25 of Abu Keita, and these were the questions that were put to him  
26 and then I have got some questions for you afterwards. And the  
27 evidence goes like this:

28 "Q. Sometimes Bockarie would say they had spoken to 'The  
29 Chief', correct?

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                            |      |
|--------------------------------------------|------|
| TF1-360                                    | 3304 |
| CROSS-EXAMINATION BY MR CAYLEY [Continued] | 3304 |
| RE-EXAMINATION BY MR BANGURA               | 3403 |
| TF1-548                                    | 3413 |
| EXAMINATION-IN-CHIEF BY MR WERNER          | 3413 |

## EXHIBITS:

|                       |      |
|-----------------------|------|
| Exhibit D-2 admitted  | 3403 |
| Exhibit P-49 admitted | 3409 |
| Exhibit P-50 admitted | 3409 |
| Exhibit P-51 admitted | 3410 |
| Exhibit P-52 admitted | 3410 |
| Exhibit P-53 admitted | 3410 |
| Exhibit D-3 admitted  | 3411 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

MONDAY, 31 MARCH 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

**Before the Judges:**

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

**For Chambers:**

Mr William Romans  
Ms Sidney Thompson

**For the Registry:**

Ms Rachel Irura

**For the Prosecution:**

Ms Brenda J Hollis  
Mr Nicholas Koumjian  
Mr Alain Werner  
Ms Maja Dimitrova

**For the accused Charles Ghankay Taylor:**

Mr Terry Munyard  
Mr Andrew Cayley



CHARLES TAYLOR  
31 MARCH 2008

Page 6227  
OPEN SESSION

1 Q. Did you hear Sam Bockarie talk about Charles Taylor?

2 A. Yes, he talked about him at any time he sat together with  
3 some other commanders discussing and he will say he is his  
4 father. He used to say it.

13:26:16 5 Q. Did you ever hear --

6 JUDGE SEBUTINDE: Mr Koumjian, which is the father, which  
7 is the son?

8 MR KOUMJIAN: Thank you:

9 Q. Who would say that he was his father? Can you just give us  
13:26:30 10 the names so we're clear?

11 A. Well, it was Mosquito who used to say that Charles Taylor  
12 was his father.

13 Q. Were you ever present when Sam Bockarie was communicating  
14 with Charles Taylor or did you ever learn about communications  
13:26:58 15 between Bockarie and Charles Taylor?

16 A. I think I had said here some time ago something that has to  
17 do with the communication that went on between Mr Taylor and Sam  
18 Bockarie and I did say that the communication between  
19 Charles Taylor and Mosquito went on on a daily basis. I think  
13:27:33 20 I had said that. Because he used to give reports about all the  
21 things that happened at the battle front and other command points  
22 and all the reports that came from the defence headquarter, he  
23 always reported it to Mr Taylor. And I had said that at one time  
24 I came and I saw some of the reports that Sam Bockarie had  
13:28:02 25 written, that he had been sending and he had the copies in his  
26 hand. I have spoken about that I think. And those were some of  
27 the reports - those were some of the daily reports about the  
28 activities that used to take place in the field.

29 Q. Approximately when was it that you saw these reports?

CHARLES TAYLOR  
31 MARCH 2008

Page 6228  
OPEN SESSION

1 A. Well, I saw these reports at the time I came to Buedu and  
2 whilst I was talking with him. That was the time he showed me  
3 some of the reports that he had been sending to the Pa, that is  
4 Mr Taylor.

13:28:53 5 Q. When you testified earlier you talked about those two trips  
6 to Buedu in 1998. That's what you're referring to?

7 A. Yes, I even talked about the trips that he made. I think  
8 I even talked about them before we went on the recess.

9 Q. Do you know how Charles Taylor and Sam Bockarie were  
13:29:17 10 communicating in 1998?

11 A. Mr Taylor and Mosquito - in fact Mosquito had a satellite  
12 phone that he mostly used to communicate with Mr Taylor and  
13 I have told you that I was not based in Buedu, but Sam Bockarie  
14 had been explaining to me things regarding his movements with  
13:30:09 15 Mr Taylor and sometimes when he was talking with Mr Taylor over  
16 the radio mostly my own radio communicators would monitor what  
17 they said and sometimes they will call on me, myself, I will go  
18 to the radio room and I will monitor their discussion.

19 MR KOUMJIAN: Your Honour, I believe I can do it in one  
13:30:34 20 question and I could finish the direct or I could do it after the  
21 break.

22 PRESIDING JUDGE: If it's only one question we can take a  
23 few minutes more.

24 MR KOUMJIAN:

13:30:43 25 Q. Sir, my question for you first of all is within the RUF how  
26 did you refer to Charles Taylor?

27 A. Well, we called Charles Taylor as the CIC. He was the CIC.  
28 He was the commander in chief. We called him CIC at the time he  
29 was fighting. At the time he now became president we were

CHARLES TAYLOR  
31 MARCH 2008

Page 6229  
OPEN SESSION

1 calling him Mr Taylor.

2 Q. My final question, what does the term commander in chief  
3 mean? When the RUF called Charles Taylor commander in chief what  
4 did that mean?

13:31:31 5 A. It means he had command over the RUF and we took it that  
6 the RUF belonged to him, although he sent somebody to head the  
7 RUF but he was the owner of the RUF. What I mean by saying that  
8 he sent somebody to help the RUF, that was Foday Sankoh because  
9 he was the one that prepared Foday Sankoh to carry out the  
13:32:10 10 mission. So the RUF was in the hands of Mr Taylor.

11 MR KOUMJIAN: Thank you, your Honours.

12 PRESIDING JUDGE: I understand that's the end of your  
13 examination-in-chief, Mr Koumjian, is that correct?

14 MR KOUMJIAN: Unless something very important occurs to me  
13:32:26 15 over the break, yes.

16 PRESIDING JUDGE: Mr witness, we will now take the  
17 lunchtime adjournment of one hour and we will reconvene at 2.35.  
18 There will be other questions for you. Please adjourn court  
19 until 2.35.

13:32:44 20 [Break taken at 1.34 p.m.]

21 [Upon resuming at 2.35 p.m.]

22 PRESIDING JUDGE: Mr Koumjian, I just note Ms Hollis is -  
23 there's a change of appearance on your Bar.

24 MR KOUMJIAN: Yes, your Honour. Present is Alain Werner,  
14:35:57 25 Maja Dimitrova and myself, Nicholas Koumjian.

26 PRESIDING JUDGE: Thank you. Mr Munyard, are you taking  
27 the cross-examination of this witness?

28 MR MUNYARD: I am, Madam President. Thank you.

29 CROSS-EXAMINATION BY MR MUNYARD:

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                     |      |
|-------------------------------------|------|
| TFI-532                             | 6160 |
| EXAMINATION-IN-CHIEF BY MR KOUMJIAN | 6161 |
| CROSS-EXAMINATION BY MR MUNYARD     | 6229 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

TUESDAY, 8 APRIL 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

---

|                                         |                                                                                                                                   |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Before the Judges:                      | Justice Teresa Doherty, Presiding<br>Justice Richard Lussick<br>Justice Julia Sebutinde<br>Justice Al Hadji Malick Sow, Alternate |
| For Chambers:                           | Mr William Romans<br>Ms Carolyn Buff                                                                                              |
| For the Registry:                       | Ms Rachel Irura                                                                                                                   |
| For the Prosecution:                    | Ms Brenda J Hollis<br>Mr Mohamed A Bangura<br>Mr Alain Werner<br>Ms Maja Dimitrova                                                |
| For the accused Charles Ghankay Taylor: | Mr Terry Munyard<br>Mr Morris Anyah                                                                                               |

CHARLES TAYLOR  
08 APRIL 2008

Page 6883  
OPEN SESSION

1 Q. And how long did Issa serve in that position?

2 A. From that time he remained in power until disarmament took  
3 place in Sierra Leone and that was some time in 2000/2001.

4 Q. Thank you. Now you mentioned in your earlier testimony  
12:16:13 5 that, when you retreated from Kono after the intervention along  
6 with Gullit and his group, you got to Buedu and Bockarie was  
7 there and he had just been promoted by his chief. Is that  
8 correct?

9 A. Yes, sir.

12:16:35 10 Q. Now apart from Bockarie, do you recall any other person who  
11 received a similar promotion from anybody else?

12 A. Yes, sir, General Issa Sesay also was promoted.

13 Q. By who?

14 A. By his chief also according to him. He met us in Kolahun.

12:16:58 15 Q. And who was his chief?

16 A. He was referring to Charles Taylor and he was the chief,  
17 everybody knew, in the RUF in the absence of Corporal Sankoh.

18 Q. Now apart from Bockarie and now Issa Sesay who you say  
19 referred to Charles Taylor as the chief, did anybody else use  
12:17:20 20 this word or this title for Charles Taylor?

21 A. That was common with the senior officers of the RUF  
22 referring to Charles Taylor as the chief.

23 Q. Thank you. Now, you said you got to know that Issa Sesay  
24 had also received promotion from his chief at Kolahun. Where is  
12:17:49 25 Kolahun?

26 A. Kolahun is in Lofa County.

27 Q. Where?

28 A. Liberia.

29 Q. And when was this that you learnt about Issa Sesay's

**I N D E X****WITNESSES FOR THE PROSECUTION:**

TF1-516 6820

EXAMINATION-IN-CHIEF BY MR BANGURA 6820



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

THURSDAY, 17 APRIL 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Doreen Kiggundu

For the Registry:

Ms Rachel Irura

For the Prosecution:

Mr Nicholas Koumjian  
Mr Alain Werner  
Ms Shyamala Alagendra  
Ms Kirsten Keith

For the accused Charles Ghankay Taylor: Mr Morris Anyah

For the Office of the Principal Defender:

Mr Silas Chekera



CHARLES TAYLOR  
17 APRIL 2008

Page 7943  
OPEN SESSION

1 MS ALAGENDRA: Spelt A-V-I-V-O. Kamara, K-A-M-A-R-A:

2 Q. At this time when you arrived in Makeni do you know who was  
3 the overall commander in Makeni for the SLA and the RUF?

4 A. well, on arrival Major Johnny Paul Koroma was the commander  
15:15:11 5 for the troops who got there, the RUF and the SLA.

6 Q. Before he arrived do you know who was the commander in  
7 Makeni?

8 A. well, when we arrived there it was Issa Sesay who was the  
9 commander that we met there. He was the overall commander in  
15:15:30 10 Makeni.

11 Q. When you arrived in Makeni did anything happen there?

12 A. Yes, Major Johnny Paul Koroma stopped for a short time in  
13 Makeni and briefed the troops. He told us, myself, including the  
14 SLA and the RUF, that we should move to Kono and then recapture  
15:16:06 15 Kono and then establish a strong junta base there against any  
16 ECOMOG attacks.

17 Q. witness, you have said that SAJ Musa and JPK said Kono was  
18 a diamondiferous area. What do you mean by that?

19 A. well, actually Kono is a place where diamond mining go on.  
15:16:36 20 That is the reason why any government that comes to power, they  
21 will always make sure that Kono is highly protected.

22 Q. What happened after JPK said this?

23 A. well, after that the troop was reorganised and we arranged  
24 a fighting force that was ahead to move with the chairman to  
15:17:14 25 Kono. Myself, Hassan Papa Bangura, we were in charge of the SLA,  
26 Superman was in charge of the RUF and the convoy left to go to  
27 Kono.

28 Q. witness, who was overall in charge of the group that  
29 advanced into Kono?

CHARLES TAYLOR  
17 APRIL 2008

Page 7944  
OPEN SESSION

1 A. Well, Major Johnny Paul Koroma was in charge.

2 Q. Did anything happen on the way?

3 A. Well, on the way we just kept on doing some defensive  
4 firing and then we arrived at Matotoka, but there were no enemy  
15:18:09 5 forces, but the information we got earlier was that Kamajors were  
6 based there. So we left there and moved towards Makali. There  
7 also we did not meet any Kamajors. We also left there and moved  
8 towards Masingbi and we did not meet Kamajors there also, and  
9 then we left there again and moved towards Sewafe.

15:18:38 10 Q. Witness, can you tell the Court what time period you're  
11 talking about?

12 A. Well, this was in 1998 after the ECOMOG intervention in  
13 Freetown.

14 Q. Where is Sewafe, witness?

15:18:57 15 A. Well, Sewafe is in the Kono District.

16 Q. Can you give us a month in 1998 that this advance into Kono  
17 was taking place?

18 A. Well, as far as I can recall that was almost early March,  
19 early March at that time, I think, 1998.

15:19:24 20 Q. What happened when you went to Sewafe?

21 A. Well, on our arrival in Sewafe myself, Superman, Hassan  
22 Papa Bangura captured the ground, but we did not meet any enemy  
23 forces there, so we were waiting for the arrival of the rest,  
24 because it was a long convoy and it included even the civilians  
15:19:50 25 that we captured in Makeni, they were all there. The vehicles  
26 were more than 200. So we arrived in Sewafe and we waited there  
27 for the arrival of Johnny Paul Koroma.

28 Q. Did Johnny Paul Koroma arrive?

29 A. Yes, my Lord. When we got there it took only few minutes

CHARLES TAYLOR  
17 APRIL 2008

Page 7945  
OPEN SESSION

1 then he came, so the rest of the convoy came and they met us in  
2 the Sewafe village.

3 Q. witness, how far is Sewafe village from Koidu Town?

4 A. well, actually it's about 22 miles or so to Koidu Town.

15:20:40 5 Q. Did anything happen when Johnny Paul Koroma and the rest of  
6 the convoy arrived in Sewafe?

7 A. Yes, my Lord.

8 Q. what happened?

9 A. well, when Johnny Paul arrived he said since we have been  
15:20:59 10 getting information that Sewafe was the stronghold for the  
11 Kamajors, now that we have arrived there and they are not present  
12 there we should burn down the Sewafe village.

13 Q. what happened after Johnny Paul said this?

14 A. well, myself, together with Superman, Bomb Blast, who is  
15:21:21 15 Hassan Papa Bangura, we started setting the houses on fire in  
16 Sewafe village.

17 Q. whose houses were you setting on fire in Sewafe village?

18 A. well, they were civilian houses in the Sewafe village.  
19 Those were the ones we set fire on. So as that went on, as the  
15:21:43 20 houses started burning the convoy went ahead and we left Sewafe  
21 village.

22 Q. where did the convoy go to after Sewafe village?

23 A. we left - I left together with Superman, Johnny Paul Koroma  
24 and the entire convoy to Bumpe Town.

15:22:10 25 Q. Did anything happen when you arrived in Bumpe Town?

26 A. well, when I arrived in Bumpe Town, together with Superman  
27 and Hassan Papa Bangura, Bumpe never had any military target, so  
28 we moved directly towards Koidu Town.

29 Q. Did you arrive at Koidu Town?

CHARLES TAYLOR  
17 APRIL 2008

Page 7958  
OPEN SESSION

- 1 A. P-Man. That was how we used to call him, P-Man.
- 2 Q. Is it the alphabet "P"?
- 3 A. Yes, that was his popular name.
- 4 Q. What happened after Issa suggested that they should use the
- 15:52:26 5 route and walk to Kailahun?
- 6 A. Well, at that point in time they made a formation and they
- 7 started going towards the bush path. I was there myself, Hassan
- 8 Papa Bangura, Superman, until the whole squad left: The RUF,
- 9 SLA, together with Johnny Paul Koroma and Issa, they all moved.
- 10 Q. Are you able to recall some of the names of the people who
- 15:52:52 11 left together with Johnny Paul and went to Kailahun?
- 12 A. Yes, my Lord.
- 13 Q. Can you tell us the names?
- 14 A. You have Major Johnny Paul Koroma, his wife Makuta, you
- 15:53:15 15 have Captain Akim Turay, you have Moses Kabia. He was CSO to
- 16 Johnny Paul. He was also called Rambo. You had Mike Lamin, he
- 17 also went. You had Issa Sesay, he too went. Morris Kallon too
- 18 went, he went with them. And also his children, and you had
- 19 Jungler, that was Samuel Kargbo, honourable Samuel Kargbo, he too
- 15:53:48 20 went and together with some troops, including the SLA and the
- 21 RUF. They all escorted the chairman to Kailahun.
- 22 Q. The group that remained in Gandorhun after this, what did
- 23 you do?
- 24 A. Well, myself, Superman, Hassan Papa Bangura, we left
- 15:54:15 25 Gandorhun together with the other men and then we went back to
- 26 Koidu Town.
- 27 Q. Where in Koidu Town did you go to?
- 28 A. Well we drove directly to Masingbi Road, whilst Superman
- 29 went to Dabundeh Street where he was based.

CHARLES TAYLOR  
17 APRIL 2008

Page 7959  
OPEN SESSION

1 MS ALAGENDRA: Dabundeh is spelt D-A-B-U-N-D-E-H:

2 Q. When you got back to Masingbi Road, did you meet anybody?

3 A. Yes, my Lord.

4 Q. Who did you meet?

15:55:03 5 A. Well, when I arrived together with Hassan Papa Bangura we  
6 met Ibrahim Bazy Kamara. He also came together with his own  
7 men, together with Junior Lion and others.

8 Q. Witness, Junior Lion, does he have any other name?

9 A. Yes, my Lord, he was called George Johnson.

15:55:26 10 Q. Who is he, witness?

11 A. Well, Junior Lion was the chief security at that time to  
12 Ibrahim Bazy Kamara.

13 Q. At this time do you know where Santigie Borbor Kanu, who  
14 you referred to as Five-Five, was?

15:55:49 15 A. Well, we left him in Makeni. When we came with the  
16 chairman, he stayed in Makeni.

17 Q. Now when you got back to Masingbi Road, did anything  
18 happen?

19 A. Well at Masingbi Road when Bazy came he restructured the  
15:56:20 20 troops, because at that time we were not well organised, and then  
21 he did some appointments.

22 Q. What were the appointments that Bazy made?

23 A. Well Bazy, who was the commander for those of us who were  
24 now at Masingbi Road, and we also had Hassan Papa Bangura who was  
15:56:52 25 the second in command and at the same time operation commander.

26 MS ALAGENDRA: Witness, I am going to stop you there. Your  
27 Honour, I heard the witness saying something about SLAs after he  
28 described Bazy's position. Can I just ask the witness to  
29 repeat:

CHARLES TAYLOR  
17 APRIL 2008

Page 7968  
OPEN SESSION

1 commanders in the other various points where Superman was  
2 serving. Who appointed those battalion commanders?

3 A. Well, this was also an appointment that came from Superman  
4 for the other various areas that they were to occupy.

16:17:53 5 Q. How do you know that?

6 A. Well, after Bazzy had made the appointments, myself, Hassan  
7 Papa Bangura, moved to Superman and then we presented his and  
8 then Superman also showed his own appointment that he made in his  
9 own battalion in the various points.

16:18:15 10 Q. Who did he show it to?

11 A. Well, in my presence he showed it to Bazzy - Ibrahim Bazzy  
12 Kamara and also Hassan Papa Bangura and I was also present when  
13 he disclosed it.

14 Q. What were the appointments that Superman made?

16:18:36 15 A. Well, he was the chief in command for the whole Kono  
16 District. He had RUF Rambo, he was the deputy operations  
17 commander and he also acted as battalion commander in Gandorhun.

18 Q. Witness, you've said that Rambo was deputy operations  
19 commander, for which area?

16:19:14 20 A. Well, he was the deputy operations commander for the RUF  
21 around that axis.

22 Q. Which axis?

23 A. The entire Gandorhun Highway and going towards the Koindu  
24 Geiya axis.

16:19:37 25 Q. And who was he deputy to --

26 PRESIDING JUDGE: Just a moment, Ms Alagendra, you referred  
27 to Rambo and I think the witness referred to RUF Rambo and, if I  
28 recall, there is a difference.

29 MS ALAGENDRA: There is, your Honour:

CHARLES TAYLOR  
17 APRIL 2008

Page 7972  
OPEN SESSION

1 Q. Ibrahim Bazzy Kamara, who was he reporting to in Kono?

2 A. He reported directly to Superman. Whatever operations we  
3 were undertaking we go to Superman.

4 MS ALAGENDRA: Your Honours, I'm noting that we have about  
16:27:05 5 three minutes left and I'm moving to a whole new area and so this  
6 might be --

7 JUDGE SEBUTINDE: Ms Alagendra, you did ask the witness the  
8 men under the command of RUF Rambo and I thought I heard him say  
9 "they had SLA and RUF". The answer, however, shows they had "an  
16:27:23 10 SLA and RUF". I just want to make sure, did he say "an SLA"?

11 MS ALAGENDRA: Your Honours, with your permission can I  
12 repeat the question to the witness, please:

13 Q. Witness, the men under the command of RUF Rambo, which  
14 groups did they belong to?

16:27:42 15 A. He had members of the SLA and the RUF.

16 Q. What was the size of a battalion?

17 A. Well, a battalion has four company that makes a battalion.  
18 A company in the - according to the American system is about 27,  
19 so it's about 120 that forms a battalion, but in the American  
16:28:17 20 system it's about a hundred that makes a battalion.

21 Q. In Kono how many made a battalion?

22 A. Well, in some areas you have over 80 men, some had 70, some  
23 had more than that.

24 MS ALAGENDRA: Thank you witness. Your Honours, if I may  
16:28:42 25 stop here for today.

26 PRESIDING JUDGE: Yes, Ms Alagendra, that would be  
27 appropriate. Mr witness, we are now adjourning until tomorrow  
28 morning. I again remind you that you have made a solemn  
29 declaration to tell the truth and you should not discuss your

**I N D E X****WITNESSES FOR THE PROSECUTION:**

|                                      |      |
|--------------------------------------|------|
| TF1-334                              | 7859 |
| EXAMINATION-IN-CHIEF BY MS ALAGENDRA | 7859 |





Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

FRIDAY, 18 APRIL 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Doreen Kiggundu

For the Registry:

Ms Rachel Irura

For the Prosecution:

Mr Nicholas Koumjian  
Ms Shyamala Alagendra  
Mr Alain Werner  
Ms Maja Dimitrova

For the accused Charles Ghankay Taylor: Mr Morris Anyah

For the Office of the Principal Defender: Mr Silas Chekera

CHARLES TAYLOR  
18 APRIL 2008

Page 8054  
OPEN SESSION

1 if we encounter an attack in any town the town should be burnt  
2 down as we are going ahead and as we are moving ahead we shall  
3 get - we should try and get able bodied civilians to join us.

4 Q. Did he say anything about civilians who were not able  
13:24:31 5 bodied?

6 PRESIDING JUDGE: Yes, Mr Anyah?

7 MR ANYAH: Madam President, I object in this sense: We are  
8 now talking about civilians and the exposure to harm or injury  
9 that may have manifested itself at this time, but in Koinadugu  
13:25:01 10 District, in particular Mansofinia, it is not alleged in our  
11 indictment of 29 May 2007. If the evidence were limited to the  
12 meeting of the minds of these people during a meeting I would not  
13 object, but to the extent we now start talking about treatment of  
14 civilians in that area I register an objection. It is not in the  
13:25:23 15 indictment.

16 PRESIDING JUDGE: Ms Alagendra?

17 MS ALAGENDRA: Your Honours, firstly the witness hasn't  
18 spoken about any particular area which these orders related to.  
19 Secondly, the evidence of crimes which may have taken place in  
13:25:39 20 Koinadugu would be relevant under Rule 93. And also, your  
21 Honour, it would go towards evidence of a widespread or  
22 systematic attack which has been alleged in the indictment.  
23 Further than that, your Honour, this Court could possibly hear  
24 evidence about this same group moving to an area which is part of  
13:26:09 25 the indictment and these orders could relate even to those areas  
26 which are in the indictment.

27 PRESIDING JUDGE: A point of law, is it, Mr Anyah?

28 MR ANYAH: Well, of course --

29 PRESIDING JUDGE: I am presuming, Ms Alagendra, you have

CHARLES TAYLOR  
18 APRIL 2008

Page 8055  
OPEN SESSION

1 finished your submissions. I apologise.

2 MS ALAGENDRA: Yes, your Honour.

3 MR ANYAH: I thank the Court for the opportunity to respond

4 further. Rule 93(B): "Acts tending to show such a pattern of

13:26:52 5 conduct shall be disclosed by the Prosecutor to the Defence

6 pursuant to Rule 66", meaning they have to disclose all of these

7 allegations pertaining to Koinadugu District to us. We have not

8 objected to this before. There has been evidence about this when

9 TF1-150 testified before this Chamber. I am registering an

13:27:13 10 objection now as to this type of evidence from a district that is

11 not charged in the indictment.

12 PRESIDING JUDGE: Thank you, Mr Anyah. Just allow me to

13 consult.

14 MR KOUMJIAN: Can we just respond to the point of law that

13:27:27 15 counsel just raised as to Rule 66?

16 PRESIDING JUDGE: There must be an end to submissions,

17 Mr Koumjian, and I have refused it and I want to be consistent.

18 We consider that this is evidence of a general order or

19 command which was put on the troops en route to Freetown and

13:29:27 20 therefore is allowed.

21 MS ALAGENDRA: Your Honours, I am just having my eye on the

22 time.

23 PRESIDING JUDGE: Indeed. Thank you for that reminder,

24 Ms Alagendra. But really the witness should answer because the

13:29:46 25 question is on record. So please repeat the question, have an

26 answer and then we will adjourn.

27 MS ALAGENDRA:

28 Q. Witness, my question to you was did he say anything to you

29 about civilians who were not able bodied?

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                      |      |
|--------------------------------------|------|
| TF1-334                              | 7974 |
| EXAMINATION-IN-CHIEF BY MS ALAGENDRA | 7974 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

MONDAY, 21 APRIL 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Ms Doreen Kiggundu

For the Registry:

Ms Rosette Muzigo-Morrison  
Ms Rachel Irura

For the Prosecution:

Mr Nicholas Koumjian  
Ms Shyamala Alagendra  
Mr Alain Werner  
Ms Maja Dimitrova

For the accused Charles Ghankay Taylor: Mr Morris Anyah

For the Office of the Principal Defender:

Mr Silas Chekera

CHARLES TAYLOR  
21 APRIL 2008

Page 8077  
OPEN SESSION

1 Q. Witness, please tell the Court what happened during this  
2 attack.

3 A. We fought back and repelled and they captured one SLA. He  
4 confirmed to us that they brought the South Africans, that they  
10:19:45 5 were in that area to attack. Later Gullit called Tito, he called  
6 Junior Lion saying that Tamba Sewa had told lies to the troop  
7 because he knew about the presence of those people, so we should  
8 reorganise and go back to the village where Tamba Sewa was and  
9 burn that village down. So I left together with Junior Lion,  
10:20:10 10 Tito and some other men. We went and set the village on fire and  
11 returned. After that Gullit ordered that the soldier should tell  
12 us exactly what they knew about the South Africans. This SLA  
13 whom we captured had nothing good to tell us, so Gullit gave an  
14 order that we should burn him alive, so we tied him and burnt  
10:20:44 15 him.

16 MR ANYAH: Madam President, I'm sorry to interrupt, but I  
17 did object to evidence pertaining to atrocities in Koinadugu  
18 District last Friday and the Chamber overruled my objection. I  
19 simply rise to make that a continuing objection for purposes of  
10:21:04 20 perfecting the record, it is not to be disrespectful. My  
21 training says that I should object whenever the same issue arises  
22 again and I just register a continuing objection to this type of  
23 evidence.

24 PRESIDING JUDGE: Your reply?

10:21:22 25 MR KOUMJIAN: Your Honour, may I reply for the Prosecution.  
26 Your Honour, the Prosecution notes, first of all, in the  
27 objection of last week Mr Anyah mentioned Rule 93 requiring that  
28 the evidence of other crimes be disclosed pursuant to Rule 66.  
29 In fact that has been done. The evidence that this witness is

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|         |      |
|---------|------|
| TF1-334 | 8057 |
|---------|------|

|                                      |      |
|--------------------------------------|------|
| EXAMINATION-IN-CHIEF BY MS ALAGENDRA | 8057 |
|--------------------------------------|------|



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

TUESDAY, 29 APRIL 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Doreen Kiggundu

For the Registry:

Ms Rachel Irura

For the Prosecution:

Mr Nicholas Koumjian  
Mr Mohamed A Bangura  
Mr Alain Werner  
Ms Shyamala Alagendra  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Terry Munyard  
Mr Morris Anyah



CHARLES TAYLOR  
29 APRIL 2008

Page 8869  
OPEN SESSION

1 Q. In a place called Kukuna you personally opened fire on  
2 civilians, killing some of them, yes?

3 A. Yes, because we went there firing heavily. I too was  
4 firing. We killed people there.

13:15:38 5 Q. You used to go on food finding missions yourself,  
6 Mr Witness?

7 A. Yes, my Lord.

8 Q. You used to take the property of civilians without their  
9 consent, yes, Mr Witness?

13:15:54 10 A. Yes, my Lord.

11 Q. Your words were they could not refuse because you had the  
12 barrel. That's what you would say, right?

13 A. Yes.

14 Q. And by barrel you are referring to weapons, yes?

13:16:11 15 A. Yes, the AK, the SMG, whatever weapon you had in your  
16 hands.

17 Q. You participated in Operation Pay Yourself, yes,  
18 Mr Witness?

19 A. Yes, when we were retreating from Freetown Operation Pay  
13:16:29 20 Yourself. I was not alone. Together with the commanders. Like  
21 Makeni, Lunsar, we looted there to get ourselves prepared.

22 Q. You also participated in Operation Spare No Soul, right?

23 A. Yes, Operation Spare No Soul, after Collins went over the  
24 air and declared it, yes.

13:16:56 25 Q. Were you ever stationed in Kurubonla, Mr Witness?

26 PRESIDING JUDGE: Just a minute, Mr Anyah. Ms Alagendra?

27 MS ALAGENDRA: Your Honours, I apologise for my late  
28 interjection. I am just looking at the record. I heard the  
29 witness use the phrase "minus you plus you" but I don't seem to

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                |      |
|--------------------------------|------|
| TF1-334                        | 8784 |
| CROSS-EXAMINATION BY MR ANYAH  | 8784 |
| RE-EXAMINATION BY MS ALAGENDRA | 8911 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

WEDNESDAY, 7 MAY 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Carolyn Buff

For the Registry:

Ms Rosette Muzigo-Morrison  
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis  
Mr Christopher Santora  
Ms Shyamala Alagendra  
Ms Julia Baly  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Terry Munyard  
Mr Morris Anyah

CHARLES TAYLOR  
7 MAY 2008

Page 9146  
OPEN SESSION

1 we would like to put on record that we had checked with WVS and  
2 what we were told was that the witness was not only willing to  
3 testify but she wants to testify, your Honour.

4 THE WITNESS: Okay.

10:22:25 5 MS ALAGENDRA:

6 Q. Madam Witness, we are going to continue from where you were  
7 talking about the two girls that were raped, your daughter and  
8 your sister's daughter, okay?

9 A. Yes, sir.

10:22:42 10 Q. When you say those two girls were raped, can you explain  
11 what you mean, witness?

12 A. Yes, sir.

13 Q. Please explain.

14 A. When the girls were captured, when they wanted to rape them  
10:23:00 15 they placed them under gunpoint and they raped them. The raping  
16 that I am talking about is that they were damaged in the vagina  
17 and they were bleeding. I myself checked them and I saw the  
18 infection.

19 Q. Did anything else happen in Karina during these two weeks?

10:23:29 20 A. Yes, sir.

21 Q. What happened?

22 A. The people, the juntas, went back, but as they were going -  
23 they said as they were going they would come back to Karina.

24 Q. Did anything happen after they left?

10:24:03 25 A. Yes.

26 Q. What happened?

27 A. Well, I and my elder brother were outside late that day in  
28 Karina and at daybreak I came out and I saw fire - a big fire in  
29 the other village.

CHARLES TAYLOR  
7 MAY 2008

Page 9147  
OPEN SESSION

1 Q. How long after the soldiers left are you talking about this  
2 day?

3 A. The soldiers went away two days and the third day they came  
4 back.

10:24:49 5 Q. Please continue, witness. What happened?

6 A. When they came, early in the morning, at that time I had  
7 got up and was going for prayers and after the prayers I came  
8 back to fetch water and I saw a big fire in the next village.

9 Q. Did you know what the fire was about?

10:25:17 10 A. I was surprised too, because it had rained all night and so  
11 when I saw the fire I entered. I was doubtful and I was  
12 grumbling how come that it had rained all night and there is  
13 fire?

14 Q. You said when you saw the fire you entered. Where did you  
10:25:36 15 enter?

16 A. I entered into my house, because I was fetching water to  
17 put in the bucket.

18 Q. At this time, witness, can you tell the Court who you were  
19 living with in your house without mentioning names?

10:26:00 20 A. Yes, sir.

21 Q. Tell the Court who, witness?

22 A. My brother and his child, my sister and her child, my  
23 mother, and I was with my child and my husband.

24 Q. Your brother, was it only one child with him in your house?

10:26:32 25 A. He had three children. My sister had two children. I had  
26 four children, plus my mother and my husband.

27 Q. At this time when you saw the fire when you were fetching  
28 water, do you recall what time it was?

29 A. Yes, sir.

CHARLES TAYLOR  
7 MAY 2008

Page 9148  
OPEN SESSION

1 Q. What time was it?

2 A. Around 5 o'clock.

3 Q. Was that in the morning, or in the evening?

4 A. Morning.

10:27:12 5 Q. How is it you were able to know the time?

6 A. Because I had prayed.

7 Q. When you entered the house, what happened?

8 A. My girl - my daughter had opened the window and she said,

9 Mama, come and see the population that is passing by. Look at my

10:27:38 10 aunt, she has oozing and his jaw and she was naked - on her jaw,

11 sorry, and she was naked.

12 Q. Did you know who she was referring to?

13 PRESIDING JUDGE: Mr Anyah?

14 MR ANYAH: Yes, Madam President, I hesitate to intervene

10:28:02 15 and interrupt the flow, but I do so with respect. I had made an  
16 objection previously about evidence not alleged in the indictment  
17 and I made that a continuing objection. This was perhaps two  
18 weeks ago.

19 In this case Karina is in Bombali District, which is  
10:28:27 20 charged in the indictment, but it's only charged in paragraph 30  
21 with respect to looting. So I just reiterate my objection  
22 respectfully, knowing that the Court has ruled on the objection,  
23 but given the extensive nature of evidence being presented today  
24 about this particular locale and concerning acts not alleged in  
10:28:50 25 the indictment I thought it appropriate to renew my objection.

26 PRESIDING JUDGE: Your reply?

27 MS HOLLIS: Madam President, with leave if I may respond?

28 PRESIDING JUDGE: Yes, please do.

29 MS HOLLIS: Madam President, your Honours, this evidence

I N D E X

WITNESSES FOR THE PROSECUTION:

|                                      |      |
|--------------------------------------|------|
| TF1-028                              | 9132 |
| EXAMINATION-IN-CHIEF BY MS ALAGENDRA | 9132 |
| CROSS-EXAMINATION BY MR ANYAH        | 9233 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

WEDNESDAY, 21 MAY 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

**Before the Judges:**

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

**For Chambers:**

Mr William Romans  
Ms Sidney Thompson  
Ms Carolyn Buff

**For the Registry:**

Ms Rachel Irura

**For the Prosecution:**

Mr Stephen Rapp  
Ms Brenda J Hollis  
Mr Nicholas Koumjian  
Mr Christopher Santora  
Ms Maja Dimitrova

**For the accused Charles Ghankay  
Taylor:**

Mr Courtenay Griffiths QC  
Mr Terry Munyard  
Ms Sanela Trzin



CHARLES TAYLOR  
21 MAY 2008

Page 10452  
OPEN SESSION

1 Issa when he resisted that nobody should arrest him. At that  
2 time Sam Bockarie was not in town, he was out of town in Kenema.

3 Q. So why then Charles Taylor if Sam Bockarie is out of town?

4 A. Well, we knew that Charles Taylor was the godfather for  
13:10:59 5 RUF, so whatever the situation was we needed to call him to let  
6 him know that that was what was going on.

7 Q. Sir, you talked about the going back to the phone call to  
8 Foday Sankoh and the invitation to the RUF to join. Did the RUF  
9 arrive in Freetown after that phone call?

13:11:26 10 A. Yes.

11 Q. And can you tell us some of the names of people that  
12 arrived and what positions they took up?

13 A. Yes, Denis Mingo alias Superman was the first to come and  
14 meet us in Freetown. After him Issa Sesay followed and he met us  
13:11:50 15 in Freetown. Then most other commanders came whose names  
16 I cannot recall now. And Sam Bockarie. Issa Sesay was the  
17 Supreme Council member, Sam Bockarie alias Mosquito too was a  
18 Supreme Council member and other members in the RUF were members  
19 of the Supreme Council, Mike Lamin and others whose names  
13:12:15 20 I cannot recall now.

21 Q. Thank you. We will go over a document involving the  
22 Supreme Council after lunch, but let me ask you: How long did  
23 Sam Bockarie stay in Freetown approximately, if you recall?

24 A. Well, I cannot give you an exact period of time, but he  
13:12:38 25 stayed with us for about one to two months and he decided to go  
26 and stay in Kenema and Issa remained in Freetown.

27 Q. Thank you. Sir, you told us this morning about two phone  
28 calls from Johnny Paul Koroma to Charles Taylor during the time  
29 of the AFRC in Freetown when he first contacted Taylor, and the

**I N D E X****WITNESSES FOR THE PROSECUTION:**

|                                     |       |
|-------------------------------------|-------|
| MOSES ZEH BLAH                      | 10376 |
| RE-EXAMINATION BY MR RAPP           | 10376 |
| SAMUEL KARGBO                       | 10413 |
| EXAMINATION-IN-CHIEF BY MR KOUMJIAN | 10413 |

**EXHIBITS:**

|                         |       |
|-------------------------|-------|
| Exhibit P-116 admitted  | 10397 |
| Exhibit P-117 admitted  | 10397 |
| Exhibit P-118 admitted  | 10397 |
| Exhibit P-119 admitted  | 10397 |
| Exhibit P-120 admitted  | 10397 |
| Exhibit P-121 admitted  | 10397 |
| Exhibit P-122A admitted | 10398 |
| Exhibit P-122B admitted | 10398 |
| Exhibit P-122C admitted | 10398 |
| Exhibit P-122D admitted | 10399 |
| Exhibit P-122E admitted | 10399 |
| Exhibit P-122F admitted | 10399 |
| Exhibit P-122G admitted | 10399 |
| Exhibit P-123 admitted  | 10399 |
| Exhibit P-124 admitted  | 10399 |
| Exhibit P-125 admitted  | 10399 |
| Exhibit P-126 admitted  | 10400 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

THURSDAY, 5 JUNE 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Doreen Kiggundu

For the Registry:

Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis  
Mr Alain Werner  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard  
Mr Morris Anyah

CHARLES TAYLOR  
5 JUNE 2008

Page 11072  
OPEN SESSION

1 white paper".

2 THE WITNESS: The white paper was folded and it was on the  
3 stool. After I had explained to him how we and the Guineans had  
4 fought he said, "It is this material business that is worrying  
11:16:14 5 me." He said, "I am trying to go to Charles Taylor." Then he  
6 took this paper, diamonds were in it and he said stones were in  
7 it, he called it stones. He said, "I am taking these stones to  
8 the Father", because we called Charles Taylor the Father. That  
9 was how we used to call him by code, the Father. He said, "These  
11:16:33 10 are the stones I am taking to the Father for me to go and get  
11 some materials quickly for us to launch a big offensive on those  
12 men and to take back Kono." He said, "Just hold tight" and he  
13 said, "I am coming. When I come we will go, we will launch an  
14 offensive." Then I thanked him. We all sat down, they brought  
11:16:57 15 food and we ate together and I bid them farewell and I went back  
16 to my house where I was.

17 MR WERNER:

18 Q. Now, Mr Witness, first you spoke about the money that  
19 Sam Bockarie had and you mentioned dollar bills. How do you know  
11:17:19 20 that it was dollar bills?

21 A. I know dollar. When I see it I will know it is a dollar  
22 bill. It is a dollar bill. It was not a Sierra Leonean money.  
23 Sierra Leone money is different from a dollar. It's different  
24 from Guinean francs. I know Guinean francs because I had traded  
11:17:42 25 at that riverside. I know Guinean francs, I know the Sierra  
26 Leonean money and I know dollar. I know American dollar and I  
27 know Liberian dollar too. But it was the American dollars that I  
28 am talking about.

29 Q. Did you see the actual notes?

CHARLES TAYLOR  
5 JUNE 2008

Page 11083  
OPEN SESSION

1 see, but then we understand that you had some pressure on you."  
2 He said they had drawn a war plan to go and attack Kono and  
3 Segbwema, Bunumbu-Segbwema axis simultaneously and that they were  
4 arranging for those men to go their own ammunition. I said, "How  
12:14:38 5 about the meeting? who were the people attending the meeting?"  
6 They told me that Colonel Jungle was present and in fact Eddie  
7 Kanneh and CO Mosquito were there, the two of them came from the  
8 mission, that's the trip that they made to Liberia and Burkina  
9 Faso. They said the two of them came back. They said Colonel  
12:15:00 10 Jungle was there, General Ibrahim himself was there and Abu Keita  
11 and some other Liberians. He said all of them were there. In  
12 fact he said Abu Keita was to be with us for the mission. They  
13 said they had come. He said --

14 MR WERNER:

12:15:18 15 Q. Just pause, Mr Witness. First you talk - once you spoke  
16 about the Master, that Master came. Who did you refer to when  
17 you said Master?  
18 A. Sam Bockarie. I had said it once or twice here in this  
19 Court that we used to call Sam Bockarie Master, so any time I use  
12:15:41 20 Master I will be referring to Sam Bockarie. Then Father, we used  
21 to call Charles Taylor the Father. So at times - I am still used  
22 to calling him that way, that's why. So they said they had come  
23 and they had drawn the plan and there was a big offensive at hand  
24 in the 2nd and 1st Brigades. Then he said, "Maybe they will even  
12:16:09 25 have to call you for reinforcement."

26 PRESIDING JUDGE: Mr Werner, I think your witness has  
27 strayed far away from your question.

28 MR WERNER: Yes, thank you, your Honour:

29 Q. You mentioned Eddie Kanneh, you said he was an AFRC strong

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                    |       |
|------------------------------------|-------|
| TF1-577                            | 11030 |
| EXAMINATION-IN-CHIEF BY MR WERNER: | 11030 |
| CROSS-EXAMINATION BY MR ANYAH      | 11117 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

MONDAY, 7 JULY 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Ms Carolyn Buff

For the Registry:

Ms Advera Nsiima Kamuzora  
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard

CHARLES TAYLOR  
07 JULY 2008

Page 13039  
OPEN SESSION

1 and held a meeting with him, from there when Issa Sesay and  
2 others returned home he was telling me that to his surprise when  
3 they went to the Pa Charles Taylor they met Sam Bockarie there  
4 and he said the Pa said he wanted to negotiate between them for  
10:53:13 5 the things that happened in Sierra Leone so as to enable Mosquito  
6 to go back.

7 But the two of them had serious argument. Sam Bockarie  
8 complained that it was Issa Sesay who made him to leave Sierra  
9 Leone to come to Liberia and Issa Sesay too was saying that he -  
10:53:32 10 it was he who did not listen to the Pa. So there was a heated  
11 argument between the two of them. From there he said the Pa  
12 Charles Taylor went angry and he said, "Benjamin Yeaten, take  
13 Issa Sesay back." So he said they came to the guesthouse and he  
14 left Mosquito there. So those were some of the things that  
10:53:55 15 happened.

16 Q. If I could just ask a few questions. You said you  
17 travelled from Monrovia to Foya. How did you travel from  
18 Monrovia to Foya?

19 A. At the time I was going I went on board a helicopter.

10:54:18 20 Q. Whose helicopter?

21 A. It was Charles Taylor's helicopter that was combatted and  
22 it had the inscription ATU.

23 Q. You said that on the way from Foya to Sierra Leone you met  
24 two people in UN vehicles. You mentioned two names, one of those  
10:54:43 25 names was Daf. Who was the other person that you met?

26 A. Junior Vandj. He was a Black Guard.

27 Q. Did you learn why Issa Sesay was seeking advice from  
28 Charles Taylor?

29 A. Yes, after I went and met Issa Sesay he told me it was



CHARLES TAYLOR  
07 JULY 2008

Page 13040  
OPEN SESSION

1 because Charles Taylor was our big revolutionary father, so he  
2 said he went to him for him to give him advice.

3 Q. Tell us what advice he received, if he know?

4 A. Well, after Issa Sesay met the Pa Charles Taylor, he said  
10:55:46 5 he told him that he, Charles Taylor - he would request for the UN  
6 peacekeepers arrested by the RUF, for them to be released. So he  
7 said that will serve as a help to him to show to the world that  
8 when he says anything that thing will happen.

9 So after he returned the UN peacekeepers were released  
10:56:20 10 through Charles Taylor's command. All of them came to Foya and  
11 from Foya they were airlifted to Spriggs field.

12 Q. When Issa Sesay left Monrovia to go back to Sierra Leone,  
13 how did he travel from Monrovia?

14 A. They travelled on board a helicopter to go to Foya. It was  
10:56:49 15 at Foya that the helicopter dropped him and from there he took a  
16 vehicle to return to Sierra Leone.

17 Q. If you know, whose helicopter was it?

18 A. It was Charles Taylor's helicopter.

19 Q. Did Issa Sesay take anything back with him to Sierra Leone?

10:57:10 20 A. Yes, when Issa Sesay was going he took with him ammunition,  
21 but I can't recall the quantity that he took with him.

22 Q. How do you know that he took ammunition with him?

23 A. When Issa Sesay used to come to Monrovia, I will be with  
24 him for all the time until his return. I went with him to  
10:57:46 25 Spriggs field, I entered the helicopter and I saw the materials.  
26 That was how I came to know that he went with ammunition.

27 Q. Do you know from whom he received this ammunition?

28 A. At all times when ammunition were given Benjamin Yeaten  
29 will say that it is his dad Charles Taylor who provided them.

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                   |       |
|-----------------------------------|-------|
| TF1-567                           | 13011 |
| EXAMINATION-IN-CHIEF BY MS HOLLIS | 13011 |
| CROSS-EXAMINATION BY MR GRIFFITHS | 13054 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

THURSDAY, 21 AUGUST 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Ms Carolyn Buff

For the Registry:

Ms Advera Kamuzora  
Ms Rachel Irura

For the Prosecution:

Mr Nicholas Koumjian  
Ms Ruth Hackler  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Morris Anyah

CHARLES TAYLOR  
21 AUGUST 2008

Page 14300  
OPEN SESSION

1 Q. How do you know that Charles Taylor told Johnny Paul and  
2 his wife to move to Monrovia? How do you know that?

3 A. It was Sam Bockarie who passed orders. At that time Johnny  
4 Paul had no vehicle, that he was not on his own, and he was not  
16:01:33 5 even brave to go out without an order. It was Sam Bockarie who  
6 released them, Johnny Paul, his wife, his bodyguards - his  
7 bodyguard whom they called Rambo and others, and they took them  
8 along to Liberia, Monrovia.

9 Q. Now, with respect that doesn't answer my question and so  
16:01:56 10 let me try it again. How do you know that it was at the request  
11 of Charles Taylor that Johnny Paul and his wife moved to  
12 Monrovia?

13 A. I heard it from Sam Bockarie.

14 Q. Where?

16:02:17 15 A. In Buedu. Buedu. The headquarters was Buedu. When I  
16 went, that was what Sam Bockarie himself told me. He was saying  
17 it. He said it.

18 Q. Now, I'm being deliberately precise about this. What was  
19 it that Sam Bockarie actually said to you? Try and help us.

16:02:46 20 A. He said, "Let him release", Sam Bockarie said - at the time  
21 we used to call Charles Taylor Father or Chief. He said, "Chief  
22 said he should release Johnny Paul and his family for them to be  
23 taken along to him in Monrovia. In Monrovia, Liberia, we hadn't  
24 anybody whom we called Chief or Pa apart from Charles Taylor. He  
16:03:14 25 was the only person who was our Papa and our everything.

26 Q. Now, I'm still trying to clarify your account about this.  
27 That's why I want to ask you this question. Who are the West  
28 Side Boys?

29 A. West Side Boys, they were former SLAs who were not under

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                     |       |
|-------------------------------------|-------|
| TF1-367                             | 14191 |
| EXAMINATION-IN-CHIEF BY MR KOUMJIAN | 14191 |
| CROSS-EXAMINATION BY MR GRIFFITHS   | 14266 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

TUESDAY, 2 SEPTEMBER 2008  
9:30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Ms Doreen Kiggundu

For the Registry:

Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis  
Mr Alain Werner  
Ms Leigh Lawrie  
Ms Ruth Hackler

For the accused Charles Ghankay  
Taylor:

Mr Terry Munyard  
Mr Morris Anyah

For the Office of the Principal  
Defender:

Ms Elizabeth Nahamya

CHARLES TAYLOR  
2 SEPTEMBER 2008

Page 15175  
OPEN SESSION

1 Secretary-General's representative Adenigi had told him that he  
2 should disarm the child combatants. But the first question  
3 Charles Taylor asked him was whether that was safe for him and  
4 then later he told him that he shouldn't accept to disarm to the  
11:00:57 5 UN at all. So he said he advised him that he shouldn't disarm at  
6 all to the United Nations. He said the United Nations were  
7 people who were would talk nicely to you today and tomorrow they  
8 would turn around and arrest you, so he asked Issa not to disarm  
9 to them at all. So Issa just answered to him, he left and went  
11:01:19 10 home and that was at the guesthouse where he was lodged. He left  
11 and went there and in the morning he jumped on board the chopper  
12 again and flew to Foya and from there he drove to Sierra Leone.  
13 Q. Now let's clear up some of what you said. You talked about  
14 the meeting and that the first question Charles Taylor asked was  
11:01:45 15 whether that was safe for him. Safe for whom?  
16 A. Safe for Issa and the RUF movement.  
17 Q. And then you told the Court that, "Later he told him that  
18 he shouldn't accept to disarm". Who told whom not to accept to  
19 disarm?  
11:02:16 20 A. Charles Taylor told Issa that he shouldn't accept to disarm  
21 to the UN.  
22 Q. Then you testified that, "He said the United Nations were  
23 people who would talk nicely to you today and tomorrow they would  
24 turn around and arrest you". Who said that about the United  
11:02:41 25 Nations?  
26 A. It was Charles Taylor.  
27 Q. What was Issa Sesay's reaction to Charles Taylor telling  
28 him not to disarm?  
29 A. Well, after he had loaded on board the chopper from

CHARLES TAYLOR  
2 SEPTEMBER 2008

Page 15176  
OPEN SESSION

1 Monrovia and gone to Foya and when he got there and loaded on  
2 board his vehicle in Foya he was grumbling to his commanders that  
3 he travelled with. He said he is not - he is no longer going to  
4 do this. He said he doesn't believe that he will continue taking  
11:03:23 5 instruction from Charles Taylor. He said Charles Taylor is now  
6 living in peace. Now they held the election and he won and he is  
7 now the President. And he was saying that he too is going to  
8 allow for the disarmament to take place so that he will be able  
9 to give peace to his own people in Sierra Leone. That was what  
11:03:43 10 Issa was grumbling.

11 Q. Now when you tell the Court that, "He said he is no longer  
12 going to do this", who is the "he" you are referring to?

13 A. It was Issa. "He" was the Issa. He, Issa, said he was no  
14 longer going to allow that. He said he will not continue to take  
11:04:16 15 this kind of instruction from Charles Taylor and now that he is  
16 telling him that he shouldn't allow himself to disarm to give his  
17 people peace, he said he will not do that. And he, Charles  
18 Taylor, had already given peace to his people in Liberia because  
19 they have conducted elections and he won and he is now in power,  
11:04:31 20 but he does not want he, Issa, to give peace to his own people.

21 MS HOLLIS: Your Honours, the witness referred to Adenigi,  
22 A-D-E-N-I-G-I:

23 Q. Mr witness, in 2001 did Issa Sesay take any additional  
24 trips outside of Sierra Leone?

11:05:00 25 A. In 2001 he was - he did not just - he did not continue  
26 making trips like that. He made a trip that I can recall outside  
27 Sierra Leone.

28 Q. And where did he go?

29 A. He went to Monrovia.



CHARLES TAYLOR  
2 SEPTEMBER 2008

Page 15189  
OPEN SESSION

1 happened to these arms and he said they were disarmed.

2 MS HOLLIS:

3 Q. Mr witness, let's be clear on the record about this. When  
4 you say that the arms were disarmed, can you explain to the Court  
12:10:27 5 what you mean? What happened to those arms?

6 A. What particular set of arms are you talking about?

7 Q. You said that Issa Sesay went back and began to disarm the  
8 child soldiers and then you said that the arms were disarmed.  
9 what do you mean "the arms were disarmed"?

12:10:57 10 A. You did not get me clearly. I said after that grumbling  
11 when he went back he mobilised the child soldiers who had arms,  
12 who had their own rifles that they used to fight and he started  
13 disarming them, the ones who had rifles.

14 JUDGE SEBUTINDE: Mr witness, you were then asked what  
12:11:20 15 happened to the arms that were recovered from the child soldiers  
16 and you said, "Some of them were disarmed and others were to be  
17 returned to Liberia to Charles Taylor who had given them in the  
18 first place". So the question is what do you mean by those that  
19 were disarmed? What happened to those weapons?

12:11:49 20 THE WITNESS: The weapons that had been taken from them,  
21 the UN destroyed them. Just when the child combatants were  
22 disarmed, they will give your own very arm to you and they will  
23 give you a hammer to destroy it yourself.

24 MS HOLLIS:

12:12:12 25 Q. Now, Mr witness, in your testimony you said, "It came a  
26 time when Benjamin Yeaten said to him that Charles Taylor had  
27 said the weapons and the remaining rounds were to be sent back to  
28 Liberia". Benjamin Yeaten said this to whom?

29 A. He said this to Issa. He said Charles Taylor had said that

CHARLES TAYLOR  
2 SEPTEMBER 2008

Page 15190  
OPEN SESSION

1 the arms he had supplied him with, those that he did not use he  
2 should not use them to disarm with because those arms belonged to  
3 him. He should not surrender those arms. He should bring them  
4 back because they belonged to him. He had given them to him.

12:12:57 5 Q. When you say those arms belonged to him, who are you  
6 referring to? The arms belonged to whom?

7 A. He was referring to Charles Taylor.

8 Q. And when you say that the arms should be brought back to  
9 him, to whom should the arms be brought back?

12:13:29 10 A. He said they should take the arms back to Benjamin Yeaten,  
11 they should meet Benjamin Yeaten in Vahun. At that time Benjamin  
12 Yeaten was in Vahun when the instruction came to Issa. He said  
13 Charles Taylor said the arms and ammunition that he had given to  
14 him, those that he did not use he should assemble them and bring  
12:13:50 15 them to Benjamin Yeaten because Charles Taylor had said he was  
16 the one who had the weapons - he had given them the weapons. If  
17 he did not use them he should bring them back to him.

18 Q. Now what happened after Benjamin Yeaten had this  
19 conversation with Issa Sesay?

12:14:13 20 A. Immediately after that Issa called one of his securities  
21 and sent him to Tongo to bring the remaining arms from Gbarnga to  
22 Koidu Town.

23 Q. To bring the remaining arms from where?

24 A. The ones he sent - he sent his bodyguard to Gbarnga to -  
12:14:45 25 for Banya to collect the heavy weapons that were there and the  
26 ammunition that he had in his possession to be brought to  
27 Lebanon. And the ones that he had in Lebanon, he put some into  
28 the truck and a jeep and took them to Vahun to Benjamin Yeaten.

29 Q. And who was Banya?

CHARLES TAYLOR  
2 SEPTEMBER 2008

Page 15191  
OPEN SESSION

1 A. Banya was a battalion commander. Even though that is not  
2 part of my statement, he was a battalion commander in Tongo.

3 Q. And to what group did Banya belong?

4 A. Banya was an RUF commander.

12:15:29 5 Q. Did you know Banya by any other name?

6 A. That is no nickname. His real name is Banya. They usually  
7 call him Sama Banya, but we call it short, Banya.

8 MR MUNYARD: Madam President, can I just be clear that  
9 where we see in this particular passage he sent his bodyguard to

12:15:56 10 Gbarnga, we are talking about Banya.

11 PRESIDING JUDGE: Yes, I was going to --

12 THE WITNESS: Not Gbarnga. He sent them to Banya in Tongo.

13 PRESIDING JUDGE: The witness has answered your question,  
14 Mr Munyard. It would appear that something was lost in

12:16:11 15 translation there.

16 MS HOLLIS:

17 Q. Now you indicated that Issa sent someone to collect the  
18 heavy weapons and that they were to be taken to Vahun. Did this  
19 happen?

12:16:33 20 A. Yes, he sent one of his bodyguards.

21 Q. And what exactly was taken to Vahun?

22 A. They went with ammunition and two Chinese 50 calibres and a  
23 GPMG, an RPG, an AK rifle and G3 rifles.

24 Q. Now when you say two Chinese 50 calibres, what is a 50  
12:17:08 25 calibre?

26 A. It is a heavy weapon that people mount in vehicles. At  
27 times they mount them on the ground or at times in vehicles. It  
28 should be operated by a team of seven people that is whenever it  
29 is mounted. It is a Chinese made weapon, a heavy weapon.

CHARLES TAYLOR  
2 SEPTEMBER 2008

Page 15192  
OPEN SESSION

1 Q. And what happened then when these materials were taken to  
2 Vahun?

3 A. The man who took them there, he handed them over to  
4 Benjamin Yeaten and the following day he returned to Issa.

12:17:56 5 Q. Now, Mr witness, earlier you testified about Issa Sesay  
6 taking trips to Monrovia and giving diamonds to Charles Taylor.  
7 Where did Issa Sesay get the diamonds that he was giving to  
8 Charles Taylor?

9 A. He got them from Kono and Tongo.

12:18:27 10 Q. And did Issa ever say anything about how many diamonds he  
11 took to Charles Taylor?

12 A. He had said something about it some time in 2002.

13 Q. And what did he say?

14 A. In 2002 when RUF had been transformed into a political  
12:18:56 15 party, the man who was appointed to be the presidential candidate  
16 of the RUF asked Issa what his account was and he said he hadn't  
17 any account, but that he had diamonds with Charles Taylor up to  
18 5,000 carats and he had \$150,000 that he had given to Charles  
19 Taylor for safekeeping and Charles Taylor had said any time  
12:19:22 20 elections would be coming close he would assist the RUF and that  
21 was why he was keeping the diamonds.

22 Q. Now you testified that Charles Taylor had also said that he  
23 was going to hold on to the diamonds that were given to him by  
24 Issa and by Sam Bockarie to give to Foday Sankoh when Foday  
12:19:42 25 Sankoh was released. To your knowledge, did Foday Sankoh ever  
26 receive those diamonds from Charles Taylor?

27 A. Well, he did not receive them in my presence and, in fact,  
28 he did not receive them because Foday Sankoh was not released.  
29 He died in detention.

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                   |       |
|-----------------------------------|-------|
| TF1-338                           | 15138 |
| EXAMINATION-IN-CHIEF BY MS HOLLIS | 15139 |
| CROSS-EXAMINATION BY MR MUNYARD   | 15239 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

MONDAY, 15 SEPTEMBER 2008  
9:30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Carolyn Buff

For the Registry:

Ms Rachel Irura

For the Prosecution:

Mr Nicholas Koumjian  
Mr Christopher Santora  
Ms Kathryn Howarth  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard  
Mr Morris Anyah  
Ms Jacqueline Watts

CHARLES TAYLOR  
15 SEPTEMBER 2008

Page 16175  
OPEN SESSION

1 were you referring to when you said "you"?

2 A. Benjamin Yeaten was the "you" and the subordinate was Sam  
3 Bockarie.

4 JUDGE SEBUTINDE: Mr Santora, another area I think you  
10:08:37 5 might clarify is when the witness said that one of the  
6 communications he noticed was the satellite phone conversation.  
7 I would like to know the basis of his knowledge of this.

8 MR SANTORA: I was going right to that area. I was  
9 starting out with the radio communications, but I will go right  
10:09:04 10 to that right now actually:

11 Q. Mr Witness, you also - when I asked you if Sam Bockarie was  
12 in communication with anyone outside of Sierra Leone you've  
13 discussed some conversations with Benjamin Yeaten and you also  
14 said that Sam Bockarie was in communication on a satellite phone  
10:09:17 15 with Charles Taylor. Before you explain that, first of all, how  
16 do you know that?

17 A. That was not any hidden thing, particularly with regards to  
18 communication, that was not hidden to me particularly because I  
19 was in charge. Once when Sam Bockarie went to Liberia he brought  
10:09:43 20 a satellite phone, just like handset that people use, that  
21 security guards use. That was what he communicated with always  
22 whenever he wanted to talk to Charles Taylor. When he would want  
23 to talk to Charles Taylor he would tell like me or the operator  
24 who would be on duty to tell Sunlight because Sunlight was the  
10:10:07 25 one who worked at Charles Taylor's radio station, the Mansion  
26 Ground. He would say tell Sunlight that I want to talk to Father  
27 because we used to call him Father or Pa, so he would say I want  
28 to talk to Pa or Father. So Sunlight would tell Charles Taylor  
29 that Sam wants to talk to you and he would switch on the phone

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                    |       |
|------------------------------------|-------|
| MOHAMED KABBAH                     | 16162 |
| EXAMINATION-IN-CHIEF BY MR SANTORA | 16162 |
| CROSS-EXAMINATION BY MR GRIFFITHS  | 16196 |





Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

TUESDAY, 16 SEPTEMBER 2008  
9:30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Carolyn Buff

For the Registry:

Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis  
Mr Christopher Santora  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard  
Mr Morris Anyah  
Ms Amina Graham

CHARLES TAYLOR  
16 SEPTEMBER 2008

Page 16328  
OPEN SESSION

1 satellite phone. Yeaten would not refer to Charles Taylor by  
2 name; Yeaten would refer to Taylor by the code name 47.  
3 Ordinarily Charles Taylor would call Sam Bockarie, not the other  
4 way around."

12:02:59 5 And for completeness, and I will ask you one or two  
6 questions about this, over the page, please:

7 "Kabbah knows that Sam Bockarie spoke to Charles Taylor  
8 during that time. However, because Bockarie would go to Monrovia  
9 often to get supplies and to meet with Taylor, Bockarie would  
12:03:14 10 tell Kabbah et al that he was going to meet with Dad or the Papay  
11 or Father or the Old Man. Sam Bockarie would not normally refer  
12 to Charles Taylor by name or say anything like 'the President'.  
13 They all knew that Sam Bockarie meant Charles Taylor when  
14 Bockarie used terms like Dad or the Papay."

12:03:35 15 Now, there are a number of propositions within that and  
16 let's take them in turn. Firstly, you agree Charles Taylor never  
17 spoke to Sam Bockarie on the radio, is that right?

18 A. On VHF, that's correct.

19 MR GRIFFITHS: Would your Honours give me a moment?

12:04:12 20 PRESIDING JUDGE: Yes.

21 MR GRIFFITHS:

22 Q. And where you say, "It was Charles Taylor who would call  
23 Sam Bockarie, not the other way round", is that also correct?

24 A. The other way round, I meant by phone, correct.

12:04:49 25 Q. So ordinarily - and I want you to concentrate please on the  
26 words. "Ordinarily Charles Taylor would call Sam Bockarie, not  
27 the other way round". Do you agree with that?

28 A. That question, the way it is posed it's difficult for me to  
29 agree with that. Charles Taylor, if he wanted to talk to Sam

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                   |       |
|-----------------------------------|-------|
| MOHAMED KABBAH                    | 16281 |
| CROSS-EXAMINATION BY MR GRIFFITHS | 16281 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

WEDNESDAY, 24 SEPTEMBER 2008  
9:30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Carolyn Buff

For the Registry:

Ms Rachel Irura

For the Prosecution:

Mr Nicholas Koumjian  
Mr Alain Werner  
Mr Christopher Santora  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard  
Mr Morris Anyah

CHARLES TAYLOR  
24 SEPTEMBER 2008

Page 17149  
OPEN SESSION

1 will be aware of that:

2 Q. Mr Witness, when you say you were based in Motema,  
3 nonetheless suggesting that you would go elsewhere, you mean that  
4 it was during those times you would on occasion go to Koidu Town,  
15:08:38 5 yes?

6 A. Yes.

7 Q. Now, from 25 May when the junta forces took over, until 21  
8 February when you and your family fled to the bushes of Fakoyia,  
9 none of your family members were killed by the junta forces, yes?

15:09:07 10 A. No.

11 Q. So during the entire junta period you did not suffer any  
12 losses as in deaths of family members, yes?

13 A. No.

14 Q. No means what, you agree with me nobody died?

15:09:28 15 A. No, nobody died. Yes.

16 Q. You agree with me nobody was killed?

17 A. No, at that time.

18 Q. And somewhere about mid-February ECOMOG began to push out  
19 the junta forces from Freetown onwards, yes?

15:09:47 20 A. Yes.

21 Q. Incidentally, did you tell the Prosecution that you went to  
22 Makeni at some point during this period of time?

23 A. Yes, I went to Makeni, but I did not enter the town itself.

24 MR ANYAH: Well, Madam Court Officer, on the next page of  
15:10:13 25 the same document, tab 1, we are now at page 3, second full  
26 paragraph:

27 Q. Mr Witness, these are notes from your interview of 14  
28 November 2002. It reads:

29 "When I heard that information I escaped from Makeni with

CHARLES TAYLOR  
24 SEPTEMBER 2008

Page 17150  
OPEN SESSION

1 my family to a place called Fakoyia which is two and a half miles  
2 from Motema. We stayed at Fakoyia up to April 1999."

3 Do you see that, Mr Witness?

4 A. That was not Makeni. It should be a mistake. It's not  
15:11:02 5 Makeni. It should be a mistake.

6 Q. Well, you are saying that what is written here is a  
7 mistake, yes?

8 A. Yes, it was Motema, not Makeni.

9 Q. But nonetheless in court today you confirmed that at some  
15:11:19 10 point in time you went to the vicinity of Makeni during the junta  
11 period, yes?

12 A. Yes, sir.

13 Q. Well, let's go to another reference to Makeni. Madam Court  
14 Officer, please, tab 3, page 2. Mr Witness, you had an interview  
15:11:48 15 with the Prosecution in July of this year specifically - sorry,  
16 Madam Court Officer, that should be tab 3. I don't know if that  
17 is what you have. It does not appear to be the page I am on. It  
18 is an interview dated 2 July. I suspect it is in your binder, it  
19 is just filed beneath or behind the wrong tab. Yes, thank you,  
15:12:25 20 Madam Court Officer. I am looking for page 2 of that document.

21 At the bottom of the page, Mr Witness, if you are looking at the  
22 page, do you see the subheading "ECOMOG intervention"?

23 A. Yes.

24 Q. And paragraph 12 reads:

15:12:59 25 "Witness did not see any of the shooting on February 21  
26 1998. The first firing the witness heard was when the jets fired  
27 the first bombs. He walked to Makeni on foot. He saw the dead  
28 bodies while going to Makeni and passing by the gates. Witness  
29 saw an old man killed at the Manbuda checkpoint. He was killed

CHARLES TAYLOR  
24 SEPTEMBER 2008

Page 17153  
OPEN SESSION

1 took them to Freetown?

2 A. Yes.

3 Q. So the fact is from 25 May through ECOMOG's intervention in  
4 February 1998 your family remained in Motema, yes?

15:18:35 5 A. Once more.

6 MR WERNER: Sorry to interrupt, but I think it would be  
7 helpful if it's not said only 25 May, but the whole date with the  
8 year.

9 MR ANYAH: well, I think from prior questions it is clear  
10 what I am referring to. I have pronounced the year with each  
11 question previously and the witness is not confused. You know, I  
12 ask for some liberty in the mode of asking my questions.

13 MR WERNER: well, your Honours, we would submit that the  
14 year should be put to the witness.

15:19:07 15 PRESIDING JUDGE: Mr Anyah, please put the year.

16 MR ANYAH: Yes, Madam President:

17 Q. Mr Witness, is it fair to say that from 25 May 1997 through  
18 the ECOMOG intervention in Freetown in February 1998 your family  
19 remained in Motema?

15:19:24 20 A. Yes.

21 Q. And from Motema on 25 [sic] February 1998 it is fair to say  
22 that that is when your family went to the bush at Fakoyia, yes?

23 A. No.

24 Q. well - sorry, go ahead, Mr witness.

15:19:52 25 A. It was 21 February 1998 that I took them to the bush at  
26 Fakoyia.

27 Q. I have looked at the transcript. I see I said 25 February.  
28 It should be 21 February and we are in agreement that that's when  
29 you went to the bush at Fakoyia, yes, Mr witness?

CHARLES TAYLOR  
24 SEPTEMBER 2008

Page 17154  
OPEN SESSION

1 A. The 21st.  
2 Q. Yes. And you said Fakoyia was a few miles, about three or  
3 four miles, from Motema, yes?  
4 A. Not three or four miles. Three miles.  
15:20:35 5 Q. That's fair enough. Three miles from Motema?  
6 A. Yes.  
7 Q. And you stayed at Fakoyia through mid-April 1998, yes?  
8 A. April.  
9 Q. You said 15 April 1998?  
15:20:56 10 A. 15 April.  
11 Q. From Fakoyia you went to a place called Tongbodu, right?  
12 A. Yes.  
13 Q. And it was at Tongbodu that you, Emmanuel and I recall you  
14 said your father, you went in search of the person with the  
15:21:22 15 letter "A", yes?  
16 A. Yes.  
17 Q. Was it at Tongbodu that Emmanuel was taken by the rebel  
18 forces?  
19 A. Yes, it was at Tongbodu.  
15:21:45 20 Q. And you recall Mr Werner, council opposite, asked you a  
21 question when next you were reunited with Emmanuel, yes?  
22 A. Yes.  
23 Q. And what did you say in response to that?  
24 A. I told him that we only reunited a few days from the time  
15:22:12 25 he had been held captive. And when they got to Motema the rebels  
26 released him and he returned to the bush. And he was also  
27 searching out for me and then later we met and reunited.  
28 MR ANYAH: Madam Court Officer, can we show the witness  
29 page 4 of tab 1. These pages should not be published because



CHARLES TAYLOR  
24 SEPTEMBER 2008

Page 17160  
OPEN SESSION

1 repeat the last name that you mentioned. Can you say it again,  
2 please?

3 THE WITNESS: Aiah Turntome.

4 MR ANYAH:

15:35:48 5 Q. Can you help us spell that, Mr witness?

6 A. T-U-R-N-T-O-M-E, Turntome.

7 Q. Is that a nickname, or a proper name, Mr witness?

8 A. That was the name that he first had as a Kamajor.

9 Q. That was his Kamajor name, yes? That was his fighting

15:36:24 10 name?

11 A. Yes.

12 Q. What was his real name?

13 A. Most of the time we used to call him Aiah, but I did not  
14 know his real surname, but he was related to us. And the thing

15:36:46 15 is that I was not much acquainted with him.

16 Q. Well, when you were at Mamboma, that is when the Kamajor  
17 chief came into town with the gun strapped on his back, yes?

18 A. Yes.

19 Q. That was when the Kamajors you said surrounded the village,  
15:37:13 20 yes?

21 A. Yes, sir.

22 Q. Was Turntome with the Kamajors when they surrounded the  
23 village?

24 A. Yes.

15:37:29 25 Q. Was Turntome bringing the Kamajors to help protect you and  
26 your family members that were in the village?

27 A. That was Kai Sandy.

28 Q. Well, Kai Sandy was the head Kamajor hunter, yes?

29 A. Yes.

CHARLES TAYLOR  
24 SEPTEMBER 2008

Page 17161  
OPEN SESSION

1 Q. And you and your family were important to the kamajors at  
2 the time, yes?

3 A. Yes.

4 Q. And that is why they came to attempt to rescue you, yes?

15:38:23 5 A. It was not because of that.

6 Q. But they were coming to your aid, the aid of you and your  
7 family, yes?

8 A. Yes, including all that were there.

9 Q. Yes. And this is when Joseph Foya was killed you said,  
15:38:51 10 yes?

11 A. Yes.

12 Q. This is when or about the time Thomas Kobie was killed,  
13 yes?

14 A. Kobie at the same time.

15:39:10 15 Q. And, indeed, this is when Pa Sandy, or Kai Sandy as you  
16 call him himself, was killed, yes?

17 A. Yes, sir.

18 Q. Now you told us in court today that when Thomas Kobie was  
19 killed you were not there, true?

15:39:29 20 A. Yes, I wasn't there.

21 MR ANYAH: Madam Court Officer, can I have your assistance,  
22 please:

23 Q. Now, Thomas Kobie is not your blood relative, but you had  
24 known him since 1981, correct?

15:39:52 25 A. Yes.

26 Q. For all practical purposes he was like your real or blood  
27 brother, yes?

28 A. Yes.

29 Q. He was somebody that you considered to be very close to

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                   |       |
|-----------------------------------|-------|
| SAMUEL BULL                       | 17054 |
| EXAMINATION-IN-CHIEF BY MR WERNER | 17054 |
| CROSS-EXAMINATION BY MR ANYAH     | 17133 |
| RE-EXAMINATION BY MR WERNER       | 17181 |

## EXHIBITS:

|                        |       |
|------------------------|-------|
| Exhibit P-181 admitted | 17186 |
|------------------------|-------|



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

TUESDAY, 30 SEPTEMBER 2008  
9:30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Doreen Kiggundu  
Ms Carolyn Buff

For the Registry:

Ms Advera Kamuzora  
Ms Rachel Irura

For the Prosecution:

Mr Nicholas Koumjian  
Mr Christopher Santora  
Mr Alain Werner  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard  
Mr Morris Anyah

CHARLES TAYLOR  
30 SEPTEMBER 2008

Page 17586  
OPEN SESSION

1 Q. Were there Kamajors in Lower Bambara Chiefdom or its  
2 vicinity during the time the junta was there starting on 11  
3 August 1997?

4 A. Before ever 11 August 1997, Kamajors and SSD were in Tongo.  
10:28:48 5 They were in the entire chiefdom taking care of the chiefdom.

6 Q. Yes.

7 A. Yes, sir.

8 Q. You said before August they were there?

9 A. Yes, sir.

10:29:03 10 Q. You said they left after the juntas came, yes?

11 A. Yes, sir.

12 Q. The question is: Were they still around its vicinity?

13 A. No, sir, they were not in Lower Bambara Chiefdom. Dodo is  
14 a different chiefdom.

10:29:16 15 Q. Yes, we appreciate that Dodo is a different chiefdom, and  
16 Dodo is where Sam Bockarie and his men went to fight the Kamajors  
17 and sustained a major defeat, yes?

18 A. Yes, sir.

19 Q. In fact, you are right about the events at Dodo Chiefdom in  
10:29:30 20 one of your reports and how Sam Bockarie and his men, upon  
21 returning, took out their frustration on many citizens including  
22 this section chief of Panguma, Pa Vandí Sei, yes?

23 A. There is a correction there. Sam Bockarie never went into  
24 the front war. He only sent his Kamajors - his commandos.

10:29:59 25 Q. Well, that is a slight distinction, we appreciate it, but  
26 the fact is his men went to Dodo Chiefdom, fought a battle, lost  
27 severely. On their way back they killed a section chief, yes?

28 A. Yes, sir.

29 Q. I see. Mr Witness, it is the case that those junta forces

CHARLES TAYLOR  
30 SEPTEMBER 2008

Page 17587  
OPEN SESSION

1 that did misbehave, those that did take part in the lootings and  
2 those that did burn houses that Sam Bockarie disciplined them,  
3 correct?

10:30:46 4 A. It was only at one incident Sam Bockarie disciplined, when  
5 they went and looted one woman and then took money from her.  
6 That was the first week when they entered Tongo, the ending of  
7 the first week.

8 Q. Madam Court Officer, the first document we looked at, 24  
9 August, at the bottom the Prosecution has you speaking about this  
10:31:10 10 issue and the last paragraph reads:

11 "Finally, apart from the heavy lootings and off-loading of  
12 people, raping by some junta members have started in the  
13 chiefdom. All these actions have caused some people on deciding  
14 to stay permanently in the bush - i.e. sorkoihun, even though  
10:31:37 15 Colonel Sam Bockarie [Mosquito] is trying to put this under  
16 control by firing a foot of anyone now reported of any of the  
17 above crimes in the chiefdom."

18 That is a correct account of what was going on around the  
19 time the junta forces came into Lower Bambara Chiefdom, correct?

10:31:58 20 A. Yes, the first week.

21 Q. And it is the case that even after the first week  
22 Sam Bockarie continued to administer punishments to junta members  
23 that "misbehaved. would you agree with that?

24 A. No, sir.

10:32:29 25 MR ANYAH: well, Madam Court Officer, shall we go to tab  
26 number 2:

27 Q. At the top of tab number 2 you give accounts about looting  
28 in Lalehun and its vicinity and then you speak of a woman who  
29 reported to Mosquito's secretary that one of his soldiers had

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                     |       |
|-------------------------------------|-------|
| ABDUL OTONJO CONTEH                 | 17552 |
| EXAMINATION-IN-CHIEF BY MR KOUMJIAN | 17552 |
| CROSS-EXAMINATION BY MR ANYAH       | 17559 |
| RE-EXAMINATION BY MR KOUMJIAN       | 17613 |
| TF1-064                             | 17622 |
| EXAMINATION-IN-CHIEF BY MR SANTORA  | 17622 |

## EXHIBITS:

|                       |       |
|-----------------------|-------|
| Exhibit D-63 admitted | 17619 |
|-----------------------|-------|



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

TUESDAY, 7 OCTOBER 2008  
9:30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Doreen Kiggundu

For the Registry:

Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis  
Mr Nicholas Koumjian  
Mr Alain Werner  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard



CHARLES TAYLOR  
7 OCTOBER 2008

Page 18006  
OPEN SESSION

1 Q. And no doubt the scars and pain of that experience were  
2 still fresh in your mind?

3 A. Yes.

4 Q. Because if we just put in a nutshell what had happened to  
09:45:16 5 you during that two years or so, you'd been captured, is that  
6 right?

7 A. Yes, I was captured.

8 Q. You'd been forced to do domestic work for Major Wallace, is  
9 that right?

09:45:42 10 A. Yes, at that time they used to send me.

11 Q. You were then recruited and forced to go to the training  
12 camp in Buedu, is that right?

13 A. Yes.

14 Q. You'd then been beaten during the training by Monica, is  
09:46:08 15 that right?

16 A. Yes, they used to beat us.

17 Q. You were then given a gun - your own gun - is that right?

18 A. Yes.

19 Q. And you were then forced to fight for the rebels?

09:46:34 20 A. Yes.

21 Q. You could not possibly forget any of those events, could  
22 you?

23 A. Yes, I cannot remember all the events. All that I could  
24 recall was what I explained.

09:46:54 25 Q. But those events were so terrible they'd be impossible to  
26 forget, wouldn't they?

27 A. Not at all. Those that I can remember is what I explained.

28 Q. And equally look at what happened to your family. Your  
29 brother had been killed, is that right?

CHARLES TAYLOR  
7 OCTOBER 2008

Page 18016  
OPEN SESSION

1 A. Well, at the time I had not taken my paper. My father had  
2 not given me my birth certificate so it was my voter ID card that  
3 I had. So the age that was on that ID card was the one that I  
4 gave to them.

10:14:23 5 Q. Very well. I'm happy to accept that answer because it's  
6 easy to become confused as to how old you are, but can we put it  
7 this way: That you're not in a position to say how old you were  
8 at the time you were recruited and sent to Buedu to the training  
9 camp. You can't really tell us how old you were, can you?

10:14:57 10 A. I did not understand.

11 Q. Can you tell us accurately how old you were when you were  
12 sent to the training camp in Buedu?

13 A. Well, I said my father used to explain to me at the time we  
14 had not run away. The first paper that he had taken, he said I  
10:15:23 15 was 14 years. That was what he used to tell me at the time we  
16 were in Koidu.

17 Q. You see, Mr Sumana, the point I'm making is this: If when  
18 you were 19 years old you could make a mistake about your age and  
19 say you were 18, is it possible that you made a mistake about  
10:15:47 20 your age and you were actually 15 and not 14 at the time you were  
21 abducted? Is it possible you made another mistake there?

22 THE INTERPRETER: Your Honours, can counsel please ask his  
23 question again.

24 THE WITNESS: I have not understood the question.

10:16:05 25 MR GRIFFITHS: Very well:

26 Q. We know that in September 2003, when you were speaking to  
27 Corinne Dufka, you made a mistake about your age. You told her  
28 that you were 18 when you were in fact 19. Do you agree?

29 A. That is what I am saying. At the time the war was over and

CHARLES TAYLOR  
7 OCTOBER 2008

Page 18017  
OPEN SESSION

1 they came and asked me. It was at the time that I told them that  
2 age because I didn't have my actual paper. So the ID card that I  
3 had and the age that it had was what I told them.

4 Q. But you agree now that it was a mistake?

10:16:51 5 A. Yes, because it was my father who took our birth  
6 certificates and he didn't hand them over to us. He was the one  
7 who kept them. At the time that I went to register the age that  
8 was on my ID card was what I told them about.

9 Q. The point I'm making is this: If you could make a mistake  
10:17:11 10 about your age then, is it possible that you made a mistake about  
11 your age at the time you were captured?

12 A. Well, as to my age I did not know, but the way my father  
13 used to tell them, that was what I remembered and when they asked  
14 me I told them that that was what my father said and that that  
10:17:45 15 was my age.

16 Q. But you did not know; that's right, isn't it?

17 A. When the war was over I was the one who told them my age  
18 because before that my father had taken the papers and had not  
19 handed them over to us.

10:18:03 20 Q. Very well. Let's move on.

21 PRESIDING JUDGE: Are you moving on to another aspect, Mr  
22 Griffiths?

23 MR GRIFFITHS: Yes, I am.

24 PRESIDING JUDGE: I would like to clarify one thing.

10:18:14 25 Mr Witness, when you had this interview on 21 and 22  
26 September 2003, how many people were there when you were talking  
27 to Ms Dufka?

28 THE WITNESS: I have not understood.

29 PRESIDING JUDGE: You said the interpreter was there,

CHARLES TAYLOR  
7 OCTOBER 2008

Page 18027  
OPEN SESSION

1 Superman were there, but you're now telling us that they weren't  
2 in fact there. Is that right?

3 A. Yes, they were not there. They were in - they were in this  
4 town --

10:42:52 5 Q. Kissi Town. They were in Kissi Town, you tell us.

6 A. They were in Kurubonla at the time.

7 Q. So can you help us how it is that Corinne Dufka is here  
8 saying that you told her that they were present at that meeting?

9 A. Well, at the time they asked me I did not name all of them.

10:43:17 10 Those whom I named, those were the four people and there was one  
11 woman who was doing the interpretation at the time.

12 Q. So are you telling us that you never said to anyone that  
13 General Bropleh and Superman were at that meeting?

14 A. I did not say so. It was later that I told them that  
10:43:49 15 Bropleh and the others were in Kurubonla, that was where we met  
16 them.

17 Q. But can you explain how it is that you didn't say they were  
18 there, but she claims that you told her that? Can you help us  
19 with that?

10:44:09 20 A. Well, at the time they asked me I could name Bropleh, but I  
21 said they were not there. I said they were not there. Those who  
22 were at the meeting were those I named at the time.

23 Q. In any event, you were thereafter selected and sent for  
24 training, weren't you?

10:44:38 25 A. Yes.

26 Q. And the person in charge of training was a woman called  
27 Monica?

28 A. Yes.

29 Q. She was a colonel, wasn't she?

CHARLES TAYLOR  
7 OCTOBER 2008

Page 18028  
OPEN SESSION

1 A. Yes.

2 Q. And her surname was Pearson, wasn't it? Monica Pearson.

3 Colonel Monica Pearson. Do you remember now?

4 A. No, they said Colonel Monica. That was what they called

10:45:18 5 her.

6 Q. But in any event, Colonel Monica was mean, wasn't she?

7 THE INTERPRETER: Your Honours, can the learned counsel

8 repeat his question slowly.

9 MR GRIFFITHS:

10:45:41 10 Q. Colonel Monica was mean, wasn't she?

11 THE INTERPRETER: Your Honours, the interpreter will

12 certainly have problems interpreting "mean". If learned counsel

13 can simplify it for the interpreter.

14 MR GRIFFITHS:

10:46:03 15 Q. Colonel Monica was a nasty piece of work, wasn't she?

16 A. Yes.

17 Q. Now there was a reason why I used the word "mean". Let's

18 go to the next page please, 6 of 10, bearing the reference

19 00000984. Let's start with the second to last line:

10:46:39 20 "Most the training however was done with sticks they

21 pretended were guns. We never received any training about how to

22 treat or not treat civilians. Monica was mean. She and the

23 others would beat us if we didn't perform well enough."

24 MR KOUMJIAN: Your Honour, I could wait for counsel to

10:47:04 25 complete his question but, since the interpreters have already

26 indicated they cannot translate that word, I'm wondering how the

27 witness will be able to understand the question.

28 PRESIDING JUDGE: Perhaps when the interpreters hear it in

29 context they might be able to interpret it and if they have a

CHARLES TAYLOR  
7 OCTOBER 2008

Page 18029  
OPEN SESSION

1 problem they can let us know.

2 JUDGE LUSSICK: Counsel has also given the interpreters an  
3 equivalent meaning of "nasty piece of work", which they were able  
4 to interpret.

10:47:33 5 MR GRIFFITHS:

6 Q. And that was a fair description of Monica, wasn't it? She  
7 was a wicked individual, wasn't she?

8 A. Yes.

9 Q. Now there's one other matter that I want you to help us  
10:47:53 10 with in that regard. You say that this training camp was in  
11 Buedu, don't you?

12 A. Yes.

13 Q. And that was where you were trained by the wicked Monica?

14 A. Yes.

10:48:21 15 Q. The reason why I'm asking you, you see, is this: At or  
16 about that time the wicked Monica was working in a training camp  
17 in Bunumbu, not Buedu. Now help me: Was the camp in Buedu or  
18 was the camp in Bunumbu?

19 A. Well, she was in Buedu. That was what they used to say.

10:49:01 20 We were in the bush. We did not go to Buedu.

21 Q. Now I have very good reason for making that suggestion to  
22 you, because we know that in 1994 Monica was training at Camp  
23 Matru Jong in Sierra Rutile, and for everybody's benefit the  
24 reference is transcript page 4826, line 22 to 23. Also in 1994

10:49:45 25 she was a trainer at Camp Lion in Zogoda on the Kenema Highway,  
26 reference page 4851, line 24 to 25. In 1998 she was at Camp Lion  
27 in Bunumbu, reference page 4867, lines 16 to 18. Then in early  
28 1999 she was in Yengema in Koidu, on the Koidu Highway, reference  
29 page 4916, line 16.

CHARLES TAYLOR  
7 OCTOBER 2008

Page 18030  
OPEN SESSION

1           what I'm suggesting to you, you see, is that she never  
2   worked in a camp in Buedu. Now, was the camp in Buedu or wasn't  
3   it?

4   A.    Well, that was where we were trained and she was the one  
10:50:54 5   who trained us there. There was a camp there where she trained  
6   us.

7   Q.    Are you sure you went to a training camp in Buedu where a  
8   female Liberian, Monica, trained you? Are you sure?

9   A.    Yes.

10:51:20 10   Q.    Because what I'm suggesting is that that Monica was nowhere  
11   near Buedu training recruits; she was in Bunumbu which is about  
12   14 miles from Buedu. Now I want to be as fair to you as I can.  
13   Is it possible you made a mistake and the camp was in Bunumbu and  
14   not Buedu?

10:51:56 15   A.    Well, we were trained in Buedu and that was where I saw  
16   her.

17   Q.    Were you really trained?

18   A.    Yes, at the time.

19   Q.    And according to you you were trained in a camp in Buedu by  
10:52:17 20   Monica, Colonel Monica?

21   A.    Yes, she trained me.

22   Q.    Now yesterday you told us that at your passing out parade  
23   you were given a gun, yes?

24   A.    Yes, they gave me a gun.

10:52:50 25   Q.    This was your own gun?

26   A.    Yes, they gave me there.

27   Q.    What type of a gun was it?

28   A.    It was an AK.

29   Q.    And everyone knows how the military operate. When they

**I N D E X****WITNESSES FOR THE PROSECUTION:**

|                                       |       |
|---------------------------------------|-------|
| KOMBA SUMANA                          | 18000 |
| CROSS-EXAMINATION BY MR GRIFFITHS     | 18000 |
| RE-EXAMINATION BY MR KOUMJIAN         | 18084 |
| FURTHER RE-EXAMINATION BY MR KOUMJIAN | 18088 |
| TF1-305                               | 18092 |
| EXAMINATION-IN-CHIEF BY MS HOLLIS     | 18094 |

**EXHIBITS:**

|                        |       |
|------------------------|-------|
| Exhibit P-185 admitted | 18089 |
| Exhibit P-186 admitted | 18089 |





Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

WEDNESDAY, 5 NOVEMBER 2008  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Carolyn Buff

For the Registry:

Ms Rachel Irura  
Mr Momodu Tarawallie

For the Prosecution:

Mr Nicholas Koumjian  
Mr Alain Werner  
Ms Ruth Mary Hackler  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Morris Anyah  
Mr Terry Munyard

CHARLES TAYLOR  
05 NOVEMBER 2008

Page 19798  
OPEN SESSION

1 Q. Mr witness, do you know approximately when this was when  
2 Bomi Hills was attacked and fell to ULIMO-K?

3 A. It was in 1992 - I mean '91 when we left and went to  
4 Maryland. I stayed in Maryland. I did not go back to Bomi Hills  
10:20:46 5 with Oliver and the troops.

6 JUDGE SEBUTINDE: Mr Koumjian, perhaps I missed something,  
7 but the witness did not say anything about ULIMO-K, did he? He  
8 said ULIMO.

9 MR KOUMJIAN: Your Honour, I believe that is absolutely  
10:21:04 10 correct. That would not have made sense what I said. The  
11 witness said ULIMO.

12 JUDGE SEBUTINDE: The witness simply said ULIMO.

13 MR KOUMJIAN: That is my error. Thank you:

14 Q. Sir, now you've talked about Mr Oliver Varney being  
10:21:21 15 executed. How do you know about that?

16 A. Okay. When I left, that was when I was in Maryland, the  
17 news went all around through radio conversations that Oliver had  
18 been arrested and I --

19 PRESIDING JUDGE: Please pause, Mr Witness. Mr Anyah?

10:21:46 20 MR ANYAH: Yes, I am objecting on the basis of relevance.  
21 This is a description of an execution on its face pertaining  
22 exclusively to the NPFL and having nothing to do with any nexus  
23 to Sierra Leone. The witness is describing how ULIMO-K fighting  
24 in Liberia, in the territory of Liberia and Bomi, took over Bomi  
10:22:11 25 Hills. Oliver Varney is assigned first to Maryland, reassigned  
26 back to Bomi Hills and Bomi Hills falls into the hands of ULIMO-K  
27 and it is alleged that an order was given by Mr Taylor to execute  
28 Varney.

29 Now with respect, your Honours, this is not in any way

CHARLES TAYLOR  
05 NOVEMBER 2008

Page 19799  
OPEN SESSION

1 relevant to Rule 93 of the rules. It is not in any way relevant  
2 to the conflicts in Sierra Leone. The incident is said to happen  
3 between 1991 and 1992 and an internal incident during the  
4 conflict in Liberia, occurring some five years before the  
10:22:49 5 indictment period, how does this help your Honours decide the  
6 issues that are relevant to the case save for portraying our  
7 client as somebody who executes people? That is all this  
8 evidence goes to show; that Mr Taylor allegedly ordered someone  
9 to be executed on Liberian soil during the conflict in Liberia.

10:23:12 10 PRESIDING JUDGE: Mr Koumjian, your response?

11 MR KOUMJIAN: Yes. Your Honour, the evidence is relevant  
12 not just to place this witness's testimony in context and his  
13 changes in assignment, but it is relevant for the reasons  
14 Mr Anyah is objecting because it does show a pattern of conduct  
10:23:26 15 and it is covered under Rule 93. It goes to show the proof of  
16 what the Prosecution case is, which is that the RUF and  
17 Mr Taylor's minions in Sierra Leone carried out a campaign of  
18 terror, that they were an organisation based on terror internally  
19 and that is how they treated the civilians even internally.  
10:23:51 20 Mr Taylor's control over the RUF, similar to his control over the  
21 NPFL, part of that was his power to execute anyone who didn't  
22 obey his orders; anybody who didn't carry out what he felt was  
23 the job he wanted them to do. This pattern of the accused  
24 continually executing commanders - even very top persons -  
10:24:14 25 without evidence, simply because they went against his wishes or  
26 failed in their assignments, illustrates this pattern of  
27 terrorising the organisation, maintaining absolute control of it  
28 and that this is part of how he maintained the control of the RUF  
29 and the other forces that he influenced in Sierra Leone.

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|         |       |
|---------|-------|
| TF1-579 | 19778 |
|---------|-------|

|                                     |       |
|-------------------------------------|-------|
| EXAMINATION-IN-CHIEF BY MR KOUMJIAN | 19779 |
|-------------------------------------|-------|



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

WEDNESDAY, 3 DECEMBER 2008  
9.33 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Ms Carolyn Buff

For the Registry:

Ms Rachel Irura  
Mr Momodu Tarawallie

For the Prosecution:

Ms Brenda J Hollis  
Mr Christopher Santora  
Mr Nicholas Koumjian  
Mr Alain Werner  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard  
Ms Amina Graham

CHARLES TAYLOR  
03 DECEMBER 2008

Page 21543  
OPEN SESSION

1 this from Sam Bockarie?

2 A. It was in Buedu. I was in Buedu right behind Sam  
3 Bockarie's house where his satellite phone was installed, where  
4 he used to install his satellite phone, and I met him there. He  
10:00:52 5 was sitting by his phone together with some of his bodyguards who  
6 were around him and some other people.

7 Q. Now you said then that when we arrived in Liberia the  
8 course changed and that particular movement was diverted to  
9 Ouagadougou. What do you mean when you say when you arrived in  
10:01:13 10 Liberia the course changed?

11 A. Well, instead of Sam Bockarie going to Libya he said the  
12 Papay had told him that the ammunition had been brought to  
13 Burkina Faso, so he was now to go and receive the ammunition from  
14 Burkina Faso.

10:01:41 15 Q. When you say in this context the Papay, who are you  
16 referring to?

17 A. CIC Taylor.

18 Q. And just describe sequentially what happened. You said  
19 that when you arrived the course changed but then you said, of

10:02:09 20 Sam Bockarie, "He said the Papay had told him that the ammunition  
21 had been brought to Burkina Faso." Do you know when this  
22 happened?

23 A. Well, it was in December. December 19 --

24 Q. Let me rephrase the question. Do you know when the Papay  
10:02:29 25 told Sam Bockarie that the ammunition had been brought to Burkina  
26 Faso? When did it happen in terms of the course of your trip?

27 A. It was only after we had reached in Monrovia. That was  
28 when I knew about that, that everything --

29 Q. How did you learn about that?

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                    |       |
|------------------------------------|-------|
| DAUDA ARUNA FORNIE                 | 21532 |
| EXAMINATION-IN-CHIEF BY MR SANTORA | 21532 |
| CROSS-EXAMINATION BY MR MUNYARD    | 21642 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

THURSDAY, 11 DECEMBER 2008  
9:30 A.M.  
TRIAL

TRIAL CHAMBER II

**Before the Judges:**

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

**For Chambers:**

Mr William Romans  
Ms Carolyn Buff

**For the Registry:**

Ms Rachel Irura  
Mr Momodu Tarawallie

**For the Prosecution:**

Ms Brenda J Hollis  
Mr Christopher Santora  
Ms Ruth Mary Hackler

**For the accused Charles Ghankay Taylor:**

Mr Terry Munyard  
Ms Amina Graham

**For the Office of the Principal Defender:**

Mr Silas Chekera



1 remember describing this?

2 A. Yes, that was in Kakata.

3 Q. During the course of your response you said:

4 "What also convinced me was the kind of convoy that they

16:15:02 5 moved with, the kind of convoy that was moving with various  
6 weapons, twin barrels, AAs. If you saw that you would know for  
7 yourself that, oh, it was indeed the CIC that was moving at that  
8 time."

9 Do you recall saying this?

16:15:20 10 A. Yes.

11 Q. Now just to be clear, who are you referring to when you say  
12 "CIC"?

13 A. That is CIC Taylor. Charles Taylor.

14 Q. Why did you refer to him as "the CIC"?

16:15:34 15 A. He was the commander in chief. He was the commander in  
16 chief. He was commander in chief of the entire - of all of us  
17 who were there, who were in Liberia. The RUF - we, the RUF  
18 forces - and the NPFL forces.

19 MR SANTORA: Can I just have one brief moment, Madam  
16:16:02 20 President?

21 PRESIDING JUDGE: Yes.

22 MR SANTORA: I have no further questions.

23 PRESIDING JUDGE: Thank you, Mr Santora.

24 MR MUNYARD: Madam President, before my learned friend

16:16:11 25 submits his documents -

26 PRESIDING JUDGE: We have some questions.

27 MR MUNYARD: Oh, I'm so sorry. I'll deal with it after  
28 that.

29 JUDGE SEBUTINDE: Mr Witness, I have a few questions

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                 |       |
|---------------------------------|-------|
| DAUDA ARUNA FORNIE              | 22130 |
| CROSS-EXAMINATION BY MR MUNYARD | 22130 |
| RE-EXAMINATION BY MR SANTORA    | 22253 |

## EXHIBITS:

|                                     |       |
|-------------------------------------|-------|
| Exhibit P-261 admitted              | 22261 |
| Exhibit P-262 admitted              | 22261 |
| Exhibit P-263 admitted              | 22261 |
| Exhibit P-264 admitted              | 22262 |
| Exhibits P-265A and P-265B admitted | 22262 |
| Exhibit P-266A and P-266B admitted  | 22262 |
| Exhibit D-76 admitted               | 22263 |
| Exhibit D-77 admitted               | 22264 |
| Exhibit D-78 admitted               | 22265 |
| Exhibit D-79 admitted               | 22265 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

THURSDAY, 29 JANUARY 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Ms Doreen Kiggundu  
Ms Carolyn Buff

For the Registry:

Ms Rachel Irura  
Mr Momodu Tarawallie

For the Prosecution:

Ms Brenda J Hollis  
Mr Mohamed A Bangura  
Mr Nicholas Koumjian  
Ms Ula Nathati-Lutchman  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths  
Mr Morris Anyah

CHARLES TAYLOR  
29 JANUARY 2009

Page 23910  
OPEN SESSION

1 January 2008, and I will read the towns through which Mr Koker  
2 said the convoy went, I will give the relevant page number and  
3 then I will pose a question. Mr Koker said the convoy started  
4 out in Freetown. That's at page 1223. He said from Freetown the  
12:24:06 5 convoy went to Tombo, T-O-M-B-O. That's at page 1224. He said  
6 from Tombo they went to Fogbo, F-O-G-B-O, and that's at page  
7 1229. From Fogbo they went to Masiaka and that's at page 1232,  
8 from Masiaka to Makeni also at page 1232, from Makeni to Mortema  
9 at page 1235 and from Mortema they went to Koidu Town at page  
12:24:55 10 1236. Then from Koidu Town they went to Gandorhun. That's at  
11 page 1246. From Gandorhun they went to Baoma, B-A-O-M-A. That's  
12 at page 1250. From Baoma they went to Kailahun, that's at page  
13 1251, and from Kailahun they went to Buedu, page 1257.  
14 Madam Witness, have you ever heard of a place called Baoma  
12:25:33 15 spelt B-A-O-M-A.  
16 A. Yes.  
17 Q. Is Baoma different from Baiama, B-A-I-A-M-A?  
18 A. Yes.  
19 Q. The place where you and your family sought refuge in from  
12:25:55 20 Koidu Town is called Baiama?  
21 A. Yes.  
22 Q. B-A-I-A-M-A?  
23 A. Yes.  
24 Q. It is not Baoma, correct?  
12:26:09 25 A. It is Baiama. We have Baiama and we also have Baoma.  
26 Q. What is the distance between Baiama and Baoma, if you know?  
27 A. They are far apart, because Baoma is way after Gandorhun  
28 going towards Kailahun.  
29 Q. That is Baoma, you mean?

CHARLES TAYLOR  
29 JANUARY 2009

Page 23911  
OPEN SESSION

1 A. Yes.

2 Q. And from Koidu Town how far is Baiama where you went,  
3 B-A-I-A-M-A?

4 A. It's also a far distance.

12:26:54 5 Q. So when this witness says they went to Baoma, B-A-O-M-A,  
6 that is not the same place you and your family were hiding at,  
7 correct?

8 A. We went to Baiama together with my family.

9 Q. Well I understand that, but just answer the question as  
12:27:12 10 posed. When this witness says that Johnny Paul's convoy passed  
11 through Baoma, B-A-O-M-A, that is not the same place you and your  
12 family were hiding at, correct?

13 A. I don't understand because we were in Baiama together with  
14 my family, not in Baoma. We were in Baiama.

12:27:36 15 Q. That's fair enough. Madam Witness, the brother of yours  
16 about whom we've spoken, how old was he when he saw this convoy?

17 A. I did not know his age because he was our elder brother.  
18 He was not a small boy.

19 Q. Was he - first of all, is he still alive today?

12:28:05 20 A. Yes.

21 Q. Did he ever fight with any of the warring factions in  
22 Sierra Leone during the war?

23 A. He never fought.

24 Q. Was he ever captured by any of the rebel forces?

12:28:22 25 A. No, he was not captured.

26 Q. Let's go back to the period of your capture and retrace  
27 your steps again, Madam Witness. You tell us that you were  
28 captured in Baiama village, correct?

29 A. Yes.

CHARLES TAYLOR  
29 JANUARY 2009

Page 23912  
OPEN SESSION

1 Q. And you were captured by a rebel named Peppe, true?

2 A. Yes.

3 Q. Have you ever told the Prosecution outside of court that  
4 you were captured in Koidu Town?

12:28:58 5 A. I said Baiama village.

6 Q. Yes, you've said that in court and many times out of court  
7 you've said the same thing, but have you ever told them that you  
8 were captured somewhere else, namely in Koidu Town?

9 A. If they - no, I only said I was captured in Baiama.

12:29:24 10 Q. You are absolutely sure, Madam Witness, that you have never  
11 told the Prosecution that you were captured in Koidu Town? Are  
12 you sure of that?

13 A. No, I did not say that.

14 Q. And there is a clear difference between Koidu Town in Kono  
12:29:47 15 and Baiama you will agree, yes?

16 A. Yes.

17 MR ANYAH: Mr Court Usher, can we display the document to  
18 be found in tab 5. It's the same interview record from 22 August  
19 last year and I need page 1, the first paragraph:

12:30:16 20 Q. Madam Witness, we've been through this statement before,  
21 your statement from last year's August. In the first paragraph  
22 it reads, "Witness states that it was after the overthrow of JPK  
23 she was captured by the AFRC/RUF in Koidu Town, Kono." Do you  
24 see that, Madam Witness?

12:30:41 25 A. I have seen that, but I said rebel because at that time I  
26 did not know the difference between a rebel and the RUF, or  
27 anything.

28 Q. That's interesting. We'll come back to that. You've just  
29 told us you did not know at the time the difference between

1 rebel, or RUF. Is that what you just said, Madam Witness?

2 A. Yes.

3 Q. We will revisit that momentarily, but let's focus on my  
4 question. The question has to do with where exactly you were

12:31:09 5 captured. You've told us in court you were captured in Baiama.  
6 What I have just read suggests you told the Prosecution out of  
7 court that you were captured in Koidu Town. Is what I've just  
8 read a mistake?

9 A. Yes, I was captured in Baiama.

12:31:32 10 Q. So the Prosecution's notes are in error, correct?

11 A. Yes.

12 Q. You told us when Peppe captured you he, or the rebels with  
13 whom he was with, kicked down the door of the house you and your  
14 family were staying in, took you outside under a mango tree, he

12:32:02 15 secured a mat and a blanket and attempted, or was going to  
16 attempt, to rape you and another rebel colleague of his told him  
17 not to and that your mother came out to plead with them, your  
18 father also came out to plead with them and eventually your  
19 father was killed - and we'll come back to that, but let's focus  
12:32:32 20 on the two women who you said came in the evening. Two women  
21 came and you said they prepared some food. Do you remember that?

22 A. Yes, in the morning the two women came.

23 Q. And you said after the rebels had eaten, Peppe took you to  
24 Koidu Town, correct?

12:32:55 25 A. Yes.

26 Q. Were you taken to Koidu Town with both women?

27 A. Yes.

28 Q. Is it fair to say then that you were captured with two  
29 women?

871

CHARLES TAYLOR  
29 JANUARY 2009

Page 23914  
OPEN SESSION

1 A. Yes.

2 Q. Are you sure there was not a third woman in the company  
3 when you went to Koidu Town?

4 A. Those two women plus me summed up to three.

12:33:26 5 Q. So when your statement to the Prosecution reads that you  
6 were captured with three women, you mean you included yourself  
7 among the three?

8 A. I said I was the third person.

9 Q. Madam Witness, we understand that. Just be patient with  
12:33:46 10 me. We will complete this soon. The question has to do with how  
11 many persons you were captured with. Is it fair to say that you  
12 were captured with three women, or is it fair to say you were  
13 captured with two women?

14 A. I was captured in Baiama and the other two were brought  
12:34:07 15 from Kwakor.

16 Q. And by the time you were taken to Koidu Town your father  
17 was already dead, correct?

18 A. Yes, yes.

19 MR ANYAH: Mr Court Usher, can we go to the document in tab  
12:34:26 20 4, handwritten notes from 19 July 2007, page 2. It's paginated  
21 on the bottom right-hand corner:

22 Q. Madam Witness, two members of the Office of the Prosecutor  
23 spoke with you on 19 July 2007; somebody named Shelley Birston  
24 and an investigator named Magnus Lamin who served as the  
12:35:21 25 interpreter. This is what the notes from that interview suggest.  
26 It says:

27 "Witness made additions to the above statement as follows:  
28 Witness was first captured with her father and three other  
29 females who were from Kono tribe."



1           Madam Witness, what I've just read to you says you were  
2    captured with your father and three other women.

3    A.    No. No, I did not say that.

4    Q.    So this record of interview is in error in two respects,  
12:36:03 5    first saying you were captured with your father. Do we agree on  
6    that?

7    A.    I was captured alone.

8    Q.    So what I've read to you is in error, it's inaccurate, it's  
9    not correct?

12:36:17 10   A.    No.

11   Q.    No means you agree with me, yes?

12   A.    No, it's not correct.

13   Q.    When it says you were captured with three other females, in  
14   that sense it is also not correct, yes?

12:36:41 15   A.    They captured me and they went and captured other  
16   civilians. They brought them and we summed up to three. We were  
17   sitting.

18   Q.    Yes, you've been consistent in saying that in court. I  
19   just want to know whether this record of interview is not correct  
12:36:54 20   when it says you were captured with three others. It is not  
21   correct in that sense, yes?

22   A.    No, I did not say that.

23   Q.    Now, I'll continue to read. It says:

24           "when they were captured the witness's father pleaded with"  
12:37:22 25   - at least that is how I read it - "the captors to release the  
26   witness. The captors said they were not going to release the  
27   witness, so her father said if they were not going to release the  
28   witness then they should kill both the father and witness. When  
29   the father was pleading the witness went and grabbed tightly onto

1 her father's legs. At this time another rebel came from behind  
2 her father and hit him with the butt of the rifle. The father  
3 dropped to the ground and the rebel that hit him shot him with  
4 the rifle."

12:38:11 5 Let's pause there. This morning in court you told us it  
6 was your mother who was hit by a rebel with a gun, yes?

7 A. Yes, yes.

8 Q. The record of interview from the Prosecution says it was  
9 your father. This is the interview from 19 July 2007.

12:38:35 10 A. I said my mother. I did not say my father. My mother.

11 Q. So clearly what I have just read to you is inaccurate, yes?

12 A. No, it was not my father. I did not hold on to my father's  
13 leg. I did not hold on to anybody's leg even.

14 Q. Then I repeat my question. What I've just read to you is  
12:39:04 15 not correct?

16 A. No.

17 Q. No means you agree with me, yes?

18 JUDGE SEBUTINDE: Mr Interpreter, does an "Ah" mean yes?

19 THE INTERPRETER: No, your Honours, in that sense it means

12:39:27 20 no.

21 MR ANYAH:

22 Q. Madam Witness, I think we have the same understanding but I  
23 just want you to speak in the affirmative voice. You have agreed  
24 with me or you agree with me that what I've just read to you that  
12:39:42 25 they claim you said is incorrect?

26 A. Ah.

27 MR ANYAH: Your Honours, I don't know what --

28 PRESIDING JUDGE: Mr Interpreter, could you please  
29 interpret into English?

1 THE INTERPRETER: Your Honours, that grunting sound, it  
2 cannot be interpreted. It could also be yes in some  
3 circumstances, in some circumstances it could mean no.

4 THE WITNESS: I said no, I did not say so.

12:40:17 5 MR ANYAH:

6 Q. Madam Witness, this episode of your father being shot?

7 A. Yes.

8 Q. Of your father being killed?

9 A. Yes.

12:40:34 10 Q. And of your mother pleading with the rebels to let you go?

11 A. Yes.

12 Q. And of the rebels hitting your mother with the butt of a  
13 weapon?

14 A. Yes.

12:40:56 15 Q. And of the rebels making your mother and you laugh upon  
16 viewing the death of your father, this entire episode --

17 A. Yes.

18 Q. -- is it fair to say that it was very troubling for you to  
19 go through all of that?

12:41:11 20 A. Yes.

21 Q. It's something that pains you when you remember it, yes?

22 A. Yes.

23 Q. It is something that you will never likely forget, yes?

24 A. Ah.

12:41:27 25 Q. What does that mean, Madam Witness, what you just said?

26 A. I will never forget that.

27 Q. When you spoke with the Prosecution the first time on 15  
28 November 2002, did you tell them anything about your father being  
29 killed by the rebels?

1 A. If I spoke to the ones who went?

2 Q. Well, let me put it to you this way: You agreed with me  
3 earlier today that you spoke with the Prosecution in 2002 and I'm  
4 saying to you that I have read what they wrote down as you saying  
12:42:13 5 and you did not tell them anything about your father being killed  
6 by the rebels. Do you agree when you first met with them and  
7 they interviewed you you did not mention the rebels killed your  
8 father?

9 A. Initially when I was interviewed, that was the first thing  
12:42:35 10 I said, that he was killed because of me.

11 Q. Well, the Prosecution counsel are in court, they are across  
12 from us here right now and they will correct me if I'm mistaken.  
13 I am saying to you, Madam Witness, I have read the record of your  
14 interview from 15 November 2002 and nowhere does it have you  
12:43:04 15 saying that the rebels killed your father. What do you say to  
16 that, Madam Witness?

17 A. That there is nowhere in the document which states that my  
18 father was killed?

19 Q. Yes, that's what I'm saying, and the Prosecution will  
12:43:21 20 correct me if I'm mistaken.

21 A. I said it in the first statement that he was killed in my  
22 presence. Why shouldn't I have said it?

23 Q. And if it is not in your first statement then the  
24 Prosecution failed to write down all that you told them, yes? Do  
12:43:49 25 you understand what I'm asking you, Madam Witness? You say one  
26 thing in court and the statement does not reflect what you've  
27 said. Nowhere in the Prosecution's notes do they have you saying  
28 your father was killed by the rebels. I'm speaking of the notes  
29 of 15 November 2002. You are telling us in court you remember

1 telling them your father was killed by the rebels, so if the  
2 notes don't have it I'm asking you, are those notes incomplete?

3 A. Yes, because it should be there.

4 Q. We have another statement or record of contact between you  
12:44:35 5 and the Prosecution in 2004. This is from 28 January 2004.

6 During that interview the Prosecution read your statement from 15  
7 November 2002 to you. They asked you if you had any additions to  
8 make to that statement and you had no additions to make. So in  
9 2004 you did not - at least their records don't have you saying  
12:45:08 10 anything about your father being killed by the rebels. So the  
11 absence of that information in the records, do you agree with me  
12 means their records were incomplete?

13 MS HOLLIS: Excuse me, for my assistance, could you tell me  
14 what tab you're referring to?

12:45:28 15 MR ANYAH: Certainly. The 28 January 2004 interview. It's  
16 one sheet of paper. It's in tab 2. The explication of why that  
17 page is blank is in tab 7, I believe, which was disclosed to us  
18 last week. Shall we go to tab 7, Mr Court Usher, please. If you  
19 could also simultaneously take out the document in tab 2.

12:46:13 20 PRESIDING JUDGE: I'm just wondering who the Prosecution  
21 was speaking to when they prepared tab 2. It refers to the  
22 witness confirming his previous statement.

23 MR ANYAH: Exactly, I see that, Mr President, and we will  
24 touch upon that. Could you display that document, Mr Court  
12:46:31 25 Usher:

26 Q. The document reads - at the top it has the witness's name,  
27 first name, Finda, last name Gbamanja. It has the date 28/1/04.  
28 Has the language, has the names of Prosecution counsel and the  
29 interpreter. It says interview notes. It says:

CHARLES TAYLOR  
29 JANUARY 2009

Page 23920  
OPEN SESSION

1 "The witness confirmed his" - the male pronoun - "previous  
2 statement and did not wish to make any alterations or  
3 alterations."

4 And then last week, this would be in tab 7, Mr Court Usher,  
12:47:33 5 page 1 of tab 7, paragraph 2 refers to this statement of 28  
6 January 2004. At the top of paragraph 2 it says 28 January 2004  
7 adoption, and it refers to that previous record and it says:

8 "Witness stated that she was asked if she had anything to  
9 add to her November 2002 statement, not if there was anything  
12:48:06 10 that needed correcting."

11 So you explained last week to the Prosecution that your  
12 first statement was presented to you again in January of 2004,  
13 and you were specifically asked if you had anything to add to it,  
14 not whether you wished to correct anything. Now the point is  
12:48:29 15 this, Madam Witness: Your first statement from November 2002,  
16 and the second opportunity you had to add something to it in  
17 January 2004, do not reflect you saying the rebels killed your  
18 father. Do you understand what I've just said?

19 A. I understand.

12:48:54 20 Q. And you remain certain that you told the Prosecution about  
21 the death of your father when you spoke with them in 2002?

22 A. I told them and even in my presence the person was writing,  
23 the person had a pen.

24 Q. Madam Witness, you said a few minutes ago that at the time  
12:49:25 25 of your capture you were not sure who was RUF and who was AFRC.  
26 Am I correct in saying that?

27 A. Yes, because we referred to them as rebels because they  
28 were killing people.

29 Q. Do you see that in the same page we are looking at, tab 7,

## I N D E X

## WITNESSES FOR THE PROSECUTION:

|                                     |       |
|-------------------------------------|-------|
| FINDA GBAMANJA                      | 23849 |
| EXAMINATION-IN-CHIEF BY MS HOLLIS   | 23849 |
| CROSS-EXAMINATION BY MR ANYAH       | 23889 |
| RE-EXAMINATION BY MS HOLLIS         | 23967 |
| ALUSINE CONTEH                      | 23976 |
| EXAMINATION-IN-CHIEF BY MR KOUMJIAN | 23976 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

MONDAY, 13 JULY 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Mr Simon Meisenberg  
Ms Carolyn Buff

For the Registry:

Mr Gregory Townsend  
Ms Advera Nsiima Kamuzora  
Ms Rachel Irura  
Mr Benedict Williams

For the Prosecution:

Mr Stephen Rapp  
Ms Brenda J Hollis  
Mr Mohamed A Bangura  
Mr James Johnson  
Mr Christopher Santora  
Ms Kathryn Howarth  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Morris Anyah  
Mr Terry Munyard  
Cllr James Supuwood  
Ms Claire Carlton-Hanciles  
Ms Salla Moilanen



CHARLES TAYLOR  
13 JULY 2009

Page 24306  
OPEN SESSION

1 north of Sierra Leone, returning back to the western district  
2 late in the year of 1998 and thereafter, on 6 January 1999,  
3 wreaked havoc and destruction in Freetown.

10:26:04 4 That is what is at the core of this case and that is what  
5 we shouldn't lose sight of. Yes, there are counts which extend  
6 beyond that time frame, but that period is really at the heart of  
7 this Prosecution and that's what we ought to concentrate on.

8 Now, having examined that, let us remind ourselves also  
9 that although the indictment itself is set in narrow limits in  
10:26:35 10 terms of time and territory, here November 1996 to January 2002,  
11 solely limited to Sierra Leone, the evidence nonetheless placed  
12 before this Court and relied on traverses a much wider historical  
13 and geographical period. Thus, in terms of the time line, we  
14 were told that the plan at the heart of this design "was  
10:27:05 15 formulated in Libya by the accused". That's a long time outside  
16 the indictment period.

17 Further, in geographical terms, much evidence has been  
18 called of events in Liberia from the likes of Hassan Bility and  
19 TF1-590, none of which, on the face of it, seemed to have much to  
10:27:31 20 do with the issue at hand, rather than a search for prejudicial  
21 evidence.

22 So the narrow limits set by the Statute have been exceeded  
23 considerably. This expansion, whilst not accepted, has to be  
24 addressed. Consequently, the Defence case cannot be dealt with  
10:27:54 25 within a narrow compass. So let me then turn now to the Defence  
26 case.

27 Now, the accused does take issue with the Prosecution  
28 allegation that he, by reason of any of the modes of liability  
29 alleged in the indictment, was responsible for any of the crimes



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

TUESDAY, 14 JULY 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Doreen Kiggundu

For the Registry:

Mr Gregory Townsend  
Ms Advera Nsiima Kamuzora  
Ms Rachel Irura  
Mr Benedict Williams

For the Prosecution:

Mr Stephen Rapp  
Ms Brenda J Hollis  
Mr Mohamed A Bangura  
Mr Christopher Santora  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Morris Anyah  
Mr Terry Munyard  
Mr James Supuwood  
Ms Salla Moilanen

For the Office of the Principal  
Defender:

Ms Claire Carlton-Hanciles

CHARLES TAYLOR  
14 JULY 2009

Page 24329  
OPEN SESSION

1 common enemy, happening to be ULIMO, we withdrew our men and  
2 ceased all, and I mean all, cooperation with the RUF.

3 Q. Did you thereafter provide any military assistance to the  
4 RUF?

09:45:55 5 A. None whatsoever.

6 Q. Were you thereafter aware of atrocities being committed in  
7 Sierra Leone?

8 A. Well, I put it this way: There is no one on this planet  
9 that would not have heard through international broadcasts or  
09:46:29 10 probably discussions about what was going on in Sierra Leone. I  
11 would be the first to say yes, we did hear of certain actions  
12 that were going on in Sierra Leone that we - that were a little  
13 strange to us because those things did not occur in Liberia.

14 Q. What things?

09:46:51 15 A. Well, we heard that people were getting killed, women were  
16 getting raped and different things, and we couldn't understand  
17 it. I could not understand it, because these are things that we  
18 did not tolerate in Liberia and so for me it was unacceptable.  
19 But then again we had no way of verifying whether, you know,  
09:47:17 20 these were true because we did not have anyone in there to tell  
21 us because, you know, these days when you see reports on  
22 television - I'm seeing on television this morning that I ordered  
23 people to cannibalise people in Sierra Leone, and when you begin  
24 to look at the different slants in the news, well, you hear them,  
09:47:37 25 you cannot verify them, and it was not in my - it was not my duty  
26 to verify them, but I would say we did hear about those things in  
27 Sierra Leone.

28 Q. And had you ordered the RUF or any other group in Sierra  
29 Leone to carry out such actions?

## I N D E X

## WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR

24324

EXAMINATION-IN-CHIEF BY MR GRIFFITHS

24324



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

TUESDAY, 18 AUGUST 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Mr Tom Dannenbaum

For the Registry:

Ms Rachel Irura  
Mr Benedict Williams

For the Prosecution:

Ms Brenda J Hollis  
Mr Mohamed A Bangura  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Morris Anyah  
Mr Terry Munyard

CHARLES TAYLOR  
18 AUGUST 2009

Page 27047  
OPEN SESSION

1 resolved.

2 According to an Executive Mansion release, the President  
3 made the statement today following a round of intensive  
4 negotiations with RUF representatives in Sierra Leone and a  
12:50:23 5 series of high level consultations with the National Security  
6 Council and opinion leaders in the Liberian society.

7 The President expressed concern over the whereabouts of  
8 Foday Sankoh and the fact that he has not surfaced for a week  
9 now. He, however, hoped that with the high level of involvement  
12:50:45 10 in the process, some positive results will be forthcoming."

11 So at this stage, help us, "a round of intensive  
12 negotiations with RUF representatives in Sierra Leone"; who's  
13 that that we're talking about?

14 A. We're talking about Issa Sesay. He's still not in Liberia,  
12:51:06 15 that's why it's in Sierra Leone. On the telephone, national  
16 security people are really involved in these talks in trying to  
17 negotiate where it is made very clear that these people must be  
18 released.

19 Q. Now help us. Are you in telephone contact at this stage  
12:51:26 20 then with the RUF?

21 A. At this stage for these negotiations I did speak to Issa  
22 Sesay at least once and made it very clear to him that the United  
23 Nations personnel had to be released unconditionally and voiced  
24 the outrage of the international community about holding United  
12:51:50 25 Nations personnel.

26 Q. Now, can we pause and just deal with one or two more  
27 details regarding Mr Sesay. Now, you told us that you invited  
28 him to Monrovia. Who did you speak to before issuing that  
29 invite?

## I N D E X

## WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR

26963

EXAMINATION-IN-CHIEF BY MR GRIFFITHS

26963



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

THURSDAY, 10 SEPTEMBER 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Ms Doreen Kiggundu

For the Registry:

Ms Rachel Irura  
Mr Benedict Williams

For the Prosecution:

Ms Brenda J Hollis  
Mr Mohamed A Bangura  
Mr Christopher Santora  
Ms Ula Nathai-Lutchman

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Morris Anyah



CHARLES TAYLOR  
10 SEPTEMBER 2009

Page 28652  
OPEN SESSION

1 Q. Right. How did you go about securing his release?

2 A. By this time I spoke both to Foday Sankoh and to Sam  
3 Bockarie. I spoke to Foday Sankoh, who had not come into the  
4 region yet, but I was in telephone conversation because we were  
15:18:45 5 trying to push him to hurry up and come. And after that I spoke  
6 directly to Sam Bockarie and told him that we could not have this  
7 situation of United Nations individuals being held hostage. And  
8 by the way, there were some RUF people, officials, who were also  
9 being held amongst the group that the West Side Boys took, and I  
15:19:15 10 told him that I asked - in fact, up until that time I didn't even  
11 know - and I don't think a lot of people knew - that Johnny Paul  
12 Koroma was actually imprisoned at that time. I really didn't  
13 know. So we agreed that he would release Johnny Paul Koroma,  
14 because the West Side Boys had said they would not release the  
15:19:32 15 hostages until Johnny Paul Koroma was released.

16 Q. And when he was released, Mr Taylor, was he released alone  
17 or with anybody else?

18 A. Along with that release were two other persons. The former  
19 and late President Momoh was set free - well, I'm not sure if  
15:19:54 20 Momoh was incarcerated, but he was let go at the time. He went  
21 into Guinea. There was another guy that I had never met, but  
22 most people in West Africa years ago had heard his name a lot.  
23 There was a gentleman, a Sierra Leonean called Hilton Fyle. I'm  
24 not sure if it's F-I-L-E-S or what, but he was a - ge worked some  
15:20:16 25 time for the BBC. He also left during that time of the release  
26 through Guinea. Hilton Fyle.

27 Q. So who was it who released Johnny Paul Koroma?

28 A. The RUF and Sam Bockarie on the ground up there at that  
29 time that released Johnny Paul Koroma.

CHARLES TAYLOR  
10 SEPTEMBER 2009

Page 28653  
OPEN SESSION

1 Q. How did Johnny Paul Koroma get from a position of  
2 incarceration in Sierra Leone to Monrovia?

3 A. Oh, I am not too sure of what modalities were used inside  
4 Sierra Leone. I'm not sure, but I know we picked him up at the  
15:20:56 5 border. If I'm not mistaken, I think he was driven to the border  
6 and then on to into Liberia, to the best of my recollection.

7 Q. And help me, when he arrived in Monrovia was he alone or  
8 with anybody else?

9 A. He arrived with some individuals, a few security personnel,  
15:21:15 10 his wife, I don't know the exact number.

11 Q. His who?

12 A. A few of his security personnel.

13 Q. And his?

14 A. I think his wife came along with him, if I'm not mistaken.

15:21:25 15 Q. Any other family members?

16 A. I'm sure there were others, but I did not meet them. I  
17 don't know the exact amount, but I know that he came with an  
18 entourage.

19 Q. Right. Now this witness, Mr Taylor, let's just remind us  
15:21:46 20 of what he says:

21 "Q. How do you know that Charles Taylor told Johnny Paul  
22 and his wife to move to Monrovia? How do you know that?

23 A. It was Sam Bockarie who passed orders. It was Sam  
24 Bockarie who released them.

15:22:02 25 Q. How do you know it was at the request of Charles Taylor  
26 that Johnny Paul and his wife moved to Monrovia?

27 A. I heard it from Sam Bockarie in Buedu. He said Chief  
28 said he should release Johnny Paul and his family for them  
29 to be taken along to him in Monrovia. In Monrovia,

CHARLES TAYLOR  
10 SEPTEMBER 2009

Page 28654  
OPEN SESSION

1           Liberia, we hadn't anybody whom we called Chief or Pa apart  
2           from Charles Taylor."

3           So let's break that down. Firstly, did you tell Bockarie  
4           to release Johnny Paul Koroma?

15:22:36 5       A.    Yes, I asked him to release Johnny Paul Koroma, yes.

6       Q.    Why what means did you communicate that to Sam Bockarie?

7       A.    I spoke to Sam Bockarie on the telephone.

8       Q.    Why did you say that to him?

9       A.    Because we wanted to get the UN and other Sierra Leonean  
15:22:52 10      officials and NGO individuals released that were being held  
11      hostage by the West Side Boys.

12      Q.    But here this witness makes no mention of that purpose,  
13      Mr Taylor. The witness says, in effect, you gave an order for  
14      Johnny Paul Koroma to be released, but makes no mention of why.

15:23:15 15      Can you help us with that?

16      A.    Well, that's the - you know, that's the whole problem with  
17      this whole ordeal of mine. You've got people who don't know  
18      what's going on, and you ask them a question and they go running  
19      off with - obviously, if there is anyone of importance in the RUF

15:23:41 20      at that time who is claiming to be close to Sam Bockarie who does  
21      not know that there is a major problem going on at that time

22      where the West Side Boys are raising all kinds of red fire - they  
23      are down in Okra Hills and there is trouble amongst them. If he  
24      doesn't know this then, I mean, I wonder if they ever know what's

15:24:06 25      going on. They really don't know, and so you ask them questions,  
26      they just go - he sees Johnny Paul Koroma coming to Monrovia and  
27      he doesn't know - of course he gets an order, because the order  
28      must come from Sam Bockarie, so he just begins to talk: Oh, Sam  
29      Bockarie ordered to - he doesn't know and really doesn't care, I

## I N D E X

## WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 28533

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 28533



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

MONDAY, 26 OCTOBER 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

---

|                                         |                                                                                                                                   |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Before the Judges:                      | Justice Richard Lussick, Presiding<br>Justice Teresa Doherty<br>Justice Julia Sebutinde<br>Justice El Hadji Malick Sow, Alternate |
| For Chambers:                           | Mr Simon Meisenberg                                                                                                               |
| For the Registry:                       | Ms Rachel Irura<br>Mr Benedict Williams                                                                                           |
| For the Prosecution:                    | Ms Brenda J Hollis<br>Mr Christopher Santora<br>Ms Maja Dimitrova                                                                 |
| For the accused Charles Ghankay Taylor: | Mr Courtenay Griffiths QC<br>Mr Terry Munyard<br>Mr Morris Anyah<br>Mr Silas Chekera                                              |

1 were from Nimba and you learned that Ganta was under attack, of  
2 course the chances are that you would join the fight. I would -  
3 I'm in no position to say that that did not happen. Yes, it  
4 could have happened.

10:33:23 5 Q. Now, the final matter I want to give you an opportunity to  
6 deal with is this: Now, the witness says that she learnt that  
7 Sam Bockarie and his family had been killed, and the account  
8 unfolds in this way. I am looking at page 15769, line 20:

9 "Q. Did he tell you who had killed Sam Bockarie and his  
10:34:00 10 family?

11 A. Well, he told me that it was 50, but he said it was  
12 an order from Charles Taylor.

13 Q. When you spoke to Toasty, this is the person who  
14 supplied this information, and he also - he confirmed this  
10:34:17 15 information to you, did Toasty tell you who killed Sam  
16 Bockarie and his family as well as all the other fighters  
17 that he told you had been killed?

18 A. Yes, he told me it was 50, but it was Charles Taylor's  
19 order."

10:34:32 20 Taking matters in stages: Firstly, who is Toasty?

21 A. I have no idea. I do not know a Toasty.

22 Q. Did you give an order for Sam Bockarie to be killed?

23 A. The last person on this planet that I wanted killed was Sam  
24 Bockarie. I never gave any such order. Sam Bockarie's death  
10:34:57 25 hurt me. Sam Bockarie was someone that I actually liked, and I  
26 can tell the world about this, and I did not want him dead. And  
27 let me just go further, because I really want it to be clear.  
28 Even if Sam Bockarie had been arrested and brought to me, I had  
29 no intention of giving him to Kabbah, okay? So this nonsense I

894

1 have been hearing about Sam Bockarie being ordered - I never  
2 wanted that boy dead. I liked him like a son. I never wanted  
3 him dead, and I never intended to give him to Tejan Kabbah  
4 either. I would have brought Sam Bockarie to Monrovia and to  
10:35:36 5 expel him back out of the country. Never gave any such order  
6 that Sam Bockarie should be killed. Never.  
7 Q. Well, Mr Taylor, let us be blunt about it, because we need  
8 to deal with this suggestion. The suggestion clearly is that you  
9 decided to kill Bockarie because he knew too much and you were  
10:36:00 10 killing him, in effect, to silence him. Do you follow?  
11 A. Yes, I follow that, but that --  
12 Q. Well, deal with that.  
13 A. That's nonsense. Well, who knows more than Issa Sesay?  
14 Who knows more than all of the RUF people - the senior RUF people  
10:36:16 15 that are on trial in Sierra Leone, who knows more than them? Sam  
16 Bockarie was not - in fact, the person that dealt even longer  
17 with the crisis, Issa Sesay dealt with the RUF issues longer than  
18 Sam Bockarie. Sam Bockarie left in 1999; Issa Sesay stayed all  
19 through, okay? But we've heard all kind of mention - remember  
10:36:34 20 there's a witness that sat here that is a protected witness whose  
21 name I cannot call that said he shot Sam Bockarie dead centre in  
22 the forehead. Nonsense. We know from the autopsy he was never  
23 shot in the head. There have been different versions of people  
24 being brought over here to lie and carry on. What did Sam  
10:36:53 25 Bockarie know that all the other senior people do not know?  
26 what? Nothing.  
27 Q. Well, the cynic would say, Mr Taylor, you didn't have an  
28 opportunity to kill the others, but you had one to kill Sam  
29 Bockarie. What do you say to that?

1 A. Well, when did I leave Liberia? I left in 2003 and by the  
2 time I left Liberia, remember, Sam Bockarie was not even in  
3 Liberia when the Sierra Leonean court started. He was not in  
4 Liberia. Issa Sesay visited Liberia many times throughout 2001,  
10:37:23 5 2002. Why didn't somebody kill him? This is total nonsense.  
6 You know, I know lawyers - and this is not - you know, lawyers  
7 are well trained and they are trained to turn black to white and  
8 white to black. That's what --

9 Q. Does that include me?

10:37:41 10 A. Well, you know, I mean, no, not directly. But I mean, you  
11 know - but this - you know, sometimes it's just so - look, I  
12 loved that boy and I am saying - you didn't ask me this question;  
13 I volunteered. I would have never turned him over to Tejan  
14 Kabbah, you understand me? And I have my reason, and we'll get  
10:38:04 15 to it, and I will talk about it.

16 So this thing about wanting Sam Bockarie killed, there was  
17 no such thing. I was upset - very, very upset about the death of  
18 Sam Bockarie when Moses Blah came and brought the body to  
19 Monrovia and reported to me that Sam Bockarie had been killed,  
10:38:18 20 because I sent him there to prevent the killing of Sam Bockarie.  
21 I sent him there to prevent that. You go, you are an experienced  
22 man, you're the Vice-President, you're a soldier; go and make  
23 sure that this matter is done calmly, and you bring Sam Bockarie  
24 to Monrovia. If I wanted Sam Bockarie killed, I would have never  
10:38:36 25 sent Moses Blah to Nimba. That lie he told here about he was  
26 just in the area, it's a blatant, blatant lie. He was sent by me  
27 there to prevent this very situation. I did not want that boy  
28 killed.

29 Q. Very well. That's all I'll ask you about that - the



## I N D E X

## WITNESSES FOR THE DEFENCE:

|                                      |       |
|--------------------------------------|-------|
| DANKPANNAH DR CHARLES GHANKAY TAYLOR | 30191 |
| EXAMINATION-IN-CHIEF BY MR GRIFFITHS | 30191 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

WEDNESDAY, 28 OCTOBER 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Ms Erica Bussey

For the Registry:

Ms Rachel Irura  
Mr Benedict Williams

For the Prosecution:

Ms Brenda J Hollis  
Mr Christopher Santora  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Morris Anyah  
Mr Silas Chekera

CHARLES TAYLOR  
28 OCTOBER 2009

Page 30632  
OPEN SESSION

1 Do you recall this incident, Mr Taylor - this testimony?

2 A. I recall the testimony, yes.

3 Q. "But before leaving Buedu, when he said he wanted a jeep

4 there was a tank, a war tank, with a chain under it, those big

16:16:09 5 military tanks. It was captured behind the Moa River where they

6 were fighting and he said Mr Taylor said he wanted a tank. He

7 said that he should send it to him in Monrovia. So we used this

8 jeep. We drove from Buedu to the Moa River and when we got to

9 the river, the tank was across the river. You could stand at the

16:16:36 10 other side of the river and see the tank across."

11 And then he goes on to mention how the ferry was broken,

12 and remember the whole episode about the tank. We don't need all

13 the details, just this for now: Do you recall a conversation

14 with Sam Bockarie when you expressed a desire to have a tank?

16:17:02 15 A. No.

16 Q. A battle tank?

17 A. No.

18 Q. Or do you recall a conversation with Mr Bockarie when he

19 said, "Guess what, chief, I've got a tank for you"? Did you have

16:17:16 20 such a conversation with him?

21 A. No, I did not.

22 Q. Do you know anything at all about this tank episode?

23 A. None whatsoever. If Sam Bockarie had a tank that I wanted,

24 I would have sent for it. Not some guy who goes there, he goes

16:17:34 25 to deliver ammunition, no. Never discussed any tank matter with

26 Sam Bockarie, never.

27 Q. Now, in the context of these trips made by the witness to

28 Sierra Leone, he continued at page 19848 in this way:

29 "Q. Do you have any idea when the trips that you were

## I N D E X

## WITNESSES FOR THE DEFENCE:

|                                      |       |
|--------------------------------------|-------|
| DANKPANNAH DR CHARLES GHANKAY TAYLOR | 30492 |
| EXAMINATION-IN-CHIEF BY MR GRIFFITHS | 30492 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

MONDAY, 2 NOVEMBER 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg

For the Registry:

Ms Rachel Irura  
Mr Benedict Williams

For the Prosecution:

Mr Mohamed A Bangura  
Mr Christopher Santora  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Morris Anyah

CHARLES TAYLOR  
2 NOVEMBER 2009

Page 30844  
OPEN SESSION

1 A. Bazzy sounds like a - that's one of the AFRC fellows on  
2 trial, I think, Bazzy.

3 Q. He goes on over the page at page 10568. So he is on the  
4 radio, he comes off the radio and he continues, picking it up at  
12:14:34 5 line 14:

6 "So straightaway as we were standing there the signaller,  
7 one of Issa's radio men, because by then Mosquito was not on the  
8 ground, that is Buedu, he said, 'Master, they are calling you on  
9 the phone, the satellite phone.' So he went and took the  
12:14:55 10 satellite phone. He talked to the person who was calling him on  
11 the satellite phone. They spoke. When they spoke I heard, 'Yes,  
12 sir. Yes, sir. Yes, sir. Yes, sir.' From there Issa told us,  
13 he said Charles Ghankay Taylor says they should take the  
14 satellite phone and the radio set so that we can go to Johnny

12:15:21 15 Paul in Kangama. So all of us boarded the vehicle and drove off  
16 to Kangama. As we got to Kangama the phone rang again. When the  
17 phone rang Issa answered, 'Yes, sir. Yes, sir,' and he handed  
18 over the receiver to Johnny Paul. So Johnny Paul spoke and when  
19 he had spoken he continued saying, 'Yes, sir. Yes, sir. Yes,  
12:15:46 20 sir. No problem. No problem.' Then Johnny Paul gave the  
21 receiver to Issa. Then he said they should call the men, the  
22 West Side men."

23 I'm going to continue with this account in a moment but I  
24 pause to ask you this, Mr Taylor: You accept - or do you accept  
12:16:09 25 that in order to resolve this Okra Hills situation, contact was  
26 made with Johnny Paul Koroma in Sierra Leone?

27 A. That is correct.

28 Q. Is it correct, as suggested by this witness, that the  
29 initial point of contact was with Issa Sesay and it was through

CHARLES TAYLOR  
2 NOVEMBER 2009

Page 30845  
OPEN SESSION

1 him that contact was made with Johnny Paul Koroma?

2 A. No. That contact was made with - it was made with  
3 Sam Bockarie. Now, I do not know who Sam sent with the  
4 telephone, but I did speak to Sam Bockarie and in order to get  
12:16:59 5 the assurance I asked him to make sure wherever they were holding  
6 Johnny Paul, yes, to take the telephone and I wanted to speak to  
7 Johnny Paul. I do not think it was with Sam Bockarie that the  
8 contact was made and I'm sure probably Sam sent Issa Sesay with  
9 the phone to Johnny Paul, yes.

12:17:15 10 Q. Just to clarify one or two details there, Mr Taylor.  
11 Before you made contact with Sam Bockarie were you at that time  
12 aware that Johnny Paul Koroma was effectively in RUF custody?

13 A. Quite frankly not exactly, no. When this West Side thing  
14 started there were low level contacts with Sam Bockarie and what  
12:17:47 15 Bockarie has said that Johnny Paul Koroma was not under arrest  
16 but he was in a different location. But the West Side Boys were  
17 insisting that he was under arrest. So I said good. This was  
18 the time that I decided that I will call directly, you know. So  
19 I asked them to get Sam Bockarie on the phone. They said, "Oh,

12:18:09 20 he is not here, Mr President, but he is at a different location."  
21 I said, "well, fine. To cut the matter, I want to speak to him  
22 so make sure you send this telephone to where he is", because the  
23 only way the conflict would have been settled is if I spoke to  
24 him personally. But I didn't know at the time.

12:18:26 25 Q. He goes on to mention how Johnny Paul Koroma following that  
26 call spoke to Bazzy then he says this, page 10569:

27 "The satellite phone rang again. Issa took up the  
28 satellite phone and handed it over to Johnny Paul Koroma. He  
29 spoke on the satellite phone and after he had spoken all of us

**I N D E X****WITNESSES FOR THE DEFENCE:**

DANKPANNAH DR CHARLES GHANKAY TAYLOR 30783

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 30783

**EXHIBITS:**

Exhibit D-91 admitted 30894





Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

THURSDAY, 26 NOVEMBER 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Ms Doreen Kiggundu

For the Registry:

Ms Rachel Irura  
Mr Benedict Williams

For the Prosecution:

Mr Nicholas Koumjian  
Mr Mohamed A Bangura  
Mr Christopher Santora  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard

CHARLES TAYLOR  
26 NOVEMBER 2009

Page 32541  
OPEN SESSION

1 chairman of ECOWAS, was speaking to him. I had my task. I  
2 performed my task. My task was to help in whatever way that I  
3 could and get them - there was no reason to get to him. None.  
4 Others were speaking to him.

10:32:02 5 Q. Because you were so close to Sam Bockarie, the person in  
6 charge of the military machine for the RUF, correct?

7 A. No, no. What do you mean by "so close"? I was not so  
8 close.

9 Q. You loved him like a son?

10:32:14 10 A. Well, in our African way, we take everybody to be a son.

11 Q. You loved him like a son?

12 A. Yes, in an African way. Not maybe in another way. I don't  
13 know what you mean, but I am speaking strictly in an African  
14 sense. We're like people - like sons and brothers. People that  
10:32:34 15 are not even blood related, we call them our brothers.

16 Q. Mr Taylor, when was the next time you saw Sam Bockarie?

17 A. After Lome, when Foday Sankoh arrived in Liberia in  
18 September 1999, Sam Bockarie came to Liberia. And by the way, on  
19 this issue on yesterday you asked me questions about it and you  
10:33:02 20 tried to infer that - when I say Sam Bockarie reported to Sankoh,  
21 you tried to infer that the report had been written in Liberia.  
22 I said no such thing. He returned in September 1999 to meet his  
23 leader.

24 Q. By the way, did you meet with your Defence team last night?

10:33:30 25 A. No, I did not meet with them. Neither this morning. And  
26 if I had met with them, if you are trying to infer that they  
27 would coach me, I think I am better than that.

28 Q. What was the - sorry, let me go back to your answer. So in  
29 September 1999 you met with Sankoh and Bockarie in Monrovia. You

## I N D E X

## WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR

32513

CROSS-EXAMINATION BY MR KOUMJIAN

32513



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

MONDAY, 12 APRIL 2010  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Ms Erica Bussey

For the Registry:

Ms Rachel Irura  
Ms Zainab Fofanah

For the Prosecution:

Ms Brenda J Hollis  
Ms Kathryn Howarth  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard

CHARLES TAYLOR  
12 APRIL 2010

Page 38660  
OPEN SESSION

1 threat in November 1998, weren't you?

2 A. Well, now you've come to the point that I want when you've  
3 mentioned Foday Sankoh. I know that Sam Bockarie can - would  
4 even say more than this. The date Foday Sankoh was captured he  
10:56:19 5 made that threatening remark against the country, yes. Now that  
6 you've mentioned Foday Sankoh, yes, Sam Bockarie would do that.  
7 Yes, he said that. He would do it.

8 Q. Indeed, Mr Ngebeh, that wasn't the only threat that Sam  
9 Bockarie made to attack Freetown in 1998, was it?

10:56:39 10 A. Yes, I told you Sam Bockarie - I told you that since '97 he  
11 was a bad leader. I told you. I told you in my statement. He  
12 was a bad leader. He can make any remark. Even those of us who  
13 were fighting, he threatened us. Who else? Now that you've  
14 called Pa Sankoh's name I have got the gist of it. He just made  
10:57:02 15 that statement.

16 Q. In fact, Mr Ngebeh, several times in December 1998 Sam  
17 Bockarie threatened to attack Freetown. Isn't that correct?

18 A. Hey mama, I don't want to tell lies. I have taken an oath.  
19 I have seen - I have heard Sam Bockarie say words even more than  
10:57:26 20 this. Let's go ahead. He was a wicked commander.

21 Q. Mr Witness, answer the questions that I give to you. In  
22 fact, Mr Witness, several times in December 1998 Sam Bockarie  
23 threatened to attack Freetown. Isn't that correct?

24 A. Yes, he used to attack not just Freetown. Kono,  
10:57:47 25 everywhere, he said until Foday Sankoh is released. He said they  
26 should release Foday Sankoh. If anything happened to  
27 Foday Sankoh he will not spare anyone. He said that. He said  
28 because he was the leader, he brought the war, if they wanted  
29 peace they should release the Pa. He said that.

I N D E X

WITNESSES FOR THE DEFENCE:

|                                |       |
|--------------------------------|-------|
| DCT-146                        | 38620 |
| CROSS-EXAMINATION BY MS HOLLIS | 38620 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

TUESDAY, 13 APRIL 2010  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Mr Artur Appazov

For the Registry:

Ms Rachel Irura  
Ms Zainab Fofanah

For the Prosecution:

Ms Brenda J Hollis  
Mr Nicholas Koumjian  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard

CHARLES TAYLOR  
13 APRIL 2010

Page 38885  
OPEN SESSION

1 he became a very senior person. That was where he started  
2 becoming the devil he was.

3 Q. You describe him as a devil.

4 A. Yes, I do. Yes.

15:40:56 5 Q. Why?

6 A. Because when I persuaded that man to respect the Abidjan  
7 peace process by taking over from Foday Sankoh when he was  
8 arrested in Nigeria, he took that as a betrayal of his boss and  
9 he arranged to have me arrested, Mr Deen-Jalloh - he arranged to  
10 have me arrested, Mr Deen-Jalloh, Juliet Gbessay James; Gbessay  
11 is G-B-E-S-S-A-Y; Dr Mohamed Barrie, B-A-R-R-I-E; Philip Palmer,  
12 and the then ambassador - the then Sierra Leone ambassador to  
13 Guinea, Mr Jabbi. I and the four others were with him, for two  
14 and a half years, from March 29 --

15:43:30 15 Q. Which year?

16 A. 1997.

17 Q. Until?

18 A. August 1999. And during that period we underwent a lot of  
19 punishment, torture. We were tortured almost every day, both  
20 mentally and physically.

21 Q. On whose orders?

22 A. On Mosquito 's orders, that's Sam Bockarie.

23 Q. Now, we'll pause there for a moment. We'll deal with  
24 something now whilst - and then we'll come back to your account

15:44:26 25 of that period later. Now, for now, as a result of the

26 punishment you received from the man you call the devil, Sam  
27 Bockarie, do you today bear any scars?

28 A. Yes, I do. It was to show these scars I decided to wear my  
29 short sleeve today. There was a day when - there was a day when



CHARLES TAYLOR  
13 APRIL 2010

Page 38886  
OPEN SESSION

1 President Kabbah called Mosquito on the field radio and attempted  
2 to persuade him to have us released. After the conversation,  
3 Mosquito came to ourselves and asked us to tell him how much  
4 money President Kabbah and the United Nations had given us to  
15:45:47 5 betray Foday Sankoh because they were saying that we were  
6 responsible for Foday Sankoh's arrest.

7 Q. Where?

8 A. In Nigeria. I told him, "If this is the moment for us to  
9 die, then we are more than prepared for that. But there is no  
15:46:22 10 way we can decide to tell you the wrong thing. We are simply  
11 behind you people to honour the peace accord." So he told his  
12 boys to tie us. We were in tie-bay. We were tied for almost  
13 four hours.

14 Q. You were in?

15:46:50 15 A. Tie-bay.

16 Q. How do you spell that?

17 A. They used to spell it T-A-B-E.

18 Q. And what does that mean?

19 A. When you are tied. They tie you with cord.

15:47:01 20 Q. How do they tie you with cord?

21 A. They tried to put our elbows together and tie it completely  
22 until the rope entered my skin and I started bleeding. But I was  
23 lucky because my - the thing did not effect my nerves. It was  
24 only my bones. My bones were dislocated. This one there, up to  
15:47:22 25 now it's like that.

26 PRESIDING JUDGE: Mr Witness, you said you wanted to show  
27 your scars, but I can't see the scars.

28 THE WITNESS: The black scar is here.

29 PRESIDING JUDGE: No, it's okay. You don't need to - just

CHARLES TAYLOR  
13 APRIL 2010

Page 38887  
OPEN SESSION

1 pull your sleeve back. Yes, perhaps we can see.

2 THE WITNESS: This black thing.

3 PRESIDING JUDGE: And on the other side?

4 THE WITNESS: This one here. Here.

15:47:49 5 PRESIDING JUDGE: Yes. I think the witness is showing two  
6 black scars around the joint --

7 MR GRIFFITHS: Inner circumference of his elbow, both  
8 elbows.

9 PRESIDING JUDGE: Exactly.

15:48:08 10 THE WITNESS: That is not the only place I have scars. I  
11 have scars on my back too. There was another day Mosquito and  
12 Issa Sesay went to the village where we were imprisoned in  
13 Kangama. When they went they told Johnny Paul Koroma, whom they  
14 had also arrested, they told him to give them instructions to  
15:48:35 15 kill us. Johnny Paul told them he would not do that. He said  
16 there is no way he would do that because he was of the SLA and we  
17 were in the RUF, so he would not risk his own name. He would not  
18 place his own name at all at risk by giving him instructions to  
19 kill us. So they went to the place. It was a court barri.

15:49:00 20 So they told myself, Palmer and Mr Deen-Jalloh to go and  
21 hold the pillar, the pillar of the barri, and then they asked one  
22 of the soldier, because by then they were mixed, AFRC and the  
23 Sierra Leonean RUF, they told an SLA soldier, a Sierra Leone  
24 government soldier, they told him to beat us with the military  
15:49:36 25 belt, the belt that has the iron at the end. We were beaten  
26 until our backs could get soaked - until our clothes could get  
27 soaked. So if you see my back skin you will see that my skin at  
28 the back looks like a tiger.

29 MR GRIFFITHS:

CHARLES TAYLOR  
13 APRIL 2010

Page 38888  
OPEN SESSION

1 Q. Maybe you might want to take off the headphones, put them  
2 down and go closer to the front bench, with your Honour's leave,  
3 so that your Honours can see what you're talking about.

15:50:28 4 A. We were beaten that day until the shirt that we wore got  
5 soaked in blood.

6 Q. Can you indicate where the scars are? Can you yourself  
7 point to them?

8 A. The scars are all over. The scars are all over. Wherever  
9 you see the skin is coloured different.

15:50:42 10 PRESIDING JUDGE: Perhaps the witness could also go to the  
11 Prosecution side. It's not very clear. Some of my colleagues  
12 have seen the scars, but perhaps the Prosecution would like to  
13 see. It's more like a mild discolouration that we saw.

14 MR GRIFFITHS: which appears to be in straight lines on  
15:51:12 15 more than one place on his back.

16 PRESIDING JUDGE: Yes. Thank you, Mr Witness. Please take  
17 your seat again.

18 MR GRIFFITHS:

19 Q. So your final assessment of the man who did that to you,  
15:51:28 20 Sam Bockarie.

21 A. Sam Bockarie, I have started and I will end with this: He  
22 is - he was a devil.

23 Q. Now, I want to clarify one matter with you before we go on  
24 to one or two other individuals. And, Mr Fayia, if you are cold  
15:51:49 25 you can put your jacket back on. Although, if you're comfortable  
26 with it off --

27 A. It's okay.

28 Q. Fine. Earlier this afternoon - and I have a reference on  
29 the transcript which I'm looking at on the screen - you told us

**I N D E X****WITNESSES FOR THE DEFENCE:**

|                                      |       |
|--------------------------------------|-------|
| DCT-146                              | 38770 |
| CROSS-EXAMINATION BY MS HOLLIS       | 38770 |
| RE-EXAMINATION BY MR MUNYARD         | 38818 |
| DCT-306                              | 38833 |
| EXAMINATION-IN-CHIEF BY MR GRIFFITHS | 38833 |

**EXHIBITS:**

|                                  |       |
|----------------------------------|-------|
| Exhibits P-516 to P-520 admitted | 38832 |
|----------------------------------|-------|



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

FRIDAY, 6 AUGUST 2010  
9.00 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg

For the Registry:

Ms Rachel Irura  
Ms Zainab Fofanah

For the Prosecution:

Mr Joseph F Kamara  
Mr Nicholas Koumjian  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Silas Chekera  
Mr Michael Herz

CHARLES TAYLOR  
6 AUGUST 2010

Page 45600  
OPEN SESSION

1 Q. And when you drove to the border, did Abu Keita come along  
2 with you?

3 A. No, no, no. I left Abu Keita in Makeni, and then I came to  
4 Foya through Kailahun.

11:27:00 5 Q. Now, when you came back from Liberia, did you come back  
6 with a satellite phone?

7 A. No, no. On that trip, I did not bring a satellite phone,  
8 except the satellite phone that had been given to me by

9 Mr Sankoh. That was what I was using. And after I had answered  
11:27:27 10 to Mr Taylor's call, when Mr Taylor spoke to me about the release  
11 of the UNAMSIL, he too made me understand that he had got a  
12 mandate from his colleague ECOWAS leaders, and I knew that the  
13 ECOWAS leaders were the guarantors to the Lome Accord, so I had  
14 to accept, because of what I had heard from Mr Taylor, because of  
11:27:51 15 the guarantors. So, I -

16 THE INTERPRETER: Your Honours, could the witness be asked  
17 to repeat from where I stopped ?

18 PRESIDING JUDGE: Pause. You said "because of what I had  
19 heard from Mr Taylor, because of the guarantors." Now, what did  
11:28:08 20 you say after that? Repeat it please, slowly.

21 THE WITNESS: I said what I heard from Mr Taylor, and he  
22 said it was a mandate from the ECOWAS leaders, and I said during  
23 the Lome, I knew that it was the ECOWAS leaders who were the  
24 guarantors to the Lome Accord. So that was why I accepted and I  
11:28:35 25 went and released the people.

26 MR CHEKERA:

27 Q. Did you bring back 50 boxes of ammunition?

28 A. Not at all, not at all. I did not bring ammunition. I did  
29 not bring a satellite phone. The only thing that Mr Taylor gave

**I N D E X****WITNESSES FOR THE DEFENCE:**

|                                    |       |
|------------------------------------|-------|
| DCT-172                            | 45574 |
| EXAMINATION-IN-CHIEF BY MR CHEKERA | 45574 |



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

FRIDAY, 13 AUGUST 2010  
9.00 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg

For the Registry:

Ms Rachel Irura  
Ms Zainab Fofanah

For the Prosecution:

Mr Nicholas Koumjian  
Mr Mohamed A Bangura  
Ms Kathryn Howarth  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Ms Silas Chekera  
Ms Logan Hambrick  
Ms Elizabeth Espinosa



CHARLES TAYLOR  
13 AUGUST 2010

Page 46218  
OPEN SESSION

1 me go through quickly, P-430B, P-430D and P-431.

2 Q. while that's being prepared, Mr Sesay, you still haven't  
3 answered my question: Sam Bockarie was proud of the fact that  
4 people knew he was evil. He was proud of being feared. Isn't  
09:56:23 5 that true?

6 A. Yes. I know that people used to fear Sam Bockarie.

7 PRESIDING JUDGE: I don't know if the interpreter is  
8 interpreting the questions properly. Mr Sesay, that's not what  
9 you were asked; whether people feared Bockarie. The question  
09:56:45 10 related to Sam Bockarie's - his pride and his own view of  
11 himself.

12 Please repeat, Mr Koumjian, the question.

13 MR KOUMJIAN:

14 Q. Mr Sesay, Sam Bockarie was proud of being feared?

09:57:04 15 A. Yes. He used to feel powerful of himself.

16 Q. And he wanted people to know how violent he could be, isn't  
17 that true?

18 A. Yes. That is true.

19 Q. I'll start with 431, please. Doing these in chronological  
09:58:00 20 order. I'm going to page 2, please, if the witness could be  
21 shown page 2. Sir, I'm going to read from the middle of the  
22 page, the sixth paragraph:

23 "Even as Sankoh was being whisked from the courtroom to an  
24 undisclosed place of detention on September 4, RUF's second in  
09:59:22 25 command, Colonel Sam Bockarie, alias Mosquito, threatened to wage  
26 a campaign of genocide if the rebel leader was not immediately  
27 released. I will order my troops to kill every living thing,  
28 including chickens, if our leader is not released. He was quoted  
29 as saying by a leading European radio station monitored here."

**I N D E X****WITNESSES FOR THE DEFENCE:**

DCT-172 46195

CROSS-EXAMINATION BY MR KOUMJIAN 46196



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

FRIDAY, 11 MARCH 2011  
9.00 A.M.  
HEARING

TRIAL CHAMBER II

**Before the Judges:**

Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate

**For Chambers:**

Mr Simon Meisenberg  
Ms Erica Bussey

**For the Registry:**

Ms Fidelma Donlon  
Ms Rachel Irura  
Mr Alhassan Fornah

**For the Prosecution:**

Ms Brenda J Hollis  
Mr Nicholas Koumjian  
Mr Mohamed A Bangura  
Ms Ruth Mary Hackler  
Ms Ula Nathai-Lutchman  
Mr Nathan Quick  
Ms Maja Dimitrova

**For the Accused Charles Ghankay Taylor:**

Mr Courtenay Griffiths, QC  
Mr Terry Munyard  
Mr Morris Anyah  
Mr Silas Chekera  
Ms Logan Hambrick  
Ms Salla Moilanen

1 seek permission, before you go waiving an indictment at the  
2 breakfast meeting with a diplomat.

3 Now, another issue raised. Mr Koumjian said - thank you,  
4 Mr Fornah. Mr Koumjian said that we raised the issue of evidence  
13:11:25 5 falling outside the temporal or geographic jurisdiction of the  
6 Court and we did so untimely, that we waived the issue but  
7 your Honours will recall you issued an order last year, CMS 1101,  
8 when we filed a motion about the same, the very same issue, and  
9 your Honours said in the order that this was a matter that was  
13:11:48 10 raised prematurely, that we should raise it at the time of final  
11 submissions. Your Honours words were, "The motion was" - this is  
12 our brief, paragraph 28, that, "The motion was premature at that  
13 stage of the trial, and that the motion was more appropriately  
14 addressed by the parties in the final trial briefs or closing  
13:12:15 15 arguments." CMS 1101, the 6th of October 2010.

16 So that addresses their issue. We haven't waived any  
17 issue. We are following the directive of the Court.

18 I will take my time on these last three issues. The issue  
19 of pillage. Ms Hollis has told the Court that one of the  
13:12:41 20 ultimate objectives of the JCE was to pillage the resources of  
21 Sierra Leone. The Prosecution, in their brief, say at page 261,  
22 paragraph 579, and in court during closing arguments on  
23 9 February, at pages 49292 through 49293, Ms Hollis adds that in  
24 any event, one of the - one of the ultimate objectives of the  
13:13:21 25 JCE, to pillage the resources of Sierra Leone, is charged in this  
26 case. I assume referring to count 11, pillage. Count 11, as  
27 Justice Sebutinde pointed out, falls under the rubric of  
28 Additional Protocol II and Article 3 common to the  
29 Geneva Conventions. Our Article 3 of the Court statute. There

## **2. Admitted Exhibits**



SCSL-2003-01-T

THE PROSECUTOR  
V  
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – P-63  
SCSL/ERN/66

NAME OF WITNESS: TFI-371

RECEIVED  
14/02/2008

BY  
RACHEL IRURA

**RUF DEFENCE HEADQUARTERS,  
FORUM WITH THE EXTERNAL  
DELEGATES LED BY THE RUF  
DEFENCE STAFF, 2ND DECEMBER 1998 -  
00015487 – 00015491**

FILED BY  
PROSECUTION

BATTLE FIELD COMMANDER - RUFSL

00015487

REVOLUTIONARY UNITED FRONT OF SIERRA LEONE  
DEFENCE HEADQUARTERS.

2nd December, 1998.

FORUM WITH THE EXTERNAL DELEGATES LED BY THE  
OF DEFENCE STAFF.

This meeting was summoned by the High Command Brigadier Sam Becharie (CDS-RUFSL) in order to acquaint members present with report on the external mission they went on. Venue-water works and time was 1323 HRS GMT.

In attendance were:

1. Brigadier Sam Becharie
  2. Mr. S.Y.B Rogers
  3. Col. Edward Kanneh
  4. Maj. Lawrence Womandia
  5. Major Junior Vandi
  6. Maj. Mohamed S. Banya
  7. Lt. Col. Rashid Sandi - External delegates
- Col. I.H. Senay EFC and members of various units were also in attendance. The meeting was opened with a short Muslim and Christian prayers.

The Chairman CDS- Brigadier Sam Becharie welcomed every one who attended the forum. He told us all that the forum was intended to brief us on the mission they had gone through. The CDS appointed Mr. SYB Rogers to give a salute report about the mission.

Mr. SYB Rogers extended his heart felt thanks to all persons in attendance. Pa Rogers wasted no time to tell us the mission was a very big success through our blessings and co-operation. According to Mr. SYB Rogers, this plan of sending out people to seek our welfare at the international front had failed. Many of these people failed us but God Almighty blessed this very outstanding effort made by the CDS and indeed the success was very great in terms of what they were able to receive. Mr. SYB Rogers stated further that since the 1997, May 25 coup, RUFSL was invited to join our brothers (AFRC) but he lamented that the MERGER was unsuccessful because there was no common understanding or ideology. He reiterated that indeed "God is behind our movement so that we shall not be disgraced". He admonished that we must reckon with the efforts played by the high command when it deserves praise. It is the sole right of the senior command structure and all combatants to defend the civilians. This is the reason why he, as Chairman of the

00015488

- 2 -

Peoples War Council and an elder among us, he confirmed it as his primary duty to advise and educate the higher authorities as to what they must do. Let no one feel or say that Brigadier Mosquito is doing things on his own, we must come together and consult even with ourselves and the high command on problems we don't understand". Pa SYB Rogers pledged his sincere thanks and credit to the CDS for his leading role in the external mission they went on: Indeed the CDS' effort was very excellent. Pa SYB Rogers noted with profound gratitude the effort applied by our host govt. on the other side for granting us the in-let and exit facilities even with escort. It was very suprising to note that according to Pa SYB Rogers, most heads of States have been thinking that the RUF/SL had been in disaray since the kidnapping of our Dear Leader. It was therefore good and a blessing in disguise to us all that the young Brigadier himself, who has held the garrison strongly against the enemies went to see some of the Heads of State<sup>in</sup> person. According to Pa Rogers, both the CDS and himself paid a courtesy call on his Excellency C.3.T. To every body's delight, there are friendly countries who have been wishing to receive serious minded people that will seek RUF/SL interest abroad.. Pa Rogers lamented that we were disappointed by most of the past external delegates who squandered RUFSL funds and made no head way so as to open our way to success. 'They have met their fate' says Pa. Rogers. "The people's Sin has fallen on them". The mission extended to Burkinafaso where they (delegates) were warmly received and attended to. All discussions with the Burkinabe authorities were highly fruitful. There was however a diplomatic test on the CDS to prove his ability and seriousness as a commander on the ground. The CDS behaved excellently and maturedly to the admiration of his excellency, *Campore*. The Brigadier has done a very historic job for the RUFSL movement. He has signed a rich contrast for us and with our support, given to him and the movement, we shall do every thing possible to promote this struggle. The WAR COUNCIL Chairman made it public that people have been meeting him on the note that the CDS is intending to take the leader's power. According to Pa Rogers, he advised every one not to think of the CDS in that way. He Pa SYB Rogers told us that he has examined the Brigadier in and out and has not suspected the least of such intention in the Brigadier. We must give the Brigadier all fervent support, so as to encourage him (Brigadier) for his great sacrifice. Pa Rogers concluded by thanking Col. Issa Sesay the RUF/Ag. CDS and all authorities who held the ground and frontlines strongly while the CDS and delegates were out.



00015489

Next to speak was Col. Eddie Kanneh (SLA Rep). The young Colonel thanked every body for their courage to attend the forum. According to the Colonel, all the trip was very successful. He dilated on how at several times he faced embarrassment on account of his association and deep commitment to the RUFSL. He made us understand that since his familiarity with our Brigadier or CDS, he, (Col. E. Kanneh) sees the CDS as a man who does not want to get involved into politics and that he has known the CDS to be far sighted person who can predict with possible results. He therefore asked all and sundry not to picture the CDS the way, other people are classing him to be (i.e Power Hungry). He warned that there must be solidarity among us all. He commended Pa SYB Rogers for his fatherly part he is playing in the movement. Col. Issah Sesay for his gallant part he played in the absence of the CDS for keeping the ground under control. He asked us to remember outstanding external friends of this movement like General Abraham. "Let us mobilize, unite, be conscious" and "I leave a general warning that no one must take revolution lightly to avoid subversion. We must care for the junior ranks and I hope and pray that this movement shall continue to live and prosper in good fate" - concluded the young Colonel. The Chief of Defence Staff, Brigadier Sam Bockarie buttressed the speeches of Pa SYB Rogers and Col. Eddie Kanneh. He threw light on some important things however for the general understanding of those who attended the meeting. In the first place, the CDS told us that they were not financially strong to make the trip as successful as it turned out to be. He said that in the first attempt, they stopped half way and heard about the shocking news on Focus about the trial and Death sentence passed on our Father and Leader Cpl. Feday S. Sankoh. The CDS made hasty preparation and returned back to the brothers as to launch offensives against the govt. of Tejan Kabba for the release of our Leader. The CDS congratulated Col. Jungle and General Abraham for their sincerity and honesty in delivering the parcels that were given to them for our father across. The CDS said the father showed him the parcels and said that he was keeping the parcel until we cater and get more so as to be able to purchase reasonable quantity of whatever we want. The CDS reiterated that if we work hard and remain united, victory will be on our side" According to the CDS, he took along Major Lawrence Momandia because he can speak

00015490

- 4 -

French and it was the delegates intention to visit France - Countries and even Libya. The CDS said due to copious arrangements Col. Eddie and Pa Rogers had at hand he did not hope he would see them to make the trip as planned but "God Greatly Helped Us, we Pa Rogers and Col. Eddie and we made the trip together". The CDS concluded that the trip was a big success on the whole. The Brigadier told the forum that he was able to formally hand over our struggle and petition about our Leader to the President of Burkina Faso, who is the current Chairman of O.A.U so that as O.A.U Chairman, he will step in and mediate Peace between us and the SLPP govt. He warned that now is the time to work together to secure the release of our Leader and to avoid funny things like gossips that will lead to disunity among us. The CDS admonished and placed a curse on any one who would plan to mismanage the small logistics they had laid down their lives for in the interest of the struggle. The Brigadier informed us that he went with a two and half carats (2 1/2 carats) diamond and some other <sup>things</sup> which he gave as present to a senior security - Benjamin in order to facilitate easy access to all chances for the undelayed success of our mission. The CDS concluded by thanking every body both missionaries and those who

The Battle Field Commander - Col. Issa Sesay thanked the delegates. He promised that we shall put our efforts together to consolidate our strength for victory. We are to strike for the release of our Leader and the victory of our movement. "A commando will feel good when he attacks and captures rather than been called to join with others - it will make no prospect". The Field Commander extended many Blessings to all those who joined the CDS to bring us the expected good which will bring success for us all. Col. Isaac Morego thanked the CDS and delegates for their grand effort. He advised every body to work hand in hand for the victory of RUFSL. We are not fighting for Pa Sankoh or the Brigadier but our selves and our country Sierra Leone for victory and peace. This the RUFSL Leader has been telling us all along.

Col. Mike Lamin, thanked the CDS and the delegates who went with him on the mission. "We as RUFSL must consider this gesture as a brilliant challenge and we must do some thing impressively in return of the challenge". He warned that we must not talk on how the material was channelled to our base for security reason.

00015491

Col. Morris Kallon - Thanked the CDS and delegates for the great effort. He stated in the first place that for the person or persons who go about saying that the CDS wants to take the Leadership of RUFSL, Col. Kallon noted that except such people do not construe them selves in a way to be understood without grudge or malice but the second in command appointment was given to the CDS by our Leader himself and that it is natural that he shall succeed our Leader after long years of the Leaders services to the movement and the Nation. He compared a combatant's risk of life to that of an external delegates own, by which he stated that the later's own risk of life was far more greater than the combatant because he does (it know the enemies around him). Col. Kallon warned all persons to put to good use what the CDS has fought hard to get for the movement.

Chiefdom Commander, J.F. Sawuka thanked the CDS and delegate and prayed for God's blessing for them. He juxta-posed Tejan Kabba God hearing prayers as a chance now gracefully given to the RUFSL.

Pastor A lpha on behalf of the Christian group thanked the CDS and delegates. He threw in a proverb which says "Uneasy lies the head that wears the crown". He prayed fervently to Almighty God for our senior officers, junior officers, against the enemies and grand success of the RUFSL. Pastor

A lpha invoked the spirits of Taburaka and Jehaja, the Great God.

*Maj E. Collins stated that the CDS was killed two birds with one stone ie solved Political and military Problems.* The CDS announced a senior officers meeting from where arrangements were to be done for full scale operations.

Meeting ended in harmony.

Signed: *[Signature]* 4/14/98  
Joint Security Rep.

cc: CDS - RUFSL.  
BFC "  
War Council "  
Col. Mike "  
Overall M.P & IDT Commander  
File.



SCSL-2003-01-T

THE PROSECUTOR  
V  
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – P-67  
**SCSL/ERN/70**

NAME OF WITNESS: **TFI-371**

RECEIVED  
14/02/2008

BY  
RACHEL IRURA

**RUF PEOPLE'S ARM - SITUATION  
REPORT TO FODAY SANKOH FROM  
THE BLACK GUARD COMMANDER,  
00009672 – 00009681**

FILED BY  
**PROSECUTION**

REVOLUTIONARY  
OF S/LEONE (PEOPLE'S ARM)

00009879

TO: THE LEADER.

FROM: THE BLACK REVOLUTIONARY GUARDS

SUBT: SITUATION REPORT

Sir, on behalf of the entire Black Guard unit we are hereby taking this opportunity to make a summary report to let you know or understand the situation on the ground.

To start with, we thank the Almighty God as per your previous Concentration programmes to the entire movement that this is a Holy war which everybody within the movement have realised, because in your absence the struggle continues with lot of developments.

Sir, as you left us in 1996 to go and sign the Abidjan Accord, lot of enemy pressure (Isamajon) was mounted on us, but due to the dedication and loyalty of the Command you left on the ground, we were able to contain situation until the A.F.R.C. Cour'd'etat, wherein you instructed the High-Command for us (R.U.F.) to join the brothers in other to form the People's Army, and defend the sovereignty of our Motherland.

The external delegates who were with you in Abidjan also went over the media that they have supplanted the leadership of the R.U.F., and went to extend of insinuating people, but due to the witness and the security experience of the High

00009671

the defensive position, but no chance had been given to them. In the North, the enemies captured Nansen and tried to advance to Kono. Our men retreated and defended part of Kono.

Due to the security situation, the High-Command therefore instructed the then B.G.C. Brigadier Issah Sesay to try by all means to report with the former A.F.B.C. Chairman J.P.K. to Kailahun. As a result, J.P.K. ~~was~~ and his body guards were brought to Kailahun as per instruction. They were welcome by the High-Command and elders.

At this stage, the High-Command, J.P.K., Senior Officers, Junior Officers and the entire Combatants held a forum and finally agreed to continue the struggle under one structure and Command.

Immediately Freetown and the provincial Headquarters fell in the hands of Ecomog, the High-Command was called to report by the President of Liberia Mr Charles Taylor. Wherein the President seriously briefed the High-Command and gave him the confidence that he should not give up but to keep up the struggle and uphold the Revolution until the Leader returns. The President gave full assurance to the High-Command and promise to give his maximum support to the R.U.F. The President also took an oath that he will never betray his brother (Cpl Foday Sankoh). From that point, the President gave huge quantity of logistics (Ammunition,



SCSL-2003-01-T  
THE PROSECUTOR  
V  
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – P-430 B  
SCSL/ERN/841 B

**RECEIVED:**  
18/03/2010

**BY:**  
RACHEL IRURA

**EXCERPTS FROM:**  
**NEWS ARTICLE, SIERRA LEONE WEB -**  
**SIERRA LEONE NEWS, NOVEMBER 1998 (PG**  
**1 OF 1) (TITLE OF NEWS SOURCE, DATE,**  
**SOURCE, PARA. 1 ("THE REVOLUTIONARY**  
**UNITED FRONT WILL DESTROY...**  
**DEFEATED MAN CAN DO SO.")**

**FILED BY**  
**PROSECUTION**

**19 November:** The Revolutionary United Front will destroy "every living thing" if anything happens to their leader, Corporal Foday Sankoh, RUF commander Sam "Maskita" Bockarie told the newspaper *For di People* in a report published on Wednesday. Sankoh is currently being held at Pademba Road Prison in Freetown where he is preparing an appeal against his conviction and death sentence on treason charges. "I am a ruthless commander," Bockarie said in a telephone interview. "I am ready to damage but I am waiting until something happens to Sankoh. When I take Freetown I shall clear every living thing and building. To my God, I'll fight. I'll kill and kill, and the more they tell me to stop, the more I'll kill. Only Sankoh can tell us to stop." Bockarie rejected a call by United States Special Envoy to Africa Rev. Jesse Jackson for the RUF to lay down its arms. "(The U.S. is) a big hypocrite whose intention is to steal our natural resources rather than bring peace to the country," he said. "America and the world should know that we shall not lay down arms, because only a defeated man can do so."

ECOMOG troops on Monday attacked suspected rebels on Tasso Island, 12 miles from Freetown, and captured 35 of them, an ECOMOG officer said on Thursday. Witnesses who fled the island said at least five rebels had been killed in the raid. "The rebels had suddenly re-emerged on the island, training and planning to carry out attacks on Freetown," one ECOMOG commander said. "We captured 35 of them and inflicted casualties." He gave no further details.

ECOMOG officers said Thursday they were committed to ending the Sierra Leone conflict militarily, and displayed five "hard core" rebel leaders captured recently in Lungi. Among them was a Lieutenant Kargbo, a member of the disbanded Sierra Leone Army, who had opposed disarming the army after the signing of the Conakry Peace Accord.

The United Nations High Commissioner for Refugees (UNHCR) said Tuesday it had suspended the airlift repatriation of Sierra Leonean refugees from Kissidougou, Guinea on November 13 after discovery of several cases of meningitis in refugee camps in the Prefecture of Gueckedou, where candidates had registered for a return to Freetown. The UNHCR had begun a second phase of the operation on November 11, returning 305 persons on several flights. All returnees undergo medical screening before returning to Freetown. The operation, for which 1,800 persons have registered so far, will be restarted if no further cases of meningitis are identified in the refugee camps.

President Kabbah raised the possibility Thursday of an amnesty for five key rebel leaders if they would lay down their arms and agree to leave Sierra Leone for a period of time. In an ECOMOG security briefing, Chief of Defence Staff Brigadier-General Maxwell Khobe identified the five as Captain SAJ Musa, Sam "Maskita" Bockarie, Eldred Collins, Dennis "Superman" Mingo, and AFRC Chairman Major Johnny Paul Koroma. Kabbah said he would be willing to consider allowing them to depart "to a third country that is not neighboring Sierra Leone for awhile," and to later be resettled in Sierra Leone. "But I cannot do that as long as they go on committing the crimes that they've been committing, and chopping off people's limbs, and all the rest of it, burning homes, and above all always threatening, just a bluff, bluffing that they're going to kill everybody in this country," Kabbah told the BBC. He stressed, however, that rebel leaders who "have committed very, very serious crimes will have to face the law." General Khobe confirmed at the security briefing that the government has been in constant contact with rebel leaders, particularly with Captain SAJ Musa. He said the entire sub-region was interested in peace in Sierra Leone, and if what was needed was to provide safe passage for rebel leaders to depart so that Sierra Leoneans could live peacefully, the entire sub-region would be prepared to provide refuge for them. Minister of Information, Communications, Tourism and Culture Dr. Julius Spencer stressed that no negotiations had taken place. He said the rebel leaders must be prepared to lay down their arms, and that then the possibility exists for them to live elsewhere in the sub-region.





SCSL-2003-01-T  
THE PROSECUTOR  
V  
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – P-431  
SCSL/ERN/842

RECEIVED:  
18/03/2010

BY:  
RACHEL IRURA

**EXCERPTS FROM:  
NEWS ARTICLE, IPS-INTER PRESS  
SERVICE/GLOBAL INFORMATION  
NETWORK, POLITICS-SIERRA LEONE: NO  
LAWYER WILLING TO DEFEND REBEL  
LEADER (LEXIS NEXIS), SEPTEMBER 7 1998  
(TITLE, DATE, SOURCE, PAGE 2, PARAS 6  
TO 7 ("EVEN AS SANKOH... MONITORED  
HERE.")**

FILED BY  
  
**PROSECUTION**



1 of 99 DOCUMENTS

Copyright 1998 IPS-Inter Press Service/Global Information Network  
IPS-Inter Press Service

September 7, 1998, Monday

LENGTH: 823 words

HEADLINE: POLITICS-SIERRA LEONE: NO LAWYER WILLING TO DEFEND REBEL LEADER

BYLINE: By Lansana Fofana

DATELINE: FREETOWN, Sep. 7

## BODY:

No Sierra Leonean lawyer appears willing to defend Cpl. Foday Sankoh, Sierra Leone's rebel leader who has been charged with treason here.

Most lawyers contacted by IPS today, and who declined to be identified, said they would not stick out their necks to defend the rebel leader, who is widely regarded here as Sierra Leone's "enemy number one".

Sankoh, who is in his mid-sixties, was extradited from Nigeria about six weeks ago on allegations of illegally entering that country with ammunition.

Two weeks ago, 16 people -- including five journalists -- were sentenced to death for collaborating with Sierra Leone's defeated military junta.

Immediately after the judgment, Sierra Leone's exiled opposition described the trial as flawed, claiming that no "independent" lawyer was allowed to defend the accused. But the government has rejected the claim.

Sankoh, who was paraded before a magistrate here in handcuffs last week, questioned Sierra Leone's legal system, and the peace which the government claims is now prevailing in the west African country. "Is this the peace you are persecuting me for?" he asked, after court registrar Mildred Solomon, read out the charges against him on Sept. 4.

Attorney General Solomon Berewa appeared for the state and would be leading the prosecution when the rebel leader makes another appearance on Sept. 11.

Sankoh started his rebellion in March 1991, attacking Sierra Leone's eastern border towns from Liberia, with his Revolutionary United Front (RUF), allegedly backed by the former National Patriotic Front of Liberia (NPFL).

Within four years, the rebels succeeded in advancing 48 kilometers to the Sierra Leonean capital of Freetown, with the rebellion spreading into Sierra Leone's three provinces of the east, south and north. The trail of destruction left behind is colossal as rebel forces burned down towns and villages.

An estimated 15,000 people are believed to have died since the war broke out and about a quarter of the country's 4.5 million population forced into exile in neighboring countries.

POLITICS-SIERRA LEONE: NO LAWYER WILLING TO DEFEND REBEL LEADER IPS-Inter Press Service  
September 7, 1998, Monday

Page 2

However, in November 1996, a peace accord was signed in Abidjan, Cote D'Ivoire, between president Ahmed Tejan Kabbah and the rebel leader under the auspices of the international community.

Although the deal was meant to end hostilities between Sierra Leone's belligerents, RUF rebels intensified their military campaign mostly against civilian populations in the interior of the country, prompting the peace accord to collapse.

The situation deteriorated when renegade soldiers of the now-disbanded Sierra Leonean army overthrew the government of President Kabbah in May 1997, and invited RUF forces from the bush to help form a government.

The rebel/military alliance, known as the Armed Forces Revolutionary Council (AFRC), headed by Maj. Jonny Koroma, ruled for nine months, before it was toppled by a Nigerian-led West African peacekeeping force, "ECOMOG", in February.

Sankoh, who was then in detention in Nigeria was named vice chairman of the AFRC. He never served that junta as he arrived in Sierra Leone after the junta's overthrow, and as a prisoner.

Even as Sankoh was being whisked from the courtroom, to an undisclosed place of detention, on Sept. 4, RUF's second in Command Col. Sam Bockarie, alias "Mosquito", threatened to wage a campaign of genocide, if the rebel leader was not immediately released.

"I will order my troops to kill every living thing including chickens if our leader is not released," he was quoted as saying by a leading European radio station, monitored here.

Refusing to be intimidated, presidential spokesman Septinus Kaikai told journalists last week that: "Cpl. Sankoh is a Sierra Leonean and like all else, he is subject to the laws of this country. He would be tried and if found guilty, would be dealt with accordingly".

Kaikai also ruled out negotiations with the rebels, "ECOMOG and the pro-government forces are currently on top of the war situation and by all indications, rebel elements still holding out in the bush will soon be flashed out," Kaikai said.

His hardline stance has been welcomed by most Sierra Leoneans here. "Foday Sankoh should be tried and killed", said Joseph Tucker, a government official here. "His wrists should first be amputated, his eyes gouged out and then butchered with a machete, as his rebels have been doing to innocent civilians".

Ismail Sillah, a businessman here, wondered, "why the government has to go through this legal waste of time?", instead of having "this monster publicly tortured and executed".

No wonder lawyers are unwilling to defend Sankoh, who today warned that he would not make any statement to the police or in court if international monitors were not present to witness the legal proceedings.

The government has assured that international observers would be allowed to monitor the trial.

LOAD-DATE: September 8, 1998

### **3. Pleadings**

74)

SCSL-03-01-I  
(3153-3159)

940  
3153



**SPECIAL COURT FOR SIERRA LEONE**

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

---

**BEFORE THE DESIGNATED JUDGE**

**Before:** Hon. Justice Bankole Thompson, Designated Judge

**Registrar:** Mr. Lovemore G. Munlo, S.C.

**Date:** 16<sup>th</sup> of March, 2006

**PROSECUTOR**                      **Against**                      **CHARLES GHANKAY TAYLOR**  
(Case No.SCSL-03-01-I)

**Confidential and *Ex-Parte* Document**

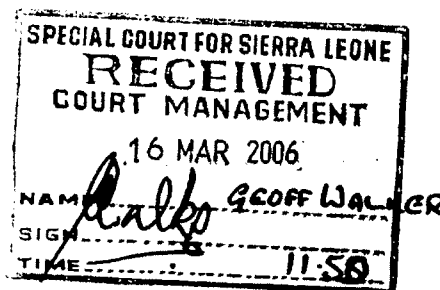
---

**DECISION ON PROSECUTION'S APPLICATION TO AMEND INDICTMENT AND ON  
APPROVAL OF AMENDED INDICTMENT**

---

**Office of the Prosecutor:**

Desmond de Silva, Q.C.  
Christopher Staker  
James C. Johnson  
Brenda J. Hollis



I, HON. JUSTICE BANKOLE THOMPSON, sitting as Designated Judge pursuant to Rule 50 of the Rules of Procedure and Evidence ("Rules") of the Special Court for Sierra Leone ("Special Court");

NOTING the Indictment filed by the Office of the Prosecutor ("Prosecution") against Charles Ghankay Taylor, also known as Charles Ghankay Macarthur Dakpana Taylor ("Charles Taylor") on the 3<sup>rd</sup> of March, 2003;

SEIZED of the "Prosecution Motion for Leave to Amend the Indictment and for Approval and Non-Disclosure of the Amended Indictment", filed confidentially and *ex-parte* by the Prosecution on the 6<sup>th</sup> of March, 2006 ("Motion");

NOTING the "Decision Approving the Indictment and Order for Non-Disclosure" of the 7<sup>th</sup> of March, 2003;

NOTING the "Warrant of Arrest and Order for Transfer and Detention" of the 7<sup>th</sup> of March, 2003 ("Warrant of Arrest");

NOTING the "Order for the Disclosure of the Indictment, the Warrant of Arrest and Order for Transfer and Detention and the Decision Approving the Indictment and Order for Non-Disclosure" of the 12<sup>th</sup> of June, 2003;

MINDFUL OF the Appeals Chamber "Decision on Immunity From Jurisdiction" of the 31<sup>st</sup> of May, 2004;

HAVING HEARD the Prosecution during an *Ex-Parte* hearing held in Chambers on the 15<sup>th</sup> of March, 2006;

PURSUANT to Article 17 of the Statute of the Special Court and Rule 8, 26bis, 47, 50, 52, 53, 54, 55, 56 of the Rules;

HEREBY ISSUE THE FOLLOWING DECISION:

## I. PROCEDURAL BACKGROUND

1. An Indictment (referred to in this Decision as the "Original Indictment") and a Warrant of Arrest against Charles Taylor were approved by me, sitting as Designated Judge pursuant to Rule 28

*PBT*

of the Rules,<sup>1</sup> on the 7<sup>th</sup> of March, 2003, when he was Head of State of the Republic of Liberia in consequence of an application by the Prosecution pursuant to Rule 47 of the Rules. On the 4<sup>th</sup> of June, 2003, at the request of the Prosecutor, they were transmitted to the appropriate authorities in the Republic of Ghana, where Charles Taylor was on an official visit, but proved ineffective in securing his apprehension. Subsequently, the orders for the non-disclosure of the said Indictment and the Warrant of Arrest were rescinded and the said documents made public.<sup>2</sup>

2. On the 23<sup>rd</sup> of July, 2003, Charles Taylor filed a Motion seeking an order that the said Indictment against him be quashed and that the Warrant of Arrest be declared null and void on the grounds that, in his capacity as Head of State of the Republic of Liberia, he enjoyed immunity from the jurisdiction of the Special Court.<sup>3</sup> The said Motion was deemed to be a Preliminary Motion pursuant to Rule 72 of the Rules and, after oral arguments was subsequently dismissed by the Appeals Chamber on the 31<sup>st</sup> of May, 2004 for lack of merit.<sup>4</sup>

3. Since August 2003, Charles Taylor has ceased to be the Head of State of the Republic of Liberia and is reportedly in Nigeria.

## II. DELIBERATION

4. It is necessary to begin this part of this Decision by noting that the Original Indictment preferred against Charles Taylor by the Prosecutor of the Special Court, which I approved on the 7<sup>th</sup> of March, 2003 charged him with Crimes Against Humanity, Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II and Other Serious Violations of International

<sup>1</sup> *Prosecutor against Charles Taylor*, Case No. SCSL-03-1-I, Order Designating a Rule 28 Judge and Authorizing the Exercise of His Functions Away from the Seat of the Special Court, 7 March 2003.

<sup>2</sup> *Id.*, Order for the Disclosure of the Indictment, the Warrant of Arrest and Order for Transfer and Detention and the Decision Approving the Indictment and Order for Non-Disclosure, 12 June 2003.

<sup>3</sup> *Id.*, Applicant's Motion made under Protest and without waiving of Immunity accorded to a Head of State President Charles Ghankay Taylor requesting that the Trial Chamber do quash the said approved indictment of 7th March 2003 of Judge Bankole Thompson and that the aforesaid purported Warrant of Arrest and Order for Transfer and detention of the same date issued by Judge Bankole Thompson of the Special Court for Sierra Leone, and all other consequential and related ORDER(S) granted thereafter by either the said Judge Bankole Thompson OR Judge Pierre Boutet on 12<sup>th</sup> June 2003 against the person of the said President Charles Ghankay Taylor be declared null and void, invalid at their inception and that they be accordingly cancelled and/OR set aside as a matter of Law, 23 July 2003.

<sup>4</sup> *Prosecutor against Charles Taylor*, Case No. SCSL-03-1-I-AR72(E), Decision on Immunity from Jurisdiction, 31 May 2004. See also *Prosecutor against Charles Taylor*, Case No. SCSL-03-1-I, Order Pursuant to Rule 72(E): Defence Motion to quash the indictment and to declare the Warrant of Arrest and all other consequential orders null and void, 19 September 2003.

1435

P. 565

Humanitarian Law.<sup>5</sup> The Prosecution now seeks leave to amend the said indictment pursuant to Rule 50 of the Rules.

5. I am now seized of this Motion as the Designated Judge of this Trial Chamber who reviewed and approved the Original Indictment pursuant to Rule 47(E) of the Rules. As a matter of law, interpreted conjunctively in their plain and ordinary sense, Rule 47(E) and Rule 50 require that the Amended Indictment be also approved.

6. My judicial recollection of the applicable legal test in approving the Original Indictment is that prescribed by Rule 47(E). It is a two-prong conjunctive test, namely:

- (i) that the indictment charges the suspect with a crime or crimes within the jurisdiction of the Special Court; and
- (ii) that the allegations in the Prosecution's case summary would, if proven, amount to the crime or crimes particularised in the indictment.<sup>6</sup>

7. Since the approval of the Original Indictment, there has been some judicial guidance on the procedural steps for review and approval of an indictment within the jurisdiction of the Special Court for Sierra Leone. Instructively, Trial Chamber I in its *Decision On The Preliminary Defence Motion On The Lack of Personal Jurisdiction Filed On Behalf of Accused Fofana*, reasoned thus:

The Chamber notes that the next procedural step is that the Judge designated to review the indictment receives the "indictment and accompanying material" from the Registrar. He or she shall conduct a review of this material "to determine *whether* the indictment should be approved," in the Chamber's view. The final procedural step is that the Designated Judge shall approve the indictment "if" he or she is satisfied that certain conditions have been met, namely, that the indictment charges the suspect with a crime or crimes within the jurisdiction of the Special Court, and that the allegations in the Prosecutor's case summary would, if proven, amount to a crime or crimes as particularised in the indictment. The Designated Judge may approve or dismiss each count.<sup>7</sup>

<sup>5</sup> *Prosecutor against Charles Taylor*, Case No. SCSL-03-01-I, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003.

<sup>6</sup> *Id.*, page 1.

<sup>7</sup> *Prosecutor against Sam Hinga Norman, Moinina Fofana and Allieu Kondewa*, Case No. SCSL-04-14-PT, Decision On The Preliminary Defence Motion on the Lack of Personal Jurisdiction Filed on Behalf of Accused Fofana, 3 March 2004, para. 30.

RBT

p. 566



8. Significantly, also, the Appeals Chamber of this Court in a recent Decision had this to say as regards the applicable test prescribed by Rule 47(E):

...The indictment was reviewed under Rule 47(E) by a designated judge for the purpose of ensuring that the crimes it charged were within the jurisdiction of the court and that allegations made by the Prosecution “would if proven, amount to the crime or crimes as particularised in the Indictment.” This exercise does not, as in certain other courts, require a judicial finding of a *prima facie* case: the judge is concerned only to ensure that the particulars which the Prosecution claims it can prove would amount to a triable offence.<sup>8</sup>

9. Guided by the foregoing exposition of the law as to the applicable test prescribed by Rule 47(E) and the requisite procedural steps, I now proceed to consider the merits of the instant application for leave to amend the Original Indictment. In doing so, let me first recall the rationale behind the Prosecution’s Motion for leave to amend the Original Indictment. It derives essentially from a four-fold observation on the original indictments made by the Appeals Chamber in the Decision referred to earlier. The first is that a case summary accompanying an indictment does not form part of the indictment and therefore is not susceptible to amendment.<sup>9</sup> The second is that the indictments presented by the Prosecution before the Special Court were “overloaded” with particulars.<sup>10</sup> The third is that “it can only serve the interests of justice to permit the Prosecution to reconsider and refine its case in the pre-trial period.”<sup>11</sup> The fourth is the need for strict compliance with Rule 47(C) in framing the indictment, by first setting out the statement of offence followed immediately thereafter by the particulars of offence. Furthermore, the primary purpose behind the proposed amendment can be deduced from this passage in the Prosecution’s Motion:

“As a result of these ongoing investigations, and with reference to the evidence that has been adduced at the trials of the AFRC and RUF accused, the evidentiary posture of the case against the Accused has been refined. It is primarily for this reason that the Prosecution moves to amend the Indictment against this Accused to allow the Amended Indictment to reflect this refined evidentiary posture.”<sup>12</sup>

<sup>8</sup> *Prosecutor against Sam Hinga Norman, Moinina Fofana and Allieu Kondewa*, Case No. SCSL-04-14-AR73, Decision on Amendment of the Consolidated Indictment, 16 May 2005, para 49.

<sup>9</sup> See *id.*, paras 50-53 and 78.

<sup>10</sup> *Id.*, para. 53.

<sup>11</sup> *Id.*, para 53.

<sup>12</sup> Motion, para. 12.

1457

P. 567

10. The Prosecution also asserts that the proposed amendments include the deletion of certain terms such as “but not limited to” which this Chamber had earlier held to be “impermissibly vague”, and other minor amendments of an editorial nature.<sup>13</sup> Also very significant is the Prosecution’s averment that the proposed Amended Indictment contains no additional counts to the Original Indictment and that in fact certain counts contained in the Original Indictment have been deleted from the proposed Amended Indictment.

### III. CONCLUSION

11. Bearing in mind the applicable test prescribed by Rule 47(E) and the rationale behind the proposed amendments as articulated in the Prosecution’s Motion Paper, I have reviewed and considered the proposed Amended Indictment (Attachment A to the Motion), summary of proposed Amendments to the Original Indictment (Attachment B to the Motion), the Case Summary accompanying the Proposed Amended Indictment (Attachment C to the Motion) alongside the Original Indictment, and after hearing the Prosecution, I am satisfied that (i) the proposed Amended Indictment charges the suspect with crimes within the jurisdiction of the Special Court for Sierra Leone; (ii) the allegations in the Prosecution’s Case Summary would, if proven, amount to crimes particularised in the proposed Amended Indictment; in effect, that the particulars of the crimes as embodied in the Amended Indictment in respect of each count which the Prosecution claims it can prove would, if proven, amount to triable offences; (iii) the requirements of Rule 47 have been complied with; (iv) the proposed Amended Indictment complies with Rule 47(C).

12. Being thus satisfied, I accordingly approve the Amended Indictment presented for review, and grant leave to the Prosecutor to amend the Original Indictment by substituting for the said Original Indictment, the Amended Indictment, recognising that it does serve the interests of justice for the proposed amendments to be granted at this early stage during the pre-trial phase of the proceedings as there is no conceivable prejudice to the Accused resulting from granting leave to amend.

### IV. DISPOSITION

13. Convinced, therefore, of the merits of the Prosecution’s Motion herein, I, sitting as Designated Judge, pursuant to Rules 47, 50(A), 52, 53(A) and (B), 56, and other relevant rules, **HEREBY GRANT LEAVE** to the Prosecution to amend the Original Indictment dated the 7<sup>th</sup> day of

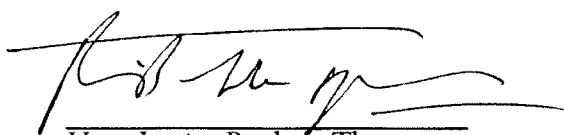
<sup>13</sup> See, for example, *Prosecutor against Issa Hassan Sesay*, Case No. SCSL-03-05-PT, Decision and Order on Defence

March, 2003 preferred against Charles Ghankay Taylor also known as Charles Ghankay Macarthur Dakpana Taylor by substituting for the said Original Indictment, which shall accordingly be marked "not to be proceeded with", the Amended Indictment which is annexed to the Motion as Attachment A;

**AND MAKE THE FOLLOWING ORDERS**

1. that the Prosecution file a signed copy of the Amended Indictment, accompanied by the Case Summary, with the Registry of the Special Court by no later than Monday, the 20<sup>th</sup> of March, 2006;
2. that there be no public disclosure of the Amended Indictment until it is served on the Accused or upon further order of the Special Court;
3. that the existing Warrant of Arrest in respect of the Accused shall remain valid and continue to be in force in the respect of the offences charged;
4. that the Registry transmit the said existing Warrant of Arrest to the specific States and relevant international bodies as may be indicated by the Prosecutor through the Registrar;
5. that the Accused be served with a copy of the Amended Indictment, together with a copy of the present Decision, at the time he is taken into custody or as soon as possible thereafter, in accordance with Rule 52.

Done in Freetown, Sierra Leone, this 16<sup>th</sup> day of March, 2006



Hon. Justice Bankole Thompson  
Designated Judge

[Seal of the Special Court for Sierra Leone]



Preliminary Motion on Defects in the Form of the Indictment, 13 October 2003

P. 569

75

SCSL-03-01-I  
(3160-3180)

947

3160

**THE SPECIAL COURT FOR SIERRA LEONE**

**CASE NO. SCSL- 2003- 01- I**

**THE PROSECUTOR**

**Against**

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

**AMENDED INDICTMENT**

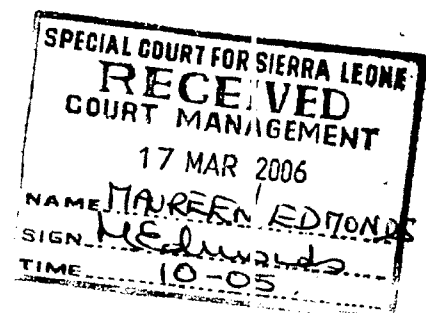
The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute) charges:

**CHARLES GHANKAY TAYLOR also known as  
(aka) DANKPANNAH CHARLES GHANKAY TAYLOR  
aka DANKPANNAH CHARLES GHANKAY MACARTHUR TAYLOR**

with **CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON  
TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II and  
OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW,**  
in violation of Articles 2, 3 and 4 of the Statute as set forth below:

**THE ACCUSED**

1. **CHARLES GHANKAY TAYLOR aka DANKPANNAH CHARLES  
GHANKAY TAYLOR aka DANKPANNAH CHARLES GHANKAY  
MACARTHUR TAYLOR (the ACCUSED)** was born on 27 or 28 January 1948 at  
Arthington in the Republic of Liberia.



2. From the late 1980's the **ACCUSED** was the Leader or Head of the National Patriotic Front of Liberia (NPFL), an organized armed group.
3. From 2 August 1997 until about 11 August 2003, the **ACCUSED** was the President of the Republic of Liberia.
4. Paragraphs 1 through 3 are incorporated by reference in CHARGES below.

### **CHARGES**

By his acts or omissions in relation to the below described events, the **ACCUSED**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

### **TERRORIZING THE CIVILIAN POPULATION**

**COUNT 1:** Acts of Terrorism, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.d. of the Statute.

### **PARTICULARS**

5. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone.

### **Burning**

6. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or

subordinate to the **ACCUSED**, engaged in widespread destruction of civilian property by burning, including the following:

**Kono District**

7. Between about 1 February 1998 and about 31 December 1998, in various locations including Koidu, Tombodu or Tumbodu, Sewafe or Njaima Sewafe, Wendedu and Bumpe;

**Freetown and Western Area**

8. Between about 21 December 1998 and about 28 February 1999, in locations throughout Freetown, including Kissy and eastern Freetown and the Fourah Bay, Ugun, State House, Calaba Town, Kingtom and Pademba Road areas of the city, and Hastings, Goderich, Kent, Grafton, Wellington, Tumbo, Waterloo and Benguema in the Western Area.

**UNLAWFUL KILLINGS**

**COUNT 2:** Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

**COUNT 3:** Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute.

**PARTICULARS**

9. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, throughout Sierra Leone, unlawfully killed an unknown number of civilians, including the following:

**Kenema District**

10. Between about 25 May 1997 and about 31 March 1998, in various locations, including Kenema town and the Tongo Fields area;

**Kono District**

11. Between about 1 February 1998 and about 31 January 2000, in various locations, including Koidu, Tombodu or Tumbodu, Koidu Geiya or Koidu Gieya, Koidu Buria, Yengema, Paema or Peyima, Bomboa fuidu, Bumpe, Nimikoro or Njaima Nimikoro and Mortema;

**Kailahun District**

12. Between about 1 February 1998 and about 30 June 1998, in various locations, including Kailahun town;

**Freetown and Western Area**

13. Between about 21 December 1998 and 28 February 1999, in locations throughout Freetown, including the State House, Kissy, Fourah Bay, Upgun, Calaba Town, A len Town and Tower Hill areas of the city, and Hastings, Wellington, Tumbo, Waterloo and Benguema in the Western Area.

**SEXUAL VIOLENCE**

**COUNT 4:** Rape, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

And:

**COUNT 5:** Sexual slavery and any other form of sexual violence, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

In addition, or in the alternative:

**COUNT 6:** Outrages upon personal dignity, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.e. of the Statute.

**PARTICULARS**

14. Between about 30 November 1996 and about 18 January 2002, members of FUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, committed widespread acts of sexual violence against civilian women and girls, including the following:

**Kono District**

15. Between about 1 February 1998 and about 31 December 1998, raped an unknown number of women and girls in various locations, including Koidu, Tombodu or Tumbodu, Wonedu and AFRC and/or RUF camps such as "Superman Ground", "Guinea Highway" and "PC Ground"; abducted an unknown number of women and girls from various locations within the District, or brought them from locations outside the District, and used them as sex slaves;

**Kailahun District**

16. Between about 30 November 1996 and about 18 January 2002, raped an unknown number of women and girls in locations throughout Kailahun District; abducted many victims from other areas of the Republic of Sierra Leone, brought them to locations throughout the District, and used them as sex slaves;

**Freetown and Western Area**

17. Between about 21 December 1998 and about 28 February 1999, raped an unknown number of women and girls throughout Freetown and the Western area, and abducted an unknown number of women and girls and used them as sex slaves.

**PHYSICAL VIOLENCE**

**COUNT 7:** Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:



**COUNT 8:** Other inhumane acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute.

#### **PARTICULARS**

18. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, committed widespread acts of physical violence against civilians, including the following:

##### **Kono District**

19. Between about 1 February 1998 and about 31 December 1998, mutilated and beat an unknown number of civilians in various locations, including Tombodu or Tumbodu, Kaima or Kayima and Wonedu. The mutilations included cutting off limbs and other body parts and carving "AFRC" and "RUF" on the bodies of the civilians;

##### **Kailahun District**

20. Between about 30 November 1996 and about 18 January 2002, beat an unknown number of civilians in locations throughout the District;

##### **Freetown and Western Area**

21. Between about 21 December 1998 and about 28 February 1999, mutilated and beat an unknown number of civilians in various areas of Freetown, including the northern and eastern areas of the city, the Kissy area around the State House, Fourah Bay, Upton and the Kissy mental hospital, and Hastings, Wellington, Tumbo, Waterloo and Benguema in the Western Area. The mutilations included cutting off limbs.

#### **CHILD SOLDIERS**

**COUNT 9:** Conscripting or enlisting children under the age of 15 years into armed force; or groups, or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.

**PARTICULARS**

22. Between about 30 November 1996 and about 18 January 2002, throughout the Republic of Sierra Leone, members of RUF, AFRC, AFRC/RUF Junta or alliance and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC and/or RUF camps in various locations throughout the country, and thereafter used as fighters.

**ABDUCTIONS AND FORCED LABOUR**

**COUNT 10:** Enslavement, a **CRIME AGAINST HUMANITY**, punishable under Article 2.c. of the Statute.

**PARTICULARS**

23. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, engaged in widespread and large scale abductions of civilians and use of civilians as forced labour, including the following:

**Kenema District**

24. Between about 1 July 1997 and about 28 February 1998, used an unknown number of civilians living in the District as forced labor in various locations such as the Tonga Fields area;

**Kono District**

25. Between about 1 February 1998 and about 18 January 2002, abducted an unknown number of civilians, and took them to various locations outside the District, or to locations within the District such as AFRC and/or RUF camps, Tombodu or Tumbody, Koidu and Wonedu, and used them as forced labour;

**Kailahun District**

26. Between about 30 November 1996 and about 18 January 2002, brought abducted civilian men, women and children to various locations within the District and used them and residents of the District as forced labour;

**Freetown and Western Area**

27. Between about 21 December 1998 and about 28 February 1999, abducted an unknown number of civilians, including a large number of children, from locations throughout Freetown and the Western Area, and used them as forced labour.

**LOOTING**

**COUNT 11: Pillage, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 30.f. of the Statute.**

**PARTICULARS**

28. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, engaged in widespread unlawful taking of civilian property, including the following:

**Kono District**

29. Between about 1 February 1998 and about 31 December 1998, in various locations, including Koidu, Tombodu or Tumbodu and Bumpe;

**Bombali District**

30. Between about 1 February 1998 and about 30 April 1998, in various locations, including Masiaka and Makeni;

**Freetown and Western Area**

31. Between about 21 December 1998 and about 28 February 1999, throughout Freetown and the Western Area.

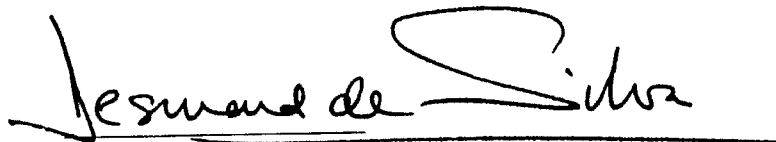
32. Paragraphs 4 through 31 are incorporated by reference in **INDIVIDUAL CRIMINAL RESPONSIBILITY** below.

**INDIVIDUAL CRIMINAL RESPONSIBILITY**

33. The **ACCUSED**, by his acts or omissions, is individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Amended Indictment, which crimes the **ACCUSED** planned, instigated, ordered, committed, or in whose planning, preparation or execution the **ACCUSED** otherwise aided and abetted, or which crimes amounted to or were involved within a common plan, design or purpose in which the **ACCUSED** participated, or were a reasonably foreseeable consequence of such common plan, design or purpose.
34. In addition, or alternatively, pursuant to Article 6.3. of the Statute, the **ACCUSED**, while holding positions of superior responsibility and exercising command and control over subordinate members of the RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Amended Indictment. The **ACCUSED** is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and the **ACCUSED** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Dated this 16<sup>th</sup> day of March 2006

Freetown, Sierra Leone



Desmond de Silva

The Prosecutor

956

3169

**THE SPECIAL COURT FOR SIERRA LEONE**

**CASE NO. SCSL – 2003 – 01 – I**

**THE PROSECUTOR**

**Against**

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

**CASE SUMMARY ACCOMPANYING THE AMENDED INDICTMENT**

The Prosecution evidence, including expert witnesses, witnesses of fact and documentary evidence, will prove the following allegations:

**THE ACCUSED**

1. In the late 1980's the **ACCUSED** received military training in Libya from representatives of the Government of MU'AMMAR AL-QADHAFI. While in Libya the **ACCUSED** met FODAY SAYBANA SANKOH. The two made common cause to assist each other in taking power in their respective countries.
2. While in Libya, the **ACCUSED** formed or joined the National Patriotic Front of Liberia (NPFL), and became the leader or head of that organized armed group.
3. In December 1989 the NPFL, led by the **ACCUSED**, began conducting organized armed attacks in Liberia. The **ACCUSED** and the NPFL were assisted in these attacks by FODAY SAYBANA SANKOH and his followers.

## **CHARGES**

### **Contextual Elements**

4. Paragraphs 1 through 3 are incorporated by reference herein.
5. All offences alleged within the Amended Indictment were committed within the territory of Sierra Leone after 30 November 1996.
6. Between 30 November 1996 and about 18 January 2002, a state of armed conflict existed within Sierra Leone. For the purposes of the Amended Indictment, organized armed factions involved in this conflict included the Civil Defence Forces (CDF), the Revolutionary United Front (RUF), and the Armed Forces Revolutionary Council (AFRC). From the beginning of, and throughout the conflict, Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), under the **ACCUSED's** control and/or operating in Sierra Leone with the **ACCUSED's** approval and assistance, also participated in this conflict, fighting as part of or alongside members of the RUF, and, later, the AFRC, AFRC/RUF Junta or alliance.
7. The CDF was comprised of Sierra Leonean traditional hunters, including the Kamajors, Gbethis, Kapras, Tamaboros and Donsos. The CDF fought against the RUF and, later, against the AFRC.
8. The organized armed group that became known as the RUF, led by FODAY SAYBANA SANKOH aka POPAY aka PAPA aka PA, was founded about 1988 or 1989 in Libya. The RUF, under the leadership of FODAY SAYBANA SANKOH, and with the assistance of Liberian fighters, began organized armed operations in Sierra Leone in March 1991. During the ensuing armed conflict, the RUF forces were also referred to as "RUF", "rebels" and "People's Army". Initially the RUF fought against the Republic of Sierra Leone Military Forces, commonly known as the Sierra Leone Army or SLA.

9. Although a peace accord was signed on 30 November 1996, in Abidjan, Ivory Coast, between FODAY SAYBANA SANKOH and President Kabbah, active hostilities recommenced after a temporary lull in the fighting.
10. The armed group known as the AFRC was created via a coup d'état by members of the SLA on 25 May 1997. On that date the members of the coup seized power from the elected government of the Republic of Sierra Leone. JOHNNY PAUL KOROMA aka JPK became the leader and Chairman of the AFRC. Soldiers of the SLA comprised the majority of the AFRC membership. The AFRC forces were also referred to as "Junta", "soldiers", "SLA", and "ex-SLA".
11. Shortly after the AFRC seized power, at the invitation of JOHNNY PAUL KOROMA, and upon the order of FODAY SAYBANA SANKOH, the RUF joined with the AFRC. The AFRC and the RUF acted together thereafter. The AFRC/RUF Junta forces (Junta) were also referred to as "Junta", "rebels", "soldiers", "SLA", "ex-SLA" and "People's Army". The two armed factions now fought together against the CDF, SLAs loyal to the elected government, and any other force that fought against the AFRC/RUF Junta or alliance.
12. After the 25 May 1997 coup d'état, a governing body called the Supreme Council was created within the Junta. The governing body included leaders of both the AFRC and the RUF.
13. The Junta was forced from power by forces acting on behalf of the ousted government of President Kabbah about 14 February 1998. President Kabbah's government returned in March 1998. After the Junta was removed from power the AFRC/RUF alliance continued.
14. On 7 July 1999, in Lomé, Togo, FODAY SAYBANA SANKOH and President Kabbah signed a peace agreement. However, active hostilities continued.
15. The **ACCUSED** and all members of the organized armed factions engaged in fighting within Sierra Leone, including the Liberian fighters, were required to abide by International Humanitarian Law and the laws and customs governing the conduct of

armed conflicts, including the Geneva Conventions of 12 August 1949, to which the Republic of Sierra Leone succeeded on 10 June 1965, and the Republic of Liberia acceded on 29 March 1954 and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986, and the Republic of Liberia acceded on 30 June 1988.

16. The armed conflict continued within the territory of Sierra Leone until about 18 January 2002, when Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, announced an end to the hostilities.
17. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.
18. All acts and omissions charged in the Amended Indictment as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.
19. The victims of the crimes alleged in the Amended Indictment were civilians. In the Amended Indictment, the words "civilian(s)" or "civilian population" refer to persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities.

**Enumerated crimes and serious violations**

20. The Prosecution relies primarily on the particulars set forth in the Amended Indictment in respect of the alleged enumerated crimes and serious violations set forth therein.
21. Between about 30 November 1996 and about 18 January 2002, members of the RUF, AFRC, Junta and/or the AFRC/RUF alliance, and Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and control of, and/or subordinate to the **ACCUSED**, committed the crimes alleged in the Amended Indictment. During that time period, members of these organized armed groups



conducted widespread or systematic armed attacks throughout the territory of the Republic of Sierra Leone, including Kono, Kenema, Bombali and Kailahun Districts, Freetown and the Western area. The attacks were directed against the civilian population, and the victims of the armed attacks were civilian men, women and children.

### **Acts of Terror**

22. The primary objective of the attacks was to terrorize the civilian population of Sierra Leone. Acts of terror included large scale burning of civilian homes and other civilian property, unlawful killings, sexual and physical violence, use of child soldiers and widescale looting. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes – dead bodies, savaged or mutilated victims and looted and burned property.
23. Also as part of the campaign of terror, members of the civilian population were routinely captured and abducted. These captives were typically subjected to sexual and physical violence; most, if not all, who survived capture were used as forced labor. Many males, and some females, were forced to become fighters in the armed groups to which their captors belonged. Men and boys who were abducted were also used as forced labour.

### **Unlawful Killings**

24. Members of the RUF, AFRC, AFRC/RUF Junta or alliance and Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and control of, and/or subordinate to the **ACCUSED**, engaged in widescale unlawful killing of civilians throughout Sierra Leone. Civilians were shot, burned in their homes, hacked to death, and killed either while trying to escape from attacks on their homes, or from their captors. Some victims died as a result of the sexual or physical violence to which they were subjected, while others died in the performance of forced labor.

**Sexual Violence**

25. Women and girls were subjected to widespread acts of sexual violence. Such violence included brutal rapes, often by multiple rapists. Captured women and girls were routinely raped; many of them were held for years, and forced to provide sexual gratification to their captors in addition to being forced to perform domestic duties and other manual labor.

**Physical Violence**

26. Physical violence was widespread and often carried out in public places. Civilians were forced to watch as others were violently attacked and mutilated; many of those forced spectators were then similarly attacked and mutilated. Civilians, in particular young men who tried to escape from their RUF, AFRC, AFRC Junta or alliance, or Liberian captors, were often mutilated by having "RUF" and "AFRC" carved on their bodies.

**Child Soldiers**

27. The conflict in Sierra Leone was marked at all stages by the presence of children, especially young boys, under the age of 15 in the ranks of the RUF, AFRC, AFRC Junta or alliance and Liberian fighters. Such children were enlisted or conscripted and forced to participate actively in hostilities. These children had generally been seized from their families and were unable or too frightened to escape from their captors. Military training was often given to these children and they were taught to handle and fire weapons, to lay ambushes and evade detection. Such was the prevalence of child soldiers during the conflict that some units were specifically designated for young boys such as the Small Boys Unit or "SBU".

**Abductions and Forced Labor**

28. Throughout Sierra Leone civilians were routinely abducted and forced to perform a variety of forced labor, including carrying goods, ammunition and weapons, performing domestic work, going on food-finding missions, performing agricultural

duties and mining for diamonds. They did so under threat of physical harm or death, and often at gun point. Those forced to work were often physically abused, or in some instances killed, if they were unable to carry out the duties assigned them. The conditions of life for those forced to carry out this labor were often very difficult, and such individuals were generally deprived of adequate food, shelter and medical care. Civilians who attempted escape were punished, often brutally, or killed. In some cases, civilians were held for years.

### **Looting**

29. Widespread looting formed a key element of the hostile activities engaged in by members of the RUF, the AFRC and the AFRC Junta or alliance and Liberian fighters. Civilian properties were routinely looted for items such as jewellery and other valuables, money and clothes.

### **INDIVIDUAL CRIMINAL RESPONSIBILITY**

30. From the beginning of, and throughout, the conflict in Sierra Leone, the **ACCUSED** provided the RUF with assistance, encouragement and direction. Prior to the initial attacks into Sierra Leone, the **ACCUSED** provided military training, financial support, arms and ammunition, and safe havens to FODAY SAYBANA SANKO and his organized group. The **ACCUSED** provided personnel for the initial attacks into Sierra Leone which began the armed conflict in that country.
31. Throughout the armed conflict in Sierra Leone, the **ACCUSED's** positions as leader or head of the NPFL and President of Liberia, combined with his close association with FODAY SAYBANA SANKO and other senior leaders of the RUF and AFRC, AFRC/RUF Junta or alliance, provided the **ACCUSED** with the authority and the means to participate in the crimes alleged in the Amended Indictment.
32. The **ACCUSED's** participation in the crimes alleged in the Amended Indictment took a variety of forms – planning, instigating, ordering, committing, otherwise aiding and abetting in the commission of the alleged crimes, and participating in a common plan, design or purpose.

33. In addition, or in the alternative, the **ACCUSED** incurs criminal responsibility for the alleged crimes because, as the superior of the perpetrators, he failed to take the necessary and reasonable measures to prevent or punish the crimes of which he had actual knowledge or of which he had reason to know.

#### **Planning**

34. The **ACCUSED**, individually, or participating with his direct subordinates and/or high level leaders of the RUF, AFRC and AFRC/RUF Junta or alliance, planned armed operations in Sierra Leone which were themselves crimes or involved the commission of crimes alleged in the Amended Indictment.

#### **Instigating**

35. Throughout the armed conflict, the **ACCUSED** encouraged the actions of the RUF, AFRC, AFRC/RUF Junta or alliance, and Liberian fighters, thereby prompting the perpetrators to commit the crimes alleged in the Amended Indictment.

#### **Ordering**

36. Through his positions set out in paragraph 31 above, and his close association with FODAY SAYBANA SANKOH and other senior leaders of RUF and AFRC, AFRC/RUF Junta or alliance, the **ACCUSED**, individually, or in concert with those senior leaders, exercised *de jure* and/or *de facto* control over the perpetrators of the crimes alleged in the Amended Indictment. He exercised *de facto* control, individually, or in concert with FODAY SAYBANA SANKOH and other high level superiors in the RUF, AFRC and AFRC/RUF Junta or alliance, through those senior leaders and/or intermediate level superiors within those armed groups. The **ACCUSED** exercised *de jure* and/or *de facto* control directly over Liberian fighters, or through intermediate superiors of those fighters.
37. The **ACCUSED** provided instruction, direction and guidance involving the commission of crimes alleged in the Amended Indictment directly to, and through, senior and/or intermediate level commanders within the RUF, AFRC, AFRC/RUF

Junta or alliance, and directly to, or through intermediate level superiors of Liberian fighters.

38. Senior level RUF leaders to whom and through whom the **ACCUSED** gave instruction, direction and guidance included FODAY SAYBANA SANKOH, SAM BOCKARIE aka MOSQUITO aka MASKITA and ISSA HASSAN SESAY. The **ACCUSED** provided such instruction guidance and direction to the AFRC through the shared AFRC/RUF leadership, which included the high level RUF commanders named above, and TAMBA ALEX BRIMA aka GULLIT and BRIMA BAZZY KAMARA aka BAZZY.

#### **Committing**

39. The **ACCUSED** committed the crimes alleged in the Amended Indictment in the sense of being a co-perpetrator of those crimes, in that, while not physically perpetrating the crimes, the **ACCUSED** shared the intent to commit the crimes and participated in the common plan, design or purpose which amounted to or involved commission of those crimes.

#### **Aiding and abetting**

40. Between about 30 November 1996 and about 18 January 2002, the **ACCUSED** assisted in the commission of the alleged crimes by providing various forms of support. Such support included the provision of: military training, both in Liberia and Sierra Leone; facilities in Liberia; safe havens in Liberia; personnel drawn from the NPFL, other organized armed groups within Liberia and from the Liberian population in general; arms and associated materiel such as ammunition; communications equipment including satellite phones; and other supplies such as food, uniforms and petrol. To ensure the timely and safe delivery of this support to the RUF, AFRC AFRC/RUF Junta or alliance and to the Liberian fighters in Sierra Leone, the **ACCUSED** also provided Liberian escorts and vehicles.
41. The essential support set out above provided practical assistance, encouragement and/or moral support to the RUF, AFRC, AFRC/RUF Junta or alliance and Liberian

fighters in carrying out the crimes alleged in the Amended Indictment, and had a substantial effect on the commission of those crimes, and/or furthered the common plan, design or purpose in which the participants included the leadership and members of the RUF, AFRC, AFRC/RUF Junta or alliance and Liberian fighters.

**Participation in a common plan, design or purpose**

42. This shared common plan, design or purpose was to take any actions necessary to gain and exercise political power and political and physical control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided primarily to the **ACCUSED** and other persons outside Sierra Leone.
43. The common plan, design or purpose included taking any actions necessary to gain and exercise physical and political control over the population of Sierra Leone in order to prevent or minimize resistance to their geographic control, and to use members of the population to provide support to those persons engaged in achieving the objectives of the common plan, design or purpose. This common plan, design or purpose amounted to, or involved the commission of, the crimes alleged in the Amended Indictment. The alleged crimes, amounting to or involved within the common plan, design or purpose, were either intended by the **ACCUSED**, or were a reasonably foreseeable consequence of the common plan, design or purpose.
44. The **ACCUSED** participated in this common plan, design or purpose as part of his continuing efforts to gain access to the mineral wealth of Sierra Leone, in particular diamonds, to destabilize the Government of Sierra Leone in order to facilitate access to such mineral wealth and to install a government in Sierra Leone that would be well disposed toward, and supportive of, the **ACCUSED's** interests and objectives in Liberia and the region.

**Intent and knowledge**

45. The **ACCUSED** intended the commission of the crimes alleged in the Amended Indictment, or acted with reckless indifference toward the possibility that such crimes

would be committed, and/or had knowledge of the commission of these crimes or the likelihood that such crimes would be committed.

46. The **ACCUSED** had knowledge of the crimes committed, or the probability that such crimes would be committed, through a variety of sources – communications via radios, satellite phones, personal visits from leaders of RUF, AFRC, AFRC/RUF Junta or alliance, contacts between the **ACCUSED**'s representatives and RUF, AFRC, AFRC/RUF Junta or alliance leaders, reports from his agents in Sierra Leone, documentary evidence of the commission of crimes alleged in the Amended Indictment from the media and international organizations and through representations made to the **ACCUSED** by representatives of the UN and of national governments. The **ACCUSED** also had this knowledge by virtue of the fact that many of these crimes paralleled the crimes committed against civilians in Liberia and Sierra Leone by members of his own organization, the NPFL, members and former members of which were fighting with or alongside the RUF, AFRC, AFRC/RUF Junta or alliance, under the direction of, or with the approval and support of, the **ACCUSED**.

47. For the above reasons, the **ACCUSED** knew or had reason to know the crimes alleged in the Amended Indictment had been committed or were about to be committed by persons subordinate to him. The **ACCUSED** did not take steps to prevent or punish these crimes.

#### **Superior Authority**

48. As alleged in paragraphs 33, 36, 46 – 47 above, the **ACCUSED**, individually or in concert with leaders of the RUF, AFRC, AFRC/RUF Junta or alliance and intermediate leaders of the Liberian fighters, exercised *de jure* and/or *de facto* control over the participants of the perpetrators of the crimes alleged in this Amended Indictment. The **ACCUSED** knew or had reason to know these subordinates were

967

3180

about to commit these continuing crimes, or had done so, and failed to take reasonable and necessary steps to prevent or punish the perpetrators.

Dated this 16th day of March 2006

Freetown, Sierra Leone



218.1

SCSL-03-01-PT  
(4869 - 5385)

968

PUBLIC

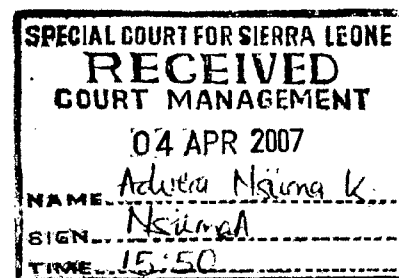
**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown - Sierra Leone

4869

Before: Hon. Justice Julia Sebutinde, Presiding  
Hon. Justice Richard Lussick  
Hon. Justice Teresa Doherty

Acting Registrar: Mr. Herman von Hebel

Date filed: 4 April 2007



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-PT

---

**PUBLIC**  
**RULE 73 bis**

**PRE-TRIAL CONFERENCE MATERIALS**

**PRE-TRIAL BRIEF**

---

Office of the Prosecutor:  
Ms. Brenda J. Hollis  
Ms. Ann Sutherland

Defence Counsel for Charles Ghankay Taylor  
Mr. Karim A. A. Khan  
Mr. Roger Sahota

*Kailahun District*

72. Kailahun District is strategically located: (i) it borders Liberia and Kono District; (ii) it had a well established trading route into Liberia; (iii) its remoteness facilitated unofficial movement across the border and made it easier to defend. Control over this District facilitated: (i) access to and control over the diamond rich Kono District; (ii) the procurement of arms, ammunitions and other supplies; and (iii) the exchange of diamonds for arms and other materiel and supplies.<sup>63</sup>
73. Kailahun District was one of the first targets of the RUF at the beginning of the war, and remained an RUF stronghold throughout the conflict. Kailahun District served as a main base for the AFRC/RUF, where senior AFRC/RUF commanders were regularly based, and from which significant support for AFRC/RUF operations was provided by the forced labour and/or conscription of hundreds of captured men, women and children. From about February 1998 to 2000, Buedu was the AFRC/RUF headquarters. Bockarie, the leader of the RUF, was based there. Kailahun District was also maintained as a buffer zone from which forces could be sent to Liberia to attack first ULIMO and later the LURD (Liberians United for Reconciliation and Democracy) forces.<sup>64</sup>
74. In particular, during the time period from about 1997 to early 2002, the District was a main transport and supply route for Junta and AFRC/RUF forces moving between Sierra Leone and Liberia. During the period from 1998 through 2000, arms/ammunitions and supplies were regularly transported from Liberia to Buedu, the AFRC/RUF headquarters. The shipments were usually transported through Lofa County, Liberia. The main modes of transport from Liberia into Kailahun were by truck, or by civilians forced to carry the materiel via bush paths. Diamonds mined primarily through the use of forced labour in Kono and Kenema Districts were first taken to AFRC/RUF headquarters in Buedu and from there were taken to the Accused in Liberia.<sup>65</sup>
75. The RUF, Junta - in particular the RUF component, and the AFRC/RUF, assisted by Liberian fighters, subjected the civilians in this District to a campaign of terror

<sup>63</sup> Exs. 1.0181.176; 1.197; 1.237; 1.283; 1.303; 1.367.

<sup>64</sup> Wits. TF1-113; 114, 141; 189; 276; 330; 374; 375; 388; 406. Exs. 1.018; 1.036; 1.047; 1.057; 1.058; 1.207. 1.303.

<sup>65</sup> Wits. TF1-071; 113; 274; 276; 366; 374; 375; 385; 399; 532; 540; 542; 568; 569; 570. Exs. 1.045; 1.063; 1.085; 1.103; 1.140.

throughout the armed conflict. These organised armed groups routinely abducted civilians, including children, and used them for forced labour or conscripted them into these groups. Captive children were trained militarily and used as fighters. Further, civilians in the District were subjected to beatings, sexual violence and/or killed, and homes were burned.<sup>66</sup>

76. Between about 30 November 1996 and about 18 January 2002, the RUF, Junta – in particular the RUF component, and later, the AFRC/RUF, and Liberian fighters subordinate to the Accused, committed the following crimes against civilians in the District. They raped an unknown number of women and girls in locations throughout Kailahun District. Further, many victims who had been abducted from other areas of Sierra Leone were brought to locations throughout the District and subjected to sexual violence and/or used as sex slaves. These victims had been abducted by the RUF, Junta – in particular the RUF component, and AFRC/RUF.<sup>67</sup>
77. In addition, they beat an unknown number of civilians in locations throughout the District. Beatings were used to punish those who failed to provide sufficient food as a result of forced food finding missions and to create a climate of terror.<sup>68</sup>
78. Also during this time period, the RUF, Junta, AFRC/RUF routinely used hundreds of captured men, women and children, and residents of the District as slave labour, including but not limited to farming, mining and carrying loads.<sup>69</sup>
79. Between about 1 February 1998 and about 30 June 1998, among other killings, they executed some 65 men whom they suspected of being Kamajor fighters. These killings were carried out in Kailahun town. The victims were detained for some time before being taken out and killed in groups of ten or so at a time. Bockarie ordered the executions and took part in the killings. Bockarie did this in the presence of a representative of the Accused. This representative was there to convey the Accused's order that Bockarie travel to Monrovia to meet with the Accused.<sup>70</sup>
80. Kailahun District operated as a major training location where forcibly conscripted men, women and children were held and given military training at bases such as those

<sup>66</sup> Wits. TF1-045; 108; 113; 116; 145; 247; 314; 330. Exs. 1.095; 1.155; 1.172; 1.173; 1.201; 1.207.

<sup>67</sup> Wits. TF1-108; 114; 116; 151; 189; 275; 314; 337; 366; 408; 414; Exs. 1.095; 1.155.

<sup>68</sup> Wits. TF1-045; 113; 114; 141; 189; 200; 247; 330. Ex. 1.172.

<sup>69</sup> Wits. TF1-045; 071; 108; 114; 116; 132; 141; 200; 275; 276; 314; 330; 366; 408; Exs. 1.173; 1.207.

<sup>70</sup> Wits. TF1-045; 168; 113; 141; 168; 245; 366; 374; 406; 532. Ex. 1.300.

at Bayama, Pendembu and Bunumbu. Such training often involved severe beatings and sometimes resulted in deaths of the trainees.<sup>71</sup>

#### *Bombali*

81. Makeni is a strategic town in Bombali District which controls the route between Freetown and Kono and facilitates access to the northern and eastern areas. Immediately after the Intervention and the AFRC/RUF's retreat from Freetown, sizable portions of the AFRC/RUF, including many of the senior leaders, initially regrouped in Makeni town, the District's headquarters, before continuing their retreat further north and east. The AFRC/RUF had announced "Operation Pay Yourself," an order to carry out extensive looting of civilian property which resulted in attacks against the civilian population. Between about 1 February 1998 and about 30 April 1998, as retreating forces proceeded through Bombali District, there was unlawful looting of civilian property in Bombali District at locations including Makeni.<sup>72</sup>
82. In addition to the wide scale looting which occurred during the retreat following the Intervention, AFRC/RUF forces engaged in the commission of widespread crimes against civilians throughout the District including intentional killing of civilians, physical violence, abductions and burning.<sup>73</sup>

#### *Port Loko District*

83. Port Loko District is located to the immediate north east of Freetown and the Western Area. While Port Loko saw periodic spates of violence throughout the conflict, principally there was significant violence in the district following the Intervention on 14 February 1998. During the Junta retreat from Freetown in early 1998, Masiaka was subjected to large scale looting of civilian property as part of "Operation Pay Yourself."<sup>74</sup>

#### *Kenema District*

84. The Tongo diamond fields, Tongo Fields, are located in Kenema District. Throughout the conflict, the RUF, Junta, and AFRC/RUF sought to control this diamond area. By March 1994, the RUF had established Camp "Zogoda", located to the north of the Moa River and in the south western part of Kenema District. This

<sup>71</sup> Wits. TF1-108; 114; 113; 132; 141; Exs. 1.038; 1.066; 1.296.

<sup>72</sup> Wits. TF1-028; 041; 071; 167; 275; 334; 352; 360; 366; 367; 375; 532. Exs. 1.170; 1.277.

<sup>73</sup> Wit. TF1-028. Exs. 1.170; 1.277.

<sup>74</sup> Wits. TF1-251; 334; 360; 366; Exs. 1.073; 1.277; 1.283.

operated as the RUF's main base or headquarters until about 1996. During part of the Junta period, Bockarie was based in Kenema town.<sup>75</sup>

85. Between about 25 May 1997 and about 31 March 1998, the Junta, AFRC/RUF and Liberian fighters subordinate to the Accused, carried out operations in order to gain and maintain control over the District, in particular, the Tongo diamond mining areas. About mid 1997, Junta forces took control of Tongo Town and began mining operations in the area, including at "Cyborg Pit" located in Tongo Fields.<sup>76</sup>
86. Thereafter, the Junta and AFRC/RUF commanders maintained a presence in the District. The mining operations were sustained through the forced labour of hundreds of captured civilians, who mined without pay, under threat of death and acts of physical violence perpetrated by SBUs. These SBUs were also used to guard the abducted civilians.<sup>77</sup>
87. The Junta and AFRC/RUF killed many civilians at Cyborg Pit, some because they were suspected of stealing diamonds. Others were killed to prevent escapes and to terrorise civilians in the area. On occasion, on the orders of Bockarie, AFRC/RUF fired indiscriminately into and around the Cyborg Pit, killing many civilians.<sup>78</sup>
88. Diamonds obtained from the mining operations at "Cyborg Pit" were handed over to Junta, and later, AFRC/RUF commanders, who transferred these diamonds to the Accused and/or his subordinates for arms and ammunition and other supplies. This materiel and supplies were used to enable the Junta and AFRC/RUF to continue their criminal campaign against civilians throughout Sierra Leone.<sup>79</sup>
89. During this time period, the Junta and the AFRC/RUF engaged in a campaign of terror against civilians throughout the District including killings, rape, beatings, physical violence, and the destruction and looting of civilian property. Captured civilians were beaten and forced to mine in the Tongo diamond mining areas.<sup>80</sup>
90. During this period, they detained many community leaders who were accused of supporting the CDF/Kamajors, including B S Massaquoi, a former Cabinet Minister and Town Council Chief. Those detained were subjected to severe interrogations.

<sup>75</sup> Wits. TF1-045; 122; 338; 376. Exs. 1.018; 1.045; 1.047; 1.063; 1.203; 1.239; 1.283.

<sup>76</sup> Wits. TF1-035; 045; 060; 274; 367; 376. Exs. 1.018; 1.045; 1.047; 1.239.

<sup>77</sup> Wits. TF1-035; 045; 060; 062; 122; 274; 366; 375; 532; 542; 515. Exs. 1.027; 1.045.

<sup>78</sup> Wits. TF1-035; 060; 062; 122; 376; 532.

<sup>79</sup> Wits. TF1-367; 371; 542. Exs. 1.018; 1.058; 1.063; 1.085; 1.164.

<sup>80</sup> Wits. TF1-035; 045; 119; 060; 122. Exs. 1.004; 1.095; 1.146; 1.171; 1.172; 1.173; 1.259.

Subsequently, several of the detainees, including B S Massaquoi, were killed, on the orders of Bockarie.<sup>81</sup>

91. During the Junta's retreat from Kenema District, in early 1998, Bockarie ordered all AFRC/RUF commanders to carry out "Operation Pay Yourself." Pursuant to this order, AFRC/RUF forces engaged in widespread unlawful taking of civilian property throughout the district.<sup>82</sup>

*Kono District*

92. Koidu Town is the headquarters of Kono District. It is a strategically important economic centre, in particular because it is a major diamond mining area. In addition, the District was strategically important because it is bordered to the south-east by Kailahun District, where the RUF and AFRC/RUF maintained major operational bases, including AFRC/RUF headquarters in Buedu.<sup>83</sup>
93. After the May 1997 coup, the Junta took control of all mining areas. After the ECOMOG Intervention in February 1998, retreating AFRC/RUF forces re-grouped and travelled to Kono District, specifically, Koidu Town. At a meeting in Koidu town, AFRC/RUF forces were told that Bockarie would now be in control of those forces. Following the capture of Koidu town, senior AFRC/RUF commanders established a joint-command structure for AFRC/RUF operations. The joint command structure included RUF commanders Dennis Mingo aka "Superman" and Morris Kallon.<sup>84</sup>
94. During the retreat from Freetown, a splinter group of AFRC fighters led by SAJ Musa went to Koinadugu district and established a base there, which was sometimes referred as to the "Northern Jungle". After the AFRC/RUF established the joint command in Koidu, Bockarie sent "Superman" to join forces with SAJ Musa. SAJ Musa and "Superman" jointly attacked Kabala and other villages and towns in Koinadugu district. After a joint decision by "Superman," SAJ Musa and Bockarie, AFRC/RUF fighters and radio operators were sent to join Alex Tamba Brima aka "Gullit" at Camp Rosos in Bombali District. SAJ Musa later joined them at Rosos base. These forces, led by "Gullit" after the death of SAJ Musa, played an

<sup>81</sup> Wits. TF1-045; 071; 122; 125; 039; 129. Exs. 1.173.

<sup>82</sup> Wits. TF1-045; 122; 370; 567. Ex. 1.171.

<sup>83</sup> Wits. TF1-036; 046; 168; 274; 371; 388; 515; 516; 565. Exs. 1.018; 1.019; 1.045; 1.081; 1.093; 1.195; 1.212; 1.219; 1.239; 1.283; 1.367.

<sup>84</sup> Exs. 1.138; 1.157; 1.195; 1.196; 1.199. 1.218; 1.297.

instrumental role in the attack on Freetown in January 1999. "Gullit" was in communication with AFRC/RUF commanders, including Bockarie.<sup>85</sup>

95. In about April 1998, the AFRC/RUF lost control of Koidu Town; however, they maintained a presence in Camps such as "Superman Ground", "Guinea Highway" and "PC Ground". The AFRC/RUF launched two major attacks in about mid and late 1998 to re-gain control of Koidu Town. This latter attack, planned and orchestrated by the Accused and Bockarie, was successful. The AFRC/RUF maintained control of Koidu Town thereafter. AFRC/RUF commanders in Kono took orders from Bockarie in 1999 and from Sesay in 2000 and 2001.<sup>86</sup>
96. From about 1 February 1998, AFRC/RUF forces in Kono District, Liberian fighters subordinate to the Accused, and AFRC/RUF forces operating from Camp Rosos engaged in a campaign of terror against the civilians in those areas. This campaign included killings, physical violence, abductions, forced labour and conscription of civilians, and the widespread looting and burning of civilian property. Women and young girls were subjected to sexual violence, abductions and were handed over as "bush wives" to their captors.<sup>87</sup>
97. Between about 1 February 1998 and 18 January 2002, the AFRC/RUF abducted hundreds of people from locations throughout the Kono District, including Koidu, Tombodu or Tumbodu and Wondedu, and used them as forced labour, including to carry loads, find food, perform domestic duties, and to mine. Senior AFRC/RUF commanders were in charge of diamond mining operations. Captive civilian miners were beaten, not paid and often not fed. They were routinely stripped and beaten and in some instances were killed for being too tired to work. These captives were controlled at gunpoint by SBUs. Diamonds were given to senior AFRC/RUF commanders.<sup>88</sup>
98. Between 1 February 1998 and 31 January 2000, the AFRC/RUF, as part of "Operation No Living Thing", undertook widespread killings of civilians in towns and villages throughout the District, including Koidu Geiya, Koidu Buma, Yengema,

<sup>85</sup> Wits. TF1-020; 167; 184; 263; 334; 352; 360; 388.

<sup>86</sup> Ex. 1.099; 1.197; 1.205.

<sup>87</sup> Wits. TF1-015; 019; 033; 071; 167; 206; 216; 219; 263; 331; 366; 542. Exs. 1.007; 1.057; 1.073; 1.095; 1.157; 1.173; 1.175; 1.180; 1.184; 1.195; 1.196; 1.197; 1.199; 1.218; 1.224.

<sup>88</sup> Wits. TF1-015; 033; 077; 189; 072; 195; 197; 216; 304; 360; 408; 405; 515; 567; 558. Exs. 1.018; 1.036; 1.045; 1.063; 1.073; 1.095; 1.129; 1.224; 1.239.

Paema or Peyima, Bomboa Fuidu, Bumpe. Mass killings of civilians also took place in Motema or Mortema, Nimikoro, Koidu Town, Sewafe, and Tombodu town; some by being burned alive in their houses. Over one hundred people were massacred in Koidu Town. Residents accused of voting for President Kabbah were also killed in Koidu Town on direct orders from senior AFRC/RUF commanders. Tombodu Town became known as a "killing zone", where dead bodies were thrown into "Savage Pit." Many victims died as a result of deliberate amputations carried out by AFRC/RUF.<sup>89</sup>

99. Between about 1 February 1998 and about 31 December 1998, the AFRC/RUF and Liberian fighters subordinate to the Accused, engaged in widespread rape and sexual slavery throughout the District, including Koidu, Tombodu, Wonedu. These crimes were often committed at gunpoint and under threat of death. Victims were forced to strip naked and were sexually violated in public areas. Family members were often forced to watch or participate. Victims were sometimes beaten following the rapes; some died from the beatings. Victims included mothers with young infants and young girls. AFRC/RUF routinely abducted women and girls and took them to camps, such as "Superman Camp", and "Guinea Highway." The women and girls were then distributed among the forces and used as sexual slaves and domestic labour.<sup>90</sup>
100. During the same time period, the AFRC/RUF also engaged in widespread acts of physical violence in various locations, including Tombodu, Kaima and Wonedu. AFRC/RUF routinely beat captured civilians. AFRC/RUF forces carried out amputations, which included chopping off the hands of those civilians accused of voting for or supporting the President.<sup>91</sup>
101. Also during this time period, the AFRC/RUF engaged in widespread looting and burning of civilian property in many towns and villages, including, Tombodu, Njiama Sewafe, Wonedu, Bumpe, and the complete burning of Koidu Town. As discussed in paragraphs 32-34 above, the looting and burning of houses typically followed the armed attack on the towns and villages. Entire villages were burned down. It was common practice to burn the houses with civilians inside them, with armed guards on

<sup>89</sup> Wits. TF1-210; 216; 334; 366; 192; 071; 173; 015; 275; 352; 532; 540; 542; 019; 072; 041; 558; 033; 263; 072; 197; 304; Exs. 1.007; 1.073; 1.095; 1.157; 1.173; 1.175; 1.180; 1.184; 1.195; 1.196; 1.197; 1.204; 1.218; 1.316.

<sup>90</sup> Wits. TF1-303; 275; 540; 064; 016; 033; 041; 567; 015; 217; 019; 189; 217; 532; 141; 045; 071; 305; 198. Exs. 1.073; 1.095; 1.175; 1.180; 1.197.

<sup>91</sup> Wits. TF1-033; 197; 304; 041; 015; 197; Exs. 1.007; 1.073; 1.095; 1.157; 1.175; 1.180; 1.184; 1.196; 1.199; 1.218.



standby ready to shoot anyone trying to escape from the burning buildings. Looting was often undertaken as part of "Operation Pay Yourself."<sup>92</sup>

102. The attack which re-established control over Koidu town initiated the operation which culminated with the January 1999 attack and partial occupation of Freetown. As part of this operation, AFRC/RUF forces from Kono, under the command of Issa Sesay, and from Koinadugu, under the command of "Superman", launched a co-ordinated attack against Makeni which led to the takeover of that town.<sup>93</sup>

*Freetown and Western Area District*

103. The area of Freetown and the Western Area encompasses the city of Freetown and the entire Peninsula, including Waterloo. Freetown is the political centre of Sierra Leone. After the May 1997 coup, Freetown was the main headquarters for the Junta. Many Junta forces were stationed in and around Freetown. During the Junta period, members of that force committed widespread rapes, killings, and looting in the Freetown area.<sup>94</sup>
104. In February 1998, Johnny Paul Koroma and many other senior Junta leaders retreated from Freetown in the face of ECOMOG advances. During the retreat, Junta forces abducted civilians and took them to Kono and other areas in Sierra Leone.<sup>95</sup>
105. The final objective of the operation commencing with the attack on Kono District at the end of 1998 was to re-take control of Freetown, in order to re-establish political control over the country. AFRC/RUF forces engaged in widespread crimes against civilians as they advanced on Freetown.<sup>96</sup>
106. In late December 1998, members of the AFRC/RUF and Liberian fighters subordinate to the Accused attacked Waterloo. This force continued its advance and in early January 1999, captured Hastings and Allen Town. Finally, on 6 January 1999, a large group of AFRC/RUF, led by Alex Tamba Brima, aka "Gullit", attacked Freetown. These forces quickly advanced into central Freetown and to the Congo Cross bridge. The AFRC/RUF forces gained control of the Statehouse where they announced that they had overthrown the government. They then broke into Pademba Road Prison

<sup>92</sup> Wits. TF1-197; 072; 019; 216; 366; 334; 071; 015; 218; 459; 071; 217; 303; 201; 275; 375; 532; 542; 374; 217; 459; 201; 263; 516; 041; 331. Exs. 1.007; 1.073; 1.084; 1.195; 1.298.

<sup>93</sup> Ex. 1.058.

<sup>94</sup> Wit. TF1-045; 088; 167; 371. Exs. 1.028; 1.030; 1.059; 1.060; 1.070; 1.172; 1.200; 1.283.

<sup>95</sup> Wits. TF1-167; 334; 370. Exs. 1.078; 1.148; 1.171.

<sup>96</sup> Wits. TF1-033; 167; 334; 360; 376. Exs. 1.076; 1.084; 1.095; 1.150; 1.185; 1.204; 1.205; 1.206; 1.216.

977

4942



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

*PROSECUTOR Against CHARLES TAYLOR*

RULE 73 *bis*

PRE-TRIAL CONFERENCE MATERIALS

PART 2: WITNESS SUMMARIES TF1-004 to TF1-099

4 April 2007



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**PART 2: TABLE OF CONTENTS**

|                              |    |
|------------------------------|----|
| ACRONYMS & DEFINITIONS ..... | 4  |
| TF1-004 .....                | 6  |
| TF1-013 .....                | 7  |
| TF1-014 .....                | 8  |
| TF1-015 .....                | 9  |
| TF1-016 .....                | 10 |
| TF1-017 .....                | 11 |
| TF1-018 .....                | 12 |
| TF1-019 .....                | 13 |
| TF1-020 .....                | 14 |
| TF1-021 .....                | 16 |
| TF1-022 .....                | 17 |
| TF1-023 .....                | 18 |
| TF1-026 .....                | 20 |
| TF1-028 .....                | 21 |
| TF1-029 .....                | 22 |
| TF1-030 .....                | 23 |
| TF1-033 .....                | 26 |
| TF1-035 .....                | 28 |
| TF1-036 .....                | 29 |
| TF1-039 .....                | 33 |
| TF1-041 .....                | 34 |
| TF1-042 .....                | 37 |
| TF1-044 .....                | 38 |
| TF1-045 .....                | 39 |
| TF1-046 .....                | 43 |
| TF1-054 .....                | 46 |
| TF1-060 .....                | 47 |
| TF1-062 .....                | 48 |
| TF1-064 .....                | 49 |
| TF1-065 .....                | 50 |
| TF1-067 .....                | 51 |
| TF1-068 .....                | 52 |
| TF1-069 .....                | 53 |
| TF1-070 .....                | 54 |
| TF1-071 .....                | 55 |
| TF1-072 .....                | 57 |
| TF1-074 .....                | 58 |
| TF1-076 .....                | 59 |
| TF1-077 .....                | 60 |

979

494A



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

|               |    |
|---------------|----|
| TF1-081 ..... | 61 |
| TF1-082 ..... | 62 |
| TF1-083 ..... | 63 |
| TF1-084 ..... | 64 |
| TF1-085 ..... | 65 |
| TF1-086 ..... | 66 |
| TF1-087 ..... | 67 |
| TF1-088 ..... | 68 |
| TF1-089 ..... | 69 |
| TF1-092 ..... | 70 |
| TF1-093 ..... | 71 |
| TF1-095 ..... | 72 |
| TF1-097 ..... | 73 |
| TF1-098 ..... | 74 |
| TF1-099 ..... | 75 |



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-015**

- |                                               |                                                                   |
|-----------------------------------------------|-------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Viva Voce | <input type="checkbox"/> Rule 92 <i>bis</i>                       |
| <input type="checkbox"/> Rule 93              | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                               | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 2, 3, 4, 5, 7, 8, 9, 10.

Relevant Paragraphs of the Indictment: 5, 6, 7, 9, 11, 14, 15, 18, 19, 22, 23, 25

Time required for Direct Examination: 3 hours

The witness may provide evidence in relation to the following:

Personal background information.

RUF/AFRC/rebels' attack on Koidu and the capture of civilians around March 1998.

The presence of the following RUF/AFRC/rebel commanders in Kono: Capt. Banya, Major Rocky, Morris Kallon, Kailondo, Peleto, Staff Alhaji, Alpha Momo, Capt. Ranger.

The fact that Major Rocky spoke with a Liberian accent.

Superman's presence at Superman ground and the receipt of reports that Savage was in Tombodu.

The RUF/AFRC/rebels holding joint meetings.

The presence of small boys among the rebels.

Civilians being sent on food finding missions.

The rape of women and women being forced to be 'wives'.

Civilians being held in camps.

The beating of civilians.

The departure of Sam Bockarie, one of the RUF leaders, from Sierra Leone for Liberia.



H962

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-028**

- |                                             |                                                                   |
|---------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Viva Voce          | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input checked="" type="checkbox"/> Rule 93 | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                             | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 2, 4, 5, 9, 10, 11

Relevant Paragraphs of the Indictment: 5, 9, 14, 22, 23, 28, 30

The witness may provide evidence in relation to the following:

Personal background information.

Multiple attacks in Karina and the surrounding areas by soldiers at the time of Kabbah's overthrow.

Attacks in Karina and the surrounding areas consisted of burnings, killings, the abduction and stripping naked of civilians and amputations.

The taking of women as bush wives and sexual slavery.

The witnessing of SBU's setting fire to houses.



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-045**

- |                                             |                                                                   |
|---------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Viva Voce          | <input checked="" type="checkbox"/> Rule 92 bis                   |
| <input checked="" type="checkbox"/> Rule 93 | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                             | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1-11

Relevant Paragraphs of the Indictment: 5, 6, 8, 9, 10, 11, 12, 14, 16, 18, 19, 20, 22, 23, 24, 26, 28, 29, 33, 34

The witness may provide evidence in relation to the following:

Personal background information.

Capture of civilians, including but not limited to women and children, from mid 1990's onward, and their conscription into the RUF, records of captives.

Involvement of Liberian personnel subordinate to the Accused with the RUF in the armed conflict in Sierra Leone, the command structure of the Liberian forces and the combined forces, leaders, communications, killings and mutilations by Liberian personnel.

Military training of the RUF in Liberia, involvement of Liberian personnel subordinate to the Accused in training RUF recruits and conscripts in Sierra Leone.

Deaths of captives during RUF training in Sierra Leone in mid 1990's, killing and mutilation of those who tried to escape.

Organizational structure of the RUF, including those trained in Libya, Liberia and Sierra Leone.

Role of violence in the RUF activities.

Use of children SBUs and SGUs in the RUF and the AFRC/RUF from the mid 1990's onward.

RUF bases, command structure, leaders, including Foday Sankoh, Sam Bockarie aka Mosquito, Issa Sesay from the mid 1990's onward.

983

4981



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-045 (Cont.)**

Rapes and sexual slavery committed by the RUF and by Liberians subordinate to the Accused in the mid 1990's.

Foday Sankoh's demotion of Sam Bockarie, aka Mosquito for excessive killing.

"Operation Stop Elections" in about 1995 – 1996 – RUF operation to attack sites where people would vote to prevent the vote.

Safe havens for the RUF/AFRC in Liberia in the mid 1990's, in particular from about 1996 to about mid 1997.

Involvement of Sierra Leone with ECOMOG in Liberia.

Command structure in the RUF after Sankoh arrested in Nigeria.

AFRC (Armed Forces Revolutionary Council) coup d'etat - RUF, AFRC relations – command structure, meetings, operations, foreign visitors.

Return of RUF personnel from Liberia to join the Junta.

Junta period and leadership.

Arms shipments anticipated for Magburaka.

Communications systems in the AFRC/RUF, including reporting systems, communications within the AFRC/RUF, communications between the AFRC/RUF and the Accused or his subordinates.

AFRC/RUF commanders' use of security personnel to monitor activities and report to them.

Transmission of orders from AFRC/RUF commanders down the chain of command.

Events surrounding the overthrow of the Junta in early 1998, command structure of the AFRC/RUF.

Events surrounding the retreat of Johnny Paul Koroma to Buedu in Kailahun District, including crimes committed during the retreat.





4982

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-045 (Cont.)**

Diamonds taken from Johnny Paul Koroma, diamonds to be taken to Liberia to exchange for arms, ammunition and supplies.

1998 meetings of AFRC/RUF commanders in Kailahun District.

RUF corridor to Liberia from about 1998 onward, use of corridor to obtain arms, ammunition and other supplies from the Accused and/or the Accused's subordinates, meetings in Liberia between the Accused and RUF/AFRC personnel, including Issa Sesay.

AFRC/RUF killing of civilians, abductions of civilians, AFRC/RUF sexual violence, "bush wives", in particular from 1997 onward.

Sam Bockarie's control over Kenema District during the Junta and upon the retreat of the Junta from Freetown, crimes by personnel subordinate to Sam Bockarie against civilians, including killings, forced labor, sexual violence, burning of civilian homes.

Events in the Tongo Fields area of Kenema District from about 1997 – diamond mining, forced labor, beating of civilians, AFRC/RUF command structure, use of SBUs.

Looting, including "Operation Pay Yourself" in 1998 in Kenema District.

Abduction of civilians in 1998 in Kenema District, use of civilians as forced labor, rape and use of females, including children, as "bush wives".

Events in Kono from 1998 onward – diamond mining, diamonds taken to Liberia and supplies received later, forced labor, beating and killing of civilians, RUF/AFRC command structure, use of SBUs, looting.

Diamond mining in Kailahun District, use of forced labor.

Attacks on civilians in Kailahun District, killings – in particular in 1998, burning of homes, forced labor, beatings.

Killing of captured Kamajors by AFRC/RUF in Kailahun District.

Late 1998 AFRC/RUF "Operation Save No Soul" – killing of civilians.

Late 1998 operation beginning with attack on Kono District, culminating in January 1999 attack on Freetown, communications relating to the attack.



14983

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-045 (Cont.)**

RUF command structure after Lome Peace Accord.

Events surrounding Sam Bockarie's departure for Liberia.

The Accused's involvement in the release of UNAMSIL personnel held captive by the RUF.

RUF fighters used to assist the Accused's forces against armed groups in Liberia and Guinea, in particular from about 2000 to about 2002.



4988

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-060**

- |                                             |                                                                   |
|---------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Viva Voce          | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input checked="" type="checkbox"/> Rule 93 | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                             | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 2, 3, 4, 5, 9, 10

Relevant Paragraphs of the Indictment: 5, 9, 10, 14, 22, 23, 24

The witness may provide evidence in relation to the following:

Personal background information.

RUF/AFRC joint operations in Kenema during the Junta period.

Diamond Mining in Cyborg Pit and Tongo Fields by the AFRC/RUF, civilians forced to mine.

Attacks on civilians by the AFRC/RUF forces in various locations in Kenema – killings, sexual violence, burning of civilian home during the junta period.

987

4991



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-065**

- |                                             |                                                                   |
|---------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Viva Voce          | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input checked="" type="checkbox"/> Rule 93 | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                             | <input type="checkbox"/> Trial Protective Measures                |

Relevant Counts: 1, 2, 3, 4, 5, 10

Relevant Paragraphs of the Indictment: 5, 9, 11, 14, 23

---

The witness may provide evidence in relation to the following:

Personal background information.

1992 RUF attack on Kono.

The AFRC Coup that over threw the SLPP Government and its aftermath.

Treatment of civilians engaged in diamond mining for the AFRC/RUF during AFRC rule: abduction and forced labour.

Killing of civilians in Koidu by RUF following the Intervention to remove the AFRC government from power.

Abduction, looting, rape and forced labour by the AFRC/RUF against civilians in Fokoiya during post Intervention fighting in Kono District.

Killing of civilians by the AFRC/RUF during attacks on Mamboma and Mortema in post Intervention fighting in Kono District.



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-072**

- |                                             |                                                                   |
|---------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Viva Voce          | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input checked="" type="checkbox"/> Rule 93 | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                             | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 2, 3, 7, 8, 10, 11

Relevant Paragraphs of the Indictment: 5, 6, 7, 9, 11, 18, 19, 23, 25, 28, 29

The witness may provide evidence in relation to the following:

Personal background information.

Fighting in Koidu and flight of civilians to Tombodu (or Tombodu or Tumbodu) area in February 1998.

Burning and killing of civilians by rebels and Junta forces at Tombodu (or Tombodu or Tumbodu).

Abduction, physical violence, mutilation, cruel treatment, and killing of civilians by Savage and party at Tombodu (or Tombodu or Tumbodu).

Presence of JPK in Kono area.

Killing of 17 civilians in Foindu.

Killing of civilians by Savage and dumping of their corpses in "Savage Pit".

Captured civilians brought to Tombodu (or Tombodu or Tumbodu) and forced to mine diamonds for soldiers between 2000 and 2001.

989

80/7



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

*PROSECUTOR Against CHARLES TAYLOR*

RULE 73 *bis*

PRE-TRIAL CONFERENCE MATERIALS

PART 3: WITNESS SUMMARIES TF1-101 to TF1-198

4 April 2007

990

5018



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**PART 3: TABLE OF CONTENTS**

---

|                |    |
|----------------|----|
| TF1-101 .....  | 3  |
| TF1-104 .....  | 4  |
| TF1-105 .....  | 5  |
| TF1-108 .....  | 6  |
| TF1-109 .....  | 8  |
| TF1-113 .....  | 9  |
| TF1-114 .....  | 11 |
| TF1-115 .....  | 13 |
| TF1-116 .....  | 14 |
| TF1-119 .....  | 15 |
| TF1-122 .....  | 17 |
| TF1-125 .....  | 18 |
| TF1-129 .....  | 19 |
| TF1-131 .....  | 20 |
| TF1-132 .....  | 21 |
| TF1-133 .....  | 22 |
| TF1-139 .....  | 23 |
| TF1-141 .....  | 26 |
| TF1-143 .....  | 28 |
| TF1-151 .....  | 29 |
| TF1-157 .....  | 32 |
| TF1-158 .....  | 33 |
| TF1-167 .....  | 34 |
| TF1- 168 ..... | 36 |
| TF1-169 .....  | 39 |
| TF1-173 .....  | 40 |
| TF1-174 .....  | 41 |
| TF1-175 .....  | 42 |
| TF1-180 .....  | 44 |
| TF1-184 .....  | 45 |
| TF1-187 .....  | 47 |
| TF1-189 .....  | 50 |
| TF1-192 .....  | 51 |
| TF1-193 .....  | 52 |
| TF1-195 .....  | 53 |
| TF1-197 .....  | 54 |
| TF1-198 .....  | 55 |

991

5027



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-114**

- |                                               |                                                                   |
|-----------------------------------------------|-------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Viva Voce | <input type="checkbox"/> Rule 92 <i>bis</i>                       |
| <input type="checkbox"/> Rule 93              | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                               | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

Relevant Paragraphs of the Indictment: 5, 6, 7, 8, 9, 12, 14, 16, 18, 20, 22, 23, 26, 28, 29, 33, 34

Time required for direct examination: 3 hours

---

The witness may provide evidence in relation to the following:

Personal background information.

The movement of the AFRC/RUF and their top commanders from Freetown through Masiaka, Makeni, Magburaka, Kono to Kailahun, following the February 1998 Intervention.

‘Operation No Living Thing’ and the crimes committed along the way from Freetown to Kono.

Unlawful killings.

Physical violence.

Burning.

Abductions.

Sexual violence.

Forced labour.

Use of child soldiers.

The RUF command structure in Kailahun.

The delivery in Buedu, of arms in trucks from Liberia.

*Prosecutor v Taylor*, SCSL-03-01-PT

11



992



~~2028~~

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-114 (Cont.)**

The Witness' participation in offloading arms from Trucks coming from Liberia.  
Arms and ammunition from Liberia being delivered to Mosquito.



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-141**

- |                                             |                                                                   |
|---------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Viva Voce          | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input checked="" type="checkbox"/> Rule 93 | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                             | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 2, 3, 4, 5, 7, 8, 9, 10, 11

Relevant Paragraphs of the Indictment: 5, 6, 7, 9, 12, 14, 15, 18, 20, 22, 23, 26, 28, 29

The witness may provide evidence in relation to the following:

Personal background information.

Capture of civilians, including children, and conscription into the RUF and the execution of many civilians at Opera Roundabout in 1998.

Witnessing burnt houses, the corpses of civilians and Kamajors and looting.

The mutilation of civilians.

The burning of houses in the surrounding areas of Koidu.

The use of captured civilians for forced labor, including carrying loads, domestic duties and farming.

The raping and taking of women as bush wives and sexual slavery.

Being sent on food finding missions by Morris Kallon while on the Guinea Highway.  
Being sent on night patrols and guard duty

Attending muster parades with other SBU's where they received instructions from RUF commanders.

Duties of the SBU's included going on night patrols, guard duty, security, domestic work and active participation at the battlefield. Such participation included killings, burnings and lootings.

Use of the SBU's being overseen by RUF commanders.



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-141 (Cont.)**

The training of conscripts, including small boys in Kailahun District (Camp Lion).

RUF commanders present at Camp Lion training base.

Receiving instructions from commanders to burn houses.

Capture of a senior SLA (Fonti Kanu) by NPFL in Liberia and his execution by Issa Sesay.

Presence of NPFL vehicles at Sam Bockarie's house in Buedu.

Sam Bockarie bringing weapons from Liberia on two occasions.

"Spare no soul", "Born naked", "No living thing" and "Pay Yourself".

Positions of authority in the RUF.



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-189**

- |                                             |                                                                   |
|---------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Viva Voce          | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input checked="" type="checkbox"/> Rule 93 | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                             | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 4, 5, 6, 7, 9, 10

Relevant Paragraphs of the Indictment: 5, 6, 7, 14, 15, 16, 18, 19, 20, 22, 23, 25, 26, 33, 34

The witness may provide evidence in relation to the following:

Personal background information.

In about February 1998, mixed AFRC and RUF rebels raped, abducted and attacked civilians and burnt houses in Kono. Some of the rebels spoke with Liberian accents and others were as young as 13-14.

The use of forced labour in Koidu and Kailahun.

Rapes and sexual slavery in Kailahun and Kono.

Abductions and forced military training of civilians in Kailahun.

The beating and physical marking of trainees at the training base near Buedu during the post-Junta period.

The command structure in Kailahun District in 1998; and the fact that there was vehicle traffic between Liberia and Buedu, Kailahun District which was reported to bring rice.


~~8070~~

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-197**

- |                                    |                                                                   |
|------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Viva Voce | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input type="checkbox"/> Rule 93   | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                    | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 2, 3, 4, 5, 7, 8, 10, 11

Relevant Paragraphs of the Indictment: 5, 6, 7, 9, 11, 14, 15, 18, 19, 23, 25, 28, 29

The witness may provide evidence in relation to the following:

Personal background information.

Mixed groups of RUF and AFRC invading Koidu after the Intervention.

Two attacks in Tombudu (or Tombodu or Tumbodu) by soldiers and RUF.

Actions taken by the soldiers and RUF during the attacks on Tombudu (or Tombodu or Tumbodu) included killings, burnings, rape and sexual violence, amputations and mutilations, the abduction of civilians, forced labor of civilians, including the carrying of loads.

Savage Pit.



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

*PROSECUTOR Against CHARLES TAYLOR*

RULE 73 *bis*

PRE-TRIAL CONFERENCE MATERIALS

PART 4: WITNESS SUMMARIES TF1-200 to TF1-284

4 April 2007



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**PART 4: TABLE OF CONTENTS**

---

|               |    |
|---------------|----|
| TF1-200 ..... | 3  |
| TF1-201 ..... | 4  |
| TF1-206 ..... | 5  |
| TF1-210 ..... | 6  |
| TF1-213 ..... | 7  |
| TF1-215 ..... | 8  |
| TF1-216 ..... | 9  |
| TF1-217 ..... | 10 |
| TF1-218 ..... | 11 |
| TF1-220 ..... | 12 |
| TF1-226 ..... | 13 |
| TF1-227 ..... | 14 |
| TF1-233 ..... | 15 |
| TF1-235 ..... | 16 |
| TF1-240 ..... | 17 |
| TF1-245 ..... | 18 |
| TF1-247 ..... | 19 |
| TF1-251 ..... | 20 |
| TF1-263 ..... | 21 |
| TF1-274 ..... | 23 |
| TF1-275 ..... | 26 |
| TF1-276 ..... | 29 |
| TF1-278 ..... | 32 |
| TF1-279 ..... | 33 |
| TF1-280 ..... | 34 |
| TF1-281 ..... | 35 |
| TF1-284 ..... | 36 |



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-210**

- ☐ Viva Voce      ☒ Rule 92 *bis*  
☒ Rule 93      ☒ Pre-Trial Protective Measures  
☒ Trial Protective Measures

Relevant Counts: 1, 2, 3, 7, 8, 9, 10

Relevant Paragraphs of the Indictment: 5, 9, 11, 18, 19, 22, 23, 25

The witness may provide evidence in relation to the following:

Personal background information.

The attack by rebels (including child soldiers) in or around mid-April 1998 on a village in Kono District during which civilians were physically attacked, taken captive, and had items looted from their homes.

Some of these civilians were then taken by the rebels and used to port the looted goods.

In or around mid-April 1998, the physical mutilation and beating of civilians by rebels in Tombodu (or Tombodu or Tumbodu) including by one Staff Alhaji. The majority of the victims died of their injuries.

The unlawful killing by burning of about 53 people in Tombodu (or Tombodu or Tumbodu) in or around mid-April 1998.





5092

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-263**

- |                                              |                                                                   |
|----------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Viva Voce           | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input checked="" type="checkbox"/> Rule 93. | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                              | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 2, 3, 7, 8, 9, 10, 11.

Relevant Paragraphs of the Indictment: 5, 6, 7, 9, 11, 18, 19, 22, 23, 25, 26, 28, 29.

---

The witness may provide evidence in relation to the following:

Personal background information.

The attack in 1998 on Koidu and the abduction of civilians by AFRC/RUF men speaking Liberian English.

Looting, forced labour, unlawful killings, military training and use of child soldiers and other civilians.

AFRC/RUF commanders: Issa Sessay, Morris Kallon, Superman.

The presence of Liberians at Superman's camp in Kono, believed to belong to the STF.

Killings by Issa Sessay and Morris Kallon.

Use of SBUs as bodyguards by Issa Sessay and Morris Kallon.

Abducted civilians including children, being sent to Kailahun for military training by a training commander named Monica.

The training camp being located at Bunumbu in Kailahun District.

The trainees being told that the purpose of training was to attack Koidu.

The arming and deployment of those trained, including children, to attack Koidu.

Movement to Koinadugu and the operations there.

Seeing 'Savage pit' and being told that civilians killed by savage were put in there.

1001

8093



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-263 (Cont.)**

Killing of many civilians on the way to Koinadugu by fighters under Superman.

Abduction and training of civilians in Koinadugu.

Movement with Superman to attack Makeni and to Lunsar.

Attacks on UNAMSIL personnel.

~~S/08~~

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

*PROSECUTOR Against CHARLES TAYLOR*

RULE 73 *bis*

PRE-TRIAL CONFERENCE MATERIALS

PART 5: WITNESS SUMMARIES TF1- 303 to TF1- 399

4 April 2007



5/09

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TABLE 5: TABLE OF CONTENTS**

|               |    |
|---------------|----|
| TF1-303 ..... | 4  |
| TF1-304 ..... | 5  |
| TF1-305 ..... | 6  |
| TF1-307 ..... | 7  |
| TF1-308 ..... | 8  |
| TF1-313 ..... | 9  |
| TF1-314 ..... | 10 |
| TF1-317 ..... | 11 |
| TF1-327 ..... | 12 |
| TF1-330 ..... | 13 |
| TF1-331 ..... | 14 |
| TF1-334 ..... | 15 |
| TF1-335 ..... | 17 |
| TF1-336 ..... | 18 |
| TF1-337 ..... | 19 |
| TF1-338 ..... | 21 |
| TF1-339 ..... | 24 |
| TF1-347 ..... | 25 |
| TF1-352 ..... | 26 |
| TF1-355 ..... | 27 |
| TF1-360 ..... | 29 |
| TF1-361 ..... | 32 |
| TF1-362 ..... | 34 |
| TF1-366 ..... | 36 |
| TF1-367 ..... | 39 |
| TF1-371 ..... | 40 |
| TF1-373 ..... | 42 |
| TF1-374 ..... | 43 |
| TF1-375 ..... | 46 |
| TF1-376 ..... | 49 |
| TF1-377 ..... | 51 |
| TF1-380 ..... | 52 |
| TF1-381 ..... | 53 |
| TF1-385 ..... | 54 |
| TF1-387 ..... | 55 |
| TF1-388 ..... | 56 |
| TF1-390 ..... | 58 |
| TF1-393 ..... | 59 |

1004

S/10



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

|               |    |
|---------------|----|
| TF1-395 ..... | 60 |
| TF1-397 ..... | 62 |
| TF1-399 ..... | 63 |

1005

SH7



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-314**

- |                                             |                                                                   |
|---------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Viva Voce          | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input checked="" type="checkbox"/> Rule 93 | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                             | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 4, 5, 9, 10

Relevant Paragraphs of the Indictment: 5, 14, 16, 22, 23, 26

---

The witness may provide evidence in relation to the following:

Personal background information.

Abduction and training of civilians including children, in 1994 in Kailahun District.

Conscription and use of child soldiers by the RUF, SBUs and SGUs.

Attacks on civilians in Kailahun between 1996 and 1998, rapes and sexual violence-  
women and girls were raped and forced to become wives to RUF fighters, abducted  
civilians were forced to do work for RUF fighters in Buedu.

Communications between SAJ Musa and RUF High Commanders for RUF  
reinforcements for the Freetown Invasion between end 1998 and 1999.

Attack by the RUF on UNAMSIL in Makump and, following the attack, RUF  
commanders driving in UNAMSIL vehicles, with UNAMSIL personnel held captive,  
through Makeni.



5/20

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-330**

- |                                               |                                                                   |
|-----------------------------------------------|-------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Viva Voce | <input type="checkbox"/> Rule 92 <i>bis</i>                       |
| <input checked="" type="checkbox"/> Rule 93   | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                               | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1, 7, 8, 9, 10

Relevant Paragraphs of the Indictment: 5, 18, 20, 22, 23, 26

Time required for direct examination: 3 hours

The witness may provide evidence in relation to the following:

Personal background information.

The presence and movements of the RUF commanders and fighters in Kailahun District since 1991 through the AFRC Junta and post-ECOMOG intervention periods.

RUF commanders present in Kailahun such as Sam Bockarie, Issa Sesay, Morris Kallon, Augustine Gbao.

The crimes committed by the RUF in Kailahun town.

Abduction and forced labour, especially on farms, fishing, mining and working on roads.

Use of child soldiers.

Beatings.



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-334**

- |                                               |                                                                   |
|-----------------------------------------------|-------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Viva Voce | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input checked="" type="checkbox"/> Rule 93   | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                               | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1-11

Relevant Paragraphs of the Indictment: 3, 5, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 33, 34

Time required for Direct Examination:

(i) Rule 92 *bis* + live - 6 hours

(ii) Live only - 16 hours

The witness may provide evidence in relation to the following:

Personal Background information.

Relationship between the RUF and AFRC and their aims and objectives.

AFRC Command Structure and Structure and Organisation of the Supreme Council during the Junta Period.

Meetings of the Supreme Council during the Junta Period.

AFRC/RUF Command Structure between 1997-1999.

Diamond Mining during the Junta period and post-junta period in Kono (Tombodu and outskirts of Koidu Town) and in Kenema (Tongo) - civilians forced to mine.

ECOMOG Intervention in Freetown in 1998 February, movement of AFRC/RUF out of Freetown.

Declaration of "Operation Pay Yourself" at Masiaka by Johnny Paul Koroma over the international media.

"Operation Pay Yourself" - Large scale looting by AFRC/RUF in Masiaka, Makeni and Lunsar.





S/23

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-334 (Cont.)**

Burning of Koidu town by AFRC/RUF forces.

Communications between AFRC/RUF leaders, including communications during the Junta period, post Junta period, and communications during the operation that culminated in the January 1999 attack on Freetown.

Attacks on civilians in various locations in Kono including Koidu and Tombodu between March and May 1998 by AFRC/RUF forces – civilians captured to carry loads, women and girls captured, raped, forced to become wives of fighters and forced to work for the fighters, physical violence-amputations, burning of Koidu Town, Tombodu, Yengema, Bumpe, Jagbwema Fiama, Yomandu. , Kayima, Gandahourn.

Use of child soldiers by the AFRC/RUF fighting forces – SBUs and SGUs.

Attacks on civilians in various locations in Freetown between 5 January 1999 and mid January – mass killings, rapes, burning of civilians homes, abductions and forced labour, amputation.

Meeting between AFRC representatives and the Accused in Liberia.



5736

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-360**

- |                                               |                                                                   |
|-----------------------------------------------|-------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Viva Voce | <input checked="" type="checkbox"/> Rule 92 <i>bis</i>            |
| <input checked="" type="checkbox"/> Rule 93   | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                               | <input checked="" type="checkbox"/> Trial Protective Measures     |

Relevant Counts: 1-11

Relevant Paragraphs of the Indictment: 2, 3, 5, 6, 7, 8, 9, 11, 14, 18, 22, 23, 25, 28, 29, 30, 33, 34

Time required for Direct Examination:

(i) Rule 92 *bis* + live - 6 hours

(ii) Live only - 16 hours

The witness may provide evidence in relation to the following:

Personal background information.

RUF command structure

Training of RUF members in Liberia, use of Liberian personnel to train RUF members.

The Accused's relationship with AFRC/RUF leader, Foday Sankoh, and, after his arrest, with Sam Bockarie.

Radio communications between Foday Sankoh and the Accused between 1994-1996.

Assistance by the Accused to the RUF in setting up radio communications systems within the territory of Sierra Leone and between the RUF in Sierra Leone and the NPFL in Liberia.

Purchase of arms by RUF from ULIMO in late 1996.

1997 arms shipment to the air strip at Magburaka, Tonkolili District, Sierra Leone, involvement of RUF and AFRC personnel in receiving that shipment.

Communications between AFRC/RUF leaders, including communications during the Junta period, post Junta period, and communications during the operation that culminated in the January 1999 attack on Freetown.



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-360 (Cont.)**

“Operation Pay Yourself” in Makeni in 1998, large scale looting of civilian property.

Provision of arms and ammunition and personnel by the Accused to the AFRC/RUF in 1998 for a special operation involving taking control of Kono District and Freetown, Sierra Leone, objectives of this special operation.

Communications between leaders of the AFRC/RUF and the Accused and/or his subordinates, including but not limited to communications regarding arms and ammunition.

The Accused’s assistance to the AFRC/RUF, including providing subordinate personnel, arms and ammunition and medical facilities from the early to mid 1990’s, and from 1998 to 2002, the use of personnel subordinate to the Accused or otherwise affiliated with the Accused to effectuate this assistance.

Meetings in Buedu in 1998 between RUF leader Sam Bockarie and AFRC/RUF Commanders to plan the attacks on Kono and Freetown.

Announcement of “Operation Spare No Soul” in 1998.

Circumstances surrounding the move of Dennis Mingo aka Superman to Koinadugu in 1998.

Attacks on civilians in Koidu Town after the Intervention in 1998, maltreatment of civilians including being locked up in containers and beaten.

Attacks on civilians in Kono District in 1998, including killings in Tombudu (or Tombody or Tumbody), civilians being forced to mine, burning of civilian property and mutilations in Bumpe and Nimikoro.

Attacks on civilians. killings during the move from Koinadugu to Rosos at the end of 1998.

Attacks on civilians in Freetown in January 1999 - burning of civilian property in Freetown, rapes, killings, amputations in various parts of Freetown.

AFRC/RUF use of diamonds between 1998 and 2001 to secure arms and ammunition, including the role of subordinates or associates of the Accused such as Jungle Jim.

Circumstances surrounding the departure of Sam Bockarie from Sierra Leone to Liberia.

1011

S/38



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-360 (Cont.)**

Abduction of UNAMSIL personnel, involvement of the Accused in the release of abducted UNAMSIL personnel.

1012

S795



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

*PROSECUTOR Against CHARLES TAYLOR*

*RULE 73 bis*

PRE-TRIAL CONFERENCE MATERIALS

PART 7: WITNESS SUMMARIES TF1-510 to TF1-570

4 April 2007



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**PART 7: TABLE OF CONTENTS**

---

|               |    |
|---------------|----|
| TF1-510 ..... | 3  |
| TF1-515 ..... | 4  |
| TF1-516 ..... | 7  |
| TF1-517 ..... | 10 |
| TF1-518 ..... | 11 |
| TF1-519 ..... | 12 |
| TF1-521 ..... | 13 |
| TF1-522 ..... | 14 |
| TF1-525 ..... | 15 |
| TF1-532 ..... | 16 |
| TF1-539 ..... | 20 |
| TF1-540 ..... | 21 |
| TF1-542 ..... | 24 |
| TF1-546 ..... | 28 |
| TF1-547 ..... | 30 |
| TF1-548 ..... | 32 |
| TF1-554 ..... | 34 |
| TF1-555 ..... | 36 |
| TF1-558 ..... | 38 |
| TF1-559 ..... | 40 |
| TF1-560 ..... | 42 |
| TF1-561 ..... | 43 |
| TF1-563 ..... | 45 |
| TF1-565 ..... | 46 |
| TF1-566 ..... | 48 |
| TF1-567 ..... | 50 |
| TF1-568 ..... | 53 |
| TF1-569 ..... | 55 |
| TF1-570 ..... | 56 |



SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-532**

- |                                               |                                                                   |
|-----------------------------------------------|-------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Viva Voce | <input type="checkbox"/> Rule 92 <i>bis</i>                       |
| <input checked="" type="checkbox"/> Rule 93   | <input checked="" type="checkbox"/> Pre-Trial Protective Measures |
|                                               | <input type="checkbox"/> Trial Protective Measures                |

Relevant Counts: 1-11

Relevant Paragraphs of the Indictment: 2, 3, 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 18, 22, 23, 24, 25, 28, 33, 34

Time required for direct examination: 16 hours

The witness may provide evidence in relation to the following:

Personal background information.

The Accused provided for training of Sierra Leoneans and Liberians at Camp Naama in Liberia.

The Accused ordered and financed the initial attack on Sierra Leone by Sierra Leoneans and Liberians.

RUF: leaders, command structure, training, bases.

The Accused's assistance to the RUF before the Junta period including but not limited to weapons, ammunition, training and radio communication facilities.

Radio communication between RUF leaders and the Accused or his subordinates before the Junta period.

Killing of civilians by the RUF forces before the Junta period in Sierra Leone; knowledge by the RUF leaders about these killings and no disciplinary action.

Rapes of female civilians in Sierra Leone by RUF forces and commanders before, during and after the Junta period; knowledge of the RUF leaders about these rapes.

Use of child soldiers in the RUF forces in Sierra Leone before, during and after the Junta period and knowledge of the RUF leaders about the use of child soldiers.



5241

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-532 (Cont.)**

Use of civilians as forced labour by the RUF before, during and after the Junta period and knowledge of the RUF leaders about the use of forced labour.

Looting of civilian properties by the RUF before, during and after the Junta period and knowledge of the RUF leaders about looting

Looting of civilians properties by the NPFL forces in Liberia before 1997.

Abduction and forced conscription of children and adults into the NPFL forces in Liberia before the Junta period. Knowledge of the Accused about the use of child soldiers in the NPFL in Liberia before the Junta period.

Use of civilians as forced labour by the NPFL in Liberia before the Junta period and knowledge of the Accused about that use.

Burning of villages and amputations of limbs of civilians by the NPFL forces in Liberia before the Junta period.

Frequent communication between AFRC/RUF leaders and the Accused and/or his subordinates during the Junta period; the Accused informed the AFRC/RUF leaders when ECOMOG Alpha jets took off from Monrovia on mission to bomb AFRC/RUF positions in Freetown.

The Accused's assistance to the AFRC/RUF during and after the Junta period, including but not limited to the supply of arms, ammunition and other supplies including the shipment delivered at Magburaka in 1997.

The Accused's control over the RUF/AFRC leaders during and after the Junta period.

Meeting between the Accused's subordinates and the AFRC/RUF leaders in Sierra Leone during the Junta period.

Several killings of civilians in Kenema by RUF leaders during the Junta period.

Mining in Kenema and Kono districts in 1997 by AFRC/RUF forces and used of civilians as forced labour in Kenema and Kono districts; the AFRC/RUF leaders were aware of the use of forced labour in Kenema district by AFRC/RUF forces.

Trips of the Accused's subordinates to Sierra Leone after the Junta period to deliver to the AFRC/RUF arms, ammunition and other supplies.





SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

~~802/12~~

**TF1-532 (Cont.)**

Meetings in Sierra Leone between subordinates of the Accused and AFRC/RUF leaders.

Radio communication between AFRC/RUF leaders and the Accused and/or his subordinates after the Junta period.

Order from the RUF leaders to burn down houses on the retreat from Koidu town in 1998.

Numerous killings of civilians in Kono district by the AFRC/RUF soldiers and commanders between February 1998 and January 2000 and knowledge of the AFRC/RUF leaders about these killings.

Massive killing in Kailahun district in 1998 by the AFRC/RUF forces.

Dozens of women and girls used as sex slaves by AFRC/RUF fighters in Kono district in 1998.

Mining in Kono after the Junta period by AFRC/RUF forces and use of civilians as forced labour to do the mining; use of civilians as forced labour to carry loads and farm in Sierra Leone.

Looting of properties of civilians, burning of villages and use of child soldiers by the AFRC/RUF forces in Sierra Leone after the Junta period.

Trip of the AFRC/RUF leaders to Liberia to take diamonds to the Accused and/or his subordinates after the Junta period.

“Operation Spare No Soul” announced on the BBC in July 1998 by Eldred Collins.

Interview of Sam Bockarie on the BBC referring to the Accused as “the Chief”.

The Accused’s order to the AFRC/RUF leaders to attack Koidu town, Makeni and Freetown at the end of 1998.

AFRC/RUF forces fighting the LURD in Liberia in 1999.

AFRC/RUF forces sent to fight in Guinea after the Lome Peace Accord in 1999.



S213

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

**TF1-532 (Cont.)**

RUF leaders apologising after the Lome Peace Accord to civilians for what RUF soldiers did during the war.

Nature of the relationship between Sam Bockarie and the Accused.

Involvement of the Accused in the promotions of AFRC/RUF leaders after the Junta period.

Roles of Benjamin Yeaten and Ibrahim Bah including their duties and position(s) of authority, meetings with AFRC/RUF leaders.



HUMAN  
RIGHTS  
WATCH

# SIERRA LEONE

## 00011233

350 Fifth Ave 34<sup>th</sup> Floor  
New York, N.Y. 10118-3299  
<http://www.hrw.org>

Vol. 10, No. 3 (A) -- July 1998

---

## SOWING TERROR

1630 Connecticut Ave, N.W., Suite 500  
Washington, DC 20009  
TEL (202) 612-4321  
FAX (202) 612-4333  
E-mail: [hrwdc@hrw.org](mailto:hrwdc@hrw.org)

33 Islington High Street  
London N1 9LH UK  
TEL (44171) 713-1995  
FAX (44171) 713-1800  
E-mail: [hrwatchuk@gn.apc.org](mailto:hrwatchuk@gn.apc.org)

15 Rue Van Campenhout  
1000 Brussels, Belgium  
TEL (322) 732-2009  
FAX (322) 732-0471  
E-mail: [hrwatcheu@skynet.be](mailto:hrwatcheu@skynet.be)

00011256

to train-up those children because they knew they were going to die themselves. They encouraged the boy not to be afraid. They cooked for us, but I couldn't eat. The boy didn't say much, but he was hungry, and he ate.<sup>38</sup>

Ike C., the reporter for the *Herald Guardian* in Koidu town who was captured by the AFRC/RUF, also testified to the role of child soldiers. Some of his captors were under ten years old and wielded guns. He said:

I was captured by Gittaboi, who said he'd execute me because I am a press man. There were little kids, boys, around seven, nine, twelve years old who were among the soldiers. They had guns and felt they had power.... I saw girls held in vehicles ready to be transported. The last group of kids I saw were held at the Branch Energy mining group office in Koidu town. They had 1,500-2,000 of them there. I saw them. In Koidu, the junta forces shouted for kids and gathered them. A soldier told me they are holding those kids as a shield in the event of an ECOMOG attack. They also use them as soldiers, for labor, and for sexual purposes.<sup>39</sup>

#### Other Violations of International Humanitarian Law

In addition to the abuses described above, members of the AFRC/RUF flagrantly violated other provisions of international humanitarian law. The AFRC/RUF regularly showed a gross disrespect for principles granting protection to hospitals, places of worship, and other non-military structures providing public services.<sup>40</sup>

The private property of civilians was frequently looted and their homes intentionally burned.<sup>41</sup> Witnesses spoke regularly of theft and mass destruction by the AFRC/RUF as they retreated from ECOMOG forces. Members of the AFRC/RUF completely stripped civilians of their belongings on a regular basis. Many of those fleeing Sierra Leone arrived in refugee camps with little more than their clothing; and several witnesses explained how they had been left naked by the AFRC/RUF and spent days in flight without clothing.

In February 1998, in Lunsar town of Porto Loko district, as a part of their "Operation Pay Yourself," members of the AFRC/RUF raided the Magbesemi hospital. Medicines and equipment were taken, patients were forced to flee, and some medical personnel reportedly abducted by the AFRC/RUF. One patient being treated for a gunshot wound described their actions:

The AFRC/RUF soldiers came to Magbesemi Hospital, fleeing the ECOMOG advance. They took the doctors away. There were many rebels—in several trucks with arms and heavy weapons. They took all the drugs. We were about twenty-five patients. They said, "this is Operation Pay Yourself."<sup>42</sup>

<sup>38</sup>Human Rights Watch interview, Fangamadou, Guéckedou, Republic of Guinea, June 14, 1998.

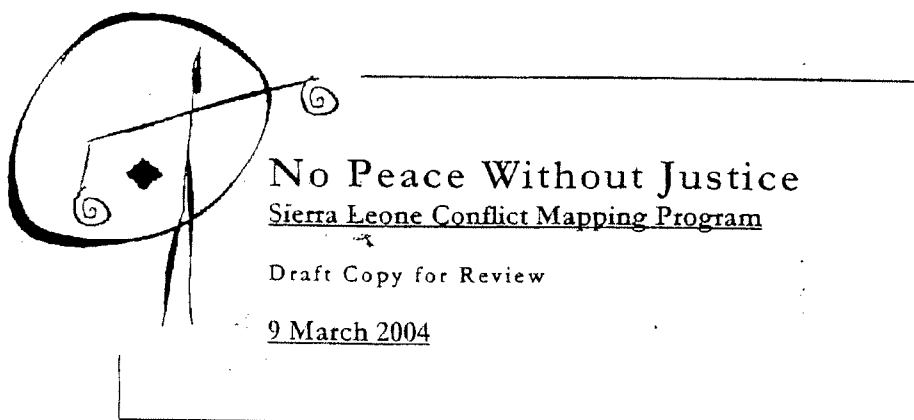
<sup>39</sup>Human Rights Watch interview, Boodou Refugee Camp, Guéckedou, Republic of Guinea, June 23, 1998.

<sup>40</sup>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I), of 8 June 1977, Article 52, and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977, Articles 9, 10, 11, and 16.

<sup>41</sup>Protocol II, Article 4 (2) (g).

<sup>42</sup>Human Rights Watch interview, Faranah Hospital, Faranah, Guéckedou, Republic of Guinea, June 3, 1998.

00011735



00011936



## NO PEACE WITHOUT JUSTICE

Barmoi Junction (BKM Chiefdom) and established a camp at Bainkoro, near the Little Scaries River between Sanda Magbolontor and Dibia Chiefdoms. The Little Scaries River, bisecting Sanda Magbolontor and BKM Chiefdoms, took on increasing significance at this time; running inland, it passes through the north of Bombali District.

ECOMOG was formally deployed in Sierra Leone in August 1997 and began training civil militia groups in Port Loko District in cooperation with traditional authorities. ECOMOG deployed in Port Loko Town (Maforki Chiefdom) and assisted the CDF in securing BKM Chiefdom. CDF forces deployed along the northern route to Mange and the route from Port Loko, through Kagbantama, to Barmoi Junction. The CDF also deployed along the south bank of the Little Scaries River in BKM Chiefdom, creating a defensive arc around the north of Port Loko Town (Maforki Chiefdom).

In February 1998, ECOMOG intervened militarily against the RUF/AFRC, driving them out of Freetown. As a result, RUF/AFRC forces commenced "Operation Pay Yourself" in Port Loko District, stealing extensively from civilian settlements along their line of retreat through Mile 38, Masiaka (both Koya Chiefdom) and Lunsar (Marampa Chiefdom) towards Makeni. RUF/AFRC forces also attacked towns in the northern chiefdoms of Port Loko District. In March 1998, ECOMOG commenced provincial operations, moving from Port Loko Town, taking control of Masiaka and forcing the RUF/AFRC out of Lunsar, where they had killed civilians and destroyed much of the infrastructure. RUF/AFRC forces scattered throughout the eastern chiefdoms of Port Loko District, raiding villages for food. In April, RUF/AFRC forces attacked Masimera Chiefdom and commenced the amputation of limbs from civilians amid attacks of astounding ferocity. In September, the RUF/AFRC again began surrounding Port Loko Town, staging attacks in BKM, TMS and Maforki Chiefdoms. Assisted by the CDF, ECOMOG held onto the stretch of road between Port Loko and Mange (BKM Chiefdom).

In December 1998, RUF/AFRC intensified attacks on ECOMOG and pushed south into Koya Chiefdom, again attacking Masiaka and Songo. A large RUF/AFRC force attacked Port Loko Town (Maforki Chiefdom) between 28 December 1998 and 3 January 1999. By the time Port Loko was attacked, the RUF/AFRC had broken out of Koidu (Gbense Chiefdom, Kono District) and Kailahun Districts and had taken every major town from ECOMOG en route to Freetown along the northern axis roads. The RUF/AFRC push towards the Western Area was along the main highway through Lunsar (Marampa Chiefdom), Masiaka and Songo to Waterloo (Waterloo RD, Western Area). For the first three months of 1999, the Masiaka area was occupied by RUF/AFRC forces and was under constant attack from the CDF. In March, Gbethis hunted down suspected "collaborators", torturing and summarily executing significant numbers of the people they caught. Those villages that did not actively support the Gbethis were targeted and looted, their inhabitants subjected to torture or simply killed. Lunsar remained under the control of the RUF/AFRC.

Peace negotiations between the RUF and the elected government resulted in the signing of the Lomé Peace Agreement on 7 July 1999. Subsequently, there were tensions between the RUF and the AFRC, resulting in clashes between the two, but not a complete severing of their alliance.

229)

SCSL-03-01-PT  
(5483-5554)



5483

1022

THE SPECIAL COURT FOR SIERRA LEONE

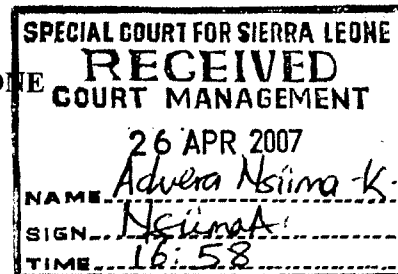
In Trial Chamber II

**Before:** Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice Teresa Doherty

**Registrar:** Mr. Herman von Hebel, Acting Registrar

**Date:** 26 April 2007

**Case No.:** SCSL-2003-01-PT



THE PROSECUTOR

-v-

DAHKPANNAH CHARLES GHANKAY TAYLOR

---

PUBLIC

RULE 73 *bis*

TAYLOR DEFENCE PRE-TRIAL BRIEF

---

**Office of the Prosecution**

Mr. Stephen Rapp  
Ms. Brenda Hollis  
Ms. Wendy van Tongeren  
Ms. Ann Sutherland  
Ms. Shyamala Alagendra  
Mr. Alain Werner  
Ms. Leigh Lawrie

**Counsel for Charles Taylor**

Mr. Karim A. A. Khan  
Mr. Roger Sahota

5486  
 Procedure and Evidence that “[a] finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.”

7. The Defence is not required to make any admissions at any stage of proceedings in a criminal trial. This is a corollary to the presumption of innocence. Be that as it may, any decision by the Defence not to expressly or implicitly address or rebut, in the present filing, any aspect of the Prosecution’s case theory or evidence, as detailed in the Prosecution Pre Trial Brief and / or in the Amended Indictment,<sup>14</sup> should not be considered to be an acceptance of any fact alleged or law propounded by the Prosecution, or a concession in any respect, unless expressly and unambiguously stated to the contrary.

### **III. Factual Background**

8. The Defence has engaged in a dialogue with the Prosecution and the facts agreed by both parties have been filed separately in a joint filing.<sup>15</sup> It stands to reason, therefore, that all facts not currently agreed by the parties, are in dispute and need to be proved by the Prosecution at trial as far as they are material to the indictment, save to the extent that further facts are agreed by the parties in due course.

### **IV. Territorial and Temporal Limitations of the Amended Indictment**

9. The charges against Mr. Taylor are set out in the Amended Indictment. These charges must fall within the territorial and temporal jurisdiction of the Special Court. The Prosecution Pre-Trial Brief and Pre-conference materials disclose numerous examples where the Prosecution are apparently relying upon alleged facts pre-dating the indictment period and alleged conduct said to have been committed outside the territory of Sierra Leone. The Defence would urge the Trial Chamber to be vigilant in ensuring that there is no expansion of the territorial or temporal jurisdiction of the Court via the back door under the guise of Rule 93 of the Special Court’s Rules of Procedure and Evidence.

---

<sup>14</sup> *Prosecutor v. Taylor*, SCSL-03-01-I-75, Amended Indictment, 16 March 2006.

<sup>15</sup> Agreed Facts and Law.



- 5487
10. Rather than precisely focusing on the temporal jurisdiction of the indictment, the Prosecution seek to cobble together alleged conduct geographically and temporally separated in a bid to establish its case. The Defence submit that the manner in which it seems the Prosecution intend to put its case is impermissible and should, in any event, viewed with circumspection. The Prosecution, for example, state that Mr. Taylor's alleged culpable conduct resulting in the crimes allegedly committed by the RUF, Junta, AFRC/RUF and Liberian fighters, detailed in the Amended Indictment and Prosecution Pre-Trial Brief, occurred "[p]rior to and throughout the conflict in Sierra Leone".<sup>16</sup> The only relevant test, of course, is whether any alleged crimes were committed in the period of the indictment.
  11. Similarly, the Prosecution Pre-Trial Brief includes a number of allegations concerning the civil war in Liberia. For example, in paragraph 11 of the Prosecution Pre-Trial Brief, it is alleged that "from the beginning of the conflicts in Liberia and Sierra Leone, both the NPFL and the RUF engaged in ongoing widespread crimes against the civilian populations of those countries."
  12. The Defence submits that this claim is wholly improper. The Prosecutor of the Special Court of Sierra Leone has no mandate, authority or jurisdiction to allege crimes anywhere other than in Sierra Leone. By making this assertion, he is acting *ultra vires* to his authority. The attempt to rely upon evidence outside the territorial and temporal jurisdiction of the Special Court, in relation to another States' affairs, is wholly unwarranted and unacceptable as a matter of law. With respect, it exposes a fundamental misconception of the Prosecution in the theory it seeks to advance.
  13. Similarly, in relation to the use of child soldiers, the Prosecution alleges that the "[t]he RUF brought this practice to Sierra Leone from Liberia, where the NPFL engaged in the same criminal conduct".<sup>17</sup> To substantiate this allegation, and to be probative, the Prosecution will have to produce evidence to establish beyond a reasonable doubt that child soldiers were used

<sup>16</sup> Prosecution Pre-Trial Brief. For examples of this and other overbroad language, see paras. 6, 16, 18, 21, 24, 42, 45, 50, 54, 58, 61, 62, 63, and 64.

<sup>17</sup> Prosecution Pre-Trial Brief, para. 18.

in the Liberian war; that, (contrary to well known reality) that the use of “child soldiers” did not pre-date the Liberian conflict, nor was it practiced throughout Africa and many other regions where civil wars and armed insurrections have taken place; and that the use of child soldiers was not independently adopted in Sierra Leone for reasons which had nothing at all to do with the alleged practices in the Liberian civil war in general or Mr. Taylor in particular. Such a convoluted theory is legally dubious and antithetical, in the respectful submission of the Defence, to a fair, concise and focused trial.

14. The Prosecution is allowed to present evidence of a consistent pattern of conduct only if it falls within the scope of Rule 93(A), which provides that:

“evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the statute may be admissible in the interests of justice”.

If the Prosecution intends to present evidence of allegations outside the territorial and temporal jurisdiction of the Special Court and outside the scope of the Amended Indictment, the Trial Chamber is invited to consider the parameters already set by the Special Court’s sister tribunals.

15. The scope of Rule 93 has been determined by the ICTR case of *Bagosora et al*, where the Prosecution sought to introduce evidence from a period pre-dating the temporal jurisdiction of the Tribunal. The Trial Chamber held that the Prosecution was only allowed to do so if the alleged events were relevant to and probative of, crimes committed during the time-period of the temporal jurisdiction. Even if relevant and probative the Trial Chamber would still exclude the evidence if unduly prejudicial.<sup>18</sup>
16. The Trial Chamber noted three possible instances when evidence of acts occurring prior to the temporal jurisdiction of the Tribunal (1994) might be relevant and admissible. First, it stated that evidence of acts occurring prior to the mandate year may be relevant to an offence which

<sup>18</sup> *Prosecutor v Bagosora et al*, ICTR-98-41-T, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 September 2003, paras. 8, 16, 17.

continues into the mandate year. Second, the Court considered that evidence of pre-1994<sup>5489</sup> events providing background or context and *which do not form part of the crimes charged*, could be admissible. Finally, the Trial Chamber considered that evidence of pre-1994 events could be admitted as “similar fact evidence”.<sup>19</sup>

17. The Appeals Chamber affirmed the Trial Chamber’s ruling in *Bagosora*, holding that under Rule 93, pattern evidence may be relevant to serious violations of international humanitarian law, but even where pattern evidence was relevant and probative, the Appeals Chamber held that the Trial Chamber could still decide to exclude the evidence *in the interests of justice* when its admission could lead to *unfairness* in the trial proceedings, such as *when the probative value of the proposed evidence is outweighed by its prejudicial effect*, pursuant to the Chamber’s duty to ensure a fair trial.<sup>20</sup> In that case, the Trial Chamber had determined that the introduction of prior criminal acts of Mr. Taylor would be inadmissible for the purpose of demonstrating “a general propensity or disposition” to commit the crimes charged.<sup>21</sup>
18. In light of the Trial Chambers decision in *Bagosora*, confirmed on appeal, it is submitted that the Prosecution can only introduce evidence of alleged prior criminal acts of Mr. Taylor if they point to the existence of a common plan or design. The Defence reserve the right to object to the admission of any such evidence where its prejudicial effect outweighs its probative value. One of the primary considerations for the Trial Chamber, it is suggested, will be the time lapse between the event(s) cited and the beginning of the indictment and whether the alleged previous act or relationship can be said to be probative on a *continuing* criminal common plan during the indictment period.
19. In relation to all the other allegations of criminal conduct prior to the Amended Indictment period, the Defence contend that these are not relevant to the charges in the Amended

<sup>19</sup> *Ibid*, relying on Judge Shahabuddeen’s Opinion as discussed in para. 19.

<sup>20</sup> *Prosecutor v. Bagosora et al*, ICTR-98-41-AR93 & ICTR-98-41-AR93.2, Decision on Prosecutor’s Interlocutory Appeals Regarding Exclusion of Evidence, 19 December 2003. para. 2.

<sup>21</sup> *Ibid*, para. 14.

Indictment and only go to demonstrate “a general propensity or disposition” to commit the crimes charged.<sup>22</sup> ~~5490~~

20. The same reasoning applies to allegations of criminal conduct said to have taken place in regions outside the territorial scope of the Amended Indictment and the Special Court’s jurisdiction. Allegations of serious criminal conduct in Liberia in particular have no bearing on the alleged criminal conduct in Sierra Leone, not only because the conflicts occurred in different time frames, but also because they involved a different cast of alleged perpetrators. Evidence of the war in Liberia, therefore, similarly only goes to demonstrate “a general propensity or disposition” to commit the crimes charged, and should not be admitted in the present proceedings.
21. A trial on alleged activities in Liberia, by proxy, would be a violation of Mr. Taylor’s right to a fair trial, and a disservice not only to the people of Sierra Leone but indeed to the citizens of Liberia who have the right to make their own decisions on issues of post-conflict justice.
22. Should the Prosecution be permitted to adduce evidence of extra-territorial acts predating the Amended Indictment period, and in countries other than Sierra Leone, the result will be a series of “trials within a trial” of subsidiary issues, such as the use of child soldiers in the Liberian civil war and alleged conduct by the NPFL and other groups, allegedly committed in the course of a conflict that lasted for several years. The Defence cannot emphasise strongly enough that it has not investigated these matters and that it does not have the means and facilities to conduct investigations into these allegations that fall outside the scope of the Amended Indictment or which do not relate to Sierra Leone.
23. In accordance with the right of Mr. Taylor to have adequate time and facilities to prepare a defence pursuant to Article 17(4)(b), the Defence would require a substantial allocation of additional resources and a very significant period of time to prepare a defence for a case that will have changed complexion beyond all recognition to that pleaded in the Amended Indictment. The introduction of evidence relating to crimes allegedly committed in the war in

---

<sup>22</sup> *Ibid*, para. 14.

Liberia will necessarily prolong the length of the trial and may render predictions that the trial phase of these proceedings can be completed within 18 months wholly redundant. The Defence pre-trial preparation, already subject to difficult, if not impossible, time constraints, will have to be completely re-assessed with regard to the need for more manpower and resources, which the Defence does not have available to it at present, to be deployed to Liberia and the alleged conduct in that civil war.

## V. Context: The Conflict and Charges in the Indictment

### A. Context: The Overthrow of the Regime of Samuel Doe and Mr Taylor's Election

24. The Prosecution attempt to portray Mr. Taylor as a brutal dictator or leader who participated in a common plan or design formulated, according to some Prosecution witnesses in the late 1980's, with its purpose to use "criminal means to achieve and hold political power and physical control over the civilian population of Sierra Leone".<sup>23</sup> In understanding his motivations, agenda and conduct, and in assessing the Prosecution's characterisations of Mr. Taylor, it is perhaps relevant to understand the situation which existed in Liberia before the entry of NPFL forces in Liberia in 1989, as well as the background to Mr Taylor's landslide victory in the 1997 democratic elections. It will be seen that Mr. Taylor's rise to power did not involve ousting a democratic Government or one based on the rule of law. It involved the Liberian people, with the help of Mr. Taylor, removing a tyrannical and oppressive regime and after that, winning a resounding democratic mandate at the polls, internationally verified as being "free and fair".
25. Samuel K Doe and a group of disgruntled soldiers seized power in 1981 coup against then President Tolbert, during which they "stormed the Executive Mansion in Monrovia, captured President Tolbert in his pyjamas and disembowelled him."<sup>24</sup> The group subsequently detained thirteen of Tolbert's cabinet members, placed them on trial, and sentenced them to death. The cabinet members were then taken to the beach, tied to telephone poles, and executed by a

<sup>23</sup> Prosecution Pre-Trial Brief, paras. 6-7.

<sup>24</sup> Bill Berkeley, *The Graves Are Not Yet Full: Race, Tribe and Power in the Heart of Africa*, Basics Books, 2001, pg. 31. [Annex A]

235)

SCSL-03-01-PT  
(5582 - 5597)

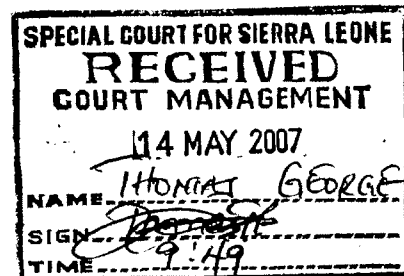
5582

**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
 Freetown – Sierra Leone

Before: Justice Julia Sebutinde, Presiding  
 Justice Richard Lussick  
 Justice Teresa Doherty

Registrar: Mr. Herman von Hebel, Acting Registrar

Date filed: 14 May 2007



**THE PROSECUTOR      Against      Charles Ghankay Taylor**

Case No. SCSL-03-01-PT

---

**PUBLIC**

**MOTION REQUESTING LEAVE TO AMEND INDICTMENT**

---

Office of the Prosecutor:  
 Ms. Brenda Hollis  
 Ms. Ann Sutherland

Defence Counsel for Charles Taylor:  
 Mr. Karim A. A. Khan  
 Mr. Avi Singh

~~5883~~

## **I. INTRODUCTION**

1. Pursuant to Rules 50(A) and 73 of the Special Court's Rules of Procedure and Evidence ("Rules"), the Prosecution files this motion requesting leave of the Trial Chamber to amend the operative indictment in this case, the Amended Indictment.<sup>1</sup>
2. The proposed amendments were discussed at the Pre-Trial Conference held on 7 May 2007,<sup>2</sup> during which the Defence stated that "there will not be any objection by the Defence to the proposals put forward" by way of formal amendment to the Amended Indictment.<sup>3</sup>
3. For the reasons stated below, the Prosecution requests that the Trial Chamber grant leave to amend the Amended Indictment against the Accused Charles Ghankay Taylor ("Accused") and further requests that the Trial Chamber approve the proposed Second Amended Indictment which is attached to this motion and marked as Annex A.

## **II. APPLICABLE LAW**

4. Rule 50(A) of the Rules provides that after the initial appearance, an amendment of an indictment may only be made by leave granted by a Trial Chamber pursuant to Rule 73, and that if leave to amend is granted, Rule 47(G) and Rule 52 apply to the amended indictment.

## **III. PROPOSED AMENDMENTS**

5. The proposed amendments to the Amended Indictment are as follows:
  - (a) Count 5: Deletion of the words "and any other form of sexual violence";
  - (b) Count 11: Deletion of the words "Masiaka and" from paragraph 30; and

---

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-I-75, Amended Indictment and Case Summary Accompanying the Indictment, 16 March 2006.

<sup>2</sup> *Prosecutor v. Taylor*, Pre-Trial Conference, 7 May 2007, Transcript ("T.") pp. 5, 50-51 (regarding paragraph 2(a) above) and T. pp. 49-50 (regarding paragraph 2(b) above).

<sup>3</sup> T. p. 50.

SS814

- (c) Count 11: Between paragraph 30 and 31, insert a heading entitled "Port Loko District" and a paragraph, numbered 30A, which states "Between about 1 February 1998 and about 30 April 1998, in various locations, including Masiaka;"

#### IV. SUBMISSIONS

##### *Count 5*

6. The amendment set out in paragraph 5(a) above is to avoid any issues with respect to duplicity.<sup>4</sup> This amendment, therefore, makes Count 5 more precise.

##### *Count 11*

7. Amendments set out in paragraphs 5(b) and (c) above are to correct an inadvertent oversight. The town of Masiaka is situated in the Port Loko District of Sierra Leone, and not in the Bombali District, as stated in the Amended Indictment.

##### *Test to be applied*

8. The Appeals Chamber in the *Norman et al.* case distinguished three categories of amendments to indictments, indicating their respective degrees of permissibility or impermissibility in the following terms:
- (i) Formal or semantic changes, which should not be opposed.
  - (ii) Changes which give greater precision to the charge or its particulars, either by narrowing the allegation or identify times, dates or places with greater particularity or detail. Such amendments will normally be allowed, even during the trial.
  - (iii) Substantive changes which seek to add fresh allegations amounting either to separate charges or to a new allegation in respect of an existing charge.<sup>5</sup>
9. The requested amendments are category (ii) amendments, providing greater precision to Count 5 and to the particulars of Count 11. The requested

---

<sup>4</sup> T. p. 5.

<sup>5</sup> *Norman* Appeal Decision, para. 79.



amendments do not “seek to add fresh allegations amounting either to separate charges or to a new allegation in respect of an existing charge.”<sup>6</sup>

10. The *Norman et al.* Appeals Chamber observed that “[i]n principle, the Indictment may be amended at any stage of the proceedings, [...] if the Court is satisfied that the Defence will not be prejudiced by the amendment and that making it will be in the interests of justice.”<sup>7</sup>
11. In the *Brima et al.* case this Trial Chamber considered that it would normally exercise its discretion to permit an amendment, provided that the amendment does not cause any injustice to the accused, or does not otherwise prejudice the accused unfairly in the conduct of his defence.<sup>8</sup>
12. Two factors particularly are relevant in determining whether amendment of an indictment would cause unfair prejudice: (1) notice, i.e., whether the Accused has been given an adequate opportunity to prepare an effective defence; and (2) whether granting the amendments will result in undue delay.<sup>9</sup>

*Whether amendment of an indictment would cause unfair prejudice*

13. None of the proposed alterations affect the Accused’s preparation of an effective defence. The amendment set out in paragraph 5(a) above potentially deletes an offence from Count 5 and therefore cannot be deemed prejudicial to the Accused. Likewise, the amendment set out in paragraph 5(b) above deletes a place name and therefore cannot be deemed prejudicial to the Accused. The amendment set out in paragraph 5(c) above does not require disclosure of additional evidence, does not allege a new crime, a new incident or a new location. The evidence relied upon by the Prosecution in relation to

<sup>6</sup> *Norman Appeal Decision*, para. 79.

<sup>7</sup> *Norman Appeal Decision*, para. 78.

<sup>8</sup> *Prosecutor v. Brima et al.*, SCSL-04-16-PT-141, Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005, page 2.

<sup>9</sup> *Norman Appeal Decision*, para. 80; *Prosecutor v. Norman et al.*, SCSL-04-14-PT-13, Decision on Prosecution Request for Leave to Amend the Indictment, 20 May 2004, para. 35; *Prosecutor v. Sesay et al.*, SCSL-04-15-PT-108, Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004, para. 27; *Prosecutor v. Sesay et al.*, SCSL-04-15-PT-617, Decision on Prosecution Application for Leave to Amend the Indictment, 31 July 2006, para. 21.

SS 76

this matter has been disclosed to the Defence for some time.<sup>10</sup> For these reasons, this amendment is not prejudicial to the Accused. The proposed amendments provide greater particularity and precision in pleading and are in the interests of justice. Moreover, the Defence has intimated that it has no objection to the proposed amendments.

*Whether there is a need for the Accused to re-plead to Counts 5 and 11*

14. There are no “new charges” or material changes to the Second Amended Indictment which would require the Accused to re-plead.<sup>11</sup> The Accused’s plea of “not guilty” to Count 5 would still pertain to the remaining charge of sexual slavery in the Second Amended Indictment. Further, there is no “new charge” being made against the Accused by the correction of an inadvertent oversight in Count 11. Therefore, there is no need for the Accused to enter pleas on Counts 5 and 11 of the Second Amended Indictment.

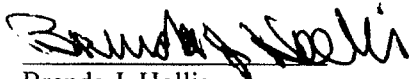
**V. ORDERS SOUGHT**

15. For the reasons stated above, the Prosecution requests that the Trial Chamber grant leave to amend the Amended Indictment as set out above and approve the Second Amended Indictment submitted for review as Annex A to the motion.

Filed in Freetown,

14 May 2007

For the Prosecution,

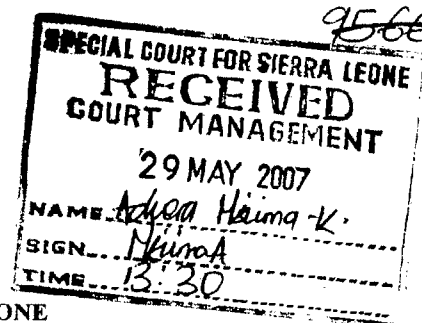


Brenda J. Hollis  
Senior Trial Attorney

<sup>10</sup> Statements of witnesses the Prosecution intends to call in relation to this aspect of the case (TF1-251; 334; 360; 366) were disclosed to the Defence on 17 May 2006; and documentary exhibits 1.073; 1.277; 1.283 were disclosed to the defence or notice provided on 11/08/06, 10/11/06 and 03/04/07 respectively.

<sup>11</sup> *Fofana Appeals Decision*, para. 71.

263)

SCSL-03-01-PT  
(9566-9575)

**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown – Sierra Leone

Before: Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate Judge

Acting Registrar: Mr. Herman von Hebel

Date filed: 29 May 2007

**THE PROSECUTOR**                      **Against**                      **Charles Taylor**  
Case No. SCSL-03-01-PT

---

**PUBLIC**

**PROSECUTION'S SECOND AMENDED INDICTMENT**

---

Office of the Prosecutor:

Mr. Stephen Rapp

Defence Counsel for Charles Taylor:

Mr. Karim A. A. Khan  
Mr. Roger Sahota

9567

**THE SPECIAL COURT FOR SIERRA LEONE****CASE NO. SCSL- 2003- 01- PT****THE PROSECUTOR****Against**

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

**SECOND AMENDED INDICTMENT**

The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute) charges:

**CHARLES GHANKAY TAYLOR also known as  
(aka) DANKANNAH CHARLES GHANKAY TAYLOR  
aka DANKANNAH CHARLES GHANKAY MACARTHUR TAYLOR**

with **CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW, in violation of Articles 2, 3 and 4 of the Statute as set forth below:**

**THE ACCUSED**

1. **CHARLES GHANKAY TAYLOR aka DANKANNAH CHARLES GHANKAY TAYLOR aka DANKANNAH CHARLES GHANKAY MACARTHUR TAYLOR (the ACCUSED)** was born on 27 or 28 January 1948 at Arthington in the Republic of Liberia.

2. From the late 1980's the **ACCUSED** was the Leader or Head of the National Patriotic Front of Liberia (NPFL), an organized armed group.
3. From 2 August 1997 until about 11 August 2003, the **ACCUSED** was the President of the Republic of Liberia.
4. Paragraphs 1 through 3 are incorporated by reference in CHARGES below.

### **CHARGES**

By his acts or omissions in relation to the below described events, the **ACCUSED**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

### **TERRORIZING THE CIVILIAN POPULATION**

**COUNT 1: Acts of Terrorism, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.d. of the Statute.

### **PARTICULARS**

5. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone.

### **Burning**

6. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or

subordinate to the **ACCUSED**, engaged in widespread destruction of civilian property by burning, including the following:

**Kono District**

7. Between about 1 February 1998 and about 31 December 1998, in various locations, including Koidu, Tombodu or Tumbodu, Sewafe or Njaima Sewafe, Wendedu and Bumpe;

**Freetown and Western Area**

8. Between about 21 December 1998 and about 28 February 1999, in locations throughout Freetown, including Kissy and eastern Freetown and the Fourah Bay, Uppun, State House, Calaba Town, Kingtom and Pademba Road areas of the city, and Hastings, Goderich, Kent, Grafton, Wellington, Tumbo, Waterloo and Benguema in the Western Area.

**UNLAWFUL KILLINGS**

**COUNT 2:** Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

**COUNT 3:** Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute.

**PARTICULARS**

9. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, throughout Sierra Leone, unlawfully killed an unknown number of civilians, including the following:

**Kenema District**

10. Between about 25 May 1997 and about 31 March 1998, in various locations, including Kenema town and the Tongo Fields area;

**Kono District**

11. Between about 1 February 1998 and about 31 January 2000, in various locations, including Koidu, Tombodu or Tumbodu, Koidu Geiya or Koidu Gieya, Koidu Buma, Yengema, Paema or Peyima, Bomboa fuidu, Bumpe, Nimikoro or Njaima Nimikoro and Mortema;

**Kailahun District**

12. Between about 1 February 1998 and about 30 June 1998, in various locations, including Kailahun town;

**Freetown and Western Area**

13. Between about 21 December 1998 and 28 February 1999, in locations throughout Freetown, including the State House, Kissy, Fourah Bay, Upgun, Calaba Town, Allen Town and Tower Hill areas of the city, and Hastings, Wellington, Tumbo, Waterloo and Benguema in the Western Area.

**SEXUAL VIOLENCE**

**COUNT 4:** Rape, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

And:

**COUNT 5:** Sexual slavery, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

In addition, or in the alternative:

**COUNT 6:** Outrages upon personal dignity, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.e. of the Statute.

**PARTICULARS**

14. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, committed widespread acts of sexual violence against civilian women and girls, including the following:

**Kono District**

15. Between about 1 February 1998 and about 31 December 1998, raped an unknown number of women and girls in various locations, including Koidu, Tombodu or Tumbodu, Wonedu and AFRC and/or RUF camps such as "Superman Ground", "Guinea Highway" and "PC Ground"; abducted an unknown number of women and girls from various locations within the District, or brought them from locations outside the District, and used them as sex slaves;

**Kailahun District**

16. Between about 30 November 1996 and about 18 January 2002, raped an unknown number of women and girls in locations throughout Kailahun District; abducted many victims from other areas of the Republic of Sierra Leone, brought them to locations throughout the District, and used them as sex slaves;

**Freetown and Western Area**

17. Between about 21 December 1998 and about 28 February 1999, raped an unknown number of women and girls throughout Freetown and the Western area, and abducted an unknown number of women and girls and used them as sex slaves.

**PHYSICAL VIOLENCE**

**COUNT 7:** Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:



**COUNT 8:** Other inhumane acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute.

#### **PARTICULARS**

18. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, committed widespread acts of physical violence against civilians, including the following:

##### **Kono District**

19. Between about 1 February 1998 and about 31 December 1998, mutilated and beat an unknown number of civilians in various locations, including Tombodu or Tumbodu, Kaima or Kayima and Wonedu. The mutilations included cutting off limbs and other body parts and carving "AFRC" and "RUF" on the bodies of the civilians;

##### **Kailahun District**

20. Between about 30 November 1996 and about 18 January 2002, beat an unknown number of civilians in locations throughout the District;

##### **Freetown and Western Area**

21. Between about 21 December 1998 and about 28 February 1999, mutilated and beat an unknown number of civilians in various areas of Freetown, including the northern and eastern areas of the city, the Kissy area around the State House, Fourah Bay, Ugun and the Kissy mental hospital, and Hastings, Wellington, Tumbo, Waterloo and Benguema in the Western Area. The mutilations included cutting off limbs.

#### **CHILD SOLDIERS**

**COUNT 9:** Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.

~~9573~~**PARTICULARS**

22. Between about 30 November 1996 and about 18 January 2002, throughout the Republic of Sierra Leone, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC and/or RUF camps in various locations throughout the country, and thereafter used as fighters.

**ABDUCTIONS AND FORCED LABOUR**

**COUNT 10:** Enslavement, a **CRIME AGAINST HUMANITY**, punishable under Article 2.c. of the Statute.

**PARTICULARS**

23. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, engaged in widespread and large scale abductions of civilians and use of civilians as forced labour, including the following:

**Kenema District**

24. Between about 1 July 1997 and about 28 February 1998, used an unknown number of civilians living in the District as forced labor in various locations such as the Tongo Fields area;

**Kono District**

25. Between about 1 February 1998 and about 18 January 2002, abducted an unknown number of civilians, and took them to various locations outside the District, or to locations within the District such as AFRC and/or RUF camps, Tombodu or Tumbodu, Koidu and Wonedu, and used them as forced labour;

9577

**Kailahun District**

26. Between about 30 November 1996 and about 18 January 2002, brought abducted civilian men, women and children to various locations within the District and used them and residents of the District as forced labour;

**Freetown and Western Area**

27. Between about 21 December 1998 and about 28 February 1999, abducted an unknown number of civilians, including a large number of children, from locations throughout Freetown and the Western Area, and used them as forced labour.

**LOOTING**

**COUNT 11: Pillage, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.f. of the Statute.**

**PARTICULARS**

28. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, engaged in widespread unlawful taking of civilian property, including the following:

**Kono District**

29. Between about 1 February 1998 and about 31 December 1998, in various locations, including Koidu, Tombodu or Tumbodu and Bumpe;

**Bombali District**

30. Between about 1 February 1998 and about 30 April 1998, in various locations, including Makeni;

**Port Loko District**

- 30A. Between about 1 February 1998 and about 30 April 1998, in various locations, including Masiaka;

9575

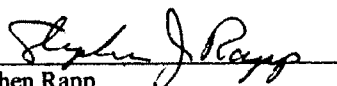
**Freetown and Western Area**

31. Between about 21 December 1998 and about 28 February 1999, throughout Freetown and the Western Area.
32. Paragraphs 4 through 31 are incorporated by reference in INDIVIDUAL CRIMINAL RESPONSIBILITY below.

**INDIVIDUAL CRIMINAL RESPONSIBILITY**

33. The **ACCUSED**, by his acts or omissions, is individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Amended Indictment, which crimes the **ACCUSED** planned, instigated, ordered, committed, or in whose planning, preparation or execution the **ACCUSED** otherwise aided and abetted, or which crimes amounted to or were involved within a common plan, design or purpose in which the **ACCUSED** participated, or were a reasonably foreseeable consequence of such common plan, design or purpose.
34. In addition, or alternatively, pursuant to Article 6.3. of the Statute, the **ACCUSED**, while holding positions of superior responsibility and exercising command and control over subordinate members of the RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Amended Indictment. The **ACCUSED** is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and the **ACCUSED** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Dated 29 May 2007,  
Freetown, Sierra Leone,

  
Stephen Rapp  
The Prosecutor

1086)

SCSL-03-01-T  
( 30292 - 30303 )

1044

30292



**THE SPECIAL COURT FOR SIERRA LEONE**

**Trial Chamber II**

**Before:** Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate

**Registrar:** Ms. Binta Mansaray

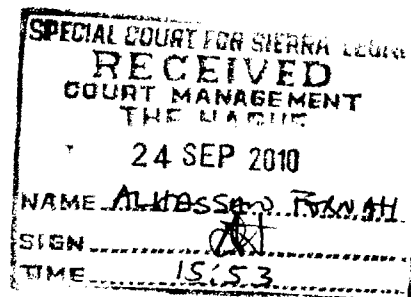
**Date:** 24 September 2010

**Case No.:** SCSL-03-01-T

**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**



**PUBLIC**

**DEFENCE MOTION TO EXCLUDE EVIDENCE FALLING OUTSIDE THE  
SCOPE OF THE INDICTMENT AND/ OR THE JURISDICTION OF THE  
SPECIAL COURT FOR SIERRA LEONE**

**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian

**Counsel for Charles G. Taylor:**

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

## I. INTRODUCTION

1. This is the Defence motion to exclude evidence falling outside the scope of the Indictment and/ or the jurisdiction of the Special Court for Sierra Leone.<sup>1</sup>
2. The Defence submits that the Motion is timely and appropriate at this stage of the proceedings because it implicates evidentiary matters that arose on a recurring basis during the trial proceedings.<sup>2</sup>
3. During its case, the Prosecution has adduced a great deal of evidence which falls outside the temporal and geographical jurisdiction of the Special Court (“ex-temporal evidence” and “ex-territorial evidence”). The Defence has previously objected to such evidence, including in its Pre-trial Brief filed on 26 April 2007.<sup>3</sup> For example, on 18 April 2008 during the course of the oral testimony of TF1-334, defence counsel objected to evidence of crimes perpetrated on civilians in Koinadugu District on the basis that such crimes are not alleged in the Indictment.<sup>4</sup> The Defence has never waived its objection on this issue, and files the Motion in continuance of its objection.
4. The Defence submits that much of the ex-temporal and ex-territorial evidence adduced in the case is irrelevant to the Indictment, falls outside the jurisdiction of the Special Court and should be excluded from the Trial Chamber’s consideration of the evidence in the case when it retires to consider judgment.

## II. PRELIMINARY MATTERS

5. The Special Court has held that where the Defence objects to the admissibility of evidence on the basis that it falls outside the scope of the Indictment, the Defence is expected to make a specific objection at the time the evidence is sought to be

<sup>1</sup> Hereinafter “the Motion”. Any references to Indictment in the Motion are to *Prosecutor v. Taylor*, SCSL-03-01-PT-263, “Prosecution’s Second Amended Indictment”, 29 May 2007.

<sup>2</sup> Rule 72(B) contemplates the filing of preliminary motions based on lack of jurisdiction and Rule 72(A) mandates that such motions be brought by either party within 21 days following disclosure by the Prosecution to the Defence of all the material envisaged by Rule 66(A)(i).<sup>2</sup>

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 18 April 2008, p. 8054; Trial Transcript, 21 April 2008, p. 8077; Trial Transcript, 7 May 2008, p. 9148; Trial Transcript, 5 November 2008, p. 19798. *Prosecutor v. Taylor*, SCSL-03-01-PT-229, “Rule 73bis Taylor Defence Pre-trial Brief”, 26 April 2007, paras. 9-23 (Hereinafter “Defence Pre-trial Brief”).

<sup>4</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 18 April 2008, p. 8054.

introduced.<sup>5</sup> However, failure to do so “is not... an absolute bar to raising such a challenge on appeal”.<sup>6</sup> Indeed, at the ICTR, the Trial Chamber in *Bizimungu* confirmed that it may deal with such matters even after the testimony has finished where the interests of justice so require.<sup>7</sup>

6. In the present case, the Defence did raise specific objections at the time in certain instances.<sup>8</sup> However, the use of ex-temporal and ex-territorial evidence by the Prosecution has been so widespread that it proved impractical for the Defence to raise the same objection at every turn. Nevertheless, the Defence’s objection to the overarching inclusion of ex-temporal and ex-territorial evidence has been well-noted. Indeed, the Defence’s Pre-trial Brief contained a specific section urging “the Trial Chamber to be vigilant in ensuring there is no expansion of the territorial or temporal jurisdiction of the Court via the back door”.<sup>9</sup> There is no reason, therefore, why the Defence should be barred from raising this matter now or later on appeal.
7. In addition, it is in the interests of justice to decide on this matter even after testimony has finished, given the centrality of the ex-temporal and ex-territorial evidence to the case, as will be further outlined below.
8. It should also be noted that the Defence’s objection is not solely to the form of the Indictment, since much of the ex-temporal and ex-territorial evidence adduced in this case falls outside the scope of the Indictment and the jurisdiction of the Special Court and could not have been charged in the Indictment in any event. To this end, the Defence also objects to the use of Rule 89(C) and Rule 93 by the Prosecution to incorporate evidence which falls outside of the remit of the Special Court into its case as if it were one with the evidence adduced to prove the crimes alleged in the Indictment. Under this head, in particular, the Defence has in mind the evidence relating to alleged crimes in Liberia, in the geographical sense, and to crimes which pre-date 1996, in the temporal sense. This is set out in more detail below.

---

<sup>5</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-T, “Trial Judgment”, 2 March 2009, para. 337 (Hereinafter “RUF Trial Judgment”).

<sup>6</sup> *Prosecutor v. Brima et al.*, SCSL-04-16-A, “Appeal Judgment”, 22 February 2008, paras. 42-43.

<sup>7</sup> *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, “Decision on Motion from Casimir Bizimungu Opposing the Admissibility of the Testimony of Witnesses GKB, GAP, GKC, GKD and GFA”, 23 January 2004, para. 18.

<sup>8</sup> Motion, para. 3, fn. 3.

<sup>9</sup> Defence Pre-trial Brief, para. 9.

17. Indeed, even were the Trial Chamber merely to consider and not rule on such evidence, the Defence submits that there must be a limit to the extent to which evidence which falls outside the scope of the Indictment and/ or jurisdiction of the Special Court can be taken into consideration by the Trial Chamber in assessing the guilt of the Accused.<sup>25</sup> Otherwise, there is a real danger that such a sheer mass of evidence will have an impact on the Trial Chamber's findings. Indeed, it becomes so prejudicial to the Accused, that such evidence violates Rule 95, and infringes the Accused's own fair trial rights guaranteed under Article 17.

*(ii) Evidence of atrocities in Liberia*

18. The evidence adduced by the Prosecution concerning the Accused's alleged involvement in atrocities in Liberia has little relevance or probative force other than to blacken the Accused's reputation with the Trial Chamber; indeed, it clearly has nothing to do with the charges the Accused faces in respect of Sierra Leone.<sup>26</sup> Throughout the trial, the Accused has had to face such evidence being admitted via the back door that is Rule 93, despite the warning given by the Trial Chamber in *Kupreškić* that Rule 93 cannot be used to simply show the bad character of an accused.<sup>27</sup> The Defence submits such evidence is contrary to Rule 95, Article 17, and the jurisprudence of the international tribunals.<sup>28</sup>

B. Evidence falling outside of the geographical scope of the Indictment

*(i) Evidence which could fall inside the scope of the Indictment but which does not*

19. The Prosecution has led evidence on the commission of crimes in certain districts of Sierra Leone which does not fall within the crimes charged in the Indictment, but which nevertheless could have been pleaded within the Indictment. For example, witness TF1-334 testified to the crimes which occurred in Koinadugu District.<sup>29</sup>

<sup>25</sup> Indeed, the Trial Chamber seems to have recognised there is a limit to the Prosecution's ability to adduce ex-temporal evidence; for instance, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 22 January 2008, pp. 1842-1845.

<sup>26</sup> For instance, the evidence of TF1-399: *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 12 March 2008, pp. 5913-5919.

<sup>27</sup> *Prosecutor v. Kupreškić et al.*, IT-95-16-T, "Decision on Evidence of Good Character of the Accused and the Defence of Tu Quoque", 17 February 1999, para. 31.

<sup>28</sup> Bagosora Appeal Decision; Shahabuddeen Opinion; *Prosecutor v. Bagosora et al.*, ICTR-98-41-AR73, "Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence", 18 September 2006.

<sup>29</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 18 April 2008, p. 8054.



Likewise, witness TF1-028 testified to crimes which occurred in Bombali District.<sup>30</sup> Neither district of Sierra Leone, nor the alleged crimes occurring therein were pleaded in the Indictment.

20. The Defence submits these locations should have been pleaded in the Indictment. The evidence is not merely background information: there is nothing to differentiate this evidence from evidence adduced to prove crimes occurring within districts that were expressly pleaded in the Indictment; its prejudicial effect is the same.
21. The Prosecution has argued that this additional evidence is necessary to prove: (a) there was a widespread and systematic attack on the civilian population of Sierra Leone; (b) there was a coordinated campaign of terror within Sierra Leone; and (c) the Accused's knowledge of, awareness of and/ or intent to cause the crimes which were taking place in Sierra Leone.<sup>31</sup> However, such elements can easily be adduced from the crimes and locations already charged in the Indictment. The Indictment is the main charging instrument against the Accused and the means by which the Accused is notified of the charges he must face at trial. It is axiomatic that the Prosecution cannot circumvent the requirements of the Indictment by adding layer upon layer of alternative locations in which crimes were committed, without formally charging the Accused with those crimes; evidence of such ex-territorial crimes provide so little probative value and are so prejudicial to the Accused, such that they contravene both Rule 95 and Article 17.
22. To view such evidence in any other way would result in the serious danger that, uniquely among international courts, the Special Court would be seen as having permitted a Prosecutor to charge an accused with as few particulars as possible, while having held back the particulars into which the bulk of the evidence falls for admission via the back door at trial under the guise of "relevant" evidence. This may be strategic for a Prosecutor, but should not be countenanced by any reasonable tribunal.

---

<sup>30</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 7 May 2008, p. 9148.

<sup>31</sup> See above, para. 12, fn. 20.

1093)

SCSL-03-01-T  
(30617-30628)

1049

30617



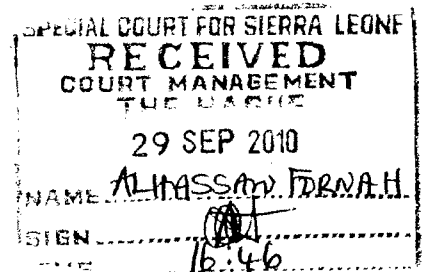
**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR**

**TRIAL CHAMBER II**

Before: Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Ms. Binta Mansaray

Date filed: 29 September 2010



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

---

**PUBLIC**

**PROSECUTION RESPONSE TO DEFENCE MOTION TO EXCLUDE EVIDENCE FALLING OUTSIDE  
THE SCOPE OF THE INDICTMENT AND/OR THE JURISDICTION OF THE SPECIAL COURT FOR  
SIERRA LEONE**

---

Office of the Prosecutor:

Ms. Brenda J. Hollis  
Ms. Leigh Lawrie  
Ms. Kathryn Howarth

Counsel for the Accused:

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

## I. INTRODUCTION

1. The “Public Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone”<sup>1</sup> should be dismissed’. The Motion is, at least in part, *res judicata*, and is otherwise:

- (i) untimely;
- (ii) insufficiently specific; and
- (iii) contrary to the accepted international jurisprudence.

## II. MOTION IS INCOMPETENT REQUEST FOR RECONSIDERATION, UNTIMELY & INSUFFICIENTLY SPECIFIC

### Motion is in part an incompetent request for reconsideration

2. The Defence “Motion” is, at least in part, tantamount to an application for re-consideration. During the Prosecution case, the Defence made several timely objections to the admissibility of evidence on grounds similar to those in the Motion<sup>2</sup> and the Trial Chamber ruled upon the same. Therefore, as far as these objections have already been overruled, this Motion is an attempt by the Defence to re-argue and is, in effect, a request for an out of time reconsideration. The Defence advances no argument as to why these prior rulings should be reconsidered and thus the offending parts of the Motion should be dismissed.

### Objections are untimely & ability to conduct defence has not been materially impaired

3. As regards those instances where the Defence failed to object to the type of evidence

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1086, Public Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone, 24 September 2010 (“**Motion**”).

<sup>2</sup> The Prosecution notes that the Defence have made objections similar to those in the Motion which were overruled on 18 April 2008, pp. 8054-55; 21 April 2008, pp. 8077-80; 7 May 2008, pp. 9148-49; 10 July 2008, pp. 13471-72. Similar objections were also made in the following filings but the resulting decisions did not exclude the evidence challenged by the Defence: *Prosecutor v. Taylor*, SCSL-03-01-T-579, Public with Confidential Annex A Defence Objection to “Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Kono District – TF1-218 & TF1-304”, 9 September 2008, paras. 4(a) & 19; *Prosecutor v. Taylor*, SCSL-03-01-T-589, Public with Confidential Annex A Defence Objection to “Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Kono District” and Other Ancillary Relief, 12 September 2008, paras. 5(a) & 20; *Prosecutor v. Taylor*, SCSL-03-01-T-597, Public with Confidential Annex A Defence Objection to “Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Freetown & Western Area – TF1-023 & TF1-029” and Other Ancillary Relief, 17 September 2008, paras. 5(a), & 21-22; *Prosecutor v. Taylor*, SCSL-03-01-T-598, Public with Confidential Annex A Defence Objection to “Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Kono District – TF1-195, TF1-197, TF1-198 & TF1-206” and Other Ancillary Relief, 17 September 2008, paras. 5(a) & 21; *Prosecutor v. Taylor*, SCSL-03-01-T-626, Public with Confidential Annex A Defence Objection to “Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Freetown & Western Area – TF1-098, TF1-104, TF1-227” and Other Ancillary Relief, 8 October 2008, paras. 5(b) & 20-21. This list is not intended to be exhaustive.

challenged at the point of its presentation, the objections now raised in the Motion are untimely and the Trial Chamber ought to refuse to consider the Motion on this basis.

4. A general requirement of pleading is that objections should be made in a timely manner. However, the Motion seeks to exclude evidence led in the Prosecution case which closed some 19 months ago. Where an objection is untimely, the burden of proof shifts from the Prosecution to the Defence to demonstrate whether the accused's ability to defend himself has been materially impaired.<sup>3</sup> In such a situation, the Trial Chamber must consider whether the Defence has provided a reasonable explanation for its failure to raise the objection earlier in the trial.<sup>4</sup> The Defence has failed to provide such an explanation and to demonstrate impairment.
5. In so far as any of the objections raised by the Defence have not previously been subject to a ruling by the Trial Chamber,<sup>5</sup> such objections have not been made at the earliest opportunity. The Defence argument that "it proved impractical ... to raise the same objection at every turn"<sup>6</sup> does not reasonably explain the 19 month delay. If the Defence was unable to object at the time of evidence presentation (which it has not shown), the alternative recourse is to "file a **timely** motion to strike the evidence."<sup>7</sup> Such a timely motion would have been before the close of the Prosecution case, not at the end of the Defence case.
6. The admission of the now contested evidence has not materially impaired the Accused's ability to defend himself. This is evidenced by the fact that the Defence chose *to lead evidence to challenge* the now contested Prosecution evidence during its 14 month long case rather than to file a timely motion to exclude or limit such evidence.<sup>8</sup> Thus, the Defence approach was to confront the evidence by attempting to counter it with other evidence. The Defence cannot now claim that its tactical choice, to confront rather than to

<sup>3</sup> *Prosecutor v. Bagosora et al.*, ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006 ("**Bagosora - Aloys Ntabakuze Decision**"), paras. 44-46. This decision considered objections based on lack of notice but it is submitted that the principles set out therein can be applied to untimely objections generally. The Defence also relies on ICTR case law dealing with objections based on lack of notice (see Motion, para. 5 and case law referred to in the corresponding footnotes).

<sup>4</sup> *Bagosora - Aloys Ntabakuze Decision*, paras. 44-46.

<sup>5</sup> See *ft* note 2 above.

<sup>6</sup> Motion, para. 6.

<sup>7</sup> *Bagosora - Aloys Ntabakuze Decision*, para. 42.

<sup>8</sup> Motion, para. 27.

object, has materially impaired the Accused's ability to defend himself. Indeed, the Defence failure to act in a timely manner and its subsequent actions lead to the inevitable conclusion that the Motion is motivated by a change of tactics rather than a genuine need for relief.

7. Further evidence that the Motion is untimely and that the Accused's ability to defend himself has not been materially impaired is the fact that the Defence has been on notice since the outset of this trial that the Prosecution would seek to lead evidence which falls outside the temporal and geographic scope of the Indictment and evidence of crimes committed outside Sierra Leone.<sup>9</sup>

Objections are insufficiently specific

8. The Motion should also be dismissed on the basis that the Defence objections are insufficiently specific. The Defence fail to pinpoint exactly which portions of evidence are to be excluded or limited.<sup>10</sup> Such specificity is particularly necessary where similar objections have already been made and overruled. If no distinction is made between objections which have and have not been ruled upon, there can be no determination of what difference, if any, exists which would warrant granting the relief requested contrary to the prior adverse rulings.
9. Specificity is also required in order to be able to undertake the case by case analysis which is required in respect of objections of this kind.<sup>11</sup>

### III. EVIDENCE OUTSIDE THE SCOPE OF THE COURT'S JURISDICTION AND/OR INDICTMENT IS ADMISSIBLE FOR A WIDE VARIETY OF PURPOSES

<sup>9</sup> Notice was provided via disclosure of witness statements and via the witness summaries filed under Rule 73bis(B)(iv)(b), see *Prosecutor v. Taylor*, SCSL-03-01-PT-218, Public Rule 73bis Pre-Trial Conference Materials Pre-Trial Brief, 4 April 2007. The Prosecution is also aware of and has discharged its disclosure obligation under Rule 93(B). Note the witness summaries indicated where it was anticipated that a witness might provide Rule 93 evidence.

<sup>10</sup> *Bagosora* - Aloys Ntabakuze Decision, para. 46. The ICTR Appeals Chamber noted in regard to objections based on lack of notice that they should be specific and timely. This requirement is equally applicable to objections generally and not just those based on lack of notice.

<sup>11</sup> See *Prosecutor v. Milutinović et al.*, IT-05-87-T, Decision on Evidence Tendered through Witness K82, 3 October 2006, para. 12. The ICTY Trial Chamber observed that "whether a Chamber should admit or refuse the evidence depends upon the circumstances of a particular case. It is difficult to distil from any of these specific cases a general jurisprudential principle that can apply across the board to all other cases." The Chamber then cited with approval the ICTR Trial Chamber's statement that "[r]elevance, probative value and even prejudice are all relational concepts" (*Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 September 2003, para. 18).

10. Should the Trial Chamber be minded to consider the merits of the Motion despite the above objections, the Motion should be dismissed as the jurisprudence very clearly establishes that evidence outside the scope of the Court's jurisdiction and/or the relevant indictment may be admitted for multiple purposes. Notably, the Defence fail to direct the Trial Chamber to the relevant jurisprudence on these issues in their Motion.<sup>12</sup>

Challenged evidence is relevant

11. The general criticism which the Defence appears to make, that the challenged evidence led by the Prosecution is irrelevant,<sup>13</sup> is inconsistent with the jurisprudence of the international courts. It is trite law that an accused cannot be held criminally liable for criminal conduct which took place outside the temporal and/or geographic scope of the Court's jurisdiction and/or the relevant indictment.<sup>14</sup> However, the jurisprudence of this Court and the international tribunals also establishes very clearly that such evidence may be admitted and relied upon by a Trial Chamber for multiple other purposes.

12. Evidence from outside the temporal and/or geographic scope of the Court's jurisdiction and/or the relevant indictment may be admitted to:

- (i) provide the context in which the offences are said to have been committed;<sup>15</sup>
- (ii) prove the existence of a joint criminal enterprise, command and control, *de facto* authority over a subordinate, and the *mens rea* of the Accused;<sup>16</sup>
- (iii) establish by inference the elements (in particular, criminal intent) of criminal

<sup>12</sup> Motion, para. 11.

<sup>13</sup> Motion, paras. 4 & 16.

<sup>14</sup> At the Special Court, this general principle has been acknowledged, *inter alia*, in *Prosecutor v. Brima et al.*, SCSL-04-16-T, Judgement, 20 June 2007, paras. 37-38 ("**AFRC Trial Judgement**") and *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1186, Decision on Kallon Motion to Exclude Evidence Outside the Scope of the Indictment, 26 June 2008, para. 12.

<sup>15</sup> See for example *Prosecutor v. Fofana et al.*, SCSL-04-14-T, Judgement, 2 August 2007, paras. 60-64. Trial Chamber I used evidence relating to events occurring prior to the temporal jurisdiction of this Court to establish the background of one of the accused, and in particular to show: (i) the origin of the Kamajor Society; (ii) its relationship to the CDF; and (iii) one of the accused's ascendancy within it. See also *Prosecutor v. Gotovina et al.*, IT-06-90-T, Decision on Defendant Ante Gotovina's Motion for Admission of Evidence of One Witness Pursuant to Rule 92bis, 16 September 2009, para. 6. The ICTY Trial Chamber allowed a witness statement whose content related in large parts to matters outside the temporal and geographical scope of the indictment, holding that it provided historical, political, and military background that was relevant for understanding the events mentioned in the indictment and the specific context leading to the commission of the crimes included therein. Note it is on this basis that some of the evidence of atrocities committed in Liberia has been led and admitted (contra Motion, para. 18).

<sup>16</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Judgement, 2 March 2009 ("**RUF Trial Judgement**"), para. 482. Note it is on this basis that some of the evidence of atrocities committed in Liberia has been led and admitted (contra Motion, para. 18).

conduct occurring during the Court's jurisdiction;<sup>17</sup>

- (iv) demonstrate a deliberate or consistent pattern of conduct, which can then be relied upon to establish specific offences, including a campaign of terror, and/or modes of liability charged in an indictment;<sup>18</sup> and/or
- (v) prove the chapeau requirements of Articles 2, 3, and 4 of the Statute.<sup>19</sup>

Volume of "contextual" evidence and volume of evidence outside the scope of the Indictment are not grounds for exclusion

13. The second general Defence argument is that the mass of "contextual" evidence in this case means there is a danger that it will serve as a basis for conviction.<sup>20</sup> This argument implies that this Chamber, comprised of professional judges, will be unable to apply the well established basis of evidence admission identified above.<sup>21</sup> The perceived risk is unfounded as these principles have been consistently and carefully applied in this Court and the other international courts. As Judge Shahabuddeen, in his Separate Opinion, states:

"the genocide of 1994 did not come out of the blue; it was not a disembowelled affair. Nor was it of limited range. It is not comprehensible without reaching back into the past. The need to demonstrate the course of development has to be measured

<sup>17</sup> *Prosecutor v. Nahimana*, ICTR-99-52-A, Appeal Judgment, 28 November 2007 ("*Nahimana Appeal Judgment*"), para. 315. Note it is on this basis that some of the evidence of atrocities committed in Liberia has been led and admitted (contra Motion, para. 18).

<sup>18</sup> See the following examples: *Nahimana Appeal Judgment*, para. 315; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Judgement, 28 February 2005, para. 71 (the ICTY Appeals Chamber found that the Trial Chamber had not erred in using evidence relating to unscheduled incidents as corroborating evidence of a consistent pattern of conduct pursuant to Rule 93 of the Rules); *Prosecutor v. Galić*, IT-98-29-A, Judgement, 30 November 2006, para. 219 (in this case involving a campaign of terror against the civilian population the Appeals Chamber found that the Trial Chamber had properly used evidence of pre-indictment crimes regarding unscheduled incidents and the general situation in Sarajevo to support conclusions on the existence of a pattern of conduct: the campaign of shelling and sniping attacks against civilians); and RUF Trial Judgement, para. 1745 (in the RUF Case Trial Chamber I relied on evidence from prior to the start of the Court's temporal jurisdiction to conclude that there was a consistent pattern of conduct by the RUF of recruiting and training children for military purposes, which pattern was sufficient to put the perpetrators on notice of the likelihood that the persons being used by them in hostilities were under 15). See further in the present proceedings where the Prosecution was permitted pursuant to Rule 93 (A) to question a witness in relation to the order allegedly given by the Accused to execute NPFL commander Oliver Varney in Liberia between 1991 and 1992. This Trial Chamber accepted the Prosecution's argument that the line of questioning was aimed at showing the Accused's practice of continually executing commanders as part of a pattern of maintaining control over the organisations that he controlled, including those in Sierra Leone such as the RUF, by means of terror (Trial Transcript, 5 November 2008, pp. 19798-19800). See also *Prosecutor v. Nahimana*, ICTR-99-52-T, Judgement, 3 December 2003, para. 103 (the Trial Chamber considered that with regard to the commission of crimes in 1994, such pre-1994 material may constitute evidence of the intent of the Accused or a pattern of conduct by the Accused, or background in reviewing and understanding the general manner in which the Accused related to the media at issue). Note it is on this basis that some of the evidence of atrocities committed in Liberia has been led (contra Motion, para. 18).

<sup>19</sup> AFRC Trial Judgement, paras. 37-38; and RUF Trial Judgement, para. 482.

<sup>20</sup> Motion, para. 14.

<sup>21</sup> See the list of basis set out in paragraph 12 above.

against the characteristics of the case.

[...]

If the demonstration of the course of development relating to the charges advanced in the indictment involves the presentation of evidence of the commission of other crimes by the accused, **professional judges would know how to treat that evidence** [...] It is not right to press too far the notion that their professionalism entirely distinguishes judges from jurors as triers of fact; but that there is some difference is not deniable. **The difference is pertinent to the capacity of professional judges to consider evidence of prior crime without unfairness to the accused.**<sup>22</sup>

14. The third general Defence criticism based on the volume of evidence outside the scope of the Indictment admitted in this case<sup>23</sup> is also not a ground for exclusion. Under Rule 87(A), the Prosecution bears the burden of proof. As indicated above, the evidence complained of is relevant to a multitude of issues which this Trial Chamber must decide, and to many elements which the Prosecution must prove.<sup>24</sup> Mechanisms exist for focusing the issues in dispute between parties, thus reducing the volume of evidence which must be led to discharge the proof burden and provide the requisite context. One such mechanism is agreed facts. However, despite Defence statements to the contrary,<sup>25</sup> very few facts have been agreed and most matters in the indictment are in dispute including the crime base. In the absence of any real attempt to narrow the issues in dispute, the Prosecution was required to lead all the evidence in its case in order to discharge its burden of proof and provide the necessary context.

*Evidence falling outside temporal scope of the Indictment: joint criminal enterprise - admissible for a variety of purposes*

15. The Defence cites no authority in support of its arguments under this heading.<sup>26</sup> Indeed, in addition to the various bases for admission listed in paragraph 12 above, guidance from the ICTY's jurisprudence indicates that a Trial Chamber is entitled to admit and rely on evidence from outside the temporal jurisdiction of the Tribunal to establish an accused's

<sup>22</sup> *Prosecutor v. Ngeze & Nahimana*, ICTR-99-52-A, Decision on the Interlocutory Appeals – Separate Opinion of Judge Shahabuddeen, 5 September 2000, paras. 23 & 24 (emphasis added).

<sup>23</sup> Motion, para. 15.

<sup>24</sup> See the Prosecutor's comments in this regard at Trial Transcript, 7 May 2008, pp. 9148-49.

<sup>25</sup> See for example Lead Defence Counsel's comments during the Defence opening statement: "Consequently, we said this case should not have been about what in fact happened in Sierra Leone; there was no issue about that. It should solely have been about who bore the greatest responsibility ... We consequently do not and never have taken issue with the fact that terrible things, atrocities, were committed in Sierra Leone. We've never done that. We still cannot therefore understand why more than half of the witnesses called were so-called crime base witnesses to prove a fact not in dispute" (Trial Transcript, 13 July 2009, pp. 24295-96).

<sup>26</sup> Motion, paras. 16 & 17.



1056  
~~30624~~

early contacts with other members of a joint criminal enterprise.<sup>27</sup>

Evidence falling outside temporal scope of the Indictment: evidence of atrocities in Liberia - admissible for a variety of purposes

16. For the reasons discussed above, the evidence of atrocities in Liberia has been legitimately led and admitted in this Trial.<sup>28</sup>

Evidence falling outside the geographical scope of the Indictment: "evidence which could fall inside scope of indictment but which does not" - admissible for a variety of purposes

17. The Defence argues that some of the elements which the Prosecution requires to prove can be adduced from the crimes and locations already charged in the indictment.<sup>29</sup> This assessment, however, does not mean that such evidence will be considered sufficient. As long as the evidence is relevant and not unduly cumulative, the Prosecution is entitled to lead the evidence it believes is necessary to discharge its burden of proof.<sup>30</sup> Furthermore, evidence from outside the geographic scope of the Indictment is relevant not only for all the purposes discussed above and to establish the existence of a widespread or systematic attack but also to establish that the charged acts were part of the attack against the civilian population and to provide evidence of the Accused's *mens rea*. The evidence is also relevant to the various introductory paragraphs of the Counts in the Indictment. For example Count 1 refers to a "campaign to terrorise the civilian population of the republic of Sierra Leone" and Counts 2 and 3 refer to the unlawful killing of an unknown number of civilians "throughout Sierra Leone."<sup>31</sup>

Evidence falling outside the geographic scope of the Indictment: evidence potentially falling outside the jurisdiction of the Special Court - admissible for a variety of purposes

18. The Defence objection to the admission of the evidence of crimes committed outside the geographic scope of the Court's jurisdiction is so broad it is difficult for the Prosecution to address,<sup>32</sup> save to state that such evidence has been led and admitted for one or more of the purposes identified in paragraph 12 above. However, the Defence does specifically

<sup>27</sup> *Prosecutor v. Martić*, IT-95-11-T, Judgement, 12 June 2007, para 448.

<sup>28</sup> Motion, para. 18. See in particular paragraph 12 above.

<sup>29</sup> Motion, para. 21.

<sup>30</sup> In this regard, the arguments made in para.12 above apply.

<sup>31</sup> *Prosecution v. Taylor*, SCSL-03-01-PT-263, Prosecution's Second Amended Indictment, 29 May 2007, paras. 5 & 9. Note contra the Defence argument that certain locations should have been specifically charged in the Indictment (Motion, paras. 19-22) it is on this basis as well as those listed in paragraph 13 that evidence from outside the geographic scope of the Indictment has been led and admitted.

<sup>32</sup> Motion, paras. 24-26.

1057  
~~30625~~

mention evidence admitted under Rule 93 and in this regard the Prosecution notes there is nothing in this Rule which requires that such evidence be limited to acts or conduct occurring in the territory over which this Court has jurisdiction.

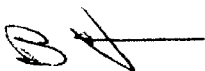
Concomitant Result

19. The Defence untimely and unfounded request for relief has even more extensive implications. A concomitant result if the Defence request is successful is the exclusion or limitation of the equivalent Defence evidence, which, according to the Defence, was led only to meet the now contested Prosecution evidence.<sup>33</sup>

**IV. CONCLUSION**

20. As argued above, the Motion is fatally flawed on various grounds and accordingly should be dismissed.

Filed in The Hague,  
29 September 2010,  
For the Prosecution,



Brenda J. Hollis,  
The Prosecutor

---

<sup>33</sup> Contra the claim made by the Defence (Motion, para. 27).

## INDEX OF AUTHORITIES

### *Prosecutor v. Taylor, SCSL-03-01-T*

#### Trial Transcripts

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 18 April 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 21 April 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 7 May 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 10 July 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 5 November 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 13 July 2009

#### Decisions

*Prosecutor v. Taylor*, SCSL-03-01-PT-218, Public Rule 73bis Pre-Trial Conference Materials Pre-Trial Brief, 4 April 2007

*Prosecution v. Taylor*, SCSL-03-01-PT-263, Prosecution's Second Amended Indictment, 29 May 2007

*Prosecutor v. Taylor*, SCSL-03-01-T-579, Public with Confidential Annex A Defence Objection to "Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Kono District – TF1-218 & TF1-304", 9 September 2008

*Prosecutor v. Taylor*, SCSL-03-01-T-589, Public with Confidential Annex A Defence Objection to "Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Kono District" and Other Ancillary Relief, 12 September 2008

*Prosecutor v. Taylor*, SCSL-03-01-T-597, Public with Confidential Annex A Defence Objection to "Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Freetown & Western Area – TF1-023 & TF1-029" and Other Ancillary Relief, 17 September 2008

*Prosecutor v. Taylor*, SCSL-03-01-T-598, Public with Confidential Annex A Defence Objection to "Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Kono District – TF1-195, TF1-197, TF1-198 & TF1-206" and Other Ancillary Relief, 17 September 2008

*Prosecutor v. Taylor*, SCSL-03-01-T-626, Public with Confidential Annex A Defence Objection to "Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Freetown & Western Area – TF1-098, TF1-104, TF1-227" and Other Ancillary Relief, 8 October

1059  
~~30627~~

2008

*Prosecutor v. Taylor*, SCSL-03-01-T-1086, Public Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone, 24 September 2010

***Prosecutor v. Fofana et al.*, SCSL-04-14-T**

*Prosecutor v. Fofana et al.*, SCSL-04-14-T, Judgement, 2 August 2007

***Prosecutor v. Sesay et al.*, SCSL-04-15-T**

*Prosecutor v. Sesay et al.*, SCSL-04-15-T-1186, Decision on Kallon Motion to Exclude Evidence Outside the Scope of the Indictment, 26 June 2008

*Prosecutor v. Sesay et al.*, SCSL-04-15-T, Judgement, 2 March 2009

***Prosecutor v. Brima et al.*, SCSL-04-16-T**

*Prosecutor v. Brima et al.*, SCSL-04-16-T, Judgement, 20 June 2007

**ICTR**

*Prosecutor v. Ngeze & Nahimana*, ICTR-99-52-A, Decision on the Interlocutory Appeals – Separate Opinion of Judge Shahabuddeen, 5 September 2000  
<http://www.ictrcaselaw.org/docs/doc59310.pdf>

*Prosecutor v. Bagosora et al.*, ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006  
<http://www.unictl.org/Portals/0/Case/English/Bagosora/Trial%20and%20Appeal/180906.pdf>

*Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 September 2003  
<http://www.unictl.org/Portals/0/Case/English/Bagosora/Trial%20and%20Appeal/180903.pdf>

*Prosecutor v. Nahimana*, ICTR-99-52-T, Judgement, 3 December 2003  
<http://www.unictl.org/Portals/0/Case/English/Nahimana/judgement/Judg&sent.pdf>

*Prosecutor v. Nahimana*, ICTR-99-52-A, Appeal Judgment, 28 November 2007  
[http://www.unictl.org/Portals/0/Case/English/Nahimana/decisions/071128\\_judgement.pdf](http://www.unictl.org/Portals/0/Case/English/Nahimana/decisions/071128_judgement.pdf)

1060

~~30628~~

**ICTY**

*Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Judgement, 28 February 2005  
<http://www.icty.org/x/cases/kvocka/acjug/en/kvo-aj050228e.pdf>

*Prosecutor v. Milutinović et al.*, IT-05-87-T, Decision on Evidence Tendered through Witness K82, 3 October 2006  
<http://www.icty.org/x/cases/milutinovic/tdec/en/061003.pdf>

*Prosecutor v. Galić*, IT-98-29-A, Judgement, 30 November 2006  
<http://www.icty.org/x/cases/galic/acjug/en/gal-acjud061130.pdf>

*Prosecutor v. Martić*, IT-95-11-T, Judgement, 12 June 2007  
<http://www.icty.org/x/cases/martic/tjug/en/070612.pdf>

*Prosecutor v. Gotovina et. al.*, IT-06-90-T, Decision on Defendant Ante Gotovina's Motion for Admission of Evidence of One Witness Pursuant to Rule 92bis, 16 September 2009  
<http://www.icty.org/x/cases/gotovina/tdec/en/090916.pdf>

1100)

SCSL-03-01-T  
(30700-30706)

1061

~~30700~~



**THE SPECIAL COURT FOR SIERRA LEONE**

**Trial Chamber II**

**Before:** Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate

**Registrar:** Ms. Binta Mansaray

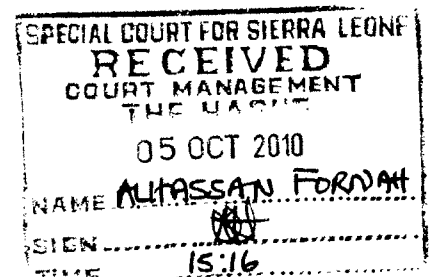
**Date:** 5 October 2010

**Case No.:** SCSL-03-01-T

**THE PROSECUTOR**

—v—

**CHARLES GHANKAY TAYLOR**



---

**PUBLIC**

**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION  
TO EXCLUDE EVIDENCE FALLING OUTSIDE THE SCOPE OF THE  
INDICTMENT AND/OR THE JURISDICTION OF THE SPECIAL COURT FOR  
SIERRA LEONE**

---

**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Ms. Leigh Lawrie  
Ms. Kathryn Howarth

**Counsel for Charles G. Taylor:**

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

1062  
30701

## I. INTRODUCTION

1. This is the Defence's reply to the *Prosecution Response to Defence Motion to Exclude Evidence falling outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone*.<sup>1</sup>
2. On 24 September 2010, the Defence filed the *Defence Motion to Exclude Evidence falling outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone*.<sup>2</sup>
3. On 29 September 2010, the Prosecution filed the *Prosecution Response to Defence Motion to Exclude Evidence falling outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone*.<sup>3</sup>
4. The Defence has considered the Prosecution's arguments in the Response, but is left with the unwavering conviction that the relief sought by the Motion should be granted.

## II. ARGUMENT

5. The Response argues that the Motion is (i) untimely; (ii) insufficiently specific; and (iii) contrary to accepted international jurisprudence.<sup>4</sup> However, the Prosecution has failed to grasp the essential nature of the Defence's complaint or of the relief being sought, arguing that, so long as its nebulous concept of "relevance" is satisfied, there should be no limit to the introduction of evidence falling outside the scope of the Indictment.<sup>5</sup> It is more than noteworthy, therefore, that the Response fails to make a single mention of Rule 95, despite a primary basis of the Motion being the effect of adverse prejudice.

---

<sup>1</sup> Hereinafter "the Reply".

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1086, "Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone", 24 September 2010 ("the Motion").

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1093, "Prosecution Response to Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone", 29 September 2010 ("the Response").

<sup>4</sup> Response, para. 1.

<sup>5</sup> Response, paras. 11 and 12. It is difficult to see what evidence would actually fall foul of the Prosecution's own definition of relevance, which, presumably, is its objective.

6. Indeed, the Prosecution's objection that the Motion is "tantamount to an application for re-consideration" demonstrates this essential point.<sup>6</sup> The Motion does not request reconsideration of any oral or other decision of the Court (no such requests are to be found anywhere within the Motion). Rather, the Motion submits that the Prosecution evidence which falls outside the scope of the Indictment, when taken together, amounts to adverse prejudice contravening Article 17 and Rule 95.<sup>7</sup>
7. In addition, the Defence takes exception to issues that the Response does raise, and these are addressed, in turn, below.

(i) The Response's first complaint: the Motion is untimely

8. The Response argues that the Motion is untimely. It does this because (a) it challenges Prosecution evidence adduced over 19 months ago,<sup>8</sup> and (b) it has not materially impaired the Accused's ability to defend himself.<sup>9</sup>
9. The general complaint that the Motion is untimely is curious, given the continuous nature of the introduction and use of ex-temporal and ex-territorial evidence throughout the case. Ironically, the Response also details Defence objections raised at different stages in the trial.<sup>10</sup> Given such continuity, it seems prudent and expeditious, rather than untimely, that the Defence has made its submissions on this issue when it has; especially because, as the Motion pointed out, the Defence's general objection to ex-temporal and ex-territorial evidence has been an obvious and long-standing one.<sup>11</sup>
10. Yet, timeliness is only half the issue; even if the Motion was deemed untimely, it is clearly in the interests of justice to address the issue. The Motion itself detailed authority for examining the issue even out of time, where it is in the interests of justice to do so.<sup>12</sup>
11. As for the Response's more specific complaint that, for the Defence to have filed a timely objection, a motion should have been filed at the close of the Prosecution

---

<sup>6</sup> Response, para. 2.

<sup>7</sup> Special Court for Sierra Leone, Statute, Article 17 ("the Statute"). Special Court for Sierra Leone, Rules of Procedure and Evidence, Rule 95 ("the Rules").

<sup>8</sup> Response paras. 4 and 5.

<sup>9</sup> Response, paras. 6 and 7.

<sup>10</sup> Response, fn. 2.

<sup>11</sup> Motion, para. 6.

<sup>12</sup> Motion, para. 5.



case,<sup>13</sup> there is nothing in the Rules or case-law to suggest this, and indeed the presumption is unsupported.

12. The rest of the Prosecution argument under this head is about notice, not timeliness, and once again ignores the import of Rule 95, for notice cannot be given for evidence *in toto*. That class of notice, ironically, is what the Indictment is for – a point the Prosecution has consistently failed to grasp.

(ii) The Response's second complaint: the Defence objections are insufficiently specific

13. The Response argues that the Motion should identify specific pieces of evidence. However, it cites no authority to support this rather general contention, and once again demonstrates the Prosecution's misconception of the Defence's complaint.
14. The Motion makes clear that its concerns are ex-temporal and ex-territorial evidence led by the Prosecution. The Defence submits that such evidence is easily identifiable and discernible in the trial record of this case. For example, any evidence concerning the Accused's involvement in, or connection to, crimes occurring in Liberia are clearly distinct and identifiable for purposes of exclusion as requested by the Motion. Secondly, Article 1(1) of the Court's Statute makes clear that the temporal jurisdiction of the Court starts on 30 November 1996 and its geographic scope is limited to the territory of Sierra Leone. Thirdly, the Indictment at bar goes further by prescribing 18 January 2002 as the end date for all crimes alleged therein and in particularising the geographic scope of the pleaded counts to specified districts of Sierra Leone. Those districts are explicitly stated in the Indictment in relation to counts 2 through 11 and Count 1 incorporates them by reference to sustain its own viability. Accordingly, evidence occurring before 30 November 1996 or after 18 January 2002, or outside those specifically-pleaded districts Sierra Leone are the subject of the Motion.
15. It is curious and ironic that the Response cites the ICTR authority of *Bagosora* as having import;<sup>14</sup> for it is a case which has established that probative value and prejudice should be taken into account alongside relevance when assessing

---

<sup>13</sup> Response, para. 5.

<sup>14</sup> Response, fn. 11.

evidence,<sup>15</sup> the very process the Response fails to mention and the Prosecution seems to reject. Indeed, as mentioned above, the Response fails to tackle the issue of prejudice in any way.

(iii) The Response's third complaint: the Motion is contrary to accepted international jurisprudence

16. It is argued in the Response that the Motion is contrary to accepted international jurisprudence, though no argument has been made under this head in the Response, with the effect being that there is nothing to argue against. Indeed, the Response contradicts itself by citing, with apparent approval, a finding in *Milutinović et al.*, to the effect that "it is difficult to distill a general jurisprudential principle that can apply across the board to all other cases".<sup>16</sup>

17. The Response, of course, goes on to do just that, citing cases in which evidence falling outside the scope of the indictment was permissible.<sup>17</sup> However, in doing so, the Prosecution fails to spot the most pertinent point: none of the cases cited, indeed no other case at the ICTY or ICTR, include such widespread use of evidence falling outside the indictment. The reason for this is simple, and it may sound trite to repeat it, but the point does not seem to have been appreciated. Cases are determined upon the evidence which supports indictments; yet in the case at bar such evidence has become shrouded in a mist of extraneous evidence to such an impermissible degree that it contravenes Article 17 of the Statute and Rule 95 of the Rules, as submitted in the Motion.

### III. CONCLUSION

18. For all of the foregoing reasons, the Defence respectfully requests that the Trial Chamber grant the relief sought in the Motion.

---

<sup>15</sup> *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, "Decision on Admissibility of Proposed Testimony of Witness DBY", 18 September 2003, para. 16.

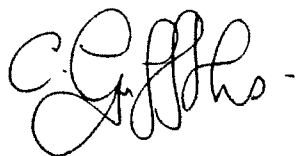
<sup>16</sup> Response, fn. 11, citing *Prosecutor v. Milutinović et al.*, IT-05-87-T, "Decision on Evidence Tendered through Witness K82", 3 October 2006, para. 12.

<sup>17</sup> For example, Response, para. 13, citing, *Prosecutor v. Ngeze and Nahimana*, ICTR-99-52-A, "Decision on the Interlocutory Appeals – Separate Opinion of Judge Shahabuddeen", 5 September 2000, paras. 23 and 24; Response, fn. 18.

1066

30705

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'C. Griffiths'.

---

**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**

Dated this 5th Day of October 2010,  
The Hague, The Netherlands

### LIST OF AUTHORITIES

#### *Prosecutor v. Taylor*

*Prosecutor v. Taylor*, SCSL-03-01-T-1086, "Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone", 24 September 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-1093, "Prosecution Response to Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone", 29 September 2010

#### ICTR

*Prosecutor v. Bagosora et al.*, ICTR-98-41-T, "Decision on Admissibility of Proposed Testimony of Witness DBY", 18 September 2003  
<http://www.ictrcaselaw.org/docs/doc39146.PDF>

*Prosecutor v. Ngeze and Nahimana*, ICTR-99-52-A, "Decision on the Interlocutory Appeals – Separate Opinion of Judge Shahabuddeen", 5 September 2000  
<http://www.ictrcaselaw.org/docs/doc59310.pdf>

#### ICTY

*Prosecutor v. Milutinović et al.*, IT-05-87-T, "Decision on Evidence Tendered through Witness K82", 3 October 2006  
<http://www.icty.org/x/cases/milutinovic/tdec/en/061003.pdf>



**SPECIAL COURT FOR SIERRA LEONE**

DOKTER VAN DER STAMSTRAAT 1 • 2265 BC LEIDSCHENDAM • THE NETHERLANDS

PHONE: +31 70 515 9701 or +31 70 515 (+Ext 9725)

Court Management Section – Court Records

**CONFIDENTIAL DOCUMENT CERTIFICATE**

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**

Case Number: **SCSL-03-01-A**

Document Index Number: **1325**

Document Date: **01 October, 2012**

Filing Date: **01 October, 2012**

Document Type: **Public with Confidential Sections D & E of the book of authorities**

Number of Pages: Number from: **376-377 and 1068-1183 Section D  
1184-1214 Section E**

- ☐ Application
- ☐ Order
- ☐ Indictment
- ☒ **Submission**
- ☐ Motion
- ☐ Correspondence

Document Title:

**Public Prosecution applicant's submissions with confidential sections D and E of the book of authorities**

Name of Officer:

Samuel Fornah

Signed: 