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SCSL-04-15-A
(3347 - 3641)

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SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Hon. Justice Renate Winter, President,
Hon. Justice Jon Kamanda,
Hon. Justice George Gelaga King
Hon. Justice Emmanuel Ayoola, and
Hon. Justice Shireen Avis Fisher

Acting Registrar: Ms. Binta Mansaray

Date filed: 15 June 2009

THE PROSECUTOR

V.

ISSA HASSAN SESAY

Case No. SCSL-2004-15-A

PUBLIC

Corrected Redacted Grounds of Appeal

Office of the Prosecutor
Mr. Vincent Wagona
Mr. Reginald Fynn

Defence Counsel for Issa Sesay
Mr. Wayne Jordash
Ms. Sareta Ashraph
Mr. Jared Kneitel

Defence Counsel for Morris Kallon
Mr. Charles Taku
Mr. Ogetto Kennedy

Court-Appointed
Counsel for Augustine Gbao
Mr. John Cammegh
Mr. Scott Martin

REVIEW STANDARD

1. The following submissions are made pursuant to Article 20 of the Statute and Rule 106 of the Rules of Procedure and Evidence ("Rules").[1] Each error of law alleged invalidates the decision on the associated charge.[2] Unless otherwise stated, each factual error alleged amounts to an assessment that no reasonable trier of fact would have made (or otherwise was an abuse of discretion[3]), was crucial to the conviction, and led to a grossly unfair outcome and a miscarriage of justice.[4] Each error of procedure could not be waived or disregarded without occasioning a miscarriage of justice.[5] Unless otherwise stated the Appellant requests that each error should result in a reversal of the decision and a dismissal of the associated charge.

APPEAL AGAINST CONVICTIONS

GROUNDS 1, 2, 3, and 14 (Accomplices)

2. The principle of the presumption of innocence requires, *inter alia*, that when carrying out

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[1] Rules of Procedure and Evidence, Special Court for Sierra Leone, 12 April 2002 (as amended 19 November 2007), Rule 106 [Rules].
[2] *Prosecutor* v. *Kondewa and Fofana*, AC Judgment, Para. 32.
[3] *Prosecutor* v. *Norman, Fofana and Kondewa*, SCSL-04-14-T, Special Court for Sierra Leone, Appeals Chamber, Decision on Interlocutory Appeals Against Trial Chamber Decision Refusing to Subpoena the President of Sierra Leone, 11 September 2006, para. 5 [Norman Subpoena Decision], referring to *Prosecutor* v. *Milošević*, IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 4 [*Milošević* Decision on Appeal from Refusal to Order Joinder], and citing *Prosecutor* v. *Karemero*, ICTR-98-44-AR73, International Criminal Tribunal for Rwanda, Appeals Chamber, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003, para. 9.
[4] *Kupreškić* Appeal Judgment, Para. 30; *Prosecutor* v. *Kondewa and Fofana*, AC Judgment, Paras. 33-36; *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].
[5] *Prosecutor* v. *Kondewa and Fofana*, AC Judgment, Para. 36.

their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged.[6] As a corollary it was for the Prosecution to inform the accused of the charges, so that he could prepare and present his defence.[7] Thereafter, it was incumbent upon the Trial Chamber to examine the charges and be satisfied beyond a reasonable doubt that the Appellant was responsible. These fundamentals were absent in the Appellant's trial. The Chamber created an irregular proeess involving novel legal principles that have no basis in international criminal law and should be rejected as inconsistent with fair trial praetices in place at the International Criminal Tribunals for Yugoslavia (ICTY) and Rwanda (ICTR) and thc International Criminal Court (ICC). Novel legal principles alone are no basis for complaint; that those created always diminished well established fair rights, whilst enhaneing those of the Prosecution, is the gravamen of this Appeal.

3. The Trial Chamber inculcated a process that compensated for the laek of clarity and quality in the Prosecution's original investigation.[8] It handed the Prosecution the discretion to exchange the factual basis of its ease at will. [9] A eireular test was ereated to permit the Prosecution to re-investigate and rely upon all the new charges.[10] There was no point when the allegations stopped and the answering could begin in full knowledge of the ease that was to bc met.[11] The resulting numbcr of new charges remains unprecedented in international criminal law[12] as does the inevitable prejudiee. The Trial Chamber throughout maintained its claim that the new charges were permissible, in part, because they did not "significantly alter the incriminatory quality of the evidence"[13] until, that is, they were used to imprison the

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6 *Prosecutor* v. *Brima et al.*, Trial Judgment, Para.97; *Prosecutor* v. *Kondwa and Fofana*, Trial Judgment, Paras. 254 and 287.

[7] Babera, Messegue and Jabardo v Spain Series A, No 146, Application Nos. 10588/83; 10589/83;10590/83, ECHR, 6 December 1988 (1989) 11.E.H.R.R. 360, at Para. 77.

[8] *Prosecutor v Sesay et al*, SCSL-04-15-635, "Prosecution Response to Sesay Defence Application for Leave to Appeal the Deeision of 1st August 2006", 23 August 2006, paragraph 7. Senior Prosecution Trial Attorney, Kevin Taverner, at the SCSL confirmed that proofing sessions at the SCSL, were used to rectify substandard pre-trial investigations. Taverner confirmed, 'All we got from the investigation was a eollection of statements – some of whieh were useful, most of which had to be re-done.... Really all we ended up with were names of people and the potential statement.' (*Effective, Efficient, and Fair? An Enquiry into the Investigative Practices of the Office of the Prosecutor at the Special Court for Sierra Leone*, by Penelope Van Tuyl, War Crimes Studies Center University of California, Berkeley, September 2008, at 44).

[9] *E.g.*, *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-339, "Decision Regarding the Proseeution's Further Renewed Witness List," 5 April 2005.

[10] Prosecutor v. Sesay et al., SCSL-04-15-T-212, "Ruling on the Oral Application for the Exclusion of Part of the Testimony of Witness TF1-199," 26 July 2004, para. 9, applying *Prosecutor* v. *Bagasora et al.*, "Decisiou on Admissibility of Evidence of Witness DP," 18 November 2003, para. 6.

[11] *Prosecutor* v. *Delalic*, IT-96-21, "Decision on the Proseeution's Alternative Request to Reopen the Proseeution's Case," 1 May 1997, Para. 20.

[12] Annex A: Convictions on charges disclosed after the commencement of the trial in July 2004.

[13] *See, e.g.*, *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-396, "Ruling on Application for the Exclusion of Certain Supplemental Statements of Witness TF1-361 and Witness TF1-122," 1 June 2005, paras. 28 (iv) and 29 (vi).

Appellant for the remainder of his life.

4. By the Trial Chamber's own admission the nexus of these charges to the Appellant was presumed.[14] The analysis conducted by regular courts to link JCE members and the direct perpetrators of crimes was abandoned,[15] along with the assessment of the Defence case which was dismissed in a paltry 16 paragraphs.[16]
5. It was not within a reasonable exercise of discretion to dismiss all the Prosecution and Defence evidence that went to support the Appellant's innocence. The novel position, that it was not possible for a high-ranking officer of the RUF hierarchy to be concerned with the well-being of the civilian population throughout the entire confliet,[17] was not based on evidence, only presumption. There can have been no other accused at an international court able to rely upon such varied and impressive support from witnesses from around the world, not least of which were the innumerable ordinary men and women of Sierra Leone who left their farms and livelihoods to travel to Freetown to give evidence for the Appellant.[18] It was not possible to both explain this support and convict the Appellant (and pass a sentence as severe as any other in international criminal law). The Trial Chamber chose to conviet on this basis and this, almost exclusively, on the tainted evidence of aecomplices.
6. It was not reasonable to dismiss the entirety of the Appellant's defence case and attach no "weight whatsoever" to witnesses who testified to not hearing about crimes in a particular locality:[19] The evidence *might* have been probative, especially given the "widespread and systematic nature of the crimes" alleged.[20] The dismissal of the totality of the Appellant's witnesses remains unsatisfactorily explained. It was an abuse of diseretion to claim that the witnesses – testifying to the considerable assistance given by the Appellant to hundreds during the conflict was applicable to only a "few privileged people."[21] The reasons proffered for dismissing the Defence insider evidence were equally flawed and inaccurate.[22] Given the *consistency*, the variety of witnesses, the breadth of their testimony, and the corroboration arising from the Prosecution case, this was patently incorrect.[23]
7. The Trial Chamber failed to have regard to any of the Prosecution and Defence evidence that, upon a sensible review, supported many (if not most) of the material aspects of the

[14] Judgment, Para. 2016.
[15] Judgment, Para. 1992.
[16] Judgment, Paras. 527-531, 565-570, 605-608, and 1329.
[17] Judgment, Paras. 605-608.
[18] Annex B: Samples of support for the Defence Case
[19] Judgment, Para. 527.
[20] *E.g.*, Judgment, Para. 1992.
[21] Judgment, Paras. 530-531.
[22] Judgment, Paras. 566, 568, 570.
[23] Annex B: Samples of support for the Defence Case.

Appellant's testimony.[24] In light of the evidence from *both Prosecution and Defence witnesses*, there was support for most, if not all material aspects of his defence. Accordingly, the epitaph "implausible," when judged according to the totality of the evidence, was unfounded. It was an error of law and fact to conclude that Sesay's testimony was a "deliberate manipulation" by Sesay to distort the truth or mislead with regard to the issue of his liability[25] unless the Chamber could provide objective support for this conclusion.

8. The reasons proffered for the dismissal of the Appellant's *consistent* testimony were stereotyped and manifestly flawed.[26] The Chamber was gravely mistaken in its conclusion that Sesay's assertion that "he was scared to punish Komba Gbundema ... as he was afraid of Sankoh's reaction"[27] could stand as proof of his unreliability. The Chamber's failure to reference a single piece of the "overwhelming evidence to the contrary" is evidence sufficient of its weakness.[28] The fact that the Trial Chamber was contrived to claim that Sesay's *de jure* status as the interim leader of the RUF was proof enough of the falsity of his assertion, when in fact it was not disputed that he was the Battle Field Commander at that time is further evidence of the erroneous analysis.[29] The fact that the Appellant's claim was supported by *evidence* (e.g., Exhibit 33 (radio log book)) leaves the matter in no doubt.[30]

9. The Trial Chamber rejected the majority of the Defence evidence on a false premise, namely that the witnesses were testifying broadly about the lack of crimes in RUF territory, the peaceful cooperation between the citizenry and the RUF, and the provision of amenities to the former across RUF territory *in the whole of Sierra Leone*.[31] This was a mischaracterisation of the factual basis of the defence case.[32] The Accused's case was predicated upon the clearest distinction between the Kailahun base, where fighters lived with

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[24] Annex B: Samples of support for the Defence Case
[25] Judgment, Para. 607.
[26] Judgment, Paras. 605-608.
[27] Judgment, Para. 605.
[28] Judgment, Para. 605.
[29] Judgment, Para. 916.
[30] Transcript/TF1-361, 14 July 2005, pp. 46-54.
[31] Judgment, Para. 530.
[32] The whole of the defence case was mischaracterised. The Trial Chamber wrongly claimed that the Sesay advanced a defence that in Kenema during the junta period no civilians were forced to mine. The Trial Chamber claimed this was asserted in paragraphs 581-584 and 590 -596 of the Sesay closing brief. This defenee was not the Sesay defence and the Chamber's conclusion that "the Chamber does not accept as credible evidence that no civilians were forced to mine in Kenema District" was, therefore erroneously based and ought not to have been taken into account in an assessment of the reliability or credibility of the defence evidence concerning enslavement at Tongo Fields. First, paragraphs 581-584 were dealing with mining in Kono during the junta which was not indicted by the Prosecution. Second, paragraphs 590-596 of the Closing Brief, set out with clarity the defence, namely "There was no *systematic* forced mining at Cyborg Pit and if there were incidents it was short lived, lasted for not more than four days and was roundly condemned by combatants and civilians alike.[32] Tthe defence position was clearly set out in in relation to the non-existence of a *policy* and, more importantly was in accordance with some of the Prosecution evidence. *See*, Ground 32.

and protected their families, compared to other less settled areas, where crimes were more common.[33] This was consistent with the Chamber's own findings[34] and supported the Appellant's case – *this is clear from the Grounds below*.

10. In any event, even a well-founded conclusion that the Appellant had manipulated the truth would not entitle the Chamber to dismiss the totality of his testimony. [35] As the Trial Chamber allowed for the testimony of Prosecution witnesses to be accepted in part, irrespective of significant frailties, the Appellant was also entitled to this approach.[36] The repudiation of the whole of this testimony was an error of law that invalidated the findings of fact and the conviction on each charge.
11. The Trial Chamber took a much less dismissive approach to the Prosecution evidence, finding witnesses unreliable but allowing their evidence to be used provided it was corroborated or provided it was "general evidence" or related to their own experiences.[37] The Trial Chamber provided no explanation – and none could properly be advanced – to justify this different approach.
12. The Trial Chamber was required to assess the witnesses on a witness-by-witness and allegation-by-allegation basis. It was not reasonable to reject all the witnesses for the same reason. The witnesses were varied and many, ranging from ex-rebels (such as witnesses DIS-069, DIS-188, and DIS-157) to teachers, farmers, traders, nurses, ex-CDF, ex-UNAMSIL (including General Opande and Hassan) and two former Presidents, Kabbah and Konaré. The accounts of these witnesses were varied and their evidence individually or taken together raised numerous separate and distinct defences which varied according to the witness testifying and the type of crime alleged.[38] The proposition that each could be rejected for the same reason – namely, that it runs counter to the evidence found reliable or, that the witness gave evidence out of an allegiance to the RUF – does not stand up to scrutiny. It is a remarkable feature of the RUF case that none of the Accused's witnesses were reliable enough to exculpate and yet each Prosecution witness could be used to convict.

Confusion of Motive and Intent

13. The Trial Chamber erred in law and fact in failing to draw a distinction between motive and intent. The Trial Chamber found the following: (i) that the RUF ideology contained 8 clear

[33] See Annex B: Samples of support for the Defence Case.
[34] Example: Paras. 705-707.
[35] Judgment, Para. 607.
[36] *E.g.*, Judgment, Paras. 539-564.
[37] For example TF1-371, TF1-366 and TF1-045 at paras. 542, 546 and 561.
[38] Annex B: Samples of support for the Defence Case

prohibitions concerning the governance of relationships between fighters and civilians;[39] (ii) that the RUF Commanders utilised the disciplinary mechanisms available to them;[40] and (iii) that "throughout the Indictment period fighters were indeed punished for transgressions such as rape, looting and burning" and that these "instances of systematic discipline of fighters for crimes committed against civilians occurred in locations where the RUF had a relatively stable control over that territory."[41] It mattered not that the Chamber concluded that the "RUF's disciplinary system was critical to maintaining its operation as a cohesive military organisation [and was used] primarily as a means to intimidate and control their subordinates and compel obedience to superior orders."[42] This was evidence that was relevant to *mens rea*. The evidence was there to be considered.

14. This evidence was critical to Sesay's defence which was based upon the evidence that there was "systematic discipline" in Kailahun where there *was* "relatively stable control." The Chamber's findings, that the RUF's approach to crimes in this stable area, was distinct from the approach to crimes in "the context of military operations," wherein the "RUF Commanders ordered the commission of crimes against civilians"[43] was significant – particularly since the evidence showed that there were few military operations conducted in Kailahun during 1996-2000. The finding that the "RUF operated on the basis that certain conduct was inherently acceptable in certain situations"[44] was a finding that it was inhibited in others. The preponderance of evidence from both Prosecution and Defence witnesses confirmed the systematic implementation of discipline across Kailahun *and* the active role that Sesay played within this context, whether to intimidate his men or otherwise.[45]
15. The Trial Chamber compounded the aforementioned errors of law and fact by failing to provide, pursuant to Article 18 of the Statute, a public judgment, accompanied by a written *reasoned* opinion. A reasoned opinion was essential to allow the Accused to fully exercise his right to appeal and so that the Appeals Chamber could review the appeal.[46]
16. The Trial Chamber was not obliged to comment on every piece of evidence and it enjoys the presumption that it "evaluated all the evidence presented to it."[47] It was not obliged to "articulate every step of its reasoning for each particular finding it makes" nor "required to

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[39] Judgment, Para. 705.
[40] Judgment, Para. 706.
[41] Judgment, Para. 707.
[42] Judgment, Para. 706.
[43] Judgment, Para. 708.
[44] Judgment, Para. 709.
[45] Annex B: Samples of support for the Defence Case
[46] *Krajišnik*, AC, Para. 139.
[47] Judgment, Para. 478, quoting *Kvočka et al.* Appeal Judgement, para. 23 [original footnotes omitted].

set out in detail why it accepted or rejected a particular testimony."[48] However, the Trial Chamber was obliged to demonstrate that it had not "disregarded any particular piece of evidence"[49] and obliged to address the specific issues, factual findings or arguments, which validate the Decisions.[50]

17. The Trial Chamber was obliged to provide clear, reasoned findings of facts as to each element of each crime charged.[51] This requirement was critical where there was a genuine and significant dispute surrounding a witness' credibility and the testimony was central to the question of whether a particular element of crime is proven.[52] The Trial Chamber elected to accept the evidence of the Prosecution accomplices and those who might reasonably have been said to have motives or incentives to implicate the accused. The Chamber has a corresponding and immutable obligation *explain why it accepted the evidence of these witnesses*; "in this way, a Trial Chamber shows its cautious assessment of this evidence."[53] It is submitted that this error alone invalidates each and every charge, relying as they do almost exclusively on accomplices – without explanation or reserve.

18. There was little or no reason to convict the Appellant and none was proffered. Evidence of a regular deliberation - where evidence is weighed and the presumption of innocence is applied - is wholly absent. "In respect of each count charged against each of the Accused, the Trial Chamber [has to determine] whether it is satisfied, on the basis of the whole of the evidence, that every element of that crime and the criminal responsibility of the Accused for it have been established beyond reasonable doubt."[54] This process, if conducted properly, necessarily produces a reasoned judgment.

19. The Judgment is drafted in a narrative form. It conceals the serious flaws in the evidential basis for the convictions.[55] Whilst the Trial Chamber had a broad discretion to evaluate inconsistencies, to consider whether the evidence taken as a whole was reliable and credible, to accept or reject the "fundamental features" of the evidence,[56] and to determine the weight

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[48] *Krajišnik*, AC, Para, quoting *Musema*, AC, Para. 277.
[49] Judgment, Paras. 478-479.
[50] *Krajišnik*, AC, Para. 139.
[51] *Kajelijeli*, Judgment, ICTR-98-44-A, AC, 23 May 2005, Para. 60.
[52] *Kajelijeli*, TC, Para. 39. .
[53] *Krajišniki*, AC, para. 146, *Niyitegeka* Appeal Judgement, para. 98. *See also Nahimana et al.* Appeal Judgement, para. 439; *Ntagerura et al.* For example, "a Trial Chamber must be careful to allow for the fact that, very often, a confident demeanour is a personality trait and not necessarily a reliable indicator of truthfulness or accuracy." (*Kupreškić*, AC, para. 138). It is submitted that a corollary to this is the need to explain what it was that convinced the Trial Chamber to rely upon these witnesses. (*Kupreškić* et al, *Appeal Chamber Judgement*, para. 202) Appeal Judgement, paras 204 and 206, and *Blagojević and Jokić* Appeal Judgement, para. 82.
54 *Prosecutor* v. *Brima et al.*, Trial Judgment, para. 98.
[55] *See* Ground 14.
56 *Prosecutor* v. *Brima et al.*, Trial Judgment, para.110.

to be given to discrepancies between a witness's testimony and his prior statements,[57] this discretion is not unfettered.

20. The Trial Chamber was obliged to examine a witness's testimony and evaluate it with reference to time-honoured criteria including an assessment of consisteney;[58] the level of detail;[59] whether it was eorroborated;[60] the reaction in eross-examination;[61] the demeanour of the witness;[62] and whether the testimony was marked by anger or hostility.[63] This was an essential component of a fair trial. The Appellant submits that 59 paragraphs[64] in the judgment purporting to assess the Prosecution witnesses are manifestly inadequatc.

21. Whilst the mere existence of inconsisteneies in the testimony of a witness does not undermine the witness's credibility,[65] significant inconsistencies do.[66] The contradictions need to be examined to assess whether they are of a material nature and whether they vitiate the consisteney of the substance of the testimony as to their account of *the facts at issue.*[67] In the event that a witness is unable to provide a convincing explanation for the inconsistencies the doubt that is raised must remain.[68] The Chamber must demand an explanation of substance rather than mere procedure,[69] something concrete to dispel the doubt.[70] The Trial Chamber did not assess the reliability of Prosecution witnesses *as it related to the charges.* Expressing general concern about 17 Prosecution witnesses generally was a fraction of the analysis required.[71]

22. Annex C illustrates the manifest frailties that characterised the principle Prosecution accomplices.[72] At not one point does the judgment purport to address these inconsistencies or indices of unreliability nor, more importantly, how it resolved them and removed the doubt that must have existed in relation to the charges. This omission is an admission of neglect of fair process and fair result; it is an error of law and fact that vitiates each conviction on each

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57 *Prosecutor* v. *Brima et al.*, Appeal Judgment, para.120; *see also*, para. 154.
58 *Kajileji* TC Judgment, paras. 261, 468, 704,
59 *Kajileji* TC Judgment, para. 704,
60 *Akayesu* TC Judgment, paras. 261, 406, 453,
61 *Akayesu* TC Judgment, para. 299
62 *Kajileji* TC Judgment, paras. 457, 680, 704,
63 *Akayesu* TC Judgment, para. 406.
64 *I.e.*, Judgment, Paras. 522-526, 533, 538-564, and 579-603.
65 *Prosecutor* v. *Brima et al.*, TC Judgment, para. 109. *Prosecutor* v. *Kondewa et al.*, TC Judgment, para. 262.
66 *See, Prosecutor* v. *Brima et al.*, Trial Judgment, Paras. 353, 359, 362, 368, 401, and 916.
67 *Rutaganda* TC Judgment, paras. 252 and 334.
68 *Rutaganda* TC Judgment, para. 227. *See also*, Rutaganda AC Judgment, para.190.
69 *Kayishema* TC Judgment para. 78.
70 *Kayishema* TC Judgment para. 443.
71 Witnesses George Johnson, TF1-045, TF1-093, TF1-108, TF1-113, TF1-117, TF1-141, TF1-253, TF1-263, TF1-314, TF1-360, TF1-361, TF1-362, TF1-366, TF1-367, TF1-369, and TF1-371 at Judgment, Para. 538-561 and 579-603
72 Annex C: Examples of indicia of unreliability in relation to TF1-012, TF1-045, TF1-093, TF1-108, TF1-141, TF1-263, TF1-330, TF1-330, TF1-361, TF1362 and TF1-366.

charge.

GROUND 4: Rule 68 Violations

23. The Trial Chamber erred in law, fact and/or procedure in dismissing the Defence Application for disclosure of Rule 68 material,[73] namely (i) the assistance offered and given to Prosecution witness John Tarnue by the Prosecution to assist with relocation to a new country;[74] and (ii) the information in the possession of, or known to the Office of the Prosecutor ("OTP"), which discloses an unlawful and *ultra vires* attempt by the investigating arm of the OTP to arrest Benjamin Yeaten in Togo between 2000 and 2004. The Trial Chamber, endorsing the position taken by the Prosecution, concluded that this material was not discloseable pursuant to Rule 68.[75]

24. The witness, John Tarnue admitted that the then-Chief of Prosecution Investigations had provided him with critical relocation and asylum assistance.[76] On an unrelated Rule 68 issue, the Defence alleged that there had been an illegal or improper attempt by Alan White to obtain evidence, namely of Benjamin Yeaten in Togo sometime during 2000-2004, and that this information was relevant to investigative probity and was discloseable pursuant to Rule 68.[77] The Prosecution claimed that "information that is not and never was in the possession of the Office of the Prosecutor cannot be disclosed."[78] The Trial Chamber erred in law in failing to order disclosure. The material had been identified with precision by the Defence.[79] It is trite law at the ICTY and ICTR that exculpatory material includes evidence that could be utilized by the Defence in the cross-examination of Prosecution witnesses[80][81] or that which might undermine credibility.[82] The Trial Chamber's ruling that the Defence suggestion (that this information was in the possession of the Prosecution) was "mere

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[73] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-276, "Motion Seeking Disclosure of the Relationship Between the United States of America's Government and/or Administration and/or Intelligence and/or Security Services and the Investigation Department of the Office of the Prosecutor," 8 November 2004.
[74] *Ibid*, Para. 1
[75] *See*, Prosecutor v. *Sesay et al.*, SCSL-04-15-T-363, "Decision on Sesay-Motion Seeking Disclosure of the Relationship Between Governmental Agencies of the United States of America and the Office of the Prosecutor," 2 May 2005.
[76] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-276, "Motion Seeking Disclosure of the Relationship Between the United States of America's Government and/or Administration and/or Intelligence and/or Security Services and the Investigation Department of the Office of the Prosecutor," 8 November 2004, Paras. 12. *See also*, Transcript/Tarnue, 5 and 6 October 2004.
[77] Ibid, Para 14 (vi).
[78] *Ibid*, Para. 26.
[79] Transcript/Tarnue, 5 and 6 October 2004.
[80] *Prosecutor v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Defence Motions alleging Violations of the Prosecution's Disclosure Obligations Pursuant to Rule 68, para. 31
[81] Prosper Mugiraneza's Motion to Compel Disclosure of Exculpatory Evidence Pursuant to Rule 68, 10 December 2003
[82] *Decision on Prosper Mugiraneza's Motion to Compel Disclosure of Exculpatory Evidence Pursuant to*

speculation" and lacking "concrete proof"[83] defied reason and was an error of law and fact amounting to an abuse. The willingness of the Prosecution to advance this position on such a critical obligation and in such an obvious manner calls into question the *bona fides* of the whole Rule 68 disclosure made during the trial. The Appellant requests the remedy requested in the Notice of Appeal.

GROUND 5: Disregard of Motive

25. The Trial Chamber erred in law and fact in finding that "the fact that a witness has been relocated by the WVS [Witness and Victim's Section] in order to protect his safety or the safety of his family does not affect the Chamber's view of the evidence provided by the witness."[84] Having ruled that this "assistance" was not discloseable pursuant to Rule 68[85] (*see* Ground 4) this material was not before the Chamber and it was not in a position to assess the impact of this potential incentive/inducement on witness testimony.

26. The material sought, namely information that would explain the purposes of unexplained payments to witnesses self-evidently went to the heart of proof of *bona fides* of the whole Prosecution. The evidence which emerged through the trial, and particular from the *Taylor* case, was shocking and ought to have put the Trial Chamber on notice that there was potential corruption infecting the investigative arm of the Prosecution, amounting to the bribery of critical witnesses and the deliberate tainting of evidence.[86] The Trial Chamber has a duty to look at the totality of the evidence on record and assess it[87] – not simply acknowledge the potential impact of relocation assistance upon testimony,[88] and thereafter disregard it. The Defence requests that the Appeal Chamber dismiss the Trial Chamber's assessment of evidence and substitute its own findings in relation to the relevant charge.

GROUND 6: Defects in the Indictment and Lack of Notice of the Charges

27. The Trial Chamber erred in law, fact and/or procedure when concluding that the Appellant's presumption of innocence, and the right to be informed of the nature and cause of the

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Rule 68, 10 December 2003.

[85] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-276, "Decision on Sesay Motion Seeking Disclosure of the Relationship Between the United States of America's Government and/or Administration and/or Intelligence and/or Security Services and the Investigation Department of the Office of the Prosecutor," 2 May 2005, Para. 8 November 2004, Para. 53.

[84] Judgment, Para. 525.

[85] *See* Ground Four.

[86] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-1161, "Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses," 30 May 2008, at, e.g., paras. 19, 27, 28, 30.

[87] *Prosecutor* v. *Brima et al.*, AC Judgement , para. 145.

[88] For an example of how testimony was observed to have affected: *see Prosecutor* v. *Simić et al.*, "Judgement

charges, (pursuant to Articles 17(3) and (4)(a) of the Statute) had not been breached as indicated in Annex D.[89] The Trial Chamber erred in concluding that the charges and their alleged commission pursuant to Articles 6(1) and 6(3) had been properly pled and/or could be cured by subsequent information. The volume of defects cumulatively undermined the trial and the Appellant's Article 17 guarantees. In the confines of these grounds and the limited page count the Appellant is unable to detail each pleading deficiency. The Appellant relies upon Annex D and asserts that the failure to plead more than a formal statement alleging the Appellant's 6(1) and 6(3) liability and every mode of responsibility known to international law - combined with the late disclosure of charges (through witness statements) fatally undermined the Appellant's ability to defend the charges. Annex A contains the "material facts" that ought to have been pleaded,[90] not simply led in evidence.

28. As Annex B shows, the resulting prejudice was extensive and incurable, and the Defence seeks the dismissal of the whole indictment. In the alternative the Defence seeks the dismissal of the charges in Annex A: all of which were impermissibly adduced through evidence after the commencement of the case.[91]

Failure to Exercise its Discretion

29. By the Chamber's own admission it declined to consider the alleged prejudice arising from the deficient indictment and the wholesale introduction of new charges. As noted by the Chamber, it "explicitly upheld the form of the pleading of the locations of criminal acts in the Indictment in its pre-trial decisions, including in the *Sesay* Form of the Indictment Decision. The Chamber will therefore not revisit the matter."[92] The Chamber was obliged to consider the matters in the Appellant's Closing Brief and the new charges.[93] The Trial Chamber appeared to labour under the misapprehension that the burden was on the Accused to prove, "the existence of a clear error of reasoning in [that] Decision,"[94] rather than the duty being on the Chamber to assess any claimed prejudice and demand that the Prosecution discharge *their* burden of proof.

Misconception of a "Charge"

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in the Matter of Contempt Allegations Against an Accused and His Counsel," 30 June 2000, para. 96.

[89] Annex B: Charges that led to convictions – no or insufficient notice.

[90] *Prosecutor v. Kupreškić*, IT-95-16-A, Judgment (Appeals Chamber), 23 October 2001, para.88. As affirmed in *Prosecutor v. Laurent Semanza*, ICTR-97-20-T, Judgement (Trial Chamber) 15 May 2003, para.44.

[91] Annex B: Samples of Support for the Defence Case.

[92] Judgment, Para. 422.

[93] Sesay Defence Closing Brief, Paras. 1-7.

[94] Judgment, Para. 422.

30. The Trial Chamber conclusion "that the volume of defects in the Indictment, taken cumulatively, has [not] deprived any of the Accused of their right to a fair trial"[95] was based on fundamental misconception of the definition of a charge.[96] Trial Chamber I created a novel legal test, claiming that a new distinct basis for conviction was not a new charge provided that it was a "building block constituting an integral part of, and connected with, the same *res gestae* forming the factual substratum of the charges in the Indictment."[97] This 'test' has no basis in any jurisprudence and the meaning of it remains unclear. It is illustrative, however, of the Chamber's misconception of the Appellant's Article 17(4)(a) rights, which depend upon an understanding of the absolute right to prompt notification of *the charges* (factual substratum or otherwise) in the indictment.[98] This misconception explains how the majority of the charges were disclosed after the commencement of the case.[99]

Abuse of Mandatory Pleading Requirements

31. The Trial Chamber added self-fulfilling caveats to the jurisprudence which transformed mandatory pleading requirements into discretionary requirements. It is accepted that there is a "narrow exception" to the specificity requirement, allowing for "the widespread nature and sheer scale of the alleged crimes [which] make it unnecessary and impracticable to require a

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[95] Judgment, Para. 472.

[96] According to the Appeal Chamber at the Special Court for Sierra Leone, substantive changes, which seek to add fresh allegations amounting either to separate charges or to a new allegation in respect of an existing charge ought to be the subject of an amendment to an Indictment. (*Prosecutor v Norman et al*, SCSL-04-14-397, "Decision on Amendment of Consolidated Indictment", 16 May 2005, paragraph 80). Further, as noted in *Prosecutor v Halilovic*, IT-01-48-PT, "Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment", 17 December 2004, paragraph 30, the key focus when considering whether the Prosecution is seeking to rely upon "a new charge" is whether there exists a basis for conviction "that is factually and/or legally distinct from any already alleged in the indictment". *See also Proseeutor v Prlic*, IT-04-74-PT, "Decision on Prosecution Application for Leave to Amend the Indictment and on Defence Complaints on Form of Proposed Amended Indictment", 18th October 2005, paragraph 13: "[i]f a new allegation does not expose an Accused to an additional risk of conviction, then it cannot be considered a new charge". *See also*, *Prosecutor v Krnojelac*, IT-27-95-PT, "Decision on Prosecutor's Response to Decision of 24 February 1999", 24 February 1999, paragraph 20, it was observed that the presence or absence of new counts in the indictment did not determine whether the Proseeution had sought to add new charges: "the Trial Chamber has obtained the impression that the prosecution may have taken the opportunity to add new charges for which leave is required pursuant to Rule 50(A). It is true, as the prosecution says, that no new counts have been added to the indictment. But that is only because of the pleading style adopted by the prosecution in this case: each count has been pleaded only in the terms of the Statute, and thus in terms of absolute generality, leaving it to the material facts pleaded in respect of that count to reveal specific details which are required".

[97] Examples: Prosecutor v. Sesay, Decision on the Defence motion for the exclusion of evidence arising from the supplemental statements of Witnesses TF1-113, TF1-108, TF1-330, TF1-041 and TF1-288, 20 March 2006, and Decision on Defence motion requesting the exclusion of evidence arising from the supplemental statements of Witnesses TF1-168, TF1-165 and TF1-041, 27 February 2006.

[98] For an indictment to be sustainable, facts alleging an offence must demonstrate the specific conduct of the accused constituting the offence. *Prosecutor* v. *Anatole Nsengiyumva*, ICTR-96-12-I, "Decision on the Defense Motion Raising Objections on Defects in the Form of the Indictment and to Personal Jurisdiction on the Amended Indictment," 12 May 2000, para. 1.

[99] Annex A: Convictions on charges disclosed after the commencement of the trial in July 2004.

high degree of specificity."[100] The Trial Chamber erred in law by permitting the Prosecution to abuse this discretion. The issue in the RUF trial was not that the Prosecution could not obtain the details. As is plain from Annex A these details were sitting on the Prosecutor's desk. They should have been in theIndictment. [101]

32. Further, the Chamber created a new and wholly impermissible exception to the specificity requirements for Indictments, namely that the SCSL trials were "intended to proceed as expeditiously as possible in an immediate post-conflict environment."[102] This was an error of law. The previously known and accepted *narrow* exception (the widespread nature and sheer scale of the alleged crimes[103]), depends upon matters outside the control of either the prosecution or the judiciary. It represents the only legitimate or fair exeeption, recognizing the balance between the rights of the accused to be fully informed while recognising that the Prosecution cannot do the impossible. As the Trial Chamber correctly identified – and ignored – this exception permits a consideration of the "praetical considerations relating to the *nature of the evidence* against the need to ensure that an Indictment is sufficiently specific to allow an aceused to fully present his defence."[104] An aceused's rights to disclosure cannot be sacrificed because thc Prosecution failed to request the Court to grant further time for investigations.

33. Further, the Trial Chamber erred in law in downgrading the absolute requirement to plead direct participation: "the Prosecution's obligation to provide particulars in an indictment must be adhered to fully."[105] The Trial Chamber downgraded this requirement, claiming that this requirement was limited to a discretionary requirement, namely "in as far it is possible."[106] In this way, the Trial Chamber erroneously concluded that, where it was alleged that the appellant was responsible for personally perpetrating the crime charged, it was permissible to omit *completely* the material facts underpinning the charge and the corresponding alleged form of responsibility pursuant to Article 6(1) liability.[107] This approach lacks merit: how can

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[100] *See, for example*, Judgment, Para. 329, where the Trial Chamber purports to accept the narrowness of this exception.
[101] *Prosecutor v. Kupreškić*, IT-95-16-A, Judgment (Appeals Chamber), 23 October 2001, paras. 88-89.
[102] Judgment, Para. 330.
[103] *See, for example, Brima et al.*, Appeal Judgment, at para. 41.
[104] Judgment, Para. 331; emphasis added.
[105] *Brima et al.*, Appeal Judgment, para. 38, quoting approvingly from *Prosecutor* v. *Brđanin and Talić*, IT-99-36-1, Deeision on Objections by Momir Talić to the Form of the Amended Indictment (TC), 20 February 2001, Para. 22 [Talić Decision on Form of Indictment]. *See* Sesay Defence Closing Brief, Paras. 3-6.
[106] Judgment, Para. 325.
[107] As noted in *Prosecutor* v. *Brđanin*, "where the prosecution gave notice of during the trial for the first time of its intention to establish a case that the accused personally perpetrated the crime eharged. Such a new case wonld require extensive amendments to the current indictment, to include detailed material facts such as the identity of thc victim, the place and the approximate date of the crime and the means by which the crime was committed" (*Prosecutor* v. *Brđanin* IT-99-36, Decision on Form of Further Amended Indictment and

the Prosecution charge direct commission if they are unaware of any evidence that shows direct participation?

34. In most instances the Chamber outlined the law and then promptly disregarded it.[108] On occasions the Chamber's approach was wholly contradictory. The Trial Chamber correctly identified the pleading requirements for Article 6(3) liability[109] and then disregarded it. The jurisprudence (nor fair trial practice) does not support the conclusion that because the "*mens rea* of the Accused for the liability as a superior is pleaded explicitly in paragraph 39 of the Indictment and incorporated into each Count by paragraph 40. The Accused's knowledge of the crimes and his failure to prevent or punish those crimes, therefore, is adequately pleaded in the Indictment."[110] The recitation of the law of command responsibility contained at paragraph 39 of the Indictment informed the Accused that he was being charged pursuant to Article 6(3); it did not inform the Accused of his precise relationship to his alleged subordinates, how he was alleged to know of the crimes, nor the necessary and necessary measure nor, with any precision, his alleged *mens rea*.

35. As regards notice, the approach taken by Trial Chamber I in the CDF case was demonstrably different. The Chamber was rigorous in its analysis of the notice requirements, refusing to to allow the Prosecution to expand the particulars in the CDF indictment by leading evidence of crimes "to include all other unspecified geographic locations."[111] In the CDF case, Trial Chamber I recognised that it was unfair to allow the Prosecution to adduce factual allegations of crime within villages and towns not particularised in the Indictment, as "the Indictment in this respect is unspecific and vague."[112] The reasons for excluding prejudice in the CDF case but permitting it wholeheartedly in the RUF case remain unclear.

36. On occasion, the Trial Chamber appreciated the importance of the issue. For example, as regards rapes and other forms of sexual violence alleged to have been committed by RUF fighters in Kailahun the Chamber declined to convict on the evidence on the basis that the "Prosecution did not plead these crimes in respect of Kailahun District."[113] There was no reason to distinguish Kailahun – which alleged "sexual violence" in the indictment – from other defective pleading. The prejudice to the Defence in this paragraph was exactly was suffered in relation to all the counts.

Prosecution Application to Amend, 26 June 2001, para. 13 ('*Brđanin*, Form of Indictment Decision')).

[108] Judgment, Paras. 418 and 420-428.

[109] Judgment, Paras. 406 – 410.

[110] Judgment, Para. 409.

[111] *Prosecutor* v. *Norman*, SCSL-04-14-T-550, "Decision on Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98," 3 February 2006, para. 8.

[112] *Ibid.*

[113] Judgment, Para. 1405.

37. The Trial Chamber erred by confusing the requirement that the accused be informed of the charges through notice and the service of witness statements (or communications akin to witness statements) such as "motions to add witnesses to its witness list."[114] Defects 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.[115] This does not include witness statements served throughout the Prosecution case. The Trial Chamber's approach confused the material facts with the evidence to prove those facts:[116] it is entirely self-fulfilling to acknowledge a defect in the pleading of a material fact and then allow the evidence to serve as both the fact and evidence. This logic would mean that an accused could never be prejudiced provided the Prosecution led evidence to prove the inadequately pled charge.
38. The Trial Chamber's error was compounded by the contradictions in its approach. On the one hand they were content to characterise witness statements as valid and valuable notice, and thereby capable of curing defects, but, when considering contradictions between those notifying statements and the subsequent oral testimony, declined to consider any departure as significant, except as an issue of credibility: "Material differences between a prior statements and oral testimony go to the credibility and the weight to be attached to such evidence, not to question (sic) of a defect in the indictment."[117] In other words, for charges led through witness statements there could be no finding of a defect and no application of the burden and standard of proof.

GROUND 7: Acts of Terror Pleading

39. The Trial Chamber erred in law and fact in concluding that the Indictment provided Sesay with adequate notice that acts of Terrorism, as pleaded in Count 1, included "acts or threats of violence independent of whether such acts or threats of violence satisfy the elements of any other criminal offence."[118] The Defence seeks the reversal of this finding and requests that affected counts/charges be dismissed.

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[114] Judgment, Para. 333.
[115] CDF AJ, Para. 443, *Simić* Appeal Judgement, para. 24.
[116] *Prosecutor v. Kupreškić*, IT-95-16-A, Judgment (Appeals Chamber), 23 October 2001, para. 88. As affirmed in *Prosecutor v. Laurent Semanza*, ICTR-97-20-T, Judgement (Trial Chamber) 15 May 2003, para. 44.
[117] Judgment, Para. 334.
[118] Judgment, Para. 115, and Sesay Closing Brief, Paras. 102-104.

40. The Appeals Chamber in the CDF Appeal found that the Trial Chamber erred in not considering all conduct that was adequately pleaded in the Indictment irrespective of whether such conduct satisfied the elements of any other crimes under the remaining counts.[119] The notice in the RUF case was different. First, the Prosecution provided notice that the acts supporting criminal responsibility under the count were the "crimes ... charged through Counts 3-14".[120] There was no indication that this would include acts outside of the crimes. The Prosecution did not indicate that the Accused should consider the facts, detailed in the indictment, falling outside these enumerated crimes, such as, "threats to kill" [or] "destroy" as per the pleading in the CDF Indictment.[121]
41. This notice was buttressed by further notice in the Prosecution's Supplemental Pre-trial which purported to provide clarification of paragraph 44 of the RUF Consolidated Indictment. The appellant was informed that "the nexus between [him] and Count 1" was his alleged commission of the crimes alleged in Counts 3-14.[122] There is nothing to suggest that the material facts would include acts not amounting to those crimes. In these circumstances, the Chambers findings that burning, including the burning of homes during the attack on Koidu Town in February/March 1998 and those in Tombodu between February and April 1998, were acts of terror was an error of law.[123]

GROUND 8: Collective Punishment Pleading

42. The Trial Chamber erred in law and fact in concluding that the Indictment provided Sesay with adequate notice that acts of Collective Punishment, as pleaded in Count 2, included "conduct [that] does not satisfy the elements of any other crimes charged in the Indictment."[124] The Defence seeks the reversal of this finding and requests that the affected counts/charges be dismissed.
43. The Appellant was deprived of clear notice. First, the Prosecution provided notice that the acts supporting criminal responsibility under the count, were the "crimes... charged through Counts 3-14".[125] The Prosecution failed to provide notice that these would include facts falling outside these enumerated crimes, such as, "threats to kill" [or] "destroy" as per the pleading in the CDF Indictment.[126]

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[119] CDF Appeal, Para. 364.
[120] RUF Consolidated Indictment, Para. 44.
[121] CDF Indictment, Para. 28 and *Fofana et al.*, Appeal Judgment, supra, note 256, paras. 360-364.
[122] Paragraph 15 of the Supplemental Pre-Trial Brief.
[123] Judgment, Para. 2064.
[124] Judgment, Para. 128.
[125] RUF Consolidated Indictment, Para. 44.
[126] CDF Indictment, Para. 28 and *Fofana et al.*, Appeal Judgment, paras. 360-364.

44. This notice was buttressed by further notice in the Prosecution's Supplemental Pre-trial which purported to provide elarification of paragraph 44 of the RUF Consolidated Indictment. The appellant was informed that "the prosecution theory of the case [was] that at various locations throughout Sierra Leone... the AFRC/RUF engaged in the crimes charged in counts 3 to 13.[127] In these circumstances the Chambers findings that the burning of homes during the attack on Koidu Town in February/Mareh 1998 and those in Tombodu between February and April 1998 were acts of collective punishment was wrong in law.[128]

45. Additionally: the Trial Chamber erred in finding burning as an act of terror or collective punishment in Koidu Town in February/March 1998.[129] The Trial Chamber claimed that only "[c]onduct that is adequately pleaded in the Indictment will be considered under this offence"[130] The aforementioned acts of burning were not pleaded, adequately or otherwise, in the Indictment, which was limited to burning in "various locations in the District, including Tombodu, Foindu and Yardu Sando, where virtually every home in the village was looted and burned."[131]

GROUND 9 and 10: (Counts 6, 9, and 13 (Kailahun District) and Counts 12, 15, and 17 Pleading)

46. The Trial Chamber erred in law and fact in concluding that the pleading of these counts and/or the charges provided sufficient notice and did not prejudice the Defence or prevent a fair trial on the counts or the charges.[132]

47. The Trial Chamber erred in law and fact in rejecting the Appellant's argument concerning defects, as advanced in the Closing Brief.[133] Having found that the Prosecution created confusion in its characterisation of thc offence "as predominantly sexual in nature"[134] it was incumbent upon the Chamber to assess the charges. Given the operative misconception, namely that charges were divisible into strata and substrata, it is plain that this analysis was not conducted.

48. It is submitted that if the Chamber had conducted the analysis the errors that defined the approach to Ground 39 would not have occurred. The Appellant refers the Appeal Chamber to Annex A and the associated submissions in Ground 39, detailing the late service of the

[127] At this time Count 14 in the RUF Consolidated Indictment was Count 13 in the RUF Indictment.
[128] Judgment, Para. 2064.
[129] Judgment, Para. 2064.
[130] Judgment, Para. 115.
[131] Indictment, Para. 80.
[132] Judgment, Paras. 426-428.
[133] Sesay Defence Closing Brief, Paras. 94-100.
[134] Judgment, Para. 467.

specific charges and the errors in the assessment of the evidenee taken by the Trial Chamber. The Trial Chamber erred by coneluding that the pleading as regards these counts was adequate and did not "adversely affect the ability of the Accused to prepare their defence."[135]

GROUND 11: Enslavement Pleading

49. The Trial Chamber erred in law and fact in concluding that the Appellant had been provided with sufficient notice that acts of alleged enslavement other than "domestie labour and use as diamond miners" could support Count 13.[136] The Prosecution having given this unequivocal notice should not have been permitted to resile from it. The Chamber acknowledged that this was the notice and then disregarded the prejudice arising. The Appellant refers the Appeal Chamber to Annex A. Thc eharges that were led concerning forced military training; forced farming and forced carrying of loads should be dismissed. As indicated in the Closing Brief – this provided the Prosceution with the opportunity to create the ease as the trial progressed.[137]

GROUND 12: Joint Criminal Enterprise Pleading

50. The Trial Chamber erred in law and fact in finding that thc pleading of the joint criminal enterprise liability provided sufficient noticc and did not prejudice the Appellant or prevent a fair trial.[138] The Defence seeks the reversal of this finding – as argucd in the Closing Brief[139] – and the dismissal of the joint criminal entcrprise liability, as alleged pursuant to Article 6(1) of thc Statute.
51. The Trial Chamber erred in law by finding that the defence was not prejudiced by the fluctuating notice provided to the defence concerning the Joint Criminal Enterprise. The Trial Chamber correctly identified its role"[140] and then failed to conduct required assessment.
52. The approach taken by the Trial Chamber was illogical: the Chamber permitted the Prosecution to cure defective plcading in the Indictment by the provision of 'clarifying' information,[141] yet, appeared not to rccognise that contradietory information could detract from adcquate notiee. The Chamber took the approach that provided the first notice was adequate, any subsequent and eontradictory notiee could safely be disregarded: thc Appellant had to guess at which case the Prosecution was pursuing and which would, ultimately, be disregarded. The Chamber accepted that the Prosecution indicated that they wished to pursue

[135] Judgment, Para. 428.
[136] Judgment, Para. 1476.
[137] Sesay Defenee Closing Brief, Paras. 246-248.
[138] Judgment, Para. 394.
[139] Sesay Defence Closing Brief, Paras. 191-204.
[140] Judgment, Para. 357.
[141] *See, e.g.*, Judgment, Para. 333.

a different JCE (*inter alia,* a change to the criminal purpose and means), dismissed the later notice as a unilateral "attempt to alter a material fact in the Indictment", and then failed to consider how that would necessarily have misled the Appellant. [142] The Trial Chamber wrongly characterised the issue – it was not only a unilateral attempt to alter a material fact in the Indictment[143] - but notice to the Appellant that created prejudice.

53. The conclusion drawn at paragraph 375 of the Judgment that the Accused were on notice that they had committed the crimes of collective punishment and acts of terrorism and that one of the goals was to gain control of Sierra Leone, misses the point. First, the relationship between these objectives and means is critical to any proper assessment of liability. The original JCE alleged that Count 3-14 were within the criminal purpose or were a foreseeable consequence of it. The JCE Notice then changed the agreement alleged and limited the crimes to those contained within counts 1, 2, 12, 13 and 14.[144] The crimes charged in Counts 3 through 11 were newly alleged to be the foreseeable consequences of the crimes agreed upon in the joint criminal enterprise;[145] it was no longer being alleged that the Appellant intended the crimes in Counts 3-11.

54. Plainly, it is not sufficient to allow confusion of the means and the purposes, since the Chamber must assess, first, whether there was a plurality and whether it acted in concert to further the common purpose.[146] It is essential to any assessment that a plurality is established in pursuit of a purpose: in the absence of a clearly alleged purpose it is not possible to assess the third requirement, namely the participation of the accused.[147] As a corollary an accused must have consistent notice concerning the purpose so as to take the first step in his defence and rebut the allegation that there was such a purpose. An accused ought not to be misled, by prosecutorial contortions, into challenging the existence of a common purpose, only to be subsequently informed that those efforts were misdirected and the common purpose was now alleged to be the means. An accused ought not to be misled into challenging and rebutting the allegation that he significantly contributed to the common purpose only to be told that his contribution was in fact being measured against his participation in one small aspect of the means.

55. Second, the Chamber failed to address other salient issues. The Trial Chamber found that the

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[142] Judgment, Para. 374.
[143] Judgment, Para. 374.
[144] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-812, "Prosecution Notice Concerning Joint Criminal Enterprise and Raising Defects in the Indictment," 3 August 2007, para. 8.
[145] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-812, "Prosecution Notice Concerning Joint Criminal Enterprise and Raising Defects in the Indictment," 3 August 2007, para. 8.
[146] Judgment, Para. 257-258.
[147] Judgment, Para. 261.

Prosecution had failed to provide "sufficient, clear, consistent or timely" notice of the second category of JCE[148] and yet the issue was more complex. In its notice at the Rule 98 stage, the Accused were alleged, *inter alia*, to have been responsible for forced mining and forced farming as, "examples of the second form of JCE."[149] In other words this notice removed forced mining and forced farming from the original JCE. The original JCE no longer included forced labour within the means. This was critical, given that Sesay's principle participation during the junta period in the original JCE, as found, was planning the enslavement of civilians in Tongo.[150] The remainder of the (properly identified) participation at that time was limited to the arrest of three persons in Kenema.[151] By this notice the Appellant was informed that the enslavement was no longer part of the original JCE.

56. The Trial Chamber therefore erred in failure to give due weight to the impact of the inconsistent notice provided by the Prosecution concerning the nature and purpose of the Joint Criminal Enterprise. It was not a reasonable exercise of discretion to simply discount all these different pleadings, especially in light of the immutable requirement that the Prosecution must know its own case before the commencement of the trial.

GROUND 13: Command Responsibility Pleading

57. The Trial Chamber erred in law and fact in finding that the pleading of the command responsibility liability provided sufficient notice and did not prejudice the Appellant or prevent a fair trial. [152] The Defence seeks the reversal of this finding and the dismissal of the command responsibility liability, as alleged pursuant to Article 6(3) of the Statute. This ground will be dealt with in Grounds 36 and 44.

GROUND 15: Corroboration

58. The Trial Chamber erred in fact and law in failing to require corroboration for the testimony of the following witnesses: TF1-012, TF1-035, TF1-361, and TF1-362. No reasonable Tribunal could have concluded that these witnesses were sufficiently reliable to allow findings adverse to the Appellant without corroboration by reliable evidence.[153] Please see Annex C.

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[148] Judgment, Para. 383.
[149] *See* Sesay Defence Closing Brief, Para. 202.
[150] Judgment, Para. 1997.
[151] Judgment, Para. 1999 and Ground 25, 27, 34 and 37.
[152] Judgmeot, Para. 393.
[153] Annex C: Examples of indicia of unreliability in relation to TF1-012, TF1-045, TF1-093, TF1-108, TF1-141, TF1-263, TF1-330, TF1-330, TF1-361, TF1362 and TF1-366.

GROUND 16: Financial Payments by the Prosecution

59. The Trial Chamber erred in law, fact and/or procedure in dismissing the Defence "Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses."[154] In paragraphs 523-526 of the Judgment the Trial Chamber stated that it had examined payments from the Witness and Victim's Section (WVS) to witnesses and had arrived at the view that there was no evidence that the witnesses had been motivated by them.[155] The Trial Chamber erred in a variety of ways. First, the Trial Chamber appeared to limit its consideration of payments generally to an examination of the payments, rather than an examination of the payments in conjunction with the relevant witness. Exhibit 22, 105, and 121, which the Chamber purported to examine ("the Chamber has examined such payments"[156]) related to TF1-263, TF1-367 and TF1-334 and should have been examined in relation *to the testimony* of these witnesses. The blanket conclusion drawn by the Chamber concerning both Prosecution and Defence witnesses[157] is impermissible. This was critical in relation to all witnesses, including TF1-263, TF1-367 and TF1-334.

60. Second, the Chamber erred in law by failing to take into consideration unchallenged evidence of payments to Prosecution witnesses by the Prosecution, rather than the WVS. The Trial Chamber wrongly disregarded these payments when assessing the credibility of the Prosecution witnesses. The Trial Chamber wrongly characterised the issue of payment incentives as limited to "fair compensation for the time spent assisting the Court" pursuant to the "Practice Direction on Allowances for Witnesses and Expert Witnesses" issued by the Registrar on 16 July 2004, and payable through the auspices of the Witness and Victim's Unit.[158] The Trial Chamber abused its discretion by refusing to accept clear evidence of improper and unregulated payments to Prosecution witnesses.[159] The Defenee has to provide reasons as to why the witness would testify falsely about him;[160] the Prosecution had a duty to initiate the enquiry;[161] and the Chamber had an irrevocable duty to have regard to the payments, which provided a reason why witnesses would testify falsely against the

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[154] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1161, "Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses," 30th May 2008.
[155] Judgment, Paras. 525 and 526.
[156] Judgment, Para. 525.
[157] Judgment, Para. 526.
[158] Judgment, Para. 523-526.
[159] *Prosecutor* v. *Sesay, Kallon and Gbao*, SCSL-04-15-T, "Motion to Request the Trial Chamber to Hear Evidence Concerniug the Prosecution's Witness Mauagement Unit and its Payment to Witnesses," 30 May 2008.
[160] *Kajileji* TC Judgment, paras. 147, 148, 149, 150, 152,
[161] The Prosecutor v. Dusko Tadić , *Judgement on allegations of contempt against prior counsel, Milan Vujin*, 31 January 2000.

Appellant.[162]

61. The payments to TF1-035, TF1-360, TF1-366, TF1-334, TF1-015, and TF1-362 were particularly relevant to the eharges that were found proven against Sesay. A reasonable Tribunal eould not have concluded that these payments were irrelevant. For examplc: TF1-366 expressly stated that as a result of payments by the Prosecution he wanted to "help them, Today or tomorrow, I want to help them;"[163] TF1-362 reeeived money in a envelope in the same month that the witness testified against Sesay; and TF1-334 received 52 payments, commencing on 4 April 2006 (three months before he testified against Sesay) through 6 November 2007. The Defence seeks the dismissal of thc totality of the evidence of witness TF1-015, TF1-035, TF1-334, TF1-360, TF1-362, and TF1-366 as indelibly tainted by improper payments.

GROUND 17: False Testimony: TF1-366

62. The Trial Chamber erred in law, fact and/or procedurc in dismissing the Defence Application to "Direct the Prosccutor to Investigate the Matter of False Testimony by Witness TF1-366."[164] The error resulted from the Trial Chamber's approach to the testimony which failed to give due weight to the incredulous nature of the testimony, including the demeanour of the witness, the manifest implausibility, the volume and nature of the inconsistencics, and other indices indieating false testimony.

63. The witness provided evidence which a reasonable tribunal would have concluded was false. The degree of implausibility meant that thc witness must have been knowingly and wilfully misleading the court in order to implicate the Accused.[165] The manifest and wilful lies told by the witness could not be satisfactorily disputed by the Prosecution in the Response to the Motion. [166] There was ample evidcnce to conclude that there were "strong grounds for believing" that the witness had given false testimony and thereby to invoke a Rule 91(B) and Rule 77(C) procedure. The Trial Chamber's euphemistic categorisation of the evidcnce as "problematic" or thc witness as someone who "tended to over implicate the Accused" confirms these objective grounds.[167]

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[162] *Kajileji* TC Judgment, paras. 147, 148, 149, 150, 152.
[163] Transcript/TF1-366, 10 November 2005, p. 79.
[164] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-610, "Decision on Sesay Defence Motion to Direct thc Prosecutor to Investigate the Matter of False Testimouy by Witness TF1-366," 25 July 2006.
[165] Annex C: Examples of indicia of unreliability in relation to TF1-012, TF1-045, TF1-093, TF1-108, TF1-141, TF1-263, TF1-330, TF1-330, TF1-361, TF1362 and TF1-366.
[166] "Prosecution Response to Sesay Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366", 23 Jauuary 2006, Transcript 18th November 2005, Para. 13 – 16.
[167] Annex C: Examples of indicia of unreliability in relation to TF1-012, TF1-045, TF1-093, TF1-108, TF1-141, TF1-263, TF1-330, TF1-330, TF1-361, TF1362 and TF1-366.

64. The Trial Chamber conclusion that "the demonstration of inconsistencies, inaccuracies, or contradictions in the evidence of a witness that raise doubt as to his or her credibility is not enough to establish that he or she made a false statement"[168] and that "something further is required to establish the *mens rea* of the offence of false testimony"[169] is an error of law which fails to recognise that that reliability and credibility are integrally linked to proof of false testimony. The Tribunal was required to have regard to the obvious and draw reasonable inferences. The relief sought from the Appeals Chamber is a reversal of the reasoning employed by the Trial Chamber and the grant of the Motion. Additionally the Defence seeks the dismissal of TF1-366 evidence in totality and the substitution of the Appeal Chamber's findings in relation to the relevant charges.

GROUND 18: TF1-108: Attempting to Pervert the Course of Justice

65. The Trial Chamber erred in law, fact and/or procedure in dismissing the Defence Application seeking "Various Relief"[170] in relation to the Prosecution's concealment of Rule 68 material and an attempt by TF1-108 to pervert the course of justice. The error resulted from the Trial Chamber's refusal to take into account relevant evidence and was so unreasonable as to constitute an abuse.

66. On 8 March 2006, TF1-108 claimed that [redacted], had been raped and killed and implicated Sesay in the crime.[171] On the 15 January 2008, the Defence disclosed that it would be calling the [redacted], as its witness DIS-255. On 29 January 2008, the Prosecution indicated it prepared for the testimony of DIS-255. DIS-255 was called on *1 February 2008* and testified that she was [redacted] and had not been raped by any RUF fighter but had left Sierra Leone when [redacted]. The Prosecution, in its cross-examination, made no substantive challenge to DIS-255's testimony, notably failing to suggest that DIS-255 was not [redacted] who had been raped and killed by members of the RUF, hence confirming their possession of Rule 68 material.

67. On 5 February 2008, after [redacted] had been exposed to public testimony, the Prosecution disclosed statements from TF1-108 and TF1-330, dated *25 January 2008*, under Rule 68, in which it was made apparent that TF1-108 had lied. TF1-330's statement stated

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[168] "Decision on Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366", 25 July 2006, Transcript 18th November 2005, Para. 29.
[169] Ibid, Para. 29.
[170] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1147, "Decision on Sesay Defence Motion for Various Relief Dated 6 February 2008," 26 May 2008.
[171] Transcript/TF1-108, 8 Mareh 2006, pp. 50-51 and 9 March 2006, pp. 67-68.

that he was approached by TF1-108 after TF1-108's interview with Prosecution investigators and TF1-108 asked TF1-330 to tell the investigators that TF1-108 [redacted] who had died after being raped and beaten by the RUF.

68. The Prosecution concealed the Rule 68 material. TF1-108 perverted the course of justice. On 6 February 2008, the Defence filed a Motion.[172] In its Response[173] the Prosecution proffered no explanation for the concealment. The Trial Chamber erred in fact and law in its Decision.[174] It was not within the reasonable exercise of discretion to decline to enquire into the concealment. This went to the heart of due process.[175] It was not within the reasonable exercise of discretion to assess TF1-108's credibility as requiring corroboration only.[176]

69. Further, the Trial Chamber erred in fact and law by disregarding even this inadequate admonishment. TF1-108 was used as the sole source of the following allegations, which resulted in the following positive findings under Counts 12 and 13: in 1996 and 1998, there were two "government" farms in Giema which were organised and managed by the RUF with approximately 300 civilians working on these farms;[177] that civilians working on these farms could not refuse to farm because armed men were observing and supervising them while they were working;[178] that civilians working on Gbao's farm in Giema were guarded by Gbao's bodyguard, Korpomeh;[179] and that girls as young as 6 yrs old were trained at Bunumbu training base.[180]

70. The witness wilfully gave false testimony, attempted to pervert the course of justice, and had tried to inveigle TF1-330 into his reprehensible conduct. It was perverse not to investigate and even more so to rely upon the witnesses testimony, corroborated or otherwise. This evidence was used – alongside TF1-330 – as proof of the forced labour of hundreds of civilians in Kailahun during the indictment period. This was an abuse of the Chamber's discretion.

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[172] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-968, "Defence Motion Reqnesting the Trial Chamber to (i) Sanction the Prosecution for Deliberately Concealing Rnle 68 Material and Abusing the Court's Process; (ii) Order the Prosecution to State Their Case with Particularity; (iii) Recall to Testify Prosecution Witness TF1-108; and (iii) To Admit the Written Statement of TF1-330 as Evidence in Lien of Oral Testimony, Pursuant to Rule 92*bis*," 6 February 2008.

[173] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-978, "Prosecution Response to Sesay Defence Motion for Various Relief Dated 6 February 2008," 12 February 2008.

[174] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-1147, "Decision on Defence Motion Requesting Various Relief," 8 May 2008.

[175] *See* Ground 4.

[176] Judgment, para. 597.

[177] Judgment, para. 1422.

[178] Judgment, para. 1422.

[179] Jndgment, para. 1426.

[180] Judgment, para. 1435. Note that the footnoted references indicate this is corroborated by TF1-330; this is incorrect.

GROUND 19: Adjudicated Facts

71. The Appellant will not pursue this ground of Appeal.

GROUND 20: Exclusion of Relevant Defence Evidence

72. The Chamber erred in dismissing probative Defence evidenee in its Decision[181] to dismiss 18 92bis and 92ter statements. The Chamber failed to identify their probative worth, noting only that some of the statements were relevant in establishing the "social and economic background information on the everyday life conditions of the inhabitants of the respective areas".[182] The statements were relevant and probative of Sesay's innocence, as regards: the finding that Sesay arranged for civilian miners to be forcibly transferred from Makeni and Magburaka to mine against their will in Kono District;[183] that civilians were forced to train at the base at Yengema;[184] and that children were used to participate in hostilities in Bombali District from 1999 to September 2000.[185]

73. The reasons proffered for rejecting the statements were demonstrably flawed. The admission of this evidence would not have been repetitive;[186] would not have resulted "in an unnecessary consumption of valuable Court time."[187] The Judgment indicates that the Chamber disregarded all evidence that showed context in relation to the alleged system of forced labour throughout Kono District[188] and this was further neglect. Had this relevant evidence been accepted and considered by a reasonable trier of fact it could have created doubt.

74. The evidence from these statements are probative, *inter alia*, of the fact i) that civilians travelled freely to Kono District where civilians were mining voluntarily on a two-pile mining system (including the lack of forcible transfer of civilians from Makeni and Magburaka to Kono);[189] ii) that markets were operating in major towns between and

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[181] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1125, "Decision on Sesay Defence Motion and Three Sesay Defenee Applications to Admit 23 Witness Statements Under Rule 92*bis*", 15 May 2008.
[182] "Decision on 23 Wimess Statements Under Rule 92*bis*," Para. 28. The Chamber stated that these statements describe i) life in Makeni, Bombali District, after December 1998; ii) life in Makali, Masingbi, and Matotoka, after December 1998; and iii) life and mining conditions in Kono District between 1998 and 2000. "Decision on 23 Witness Statements Under Rule 92*bis*," Para 2. See also, "Decision on 23 Witness Statements Under Rule 92*bis*," Dispnsition.
[183] At, Judgment, Para. 1249.
[184] Judgment, Paras. 1260-1264.
[185] Judgment, Para. 1747.
[186] "Decision on 23 Witness Statements Under Rule 92*bis*," Para. 47.
[187] "Dccision on 23 Witness Statements Under Rule 92*bis*," Paras. 46 and 48.
[188] Judgment, Paras. 1246-1250 and see Ground 35.
[189] *E.g.*, DIS-007 (24458-24464); DIS-041 (24265-24271); DIS-044 (24273-24278); DIS-071 (24485-24489); DIS-219 (24604-24608); DIS-271 (24309-24318); DIS-283 (24320-24325); and DIS-285 (24515-24521). A direct rebuttal to the Chamber's finding at Paras. 1246-1250. These witnesses were either present in Kono District or saw people go to Knno District. There was no force in connection with people going to and from

including Koidu and Makeni and civilians travelled between these towns to trade;[190] iii) that no one was forced to train for the RUF and former CDF combatants defected to the RUF;[191] and iv) that children were being sent to school and there were no child combatants under Sesay's command.[192] Each of these witnesses affirmed that civilian compliant mechanisms were in place in their locales so that civilian harassment would be prevented and punished. The Chamber erred in fact and law in relying on accomplices to convict the Appellant – *see* Grounds 35, 36 and 43, in preference to these 18 independent civilians.

GROUNDS 21 & 22: "Acts and Conduct" and Victim Witnesses

75. The Trial Chamber erred in law and fact by defining and approaching Prosecution evidence which went to the "acts and conduct of the accused" as uniformly distinct from evidence which was more "general"[193] or related to the witnesses "own experiences."[194] The Trial Chamber erred in law and fact by identifying an inviolable category of Prosecution "Victim Witnesses" (whose evidence was, "generally accepted … for the purpose of establishing that crimes took place" "as being credible and reliable"[195]) and "former child combatants" (whose evidence was "generally accepted … especially as it relates to their own experiences"[196]).

76. This impermissible presumption was employed in relation to the accompliees: TF1-371,[197] TF1-366,[198] TF1-141,[199] TF1-263,[200] TF1-117,[201] TF1-314,[202] and TF1-093.[203] This error led

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Kono District from, e.g., Makeni. The witnesses knew or heard of civilians that went to Kono to mine. There was no suggestion that there was any force in mining; to the contrary, civilians were mining on a traditional two-pile system in Kono District in which the civilians retained a portion of the proceeds from the mining.

[190] *E.g.*, DIS-007 (24458-24464); DIS-011 (24466-24472); DIS-012 (24474-24477); DIS-021 (24250-24255); DIS-041 (24265-24271); DIS-044 (24273-24278); DIS-047 (24280-24285); DIS-048 (24287-24290); DIS-071 (24485-24489); DIS-110 (24491-24495); DIS-158 (24497-24502); DIS-173 (24504-24508); DIS-213 (24510-24513); DIS-219 (24604-24608); DIS-271 (24309-24318); DIS-283 (24320-24325); DIS-040 (24479-24483); and DIS-285 (24515-24521). Another rebuttal to Judgment, Paras. 1245-1250. That there were markets in Kono District (including Koidu and Koakoyima) and civilians coming to these markets from outside the District demonstrates that implausibility of an organized system of labour forcing hundreds of civilians to mine against their will.

[191] *E.g.*, DIS-041 (24265-24271); DIS-044 (24273-24278); DIS-047 (24280-24285); DIS-048 (24287-24290); DIS-283 (24320-24325); and DIS-040 (24479-24483). A rebuttal to Judgment, Paras. 1260-1265. *See* Ground 36. That many former CDF combatants were defeeting to the RUF demonstrates an unanticipated resource for the RUF. None of these combatants were harassed as a result of their surrender.

[192] *E.g.*, DIS-007 (24458-24464); DIS-011 (24466-24472); DIS-012 (24474-24477); DIS-021 (24250-24255); DIS-023 (24257-24263); DIS-041 (24265-24271); DIS-047 (24280-24285); DIS-048 (24287-24290); DIS-071 (24485-24489); DIS-173 (24504-24508); DIS-213 (24510-24513); DIS-219 (24604-24608); DIS-271 (24309-24318); DIS-283 (24320-24325); and DIS-285 (24515-24521). A direct rebuttal to Judgment, Para. 1747. When Sesay or combatants under his commander were present in these witnesses' locales, child soldiers were not present. In contrast, when other commanders such as Superman were present, child soldiers were also present.

[193] *E.g.*, Judgment, Para. 543.

[194] *E.g.*, Judgment, Para. 546.

[195] Judgment, Paras. 532-536.

[196] Judgment, Para. 579.

[197] Judgment, Para. 543.

[198] Judgment, Para. 546.

[199] Judgment, Para. 583.

the Trial Chamber to fail to assess the Prosecution evidence with due regard to the burden and standard of proof. The Defence requests that the Appeals Chamber dismiss the Trial Chamber's assessment of evidence and substitute its own findings in relation to the relevant charges.

77. First, there is no basis in law for failing to examine all evidence with the same critical evaluation. This prohibits the drawing of legal presumptions, notably the existence and occurrence of crimes. The correct application of the burden and standard of proof requires the careful evaluation and exclusion of all other reasonable inferences.[204] In circumstances where the trier of fact makes a finding of general unreliability there exists a reasonable inference, namely that the witness' testimony *per se* is unreliable.

78. Second, as indicated above in relation to Grounds 1, 2, 3, and 14, the duty to approach accomplices with caution is mandatory. The proposition that an accomplice – found *actually* to be unreliable should, nonetheless have part of his/her evidence elevated to an inviolable status has no basis in the jurisprudence or basic principles underpinning Article 17.[205]

79. Further the Trial Chamber erred in law in failing to appreciate that the evidence given by TF1-141, TF1-093, TF1-263, and TF1-314 was critieal to proof of essential elements of crime and proof of responsibility.[206] The distinction the Trial Chamber made between personal experience and acts and conduct was therefore unsustainable. The evidence that these witnesses gave in relation to their victim status or their general experience was evidence used to prove, *inter alia*, that the Appellant committed (that he personally physically perpetrated) the crimes and that he had participated in the joint criminal enterprise and this was with the requisite intent for those crimes.[207] In summary the Appellant was convicted on all the charges that are the subject of Grounds 25, 32, 36, 37, 39, 40, 42 and 43 without the

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[200] Judgment, Para. 587.
[201] Judgment, Para. 590.
[202] Judgment, Para. 594.
[203] Judgment, Para. 603.
204 AFRC TC Judgment, para.97. CDF TC Judgment paras. 254 and 287.
[205] Krajišniki, AC, para. 146; *Niyitegeka* Appeal Judgement, para. 98. *See also, Nahimana et al.* Appeal Judgement, para. 439; *Ntagerura et al.* For example, "a Trial Chamber must be careful to allow for the fact that, very often, a confident demeanour is a personality trait and not necessarily a reliable indicator of truthfulness or accuracy". (Kupresic, AC, para. 138). It is submitted that a corollary to this is the need to explain what it was that convinced the Trial Chamber to rely upon these witnesses. (*Kupreškić* et al, *Appeal Chamber Judgement,* para. 202). Appeal Judgement, paras 204 and 206, and *Blagojevic and Jokic* Appeal Judgement, para. 82. Kajelijeli, Judgment, ICTR-98-44-A, AC, 23 May 2005, Para. 60.
[206] *See* Grounds 25, 32, 36, 37, 39, 40, 42 and 43.
[207] *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao,* SCSL-04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92*bis,* 15 May 2008, para. 33 citing *Prosecutor v. Galic,* IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002, para. 10. *See also Prosecutor v. Bagasora* et al., ICTR-98-41-T, "Decision on the Prosecutor's Motion for the Admission of Written Witness Statements Under Rule *92bis*. 10 March 2008, para 13.

Chamber evaluating the critical evidence and, instead, presuming it to be reliable and true. Accordingly the Appellant requests that these charges be dismissed.

GROUND 23: Forced Marriages as Acts of Terror (Count 1)

80. The Trial Chamber erred in law in concluding that the Prosecution had established that the forced marriages found to have been committed by the AFRC/RUF within the territory of Sierra Leone could be classified as acts of terror.[208] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced. Alternatively, the Trial Chamber erred in law and fact by classifying all forced marriages found to have been committed by the AFRC/RUF within the territory of Sierra Leone as acts of terror.[209] No reasonable Tribunal, properly directing itself, could have concluded that each perpetrator had the primary intention to spread terror. The Appellant refers the Appeal Chamber to Grounds 24, 34, 37, and 39 for the full argument on the errors of law and fact and the resulting prejudice.

GROUND 24: Joint Criminal Enterprise (JCE)

Overall Erroneous Approach to the JCE

81. The paragraphs below – 81 – 231 detail the legal and factual errors made concerning the assessment of the common purpose within the alleged JCE. In order to demonstrate the issues the Defence have included in the analysis the salient grounds, which consequently are not in numerical order.

82. The error in convicting the Appellant arose due to a fundamental misconception of the nature of the common purpose. The error in defining the common purpose as "not even reflective of a crime which would fall under the jurisdiction" of the Court[210] was a material error of law. This error caused the Trial Chamber to first assess whether there was a plurality that existed which had aeted in concert to take power and control over the territory of Sierra Leone (the Chamber's erroneous criminal purpose); and second to assess whether crimes had been committed during the implementation of this purpose and, latterly, to assess whether the Appellant contributed to the mere (lawful) purpose of taking of power and control of Sierra Leone. At some point in this erroneous analysis the Chamber had an understanding of the Appellant's contribution to the taking power and control, but was deprived of any meaningful

[208] Judgment, Paras. 1352 and 1356.
[209] Judgment, Paras. 1352 and 1356.
[210] Dissent, Justice Boutet, Para. 16; Example, Judgment Para. 1979.

assessment of his contribution to the crimes in Counts 3-14 which was, ultimately, all that mattered. The Chamber was left without the very 'thing' that would have enabled the Appellant's intent to be gauged and properly understood.[211]

83. Further, as the Chamber was convinced that participation in an armed rebellion necessarily implied "the resolve and determination to ... commit the crimes for which the Accused"[212] was indicted, both the Appellant's awareness of the crimes[213] and his criminal intent was simply presumed. Having concluded that the taking power over State territory is not a criminal purpose unless it is "intended to be implemented through the commission of crimes",[214] and that the AFRC/RUF Junta collaboration did intend such a venture, then *a fortiori* it followed that the Appellant, by joining that non-criminal purpose, must have intended the crimes. This circular logic made conviction through the JCE inevitable, irrespective of involvement in crime.

Error in defining the Common Purpose

84. The Trial Chamber ereated a fourth category of JCE, which has no basis in customary law.[215] This interpretation of the common design, with the criminal purpose *per se* being adjudged to be limited to the taking power and control, and the Accused's participation and intent being judged according to this goal, rather than the participation in a crime,[216] was akin to criminalising the membership of an organisation, which was a new crime, not foreseen under the Statute and amounted to a flagrant infringement of the principle *nullum crimen sine lege*.[217]

85. Consistent with the language of the Indictment and the immutable requirement that the common purpose amounts to a crime, the common criminal purpose alleged was the taking power and control by a campaign to terrorise and collectively punish the population. [218]The alleged "unlawful killings, abductions, forced labour, physical violence, use of child soldiers [and] looting ... were within the joint criminal enterprise (the means) or were a reasonably

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[211] Kvočka et al. AC, Para. 97- 98; Brđanin AC, Para. 430. Brđanin, AC, Para. 427 and 430: Moreover, "[i]n practice, the significance of the accused's contribution will be relevant to demoustrating that the accused shared the intent to pursue the common purpose." Kvočka at al. Appeal Judgment.
[212] Judgment, Para. 2019.
[213] Judgment, Para. 2018.
[214] Judgment, Para. 260 and 1979.
[215] Customary Law recognises only three: see Judgment, Para. 254.
[216] Simic, TC, Para. 433.
[217] Stakic Trial Chamber 31 July 2003, Para 433; Kvočka, AC, Paras. 82 and 96; Brđanin, TC, Para. 258; Vasiljevic, AC, Para. 96; Limaj, TC, Para. 511; Krnojelac, AC, Para. 30; Tadić, AC, Para. 195.
[218] Indictment, Para. 36 and 37.

foreseeable consequence of the joint criminal enterprise."[219]

86. The Trial Chamber's claim that the taking power and control over State territory is a criminal purpose when it is "intended to be implemented through the commission of crimes within the Statute"[220] was correct inasmuch as it identified what may fulfil the pleading requirements of a properly specified indictment.[221] It was correct insofar as a non-criminal aim may be alleged as an *aspect* of a criminal plan, purpose or design, as per the RUF indictment. It was wrong in all other respects.

87. The Trial Chamber had to decide, first and foremost, whether there was a plurality and whether it acted together in the implementation of a criminal objective.[222] That question concerned the assessment and identification of "specific material elements" that demonstrated the existence of an objectively punishable criminal act, precisely determined in time and space.[223] Before looking at whether the Appellant participated in such an enterprise, it was necessary to determine whether such an enterprise existed.[224] Through this analysis the Chamber could have assessed whether crimes were pursuant to a plan or whether there was another explanation for their commission such as the existence of other criminal enterprises or random criminality. This was a necessary step to the next question: whether the Appellant had carried out acts that substantially or significantly effected the furtherance of this criminal purpose, with the knowledge that his acts or omissions facilitated the crimes committed as part of the enterprise.[225]

88. Defining from the outset the concerted action of taking power and control as criminal by dint of a group intention to commit crimes[226] distinguishes the possibility that an accused could have acted in pursuance of the taking of power and control in a lawful manner devoid of criminal intent. The criminal intention is presumed from the involvement with the plurality, and not from the sum of the acts in pursuit of crime. This error was at the heart of the Appellant's convictions, pursuant to the JCE.[227] As noted by the Chamber, *inter alia*, "The Chamber further concludes that Sesay intended to take power and control over the territory of Sierra Leone … and actively participated in the furtherance of the common purpose *and that*

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[219] Indictment, Para. 37.
[220] Judgment, Para. 1979.
[221] AFRC Appeal, Para. 80 and *Prosecutor* v. *Taylor*, Decision on "Defence Notice of Appeal and Submissions Regarding the Majority Decision Concerning the Pleading of JCE in the Second Amended Indictment", 1 May 2009, Para. 25.
[222] *Brđanin* Appeal Judgement, paras 410, 430
[223] *Prosecutor v. Sagahutu et al.*, ICTR-00-56-T, Trial Decision, 25 September 2002, at para. 39.
[224] Milotinovic, TC, Para. 16.
[225] Kvočka, TC, Para. 312; Kvočka, AC, Paras. 99, 263; Brdnanin, AC, Para. 427.
[226] Judgment, Para. 1979.
[227] Judgment, Para. 2002, 2056, 2163 and 2092.

by this participation he significantly contributed to the commission of acts of terrorism (Count 1), unlawful killings (Count 3-5) and pillage (Count 14)."[228] For the Trial Chamber what was critical was the intention to take over the country which evinced the intention to commit crimes. By *this* participation the Appellant's contribution to the crimes was erroneously assessed.

89. The Trial Chamber's error originated from two sources: (i) an incomplete interpretation of the ratio in the AFRC Appeals Chamber decision and (ii) a misapplication of *Martić*.[229] Contrary to the Trial Chamber's approach the Appeal Chamber did not limit its enunciation of the law to "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."[230] The true ratio was that "the criminal purpose underlying the JCE can derive not only from its ultimate objective, but also from the means contemplated to achieve that objective. The objective *and* the means to achieve the objective constitute the common design or plan" [emphasis added].[231]

90. This conflation of objective and means is a consistent feature of collective criminal conduct in the context of relatively large-scale conflicts. Warring parties rarely commit crimes without aiming at an objective other than the immediate 'benefits' or gratuities arising therein. The significance of the (non-criminal) objective to an assessment of JCE liability will be contingent upon a number of factors, namely the Prosecution's pleading of the enterprise; the form of the criminal plan (overall purpose or design) and the type of crimes falling within the enterprise. The more the non-criminal aim is inextricably tied to the commission of crimes and necessarily entails the commission of crimes, the more that participation in this aim is evidence from which an Accused's participation in the criminal purpose can be inferred.

91. In circumstances where a non-criminal political objective is *inextricably* and *necessarily* linked to the commission of a specified crime, participation in this (non-criminal) objective will be evidence that the Accused participated and intended the furtherance of crime. Then the overall objective is "inherently criminal"[232] but, nonetheless, remains formulated from a common purpose which necessarily involves the perpetration of one of the crimes provided

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[228] Judgment, Para. 2002.
[229] Judgment, Para. 260, referring to the Martić Appeal and Trial Judgment.
[230] *AFRC* Appeal Judgement, para. 80. *See also Martić* Appeal Judgement, paras 112-123, endorsing *Martić* Trial Judgement, para. 442.
[231] AFRC Appeal Judgment, Para. 80.
[232] AFRC AC, Para. 80.

for in the Statute.[233] Only this satisfies the requirement that the accused's acts amount to a "crime forming part of the common objective (and provided for in the Statute)"[234]

92. The Accused's participation "must form a link in the chain of causation" to the crimes and the significance of this contribution to the crime is relevant for determining whether such a link exists.[235] In sum, a criminal plan cannot be constituted wholly from a non-criminal objective. In order to impute liability to an accused for a crime committed by another person, the crime in question must form part of a *common criminal* purpose.[236] The question remains one of whether the Accused participated or contributed to the execution of a criminal purpose, which is constituted from the overall aim and the means.[237]

93. There is no support in the jurisprudence for Trial Chamber I's approach. There are cases, such as *Kvočka*[238] where the criminal plan is relatively remote from the overall (non-criminal) objective and those, such as *Martić*, where it is necessary to commit crimes under the Statute to achieve the non-criminal objective. In *Kvočka*, the ICTY Appeals Chamber was of the opinion that "the common design that united the accused was the creation of a Serbian state within the former Yugoslavia, and that [the participants] worked to achieve this goal by participating in the persecution of Muslims and Croats."[239] As noted by the Appeals Chamber, "[w]hereas creation of a Serbian State within the former Yugoslavia is not a crime within the Statute of the ICTY, the means to achieve the goal, such as persecution, constitute crimes within that statute."[240]

94. In other words, the common purpose was to persecute and thereby "rid the Prijedor area of Muslims and Croats as part of an effort to create a unified state."[241] The core of the criminal purpose was the crime of persecution at the Omarska detention camp[242] (intended to be pursued by the commission of crimes such as murder, torture and rape and mental and physical violence and inhumane conditions[243]), which had been agreed upon in furtherance of the non-criminal aim of creating a Unified State. The existence of a plurality, the Accused's level of participation, and the degree of intent was judged by reference to the persecution; this

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[233] Kvočka, AC, Para. 96.
[234] Krajišnik, TC, Para. 883.
[235] Blagojevic, TC. Para. 702; Brđanin TC, Para. 263; Milutinovic, Para. 105.
[236] *Brđanin*, Appeal Judgement, Para. 418.
[237] Martié TC. Para. 440.
[238] See also for example: Simic et al., TC; Para. 983 where the Trial Chamber was not satisfied that the JCE could, on the evidence, be extended to the political leadership of Republic of Srpska.
[239] AFRC Appeal Judgment, Para. 77, referring to *Kvočka* Appeal Judgment, para. 46.
[240] AFRC Appeal Judgment, Para. 77, referring to *Kvočka* Appeal Judgment, para. 46.
[241] *Kvočka, TC*, Para. 45
[242] *Ibid*, Para. 66.
[243] *Kvočka*, TC, Para. 320.

was the core of the criminal purpose.[244] In *Simic*, the common plan was identified as being "aimed at committing persecution against non-Serbs, including acts of unlawful arrest, detention, or confinement, cruel and inhumane treatment, deportation and forcible transfer, and the issuance of orders, policies and decisions that violated the fundamental rights of non-Serb civilians."[245] The common criminal plan to persecute non- Serb civilians in that municipality remained central to the assessment of the accused's responsibility.[246]

95. In *Krajišnik*, the ICTY Trial Chamber identified the creation of Serb dominated territories ("ethnically recompose"[247]) in Bosnia-Herzegovina as the non-criminal purpose, which was sought to be achieved through the permanent removal, by force or other means, of Bosnian Muslims and Bosnian Croats from large portions of Bosnia-Herzegovina through the commission of the crimes.[248] Each member of the JCE had the "shared intent to secure the objective of forcibly removing non-Serbs from the targeted territory".[249]

96. The Trial Chamber found that he "not only participated in the implementation of the common objective but was one of the forces behind it." Accordingly the Accused's liability was found to be based upon his actions in *furtherance of the permanent removal by force*, through *inter alia* the creation of governmental policies and institutions and the use of Serb forces to further this criminal objective.[250] Krajišnik's participation in the joint criminal enterprise was not judged by reference to his role in the governmental structures *per se* (i.e., with reference to a non-criminal political aim) but through his overall contribution to furtherance of the criminal purpose.

Misapplication of *Martić* Principles

97. *Martić* is not an authority for the proposition that criminal purposes may be constituted from non-criminal purposes only. The criminal purpose identified in that case was the "establishment of an ethnically Serb territory through the *displacement* of the Croat and other non-Serb population, as charged in Counts 10-11" [emphasis added].[251] In *Martić* the Trial Chamber and Appeals Chamber agreed that the non-criminal political objective of uniting territories "*necessitated* the removal of the non-Serb population from the SAO Krajina and

[244] Example: *Kvočka, TC*, Para. 273 and 320 and AC, Para. 559 and 599
[245] *Simic et al.*, TC, Para. 987.
[246] *Ibid*, Para. 984.
[247] *Krajišnik*, TC, Para. 1090.
[248] *Krajišnik*, TC, Para. 6, 1095-1098.
[249] *Ibid*, Para. 1123.
[250] *Ibid*, Paras. 7, 1119-1122.
[251] *Martić* TC. Para. 445.

RSK territory" [emphasis added].[252] Nonetheless, Martić's liability was decided foremost with reference to his contribution to *the forcible removal and displacement of the non-Serb population*.[253] The pursuit of criminal conduct – forcible displacement – remained the critical and immutable heart of liability pursuant to the JCE.

98. The approach taken in *Martić* is a commonsense approach to an assessment of criminal participation and intention: that, on some occasions, although the overall outcome desired is not explicitly the commission of a crime, it may be so intimately linked with a crime that to interpret the purpose as anything less would be illogical. The purpose is considered criminal because, in the real world, it could be nothing else. The Accused's continued participation in it with the awareness that its accomplishment *absolutely* depends upon the commission of crimes provides the clearest demonstration of criminal intent.

99. This approach is an enunciation of the English common law approach to the thorny distinctions between intention and recklessness. As noted by the House of Lords in *Woollin*, on a charge of murder, a specific intent crime, the requisite intention could be inferred if, and only if, "death or serious injury was a virtual certainty ... as a result of the defendant's actions"[254] and "[w]here a man realises that it is for all practical purposes inevitable that his actions will result in death or serious harm, the inference may be irresistible that he intended that result, however little he may have desired it or wished it to happen."[255]

100. However, this had little or no application to the legal and factual situation alleged to underpin Sesay's JCE liability. The non-criminal aim of taking over power and control was not irrevocably contingent on the commission of crime. It did not depend upon such commission for the fulfilment of this goal. Rather, the choice remained that of the participants – to be legally determined with reference to an assessment of conduct in furtherance of crime, not by continuance in war. It is possible, despite the Chamber's claim to the contrary, to take up arms and fight a government, without entailing the determination to commit crimes under the Statute.[256]

101. The characterization by the Chamber of the common design as one "which necessarily contemplated the commission of crimes"[257] is illustrative of the Chamber's presumption of guilt: if the act of trying to taking over the country *necessarily* involves (a group) intention to commit the crimes, then it is becomes impossible to pursue war without falling into a joint

[252] *Martić* TC, Para. 445 and AC, Paras. 92, 123.
[253] *Ibid*, Paras. 450, 452, and 453.
[254] *R* v. *Woollin* [1999] 1 AC 82, p. 7 at http://www.parliament.the stationary-office.co.uk.
[255] *Ibid*, p. 9.
[256] Judgment, Para. 2016.
[257] Judgment, Justice Boutet's dissent, Para. 12 and also Judgment, Para. 2016.

criminal enterprise. In these circumstances, the Chamber's task was restricted to enumerating the crimes and announcing the guilt of the Appellant.

102. The correct approach was taken in *Milutinovic*, which was concerned with an enterprise alleged to be "a campaign of terror and violence designed to forcibly displace members of the Albanian population of Kosovo with the aim of modifying the ethnic balance of the population in Kosovo to secure control of the province in the hands of ethnic Serbs" [emphasis added]. The Chamber correctly identified that the first question to be addressed was "whether such an enterprise existed: in other words, whether there was concerted action by such senior officials and officers to engage the might of the state against a section of its own citizens to achieve that end.... After making its findings on the second physical element [the criminal purpose] the Chamber will the turn to the other physical and mental elements of joint criminal enterprise in relation to each of the six Accused."[258] This was the approach required in the RUF case.

Consequential Errors

Assessing the Plurality and action in Concert

103. The finding that the forming of a joint "government" in order to control the territory of Sierra Leone was the criminal plan meant that the critical question was never addressed: whether there was a plurality acting in concert to pursue a criminal plan.[259] Rather, an assumption was made: that as the violence was committed by those involved in a war to take power and control, all violence was part of the endeavour, *ipso facto,* all violence was part of a common criminal plan. The evidence did not sustain a finding beyond a reasonable doubt that the onset of the junta in May 1997 marked the implementation of a criminal plan. The actions and the occurrence of crimes were not those that allowed such an inference.

104. As noted above, this was an enterprise quite different to that in *Martić* and, in fact, those generally alleged: terror and collective punishments to advance the pursuit of power and control could be achieved by a plurality but it could also be "achieved without joint control over the final outcome."[260] Terror can be caused inadvertently in a war. Terror and collective

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[258] *Milutinovic* TC, Para. 16.

[259] Judgment, Para. 1979. *See, Brđanin* Appeal Judgement, paras 410, 430; *Stakic* Appeal Judgement, para. 64; *Tadić* Appeal Judgement, para. 227.

[260] *See, for example*, Stakic, TC, where the TC noted that the campaign aimed at ethnically cleansing the Prijedor Municipality could not have been achieved "without joint control over the final outcome and it is this element of interdependency that characterises this interdependency that characterises the criminal conduct" (Para. 490): Simic, TC, "The common goal to commit acts of persecution could not have been achieved without the joint actions of the police, paramilitaries, 17th Tactical Group of the JNA and Crisis Staff" (Para. 991).

punishment can result from the actions of whole governments, or *ad hoc* groups or individual criminals alike. Taking control and power could be effected without the commission of crime. The arbitrary use of terror and collective punishment – a feature of every war and especially those that involve irregular armies and guerrilla outfits – might appear indistinguishable from that planned or plotted from high. This was a clarion call to a reasonable trier of fact, properly directed, to have been particularly scrupulous in examining the alleged plurality and the concerted action with care (*before* examining the crimes)[261] and to exercise the utmost caution before attribution of crimes.

105. Instead the Trial Chamber plainly disregarded all the relevant evidence concerning the onset of the junta, the crimes that were committed, and the link between the two. It was not incorrect, as a preliminary step, to assess the existence of a plurality of persons (Sankoh, Bockarie, Sesay, Gbao, Superman, Eldred Collins, Mike Lamin, Isaac Mongor, Gibril Massaquoi, JPK, Gullit, Bazzy, Five-Five, SAJ Musa, Zagalo, Eddie Kanneh[262]) and the (non-criminal) aim of a common plan to take any action necessary to gain and exercise political power and control over the territory.[263] This was an important evidential step *towards* assessing whether this concerted conduct was *designed* to terrorise and collectively punish and that the 'attacks'[264] were carried out pursuant to the design. The fact that Chamber was not satisfied that mid- and low-level RUF and AFRC Commanders as well as rank-and-file were part of any agreement[265] meant that it was critical to examine the links between those lower ranks and the alleged plurality and thereafter to be satisfied that crimes being committed on the ground were relevant and probative of the existence of the common purpose.

106. The Chamber failed to conduct the analysis noting that it was "satisfied that non-members who committed crimes were sufficiently closely connected to one or more members of the joint criminal enterprise acting in furtherance of the common purpose."[266] The Chamber's approach is an admission that it abandoned the requirement that crimes must be committed in pursuance of the criminal purpose. This was a deeply flawed approach to a critical element. The Chamber had to be satisfied that each crime was committed by either a JCE member or a perpetrator being used by a JCE member in furtherance of the common purpose.[267] The claim

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[261] *E.g.*, *Milutinovic*, TC. Section III: Para. 94.
[262] The Trial Chamber clearly did not intend to include Zagalo and Eddie Kanneh in its enumeration of the JCE members – these two men had not at any time been alleged to be members of the JCE (Indictment, Para. 34).
[263] E.g., Judgment, Paras. 1985-1990.
[264] Judgment, Para. 1985.
[265] Judgment, Para. 1992.
[266] Judgment, Para. 1992.
[267] *Ibid*, Para. 228. *Krajišnik*, Para. 1087.

to be satisfied globally that the non-members were "closely connected" undermines the convictions on each charge.

107. That the Chamber's approach was deeply flawed is plain from the aforementioned legal errors, but also from the Chamber's explicit findings. In most instances the Chamber omits the essential analysis. Moreover, the pattern, frequency and type of crimes, which were established on the evidence, did not provide a proper basis for this inference.

No plurality engaged in concerted action in furtherance of crime

108. The Chamber erred in law and fact in purporting to conclude that a JCE came into existence at the onset of the junta. The Judgment lacks any conclusion concerning the actions of the so-called members of the JCE in the first few months of the Junta (May to August 1997) that gives rise to an inference of the existence of the requisite criminal purpose. The following findings are critical: key members of the RUF, including Sesay and Kallon, only attended Supreme Council meetings from August 1997;[268] Kallon cooperated with the AFRC at Teko Barracks but this did not "directly involve the commission of crimes;"[269] Gbao did not communicate with any of the Junta leaders during the whole of the Junta period[270] (and in any event did have the same intent as other members of the plurality[271]); Sankoh was in prison;[272] Mongor was responsible for preventing looting in Freetown; Lamin was the Director of Intelligence – collating information to prevent looting and harassment of civilians;[273] and SAJ Musa was the Minister for the Mining, which, importantly did not start until August 1997.[274] Further, even though JPK was the Chairman of the AFRC (and presumably in the minds of the Chamber also of the plurality) the Judgment is silent as to his actions in the first few months of the junta[275] as it is about the actions of the remaining JCE members, Eldred Collins or Gibril Masaquoi.

109. The Trial Chamber's failure to appreciate the importance of establishing the plurality engaged with a common criminal purpose analysis, led them astray. The Defence advanced detailed submissions to demonstrate that the alliance between the RUF and AFRC was instigated and understood by commanders and rank-and-file to be aimed at ending the conflict and that crimes were committed largely as a result of failures to work together, rather

[268] Judgment, Paras. 772 and 774.
[269] Judgment, Para. 2004.
[270] Judgment, Para. 775.
[271] Judgment, Para. 2042.
[272] Judgment, Para. 20.
[273] Judgment, Para. 756.
[274] Judgment, Para. 1094.
[275] Judgment, Para. 755.

than any eoncertcd effort to commit terror or eolleetive punishment to take power and eontrol.[276] As concluded by the Chamber, the RUF and the SLA soldiers were talking peace as they eommeneed their eollaboration.[277] As is obvious, these submissions were highly relevant to the proper eonsideration of an alleged criminal purpose, but were disregarded by the Chamber.

110. The Trial Chamber's own findings strongly supported a finding that there was no common purposc to terrorise or collectively punish in the first few months of the junta. In particular the Chamber found (i) that the members of the JCE, apart from Gbao, were members of the Supreme Couneil;[278] (ii) that the Supremc Council was concernecd with (the prevention of) looting and harassment of civilians;[279] (iii) that Mongor was responsible for preventing looting in Freetown and that Lamin was the Direetor of Intelligenee.[280] This last finding eoneerning Lamin represents the Chamber's acceptance of the evidenee given by TF1-371 that this role involved investigating and collating information concerning the "looting and harassment of civilians" and was "in ordcr to maintain good order."[281]

111. Additionally there was cvidence from a number of witnesses that the junta was involved in mectings that were designed to pass anti-crime measures (c.g., anti-looting decrees), to create institutions to ensure "good governance;" to set up security patrols to eradicate crimes; and punish the commanders for failing to keep command and control over their subordinates. There were laws, *inter alia*, against looting, raping and harassment. According to TF1-371 these were taken seriously.[282] This evidcnce emanated from witnesses such as TF1-045, TF1-334 and TF1-371 – witnesses whose incriminatory evidence was the foundation of many of a conviction.[283]

112. Membership of the Supreme Council guaranteed that Sesay could discuss issues but could not vote in the decision-making, which remained in the hands of JPK, SAJ, and the PLO's.[284] There was no proper basis – and none was suggested – for disregarding important aspects of TF1-371's testimony, who confirmed that these significant decisions included the control and

[276] Sesay Defence Closing Brief, Paras. 465-482.
[277] Judgment, Para. 752.
[278] Judgment, Paras. 755 and 1990.
[279] Judgment, Para. 756. The Trial Chamber inadvertently failed to mention the bracketed words: [the prevention of]. This activity is confirmed by all relevant prosecution witnesses, including: TF1-045, who confirmed the Supreme Council's concern, expressed at several meetings, that civilians were being harassed, raped, and being forced to labour and the elear agreement to make efforts to eradicate these crimes (Transcript/TF1-045, 18 November 2005, pp. 80-89).
[280] Judgment, Para. 756.
[281] Transcript/TF1-371, 1 August 2006, pp. 30.
[282] Transcript/TF1-045, 22 November 2005, pp. 84-86; Transcript/TF1-334, 16 May 2005, pp. 57-59 and 75-77; and Transcript/TF1-371, 28 July 2006, pp. 56-61.
[283] *E.g.*, Para. 1044 The Chamber found TF1-045 generally credible (Para. 561); TF1-344 (Para. 799).

regulation of the whole military apparatus and the implementation of crime prevention and punishment mechanisms.[285] As confirmed in the AFRC trial and the adjudicated facts in the *Taylor* trial – the Supreme Council did not even control the military.[286]

113. The evidence did not establish (and the Chamber did not conclude) that the Supreme Council was a forum for discussing crimes,[287] except the conclusion concerning the planning and organising of enslavement at Tongo and this did not commence until August 1997.[288] First, the Trial Chamber erred in fact and law by disregarding critical evidence, from both Prosecution and Defence witnesses, which established that the Supreme Council was involved in discussing and implementing crime prevention methods – including Court Martials and public executions of AFRC perpetrators.[289]

114. Whilst NGO reports and reporters appear to suggest that these may not have been effective, the *Prosecution* did not establish that they were not. The crimes that occurred and were established by evidence, between May 1997 and August 1997, were the terror attacks in Bo in June 1997.[290] There was no evidence that these attacks were planned at the Supreme Council or that they concerned anyone other than Bockarie and the direct perpetrators. The three/four attacks established could not prove a Junta criminal plan, originating at the Supreme Council or otherwise.

115. If the Chamber had conducted a proper analysis it could not have reached the conclusion that the "strategy of the Junta was thenceforth [the onset of the junta rule] to maintain its power over Sierra Leone and to subject the civilian population to AFRC/RUF rule by violent means".[291] This was demonstrably not borne out by the evidence. The Chamber's reliance on a No Peace without Justice (NPWJ) Conflict Mapping Report to sustain this hugely significant conclusion demonstrates the paucity of evidence on the trial record. The Chamber's reliance upon Operation Pay Yourself in February 1998; actions concerning the recruitment of combatants following the intervention in 1998; the evidence of George Johnson limited to describing membership of the Junta government and (once again) the NPWJ report[292] was wholly insufficient. These 'facts' could not support the conclusion that

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[284] Transcript/TF1-371, 28 July 2006, pp. 61.
[285] Transcript/TF1-371, 28 July 2006, pp. 56-61.
[286] *Prosecutor* v. *Taylor*, SCSL-03-1-T-765, 23 March 2009, "Decision on Defence Application for Judicial Notice of Adjudicated Facts From the AFRC Judgment Pursuant to Rule 94(B)," 23 March 2009, Annex A, adjudicated Fact 4 (AFRC Judgment, Para. 1656).
[287] Sesay Defence Closing Brief, Paras. 483-488.
[288] Judgment, Para. 1997.
[289] Sesay Defence Closing Brief, Paras 485.
[290] Judgment, Paras. 1031-1037 and below: common purpose in Bo District.
[291] Judgment, Para. 1980.
[292] Judgment, Para. 1981.

"[t]he AFRC/RUF forces cooperated on armed operations in which crimes were committed."[293] Similarly, the corresponding conclusion that "these operations demonstrate that the Junta intended, through disproportionate means, to suppress all opposition to their regime"[294] – without cogent evidence that these operations *were* being conducted at the outset of the Junta period and throughout *and* that they were being committed pursuant to a plan agreed upon by the JCE members – was demonstrably flawed.[295]

116. The Chamber drew the conclusion that "joint AFRC/RUF forces targeted civilians in a widespread and systematic attack designed to terrorise the population into submission through eollective punishment, unlawful killings, sexual violence and physical violence"[296] but failed to support this conclusion with reference to evidence.

117. It is hugely significant, if not dispositive, that the crimes of terror or collective punishment found to have been committed between May 1997 and August 1997 were limited to single attaeks on Tikonko, Sembehun and Gerihun in June 1997 in Bo.[297] The first relevant acts elsewhere were those found proven in Kenema, namely the acts of terror (enslavement and killings in Kenema) at Cyborg Pit in August 1997.[298]

118. The Chamber's findings coneerning crime in Kailahun are relevant, although contradictory. At its highest the Chamber found that the only crimes of terror committed in the period of May 1997 to February 1998 were those in Counts 7-9 (sexual violence). This is contradicted – as the Chamber also concluded that the evidenee did not prove acts of terror in Kailahun District.[299] The benefit of the doubt must go to the Appellant whose conviction for acts of terror must be reversed. Addressing the positive finding, however, the Trial Chambcr found that the acts of terror (Counts 7-9) were committed "on combat operations on villages in Kailahun Distriet" but conceded that the original capture and force had been committed prior to the indictment period.[300] The Chamber could not have relied upon these as evidence of a plurality of RUF *and* AFRC commanders acting in concert to commit terror and colleetive punishment in Kailahun at the onset of the junta or beyond.

119. In summary, the Trial Chamber failed to conduct the essential analysis; to assess whether the

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[293] Judgment, Para. 1980.
[294] Judgment, Para. 1981. The corresponding conclusion that the "Junta launched fierce attacks in Districts where its regime had not yet consolidated its power" is equally unsustainable on the *evidence*. The fact this contention is footnoted to paragraph 1139 of the Judgment, which deals with attacks on Koidu in 1998, is further evidence that it lacks any support.
[295] *Krajišnik* Trial Judgement, para. 884.
[296] Judgment, Para. 1985.
[297] Judgment, Paras. 1974-1975.
[298] *E.g.*, Judgment, Para. 1082.
[299] Judgment, Para. 2047.
[300] Judgment, Para. 1409-1411 and footnote.2621.

crimes of terror and collective punishment were the result of a common plan, rather than the result of individual pieces of violence committed by groups or individuals. The conclusion that the "widespread and systematic nature of the crimes, in particular the attacks on Bo and the forced labour in Kenema District, in which the RUF was engaged indicate that such conduct was a deliberate policy of the AFRC/RUF ... that must have been initiated by the Supreme Council" [301] is demonstrably unsupported by evidence.

120. The Chamber's error in defining the criminal purpose as the taking of power and control gave rise to a failure to assess whether there was "a discernable pattern" to the underlying crimes,[302] indicative of the claimed criminal plan. Consequently the Chamber neglected to enquire whether the violence, such that it was established, was committed in a "random and un-orchestrated manner"[303] or by individuals on a criminal frolic of their own, or any alternative explanation.

GROUND 26: Acts of Terror in Bo (Common Purpose)

121. The Chamber erred in fact and law in concluding that "the common purpose of the joint criminal enterprise was furthered in Bo District" through violent forced mining activity, the misuse of "the levers of State power to destroy any support within the civilian population for the Kamajors" and the terror attacks on the Bo in June 1997.[304] The conclusion that mining had furthered the common purpose in Bo was patently incorrect as the Chamber found that the mining commenced in August 1997.[305] The generalised claim that the AFRC and RUF used the levers of State power in an attempt to destroy civilian support for the Kamajors is remarkably opaque. It is meaningless without reference to evidence that situates this action in Bo – or at least in furtherance of crime in that District. Sesay's so-called use of State levers in Kenema in October 1997 must be irrelevant.

122. Although the Chamber found that the killings and burnings in Tikonko, Sembehun and Gerihun constituted acts of terrorism,[306] there was no evidence upon which a reasonable trier of fact could have concluded that they were committed as part of a criminal plan to commit terror and collective punishment to take over the country.

123. The Chamber erred by limiting its analysis to a list of the most egregious features of crimes. That there were crimes committed and they were horrific was not in dispute. The question

[301] Judgment, Para. 2005.
[302] *Milutinovic*, TC, Part III: Para. 41
[303] *Ibid*, Para. 46.
[304] Judgment, Paras. 1974-1975 and 1984.
[305] Judgment, Para. 1094.
[306] Judgment, Para. 1037.

that arose – and was ignored – was whether it could be shown or inferred that these crimes were committed as part of a common plan to terrorise or collectively punish. The Trial Chamber failed to assess, and properly conclude, that these operations, or their conduct, had been agreed upon by members of the JCE other than Bockarie. It was *possible* that this violence occurred "just by spontaneous action or by criminal actions conducted by isolated radical groups."[307]

124. There was no evidence that these June 1997[308] attacks had been planned or organised by the plurality, in the Supreme Council or elsewhere. The Chamber did not make any relevant findings concerning Bockarie's interaction with the other JCE members at this time or how the operations had been conceived or whether there had been any planning by anyone other than the immediate participants. Crucially, the Trial Chamber (although relying heavily on his testimony to convict the Appellant) disregarded the most relevant evidence provided by TF1-054, who testified that a five person delegation, including Mike Lamin and Kallon, had been sent from Freetown to Gerihun *to talk to the* residents in order to request that they join the juntas.[309] The attack on Gerihun took place after the residents declined the invitation. Undoubtedly, an inference arises; that these men were responsible for the attacks. But this could not support an irresistible inference that the attacks were conceived, agreed or planned by others, including any of the JCE members: an inference on an inference is an inference to far.

125. The Chamber found that Bockarie was the JCE member involved in the remainder.[310] The evidence could not satisfy a reasonable trier of fact that he was acting in pursuance of a common criminal plan. There was no nexus to any other JCE member. Further, there was ample evidence to the contrary (which the Chamber failed to examine or appreciate). This evidence – Bockarie's seniority and his self-serving conduct[311] – raised a further doubt. TF1-008 testified that Bockarie made it plain that *he* had captured the town and *he* was now in charge.[312] There was no evidence that rebutted the inference that the Le800,000 pillaged from Kamara went anywhere but Bockarie's pocket.[313] The fact that the Chamber found that this pillage was not an act committed with an intent to spread terror buttresses this

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[307] *Brđanin*, TC Para. 119.
[308] Judgment, Paras. 994, 995, 1006, 1010.
[309] Transcript/TF1-054, 8 December 2005, pp. 23-27.
[310] *E.g.*, Judgment, Para. 1029.
[311] Judgment, Para. 1007.
[312] Judgment, Para. 1029. *See*, Transcript/TF1-008, 8 December 2005, pp.36.
[313] Judgment, Para. 1008.

conclusion.[314] There was nothing in the commission of these crimes to undermine the reasonable inference that these crimes were committed by Bockarie for his own self aggrandisement or personal enrichment. The Appellant should not have been found guilty of these crimes pursuant to the JCE, since there was insufficient evidence to conclude that they fell within a common purpose.[315]

126. For the reasons outlined above there was ample doubt that the crimes in Bo District were within any common criminal plan and the Chamber erred in fact and law by purportedly reaching this conclusion.

GROUNDS 27, 28, 29, 30, 31 & 32

127. The submissions in connection with Ground 28 are below the submission for Ground 32.

128. The Appellant submits these grounds interlinked and relevant to the critical question concerning the existence of a plurality and a common criminal purpose. The Appellant submits that each Ground establishes a further doubt concerning its existence. The Grounds will be argued together to demonstrate that the Chamber erred in fact and law in concluding that there was a countrywide common criminal purpose in Kenema which was evidenced by the actions of the Junta government.[316]

Errors in finding a common criminal purpose

Bockarie leaving the 'Plurality'

129. The Chamber found that the enslavement in Tongo commenced on the 11 August 1997.[317] Prior to this the sole crime found established by the Chamber in Kenema District, since the onset of the Junta, was the killing of Bunnie Wailer and his accomplices and this was not found to be either an act of terror or an act of collective punishment.[318] Accordingly there was no evidence upon which a reasonable trier of fact could conclude that any criminal purpose existed from 25 May to 11 August 1997 in Kenema District.

130. Between 25 May 1997 and late January 1998, *only two* alleged crimes were found to have

[314] Judgment, Para. 1034. The Trial Chamber failed to make a finding that the crime of pillage, whereby Bockarie looted Le800,000, was a crime of terror, as charged in Count 1. In other words, this crime was committed without an intention to further terror, collective punishment or in furtherance of the taking of power and control. Accordingly, it was outside the common purpose and the Appellant should not have been found guilty pursuant to the JCE 6(1) liability for the pillage in Sembehun.
[315] The Appellant will not be pursing Ground 26.
[316] Judgment, Para. 2054.
[317] Judgment, Para. 2051 and, *for example*, Transcript/TF1-060, 29 April 2005, pp. 48 (The RUF and AFRC entered Tongo on the 11th August 1997).
[318] Judgment, Paras. 1061-1063.

occurred in Kenema Town: the killing of Bunnie Wailer and his two accomplices,[319] and the arrest of TF1-129 on 27 October 1997.[320] Accordingly there was no evidence upon which a reasonable trier of fact could conclude that any criminal purpose existed from 25 May to late January 1998 and that it encompassed Kenema Town.

131. It was an error of law and fact to conclude that Bockarie's actions in Kenema Town were in pursuance of a criminal plan shared by any AFRC JCE member. There was overwhelming evidence that he was operating his own regime, for better or worse, and that it was not at the behest of, or in concert with, any member of the AFRC JCE. The Chamber's conclusion that his relocation to Kenema "did not impact on the common purpose and the cooperation between the leadership [JCE members] continued"[321] was not supported by evidence.

132. The Trial Chamber found that by "early September 1997, Bockarie had become disillusioned with the RUF's limited role in the AFRC government. Bockarie was particularly aggrieved by the AFRC's disregard for the RUF's advice on military matters.... Also motivated by fears that the AFRC fighters would make an attempt on his life, Bockarie relocated to Kenema."[322] The Chamber downplayed (or ignored) the evidence to arrive at this conclusion. The evidence was that Bockarie believed that there had been three attempts on his life by AFRC men.[323] This was confirmed by TF1-360, who also stated that Bockarie lacked any military command in Freetown.[324] TF1-361 confirmed that Bockarie had departed to have "his own regime" in Kenema.[325] TF1-045 confirmed that Bockarie left because he was of the view that his position in the RUF was not recognized, "[a]t all" within the AFRC junta.[326]

133. As previously submitted[327] – but roundly ignored by the Chamber – there was no evidence that Bockarie took his orders from JPK, whilst in Kenema nor that he was acting in concert with AFRC JCE members in furtherance of crime, particularly terror or collective punishment. [328] According to the evidence Bockarie became like an "outlaw" refusing to take orders or instructions from JPK or any member of the AFRC.[329] Sam Bockarie's fall from potential vice-president in the new Junta regime to his (self imposed) relegation in Kenema was not without consequence:[330] he ordered the RUF to withdraw from Freetown.[331] While in

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[319] Judgment, Para. 1061. These killings were found to have happened in the "early months of the regime."
[320] Judgment, Para. 1048.
[321] Judgment, Para. 1989.
[322] Judgment, Para. 764.
[323] Exhibit 35, p. 2361.
[324] Transcript/TF1-360, 22 July 2005, pp. 39 and 41.
[325] Transcript/TF1-361, 14 July 2005, pp.75.
[326] Transcript/TF1-045, 22 November 2005, pp. 62-63; Transcript/Sesay, May 2007, pp.10.
[327] *See, generally*, Sesay Defence Closing Brief, Paras. 463-504 ("The Alleged Crimes During the Junta").
[328] Sesay Defence Closing Brief, Para. 489.
[329] Transcript, RUF, George Johnson, 18 October 2005, pp. 108-112.
[330] Transcript/TF1-371, 28 July 2006, pp. 50.

Kenema, the RUF and AFRC maintained separate command struetures in Kenema[332] and Boekarie maintained his minimal ties to the AFRC because he was reliant upon them for the distribution of weapons.[333] However, beeause the AFRC did not share these weapons, Boekarie withdrew his eooperation from the AFRC.[334]

134. The elaim by the Chamber that "From Kenema Town, Boekarie eommunicated over radio with RUF forces throughout the country and ensured that the AFRC/RUF cooperation continued"[335] is too vague to demonstrate any analysis of whether that cooperation was directed to terror and collective punishment. The evidence to which the Trial Chamber cites indicates that the RUF and AFRC maintained separate radio communication systems;[336] there is no finding that Boekarie communicated with anyone other than the RUF or that he sent or received communications from Freetown. Conversely, there was un-contradicted evidence that demonstrated that Bockarie ordered the RUF not to any longer cooperate with the AFRC.[337]

Tongo Field and Bockarie

135. The operations at Tongo Field provided little or no further support for the proposition that there was a global criminal purpose being put into action involving an agreement to commit terror and collective punishment to take over the country. Conversely, the Chamber had erred by disregarding the relevant evidence. It was not open to a reasonable Chamber to conclude that the forced "government" mining was designed and executed by joint collaboration between the AFRC *and* RUF.[338] The evidence that was disregarded by the Chamber, without reasons, was adduced through prosecution witnesses, otherwise found reliable when incriminating the Appellant. Government mining was controlled by the AFRC administration

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[331] Transcript/TF1-071, 19 January 2005, pp. 23.
[332] Transcript/TF1-371, 28 July 2006, pp. 50. *See also*, Transcript/TF1-361, 14 July 2005, pp. 68 (the RUF and AFRC maintained separate command structures in Freetown as well).
[333] Transcript/TF1-361, 14 July 2005, pp. 75 (Bockarie thought the AFRC were keeping the weapons to themselves and playing a trick on the RUF); Transcript/TF1-036, 3 August 2005, pp. 67 (While in Kenema, if Bockarie were to engage in an operation, he had to procure weapons and ammunition from the AFRC Kenema brigade); and Transcript/TF1-371, 28 July 2006, pp. 50 (Bockarie had to rely upon the AFRC for the distribution of weapons; JPK guarded those weapons with jealousy).
[334] Transcript/TF1-045, 22 November 2005, pp. 70-71.
[335] Judgment, Para. 1989.
[336] Transcript/TF1-036, 3 August 2005, pp. 66-67. Cited at footnote 3723.
[337] Transcript/ TF1-045, 22 November 2005, pp. 62-63.
[338] E.g., Judgment, Paras. 1089 and 1093. Sec. Sesay Defence Closing Brief at Paras. 644-654. The Defence notes that, in error, the Sesay Defence Closing Brief (Para. 649) refers to TF1-036's testimony as diamonds being reported to Bockarie from Tongo during the junta. TF1-036's evidence is clear that he was referring to Bockarie receiving diamonds from Tongo while he was at the headquarters (not Secretariat) in Buedu (Transcript/TF1-036, 28 July 2005, pp. 54). As Bockarie was not in Buedu during the Junta, this mining occurred after Tongo's capture towards the end of 1998 or beginning of 1999.

and its senior officials[339] at the Secretariat.[340] TF1-045 saw Bockarie in Tongo Field once.[341]

136. The AFRC had no control over the RUF personal mining[342] which was arranged by Bockarie.[343] In addition to the RUF personal mining there was also AFRC personal mining.[344] The RUF personal mining was separate from the AFRC "government" and personal mining.[345] Further, the overall commander in Tongo was AFRC Captain Yamao Kati[346] who reported to the AFRC brigade commander in Kenema,[347] who was answerable to Army Chief of Staff, who reported to the Chief of Defence Staff, who in turn reported to Johnny Paul Koroma.[348] Captain Kati "was taking care of Tongo."[349] Of note, RUF combatants such as TF1-045 sought permission from Kati to mine.[350] The Trial Chamber points to DIS-069's evidence for its finding that diamonds from the mining in Tongo were delivered to Bockarie.[351] There is no suggestion that these diamonds came from the centralized mining; rather, they would have come from RUF personal mining. Further, the appointments of senior members to supervise alluvial diamond mining was made by Johnny Paul Koroma,[352] and not the Supreme Council.[353]

137. No reasonable trier of fact could have concluded that these separate mining operations were evidence of a plan formulated between Sankoh, Bockarie, Sesay, Gbao, Superman, Eldred Collins, Mike Lamin, Isaac Mongor, Gibril Massaquoi, JPK, Gullit, Bazzy, Five-Five, SAJ Musa, Zagalo, Eddie Kanneh.[354] Further, even if this is not accepted, the plan was focused on

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[339] Transcript/TF1-371, 31 July 2006, pp. 52 ("the AFRC council was responsible for mining in Kono District and they did mine in Kenema District. Specifically, Tongo was predominantly the RUF, because the RUF liberated that particular piece of land from the civil militia, though there was the presence of the AFRC secretariat, as it was, in Kono."); Transcript/TF1-045, 18 November 2005, pp. 68 (PLO-2 "was the *head of the mining which was set up in Tongo for AFRC.* He was the one that was sent there so as to take over."); and Transcript/TF1-045, 23 November 2005, pp. 22 (PLO-2 was in control of the centralized mining for the AFRC).
[340] Transcript/TF1-371, 31 July 2006, pp. 56 (note that the AFRC Secretariat was run by Eddie Kanneh who reported to SAJ Musa); and Transcript/TF1-045, 18 November 2005, pp. 68 ("OC secretariat [AFRC Sergeant Junior], according to what I saw, he was in charge of all the administration that had to do with civilians which was going on, together with the AFRC soldiers who were in Tongo.").
[341] Transcript/TF1-045, 23 November 2005, pp. 23.
[342] Transcript/TF1-371, 31 July 2006, pp. 56 ("[The AFRC secretariat] had their administrative functions and mining, that was controlled by the AFRC for it [but the AFRC] did not have any control over RUF mining."); Transcript/TF1-045, 23 November 2005, pp. 22 (PLO-2 was not in control over personalized mining).
[343] Transcript/TF1-045, 23 November 2005, pp. 19.
[344] Transcript/TF1-045, 23 November 2005, pp. 19-20.
[345] Transcript/TF1-371, 31 July 2006, pp. 56. See also, Transcript/TF1-045, 23 November 2005, pp. 19-20 (AFRC personal mining was controlled by Sergeant Junior, the OC Secretariat, and the PLO-2).
[346] Transcript/TF1-045, 23 November 2005, pp. 18.
[347] Transcript/TF1-045, 23 November 2005, pp. 20.
[348] Transcript/TF1-045, 23 November 2005, pp. 20-21.
[349] Transcript/TF1-045, 18 November 2005, pp. 67.
[350] Transcript/TF1-045, 23 November 2005, pp. 20.
[351] Judgment, Para. 1090.
[352] Transcript/TF1-371, 20 July 06, pp. 36.
[353] The evidence to which the Chamber cites for this finding at Para. 1088 (Transcript/TF1-371, 20 July 06, pp. 36) does not support this conclusion.
[354] The Trial Chamber clearly did not intend to include Zagalo and Eddie Kanneh in its enumeration of the JCE

mining – not terror and collective punishments: see Ground 32 below.

Analysis of crimes and common purpose[355]

Error in holding 'ordinary' crimes to be part of the common purpose

138. The Defence submits that the Trial Chamber, having erred in concluding that the taking power and control was the common purpose, further erred by concluding that offences that were not committed with an intent to spread terror or collectively punish could still fall within the common purpose. The following crimes were not found to be committed with this intent and therefore could not be within the criminal purpose alleged: the killing of Mr. Dowi;[356] the killing of Bunnie Wailer and two accomplices;[357] the killing of two alleged thieves;[358] and the beating of TF1-122.[359]

Error in failing to make a finding concerning an essential element

139. The following crimes were not found to be committed with intent to take control or power and therefore could not be within the common purpose: the killing of Mr. Dowi;[360] the killing of three civilians at Mambu Street;[361] the killing at the NIC building;[362] the beating of TF1-122;[363] the arrest of TF1-129;[364] the beating of BS Massaquoi et al. in January 1998;[365] and the beating of BS Massaquoi et al. on 6 February 1998.[366]

Errors in finding an intention to spread Terror (Ground 29) and commit Collective Punishments (Ground 30)

140. It is submitted that, even when the Trial Chamber found that crimes were acts of terror, and therefore potentially being in furtheranee of the criminal purpose, fundamental errors of law and fact were made. In particular: in concluding beyond a reasonable doubt that the following crimes were committed with the specific intent to terrorise the civilian population, as charged in Count 1. An act of terror is a specific intent crime. That is, the perpetrator must have

members – these two men had not at any time been alleged to be members of the JCE (Indictment, Para. 34).
[355] Milutinvic, TC, Para. 100, 413; Martić, AC, Para. 410.
[356] Judgment, Para. 2050, 3.1.1(ii).
[357] Judgment, Para. 2050, 3.1.1(vi).
[358] Judgment, Para. 2050, 3.1.1(vii).
[359] Judgment, Para. 2050, 3.1.2(i).
[360] Judgment, Para. 2050, 3.1.1(ii).
[361] Judgment, Para. 2050, 3.1.1(iii).
[362] Judgment, Para. 2050, 3.1.1(iv).
[363] Judgment, Para. 2050, 3.1.2(i).
[364] Judgment, Para. 2050, 3.1.2(ii).
[365] Judgment, Para. 2050, 3.1.2(iii).
[366] Judgment, Para. 2050, 3.1.2(iv).

intended to cause extreme fear[367] by the commission of a crime. This has to "be judged on a case-by-case basis."[368] The Trial Chamber had to exclude all other reasonable inferences in relation to the specific intent of *each* individual crime and thereafter be satisfied that the intent to *spread* terror among the civilian population was principle among the aims. Such intent can be inferred from the circumstances of the acts or threats, that is, from their nature, manner, timing and duration.[369] As far as can be discerned from the paucity of reasoning proffered,[370] the Trial Chamber's approach was fundamentally flawed.

141. First, the Chamber erred in law by reversing the burden of proof by erroneously taking the conclusion that "the AFRC/RUF regularly killed civilians accused of being Kamajors as a deliberate strategy to terrorise the civilian population and prevent any support for their opponents"[371] as proof of the (global) intent of the perpetrators in Kenema Town. This conclusion was used to infer terror from the mere presence of three corpses discovered in Kenema Town.[372] On this basis alone it must be assumed that this reversal of the burden of proof was applied by the Chamber in relation to all the crimes.

142. The Trial Chamber failed to address each crime individually as was required. Instead the Trial Chamber purported to deduce from an amalgam of *different* crimes (against Kamajor suspects or dead bodies) that acts of terror were committed.[373] This was an error of law that invalidates the decisions. The Trial Chamber disregarded the evidence that demonstrated that civilians were free to leave Kenema but remained despite the so-called terror.[374] There was no evidence in dispute of this fact.

143. The reasons proffered for finding acts of terror are largely irrelevant to the determination of the perpetrators intent. The victim's occupations; that the ICRC came to enquire about a victim; that Kamajors attempted to rescue victims; and that a number of victims were prominent members of civil society[375] do not, without more, amount to the requisite proof. The only relevant factor identified, that might have probative value, was the publicizing[376] of two crimes: the impaling of BS Massaquoi's head on a pole, and combatants singing as a civilian was taken to be killed and the use thereafter of his intestines as a checkpoint.[377]

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[367] Judgment, Para. 117.
[368] Judgment, Para. 117.
[369] Judgment, para. 121, quoting *Galic* Appeal Judgment, Para. 104. This was endorsed by the Appeals Chamber in the *CDF* Appeal Judgment, Para. 357
[370] Judgment, Para. 1122-1130.
[371] Judgment, Para. 1102.
[372] Judgment, Para. 1102.
[373] Judgment, Para. 1124.
[374] *See, generally*, Ground 28; *see also, e.g.*, Exhibit 28.
[375] Judgment, Para. 1124.
[376] Judgment, Para. 1124.
[377] Judgment, Para. 1124. The civilian around whom the RUF and AFRC were dancing after the civilian was

144. Notwithstanding, this evidence was insufficient. The Trial Chamber could not identify who impaled BS Massaquoi's head and tied it to a pole.[378] The Chamber could not identify the killer of the man whose intestines were used or what his intention might have been.[379] In both cases the specific intent of the unknown perpetrator cannot be imputed to those who abused the corpses: the Chamber could properly infer the intent of those men but not the intent of the killers.

Corpses at Mambu Street[380]

145. The Trial Chamber could not be satisfied that these corpses were even unlawfully killed. In concluding that because there was no evidence of fighting in Kenema Town those men must have been unlawfully killed[381] the Chamber reversed the burden of proof. Intent to spread terror can not reasonably be inferred from corpses, who are unable to give up their killers or explain the motivations behind their untimely end.

The Person Killed at the NIC Building[382]

146. The Chamber found that Bockarie was boasting that the murder was part of his desire to "do away with all the Kamajors."[383] There was nothing to gainsay that the deceased *was* a Kamajor and that this was the intention behind the killing.

The Killing of the Alleged Kamajor Boss[384]

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captured, and the civilian that was disemboweled are, as found by the Trial Chamber, the same civilian. *See*, Judgment, Para. 1065. Thus, only two crimes were publicized. The Defence disputes that the RUF or AFRC sang upon the capture of a civilian or disembowelled any civilian. The Defence also disputes that BS Massaquoi's head was *in fact impaled*. *In finding that* BS Massaquoi's head was impaled, the Trial Chamber relies upon hearsay evidence (*see*, Judgment, Para. 1078: "TF1-125 was told that BS Massaquoi was beheaded and his severed head had been tied to a pole and displayed in Kenema"). In contrast, on the 8th of February, TF1-122 "saw the body of BS Massaquoi lying with a very big cement block on his head" (Transcript/TF1-122, 7 July 2005, pp. 92).

[378] Judgment, Para. 1078 (The Trial Chamber only found that TF1-125 heard that BS Massaquoi's head was tied to a pole; the Trial Chamber provided no indication as to who actually tied his head to the pole). The Defence also notes that the Trial Chamber did not find who killed BS Massaquoi (*see*, Judgment, Para. 1078: "It was *rumoured* that [BS Massaquoi et al.] had been killed by Bockarie and his men"; *see also*, Judgment, Para. 1079: "Kallon *heard* that Bockarie and Eddie Kanneh had killed BS Massaquoi and certain other civilians for supporting Kamajors"). In its Legal Findings however, the Trial Chamber did find that "Bockarie and men under his command killed BS Massaquoi [et al.]" (Judgment, Para. 1099); however, the Trial Chamber erred here as the Chamber's factual finding does not support this conclusion.

[379] Judgment, Para. 1065.

[380] Judgment, Para. 1057.

[381] Judgment, Para. 1102.

[382] Judgment, Paras. 1058-59.

[383] Judgment, Para. 1059.

[384] Judgment, Para. 1065.

147. The Chamber could not be satisfied of the identity of the killer or the circumstances of his death. Further, as found by the Chamber the disemboweled civilian was killed during the "impending Kamajor attack" (that is, the Intervention).[385] No reasonable trier of fact could have inferred the intent of an unknown killer from this fact and in these circumstances.

Killing of BS Massaquoi et al.[386]

148. Trial Chamber provided no indication as to who killed these men. The Chamber found that it was "*rumoured* that [BS Massaquoi et al.] had been killed by Bockarie and his men"[387] and that "Kallon *heard* that Bockarie and Eddie Kanneh had killed BS Massaquoi and certain other civilians for supporting Kamajors."[388] Therefore, the specific intent of the perpetrator(s) of these killings cannot be discerned.

Beating of BS Massaquoi et al.[389]

149. As found by the Chamber the beating of suspected Kamajor collaborators occurred between the 28th January and the 8th February 1998. The Chamber disregarded relevant evidence for reasons that remain unexplained. The Chamber disregarded the best evidence that the beating of these men was not intended to spread terror, namely that it did not have this effect – as evidenced by Exhibit 28, the Kenema Town Police Diary. There is nothing to allow an inference that life did not continue as "normal" within Kenema Town or any evidence that, excepting a few police officials, anyone was made of aware of the events. Further, there was no evidence to suggest that any civilian even knew about their arrest or beatings; nor is there any suggestion that their arrest or beatings were "publicised."[390] Exhibit 28 also raised a reasonable inference: it demonstrates that BS Massaquoi's collaboration with the Kamajors was confirmed.[391] Had the Chamber taken this evidence into account – and there was no reason to disregard it – it could not have excluded the reasonable possibility Bockarie was acting in response to conduct that aggravated him.[392]

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[385] Judgment, Para. 1065.
[386] Judgment, Paras. 1077-1078.
[387] Judgment, Para. 1078.
[388] Judgment, Para. 1079.
[389] Judgment, Para. 1072-1076.
[390] Judgment, Para. 1124.
[391] Exhibit 28, 17th January 1998, entry 50 at 8474, "In the process of search [nf BS Massaquoi's residence], two expired pistol licenses, three letters dated 24-8-97, 6-10-97, and 1-12-97, *a list of contributions towards Kamajor initiation were also discovered.*"
[392] *See, e.g.*, Judgment, Para. 1126 in which the Chamber found that when a perpetrator commits a crime in response to conduct that aggravates that perpetrator, this is not an act of terror. *See also*, Exhibit 28, 17th January 1998, entry 50 at 8474, "In the process of search [of BS Massaquoi's residence], two expired pistol licenses, three letters dated 24-8-97, 6-10-97, and 1-12-97, *a list of contributions towards Kamajor initiation were also*

Beating of TF1-129[393]

150. On a reasonable assessment TF1-129's allegations concerning his first arrest lacked the necessary indices of reliability.[394] Notwithstanding, it is clear that his treatment was much more nuanced that the conclusion reached by the Chamber.[395] It was unreasonable for the Trial Chamber to conclude that TF1-129 was in fact beaten during his first arrest. In any event, the fact that the ICRC and prominent members and relatives of the witness came – and were permitted by Bockarie – to visit, would appear to support a conclusion in contradistinction to that drawn by the Chamber.[396] It is, at least, evidence that the event did not terrorise those who visited, which ought not to have been disregarded.

151. Further, the nature of the crime militated against a single all-encompassing intention. The Chamber found that TF1-129 was mistreated by many over a reasonably long time and in different locations and together this amounted to an inhumane act.[397] Sesay's conduct was not found to amount to an inhumane act and there was no evidence that supported an inference that he knew of all or even most of the remaining mistreatment.[398] The evidence did not support an inference that he intended terror or, that he, or the remaining perpetrators, sought to publicize[399] the crime. In any event, TF1-129 (himself a Kamajor ally),[400] was alleged to have provided assistanee to the Kamajors.[401] In response, an aggravated Bockarie ordered TF1-129's arrest. Thus, any crime committed during TF1-129's arrest cannot be said to be committed with the primary intent of spreading terror.

GROUND 30: Collective Punishments in Kenema Town

152. In finding that colleetive punishments were eommitted,[402] the Trial Chamber erred in law and fact. A collective punishment is a specific intent crime. That is, the perpetrator must have specifically intended to impose *indiscriminate* punishment and it must be imposed *collectively* for omissions or acts for which the person may or may not have been

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discovered. Otherwise no serious report."
[393] Judgment, Paras. 1048-1053.
[394] *See*, Sesay Defence Closing Brief, Paras. 550-563. Note that Sesay was not cross-examined on his version of events.
[395] Transcript/TF1-129, 12 May 2005, pp. 7-9.
[396] Judgment, Paras. 1053 and 1124.
[397] Judgment, Para. 2052.
[398] Judgmeut, Para. 2052.
[399] Judgment, Para. 1124.
[400] Transcript/TF1-129, 12 May 2005, pp. 14-15.
[401] Judgment, Para. 1053.
[402] Judgment, Para. 1132.

responsible.[403] Thus, the specific intent of *each* individual crime must be examined. The Chamber erred in law by failing to examine the circumstances of each crime and thereafter exclude all other reasonable inferences. The Chamber concluded that "the victims of these crimes were targeted in order to punish them for allegedly providing assistance to enemies of the RUF, an action for which some or none of them may or may not have been responsible."[404] In other words they were not targeted because they were part of a group; not targeted indiscriminately and not punished collectively: they were punished individually for a suspicion, reasonable or otherwise, that they were betraying the AFRC/RUF. The punishment they received was aimed at them and no one else; it was personal in nature.[405] The fact that the punishment was administered to few individuals is further evidence of the individual nature of the punishment. The crime of collective punishments it is not intended to penalize excessive or cruel punishment of an individual. It is designed to prohibit punishment aimed at a group under any circumstances. That is the intent and the mischief to which the prohibition is directed. This separates it from 'ordinary' offences that target protected persons or objects.[406]

Error in failure to conduct essential analysis concerning crimes by non-JCE Members[407]

153. The Chamber observed that "individual acts of violence, even when committed in the context of a campaign to terrorise the civilian population, may be committed without the primary purpose of furthering this campaign."[408] This was correct inasmuch as it identified an aspect of the required assessment. The remainder – the assessment of whether it can be established that the crimes can be imputed to at least one member of the JCE and that this member, when using the principal perpetrators acted in accordance with the common objective[409] – was not conducted. The Trial Chamber concluded that the "control exercised by the AFRC and RUF over Kenema Town during the junta period created a permissive environment in which the fighters could commit crimes with impunity."[410] This created a presumption, namely that it was more likely that crimes would be committed for personal reasons, rather than in pursuance of a common criminal purpose to terrorise and collectively punish in furtherance of the aim to take power and control. Having reached this conclusion it was incumbent upon

[403] Judgment, Para. 126.
[404] Judgment, Para. 1133.
[405] Judgment, Para. 124.
[406] Judgment, Para. 127.
[407] *Brđanin*, Appeal Judgement, Para. 418.
[408] Judgment, Para. 1126.
[409] *Brđanin*, AC, Para. 413, 418, 430; *Limaj et al.*, AC, Para. 120; *Krajišnik*, AC, Para. 226.

the Chamber to, not only examine each crime in Kenema to be sure that it was within the common purpose, but to apply this presumption.

154. Hence the Chamber ought to have addressed the fact that there was no evidence that created the required link between the following crimes and a JCE member: the beating of TF1-122;[411] the killing of Mr. Dowi[412] and the killing of an alleged Kamajor boss.[413] Seven crimes were found by the Trial Chamber to have been committed by or procured by a member of the JCE: Bockarie. These are the killing of Bunnie Wailer and his two accomplices, the killing of two thieves, the killing of three persons at Mambu Street, the killing of a suspected Kamajor at the NIC building, the beating and killing of BS Massaquoi et al., and the arrest of TF1-129 by Sesay et al. (see above). As discussed above, the Chamber found that the killing of Bunnie Wailer, his two accomplices, and the killing of the two thieves were found not to have been committed with an intention to terrorise or collectively punish[414] and therefore they were not within the common purpose. As regards the remaining crimes, the evidence did not permit a reasonable trier of fact to conclude that Bockarie remained a member of the JCE.

155. Further, no reasonable trier of fact could have been satisfied that the crimes that involved Bockarie were not committed for personal reasons unconneeted with any common criminal plan. There was simply no evidence that these crimes had been agreed upon by any other alleged member of the JCE. The Appellant relies upon the arguments advanced above in relation to the question of terror and collective punishments. Further, as submitted above, the evidence suggested Bockarie had left the plurality. The only JCE member to have visited Kenema Town during the relevant period was Sesay, and his involvement was found limited to the arrest of three men.[415] There was simply insufficient evidence to rebut the inference that Bockarie was an outlaw and was running his own regime.

GROUND 31: No Unlawful Killings at Tongo Fields Area and No Common Criminal Purpose[416]

156. The Trial Chamber erred in finding beyond a reasonable doubt that there were killings at the Tongo Field area.[417] Alternatively, it was unreasonable for the Trial Chamber to find that these unlawful killings constituted acts of terrorism, and thereby capable of being within the

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[410] Judgment, Para. 1100.
[411] Judgment, Para. 1047; committed by "RUF and AFRC rebels."
[412] Judgment, Para. 1100; committed by "AFRC/RUF rebels."
[413] Judgment, Para. 1065; committed by "AFRC and RUF rebels."
[414] Judgment, Paras. 1123-1126 and Paras. 1132-1134.
[415] Judgment, Para. 1054-1056 and 1048-1056.
[416] *See also*, related submissions in Ground 28 below.
[417] Annex B: Charges that led to convictions – no or insufficient notice. For Kenema District, the Indictment only pleads unlawful killings in Kenema Town.

common purpose. The Trial Chamber erred in fact and law by failing to weigh the evidence. The Chamber simply selected the most incriminating aspects of the Prosecution evidence, whilst disregarding the rest, without reason or explanation.

TF1-035's Evidence – Alleged Unlawful Killings[418]

157. The Trial Chamber disregarded the Defence Submissions and proffered no reason for that dismissal. The Defence advanced plausible explanations concerning the deaths at the Cyborg Pit. The explanation that people died only when the sands of the pit collapsed on them[419] was supported by both Prosecution and Defence evidence and could not reasonably be excluded. The evidence relied upon by the Chamber, namely the evidence proffered by TF1-035 and TF1-045's[420] was incapable of rebutting this inference.

158. The Chamber relied upon a single witness to establish the brutal killings of 60 men. TF1-035's accounts were not corroborated by a single witness. TF1-045 claimed to be present in the Tongo Fields in August and September 1997 when TF1-035 alleged the killings took place.[421] That TF1-045, who professed his anger for Sesay,[422] did not testify to these killings but was found by the Chamber to be "confident and truthful while testifying"[423] was doubt enough.[424] Not a single relevant witness corroborated this account.[425]

159. Further, the Trial Chamber failed to take into account relevant evidence:[426] TF1-060 testified that on the day of the first shooting (20 civilians) the market was back in operation.[427] TF1-060 was present in Tongo Field area at the time of the purported shooting incident. He heard about the market re-opening but not the brutal slaying of his township citizens. Further, the fact that he did not hear of it subsequently, ought to have excited the Chamber's curiosity. It is unclear whether TF1-060 would have been present in Tongo for TF1-035's second

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[418] Judgment, Para. 1105-1108.
[419] *See*, Sesay Defence Closing Brief, Paras. 634-638.
[420] Judgment, Paras. 1082-1087.
[421] TF1-045 testified that he was in Tongo in August and September (Transcript/TF1-045, 18 November 2005, pp. 79). TF1-035's purported shootings happened in August and September; *see* below.
[422] *See*, e.g., Sesay Defence Closing Brief, para. 329. *See* Transcript/TF1-045, 24 November 2005, pp. 30-37 (the witness resents Sesay, inter alia, for having disarmed the RUF, having been beaten by Sesay; the witness also shifted blame on Sesay because he was indicted by the Special Court).
[423] Judgment, Para. 561.
[424] Judgment, Para. 1106.
[425] TF1-036, TF1-041, TF1-045, TF1-060, TF1-122, TF1-366, TF1-367, and TF1-371.
[426] *See* Ground 28 for context as it related to Tongo Fields.
[427] Transcript/TF1-060, 29 April 2005, pp. 54. Transcript/TF1-035, 5 July 2005, pp. 85-87. TF1-035 testified that civilians were forced to mine on the first, second, and third day of the RUF and AFRC's entry with SBUs opening fire on 20 civilians on the third day. *See*, Judgment, Para. 1082.

purported shooting[428] (the second shooting would have between the 19th and 22nd of August 1997[429]). However, as he was on the Caretaker Committee – which operated in that location – it is logically to infer that he would have received a report of such an incident.[430] For the third purported shooting, TF1-060 would have been present in Tongo[431] and yet, he did not testify to the event. This lack of corroboration raised more than a reasonable doubt.

160. The Trial Chamber erred in fact and law in relying upon the evidence of TF1-035 as proof beyond a reasonable doubt of the third shooting (of 25 civilians at night).[432] The sole piece of evidence came from TF1-035[433] who was told it by a combatant after that combatant made an inquiry of another.[434] Triple hearsay cannot sustain an allegation of the unlawful killing of 25 civilians. Once again TF1-060 did not testify about such a killing.[435]

TF1-045's Evidence – Alleged Unlawful Killings

161. The Trial Chamber's conclusions concerning the killing of three civilians rely upon the TF1-045's[436] uncorroborated testimony. The Trial Chamber did not conclude, and TF1-045's testimony is unclear on, when these purported killings occurred. However, as TF1-045 testified that he was in Tongo in August and September,[437] TF1-035 and TF1-060 would have

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[428] TF1-060 testified that he went to Kenema Town on the evening of the 20th August 1997 (Transcript/TF1-060, 29 April 2005, pp. 60; "[Sam Bockarie] provided us with a vehicle; we came to Kenema on the 20th [of August]") and returned to Tongo on the 31st August 1997 (Transcript/TF1-060, 29 April 2005, pp. 65; "we returned to Tongo on 31st of August"). *See*, Judgment, Para. 1084.

[429] This shooting was six to nine days after the first shooting. The RUF and AFRC entered Tongo on the 11th August 1997 (Transcript/TF1-060, 29 April 2005, pp. 48). The first shooting was on the 13th of August 1997, the third day after the RUF and AFRC's entry into Tongo. TF1-035 testified that he was detained two or three days after the first shooting incident (Transcript/TF1-035, 5 July 2005, pp. 88); he was then locked up for two or three days (pp. 88); and then on the second or third day of his release, the civilians were forced to mine again (pp. 90). On that day, 25 civilians were fired upon.

[430] TF1-060 testified that when the Caretaker Committee returned to Tongo from Kenema, they received "so many reports." None of these included a civilian death in connection with mining or forced labour in connection with mining. In contrast, the Caretaker Committee received a report of a civilian death on 8th September 1997 from the neighbouring chiefdom (Transcript/TF1-060, 29 April 2005, pp. 65).

[431] TF1-060 testified that he returned to Tongo from his trip from Kenema Town on the 31st August 1997 (Transcript/TF1-060, 29 April 2005, pp. 65). The third shooting was two weeks after the second shooting (Transcript/TF1-035, 5 July 2005, pp. 94-95) which occurred between the 19th and 22nd August 1997, placing the third shooting between the 2nd and 5th September 1997.

[432] Judgment, Paras. 1085-1086.

[433] Transcript/TF1-035, 5 July 2005, pp. 95. "'Colonel, we heard some firing yesterday at Cyborg. What happened?'"

[434] Transcript/TF1-035, 5 July 2005, pp. 95. "A. Well, I felt that it was the Kamajors that attacked, but in the morning, one Colonel Gibbo, he went and checked at the guide [sic; guard] post."

[435] TF1-060 would have returned from Kenema Town by this time; further, as a member of the Caretaker Committee, TF1-060 would have heard about such a killing had it occurred.

[436] Judgment, Para. 1087. Further, the first time TF1-045 ever made mention of this killing was during his direct-examination in *Sesay et al.* TF1-045 did not refer to this killing in his meetings with the Prosecution prior to his testimony in *Sesay et al.* and *Brima et al.*, nor in his testimony in *Brima et al.* *See*, Transcript/TF1-045, 23 November 2005 pp. 40.

[437] Transcript/TF1-045, 18 November 2005, pp. 79: "I was there July, August. Towards the end of August to September I was there."

been present in the location and it is reasonable to infer would have heard about it – or, in the case of TF1-060, would have received a report about such an incident.[438] However, neither TF1-035 nor TF1-060 testified to these killings.

Common Purpose: Acts of Terrorism

TF1-035 and TF1-045's Alleged Killings At Cyborg Pit

162. Even if the Chamber's conclusion concerning the commission of these crimes were correct it is submitted that they erred in fact and law in determining that the crimes were committed with a primary intention to spread terror.[439] In these circumstances they were incapable of being within the alleged criminal purpose. The Chamber found that the crimes were committed in order to create an environment conducive to absolute obedience.[440] In other words the primary intention was enslavement – the intention to *spread* terror was not principal among the aims.[441]

163. Further, the Chamber disregarded the best (and undisputed) evidence concerning the intent of the perpetrators. The evidence shows that whatever happened did not spread terror. Conversely, after the first alleged shooting *all the civilians went on strike.*[442] Similarly, the civilians ran away from the mining site after the second shooting. Without fear they returned to the mining site "after the firing subsided."[443] Again they refused to mine.[444] The fact that civilians remained in Tongo Fields – even after each of these four sets of killings – rather than leaving in droves is powerful proof of the doubt (as to their commission or the intent of the perpetrators) unreasonably ignored by the Chamber.

TF1-045's Alleged Killing At Lamin Street

164. The Trial Chamber also found that a man at Lamin Street was killed because he had challenged a group of AFRC/RUF fighters."[445] The correct approach to this crimes was that

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[438] As a member of the Caretaker Committee, TF1-060 would have received such reports. *See, e.g.*, Transcirpt/TF1-060, 29 April 2005, pp. 65.
[439] Judgment, Para. 117.
[440] Judgment, Para. 1129.
[441] Judgment, Para. 121.
[442] Transcript/TF1-035, 5 July 2005, pp. 87. "Well, we strike, all the civilians. We said we are not going to mine for those people again, even if they kill us, we are not going to mine for them again."
[443] Transcript/TF1-035, 5 July 2005, pp. 92.
[444] Transcript/TF1-035, 5 July 2005, pp. 93. "Well, we all resisted that we are not going to mine for them, so no civilian mined for the government again."
[445] Judgment, Para. 1080. The Defence was not on notice for this crime and disputes that this killing in fact occurred. *See also*, Judgment, Para. 1127. The evidence doesn't support the finding that shots were fired into a crowd: "The report was brought that soldiers from there [Lamin Street], they captured women there. They were firing. So the people had wanted to challenge the soldiers. So they fired at a civilian and killed him. They left

taken previously by the Chamber, namely that the existence of an alternative reason – namely when the perpetrators' act out of anger and aggravation this is powerful proof that the primary motive was not to spread terror.[446] The Trial Chamber erred in fact and law in not drawing this conclusion.

165. Further, the Trial Chamber did not find that any member of the JCE, or his tool,[447] committed this killing or otherwise had the requisite intent to spread terror.

GROUND 32: Enslavement as Act of terror – part of the common purpose[448]

Reversal of the burden of proof

166. The Trial Chamber abused its discretion in taking the height of the Prosecution's case (i.e., TF1-045; *see* Para. 1094) and using that as the basis for its findings of guilt against Mr. Sesay. There was a disregard of all exculpatory evidence from a witness the Chamber found otherwise credible: TF1-035, who testified *inter alia* to miners striking, miners running away, Bockarie "*begging*" civilians to mine, and the clearest testimony indicating that forced mining was restricted to four days only. The Trial Chamber disregarded every piece of evidence that was relevant to the indices of enslavement; namely that which demonstrated that civilians were *free to leave Tongo at any time*; that civilian life was near to normal; that people were free to travel to Kenema to report the theft of mining equipment and other crimes and no measures were taken to prevent these actions.[449] These facts were relevant to the indices of enslavement[450] and the Chamber had a duty to deal with them. There was nothing in the sweeping generalized dismissal of the defence case[451] that was remotely relevant to the issues advanced.

167. The Trial Chamber relied almost exclusively on the evidence of TF1-035[452] and TF1-045 to establish the legal elements of enslavement at Tongo Fields.[453] The Chamber accepted as

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there." Transcript/TF1-045, 18 November 2005, pp. 76. The Defence notes that this is an uncorroborated double-hearsay account.

[446] Judgment, Para. 1126.

[447] Judgment, Para. 1080 (the crime was purportedly committed by "AFRC/RUF fighters").

[448] *See also*, related submissions in Ground 28 below.

[449] *See*, Sesay Defence Closing Brief, Paras. 564-587 ("Kono Diamonds in the Junta Period") and Paras. 588-663 ("Tongo: Count 13").
Annex E: Evidence used to support Enslavement in Tongo: Errors. Examines the evidence upon which the Trial Chamber relied to support its findings, and illustrates that many of the Trial Chamber's finding are either unreasonable or incorrect based on that evidence.

[450] Kunarac, Appeals Chamber Judgment, Para. 119.

[451] Judgment, Para. 527-531 and 565-569.

[452] The Defence notes that, as with the other Prosecution witnesses to which it cites, only the direct-examination of TF1-035 was cited.

[453] Judgment, Paras. 1088-1095.

eredible all of TF1-035's evidenee in eonnection with unlawful killings at Tongo.[454] The Chamber aecepted the vast majority of TF1-035's evidence eoneerning enslavement at Tongo.[455] In connection with enslavement, the Trial Chamber found: after TF1-035's first purported shooting incident,[456] "a group of civilians went on strikc;"[457] after TF1-035's second purportcd shooting incident,[458] "civilians in the vicinity ran away from the pit;"[459] and those civilians that ran away, of their own volition, returned to the pit.[460] However the Trial Chamber disregarded the aspects that would have removed or reduced the Appellants criminal responsibility.

168. Further, the evidenee was not that "a group of civilians went on strike,"[461] but *every* civilian miner went on strike.[462] This may have been "inconvenient" evidence, which did not dovetail with the Chamber's presumption of guilt, but nonetheless it was relcvant and probative of a lack of real enslavement. TF1-035 testified that Bockarie requested forgiveness for the shooting at the mining pit (that had led to the strike) and *"begged"* that the mining bc continued.[463]

169. TF1-045's evidence further detracts from the Trial Chamber's findings. It was unreasonable to conclude that there was an organized system of forced mining in the additional context that TF1-045 provides. The Trial Chamber citcd TF1-045's direct evidence concerning thc Secretariat and its functions.[464] TF1-045 also testified (again, on direct) that civilian members of the Mining Committcc initially found other civilians to mine.[465] However, the Mining

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[454] *See*, Judgment, Paras. 1082-1086.
[455] *See*, Judgment, Paras. 1089, 1093-1095.
[456] Judgment, Para. 1082.
[457] Judgment, Para. 1083.
[458] Judgment, Para. 1084.
[459] Judgment, Para. 1084.
[460] Judgment, Para. 1084. The Trial Chamber made no finding that these civilians were forced or otherwise compelled to return to the pit.
[461] Judgment, Para. 1083.
[462] Transcript/TF1-035, 5 July 2005, pp. 87 (this portion of TF1-035's evidence was cited by the Trial Chamber).
[463] Transcript/TF1-035, 5 July 2005, pp. 90 (this is from TF1-035's direct-examination). The Defence notes the curiosity of this statement; unless the civilians were in fact not being forced to mine, why would the civilians even consider mining upon this request.
Further, although TF1-035 refuted ever stating so, in his 26th November 2004 interview notes with the Prosecution, TF1-035 said "Then Mosquito said that they were not there to disturb anybody or hurt anybody." (5 July 2005, pp. 112). These notes were not corrected when TF1-035 met with the Prosecution again in April 2005 (see, pp. 113). *See, Kajelijeli* Trial Judgment, Para. 37 ("the Trial Chamber should consider such factors [as inconsistencies] as it assesses and weighs the evidence").
[464] Transcript/TF1-045, 18 November 2005, pp. 68 (cited at footnote 2114). "A. Well, the OC secretariat, according to what I saw, he was in charge of all the administration that had to do with civilians which was going on, together with the AFRC soldiers who were in Tongo. They custom duties, everything. When a truck came or a motor car came, they would stop there and they would give some commission there. Any time that a problem arose between civilians and soldiers, I would see them going there and they would sit together and discuss it. So he was in charge of that. That is Sergeant Junior as the OC secretariat."
[465] Transcript/TF1-045, 18 November 2005, pp. 70.

Committee was later reduced to identifying good mining sites[466] as the members of the Mining Committee no longer cooperated in identifying other civilians to mine.[467] On cross-examination, TF1-045 admitted that the Mining Committee was formed to *prevent the harassment* of civilians by combatants.[468] After the members of the Mining Committee *once or twice* refused to identify civilians to labour for the combatants, the Mining Committee was relegated to only finding good mining locations.[469] The Trial Chamber erred in finding that at Para. 1090 that the Mining Committee assisted in identifying civilian labour *throughout* the period that the RUF and AFRC were mining in Tongo.

170. Further, TF1-045 affirmatively indicated that some civilians mined willingly[470] including miners that mined voluntarily with the combatants.[471] In fact, TF1-045 testified that civilians stayed in Tongo and agreed to work for soldiers in exchange for food. According to TF1-045, although harassment was continuing, it was better to stay with an armed man.[472] Again, according to TF1-045, it was easier to work for the soldiers than to go elsewhere and try to earn a living.[473] TF1-045 also confirmed the existence of public relation officers at the Secretariat responsible for liaising between the civilians and soldiers and investigating offences. If the perpetrators of wrong-doings against civilians were caught, they would be punished.[474] None of TF1-045's exculpatory evidence, all of which is probative of the lack of enslavement, was included in the Trial Chamber's findings.

171. The Chamber unreasonably disregarded TF1-060's evidence as it concerns the Caretaker Committee. The Committee was another civilian complaint mechanism and another indicator of the lack of enslavement in Tongo.[475]

Duration of Enslavement: Four Days Only

172. The Chamber disregarded TF1-035's testimony that the only times in which civilians were forced in any sort of organized way[476] were on the first three days upon the RUF and AFRC's entry[477] and an additional day, six to nine days later.[478] This was powerful evidence, from a

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[466] Transcript/TF1-045, 18 November 2005, pp. 70.
[467] Transcript/TF1-045, 18 November 2005, pp. 70.
[468] Transcript/TF1-045, 23 November 2005, pp. 40.
[469] Transcript/TF1-045, 23 November 2005, pp. 36.
[470] *E.g.*, Transcript/TF1-045, 23 November 2005, pp. 30.
[471] Transcript/TF1-045, 23 November 2005, pp. 30.
[472] TF1-045/Transcript, 23 November 2005, pp. 33, line 5 – pp. 34, line 9.
[473] TF1-045/Transcript, 23 November 2005, pp. 35, lines 1-6.
[474] Transcript/TF1-045, 23 November 2005, pp. 26-27.
[475] *See*, Sesay Defence Closing Brief at Paras. 616-618.
[476] Thus excepting TF1-035's allegations of force at Para. 1085-1086.
[477] Transcript/TF1-035, 5 July 2005, pp. 85-86.
[478] TF1-035 testified that he was detained two or three days after the first shooting incident (Transcript/TF1-035, 5 July 2005, pp. 88); he was then locked up for two or three days (pp. 88); and then on the second or third day of

witness heavily relied upon by the Chamber to incriminate the Appellant. No other prosecution witness was capable of rebutting this evidence.[479] TF1-045's testimony did not support the Chamber's finding that there was forced mining between August/September and December 1997 (and especially not at Cyborg Pit).[480] In August/September 1997,[481] TF1-045 returned to Freetown. In December 1997,[482] TF1-045 came back to Tongo. However, when TF1-045 returned, mining at Cyborg Pit had ceased.[483]

173. The Trial Chamber's approach deprived the Appellant of the benefit of the doubt. The Chamber concluded that "[d]uring the period from August to December 1997, up to 500 civilians in Tongo Field worked in the mining sites under the supervision of a mixture of armed AFRC and RUF fighters."[484] First, there was no evidence to establish how many civilians were forced to mine at Cyborg pit, rather than the whole of Tongo Fields. The Appellant was alleged to be responsible for enslavement at Cyborg pit only.[485] Second, the Chamber relied upon TF1-045, TF1-367 and TF1-041 to conclude that there were up to 500 detained. The evidence could not sustain this finding. First TF1-045 stated that he was able to "give an estimate; 300, 400, 500 every day".[486] Further, disregarded by the Chamber was TF1-045's concession that some civilians mined willingly.[487] TF1-041 stated that there were "[l]et's say 200, because there were many".[488] TF1-367 stated that the number was 200 to 300 every morning.[489] The Trial Chamber's approach to take the highest number was to deprive the Appellant of the benefit of doubt.

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his release, the civilians were forced to mine again (pp. 90).
That there were a total of four days of organised forced ("government") mining was confirmed during TF1-035's cross-examination. *See*, Transcript/TF1-035, 5 July 2005, pp. 104. This portion of TF1-035's transcript was cited in the Sesay Defence Closing Brief at Paragraph 590. The Defence notes that, on cross-examination, TF1-035 did not foreclose the possibility of non-forced mining after the government mining ended. *See*, Transcript/TF1-035, 5 July 2005, pp. 130.

[479] The other Prosecution witnesses cited by the Trial Chamber in connection with enslavement at Tongo are TF1-041, TF1-045, TF1-366, TF1-367, and TF1-371, all of whom were RUF accomplice-insiders. With the exception of TF1-045, each of these witnesses were not present in Tongo at the relevant time (TF1-366, *see* Transcript/TF1-366, 11 November 2005, pp. 40; TF1-367, *see* Sesay Defence Closing Brief at Para. 660) or were not present for any substantial period of time (e.g., Transcript/TF1-041, 10 July 2006, pp. 19 (TF1-041 was present in Tongo for a day-and-a-half in late December 1997); Transcript/TF1-371, 20 July 2006, pp. 57 (TF1-371 was in Tongo for a very limited period of time in late August 1997)). *See, e.g.*, Sesay Defence Closing Brief at Paras. 619-638.

[480] Judgment, Para. 1094.

[481] Transcript/TF1-045, 18 November 2005, pp. 79: "I was there July, August. Towards the end of August to September I was there [in Tongo]."

[482] TF1-045 returned to Tongo in December. Transcript/TF1-045, 18 November 2005, pp. 94.

[483] Transcript/TF1-045, 18 November 2005, pp. 98. "Now Cyborg is finished."

[484] Judgment, Para. 1094.

[485] Judgment, Para.1118.

[486] Transcript/TF1-045, 18 November 2005, pp. 68-69.

[487] *E.g.*, Transcript/TF1-045, 23 November 2005, pp. 30 (cited by the Defence above in connection with Para. 1092).

[488] Transcript/TF1-041, 10 July 2006, pp. 20.

[489] Transcript/TF1-367, 21 June 2006, pp. 60-61.

Enslavement as Acts of Terror and Common Purpose

174. The Trial Chamber found that the enslavement of hundreds of civilians at Cyborg Pit was an act of violence committed with the specific intent to spread terror.[490] This was an unreasonable inference from the evidence adduced and the nature of the underlying crime.[491] The Trial Chamber had to exclude all other reasonable inferences before being satisfied that the intention to spread terror was principal among the aims.[492] The Trial Chamber failed to follow the logic of its own reasoning: as noted by the Chamber terror would logically have been designed to "create an environment conducive to absolute obedience."[493] Terror was thus intended to facilitate the enslavement. Terror was a side effect of the perceived need for brutality to create the most efficient system of mining, which was the "major source of income of the AFRC/RUF regime."[494] The correct approach was taken by the Chamber in respect of enslavement in Kono District and there was nothing to distinguish the two operations found.[495]

175. There was nothing to distinguish the "facts" found established by the Trial Chamber concerning the enslavement in Tombodu and Tongo Fields: the facts were similar (e.g., number of persons enslaved,[496] civilians stripped naked,[497] civilians tied together,[498] etc.). Further, there was more evidence – disregarded but nonetheless important: e.g., that the civilians remained in the town despite being free to leave[499] were able to approach the authorities to report diamonds and mining equipment being stolen from them;[500] and that

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[490] Judgment, Para. 1130.

[491] The Chamber was not entitled to rely upon the terror found to have been the result of the unlawful killings at Cyborg Pit (Judgment, Para. 2050). This evidence was relevant to the proof of the killers intention – not those who were responsible for organising and implanting the mining.

[492] Judgment, para. 121, quoting *Galic* Appeal Jndgement, para. 104. This was endorsed by the Appeals Chamber in the *CDF* Appeal Judgement, para. 357

[493] Judgment, Para. 1129.

[494] Judgment, Para. 1088.

[495] Judgment, Paras. 1359-60.

[496] Judgment, Para. 1257 (500 persons in Tombodu); Judgment, Para. 1094 (500 persons in Tongo Fields).

[497] Judgment, Paras. 1251 and 1258; Judgment, Para. 1094.

[498] Judgment, Para. 1258 (eivilians were tied together with ropes aod taken to Bendutu); Judgment, Para. 1094 (civilians canght in the bush near Tongo were tied together with ropes).

[499] *E.g.*, after TF1-035's first purported shooting, civilians went on strike (Judgment, Para. 1083); after the second purported shooting, civilians in the vicinity ran away from the pit (Judgment. Para. 1084); civilians, of their own volition, then returned to the pit (Judgment, Para. 1084).
Notwithstanding that the civilians knew they would be forced to mine upon a morning raid, some civilians nonetheless remained at their homes. Transcript/TF1-045, 23 November 2005, pp. 27-20.
Also consider Exhibit 28: 17 Jannary 1998, entry 19 at 8469 (a civilian from Tomkpdon [*sic*: Tokpombu] II New Site, Tongo Field, madc a report to the Kenema Town police); 24 January 1998, entry 10 at 8524 (civilian reported that in January 1998, while traveling by vehicle from Tongo to Kenema, his traveling bag containing diamonds and money was stolen). Further consider also TF1-060's testimony that he traveled to and from Kenema Town. *See also*, Sesay Defence Closing Brief, Para. 620.

[500] *See*, Ground 28 above and Exhibit 28.

some civilians were mining freely, as noted by TF1-045;[501] speaks eloquently to the unreasonable conclusion by Trial Chamber I.

176. There was no evidence that could support the conclusions that the organisers' primary intention was to cause terror. The Trial Chamber relied upon the "sheer scale" of the enslavement to infer that "the forced mining was a planned and a systematic policy of the Junta government"[502] and yet, there was not a single piece of evidence on which to base this inference. Conversely the evidence showed that it was not planned at the Supreme Council.[503] The inference that it was planned at the Supreme Council – that terror was the intention of the imagined planners - was pure unadulterated speculation, inconsistent with cogent evidence to the contrary.

GROUND 28

No Attack in Kenema Town (or crimes not part thereof)

177. The Trial Chamber erred in finding that there was an attack directed against the civilian population of Kenema Town between May 1997 and February 1998.[504] The Trial Chamber concluded that from May 1997 until the ECOMOG intervention there was a joint AFRC/RUF campaign in Kenema to strengthen their government "through brutal suppression of perceived opposition by killing and beating civilians."[505] The Trial Chamber disregarded the context that would have enabled them to arrive at a reasoned and reasonable conclusion. The Defence submissions were disregarded in totality.[506]

178. The submissions were based predominantly on evidence adduced by Prosecution witnesses,[507] and involved highly relevant and, in the main undisputed, evidence focusing on the continuance of civilian life and efforts to implement law and order.[508] That the exculpatory evidence provided by these witnesses was disregarded is further proof of a

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[501] *E.g.*, Transcript/TF1-045, 23 November 2005, pp. 30.
[502] Judgment, Para. 1997.
[503] TF1-371 was the only witness who testified to the issue of mining being discussed at the Supreme Council. The witness confirmed that forced mining was not discussed at the Supreme Council (Transcript/TF1-371, 31 July 2006, pp. 40.). Rather, the prevention of force in mining was discussed: if civilians were harassed while they were mining, the Supreme Council would *remove* the commander in that area and replace him with another commander (Transcript/TF1-371, 20 July 2006, pp. 36-37).
The Defence notes that TF1-371's evidence as it concerns mining in Tongo (and Kono) is designed to implicate the Appellant. Consider, *e.g.*, Transcript/TF1-371, 31 July 2006, pp. 46 ("I told you that I went to Tongo during the junta period and met Peleto there. … He was assigned there."). TF1-371 is directly contradicted by TF1-366 at Transcript/TF1-366, 11 November 2005, pp. 40.
[504] Judgment, Para. 956-958.
[505] Judgment, Para. 946 and 1097.
[506] *See* Sesay Closing Brief, Paras. 505-563.
[507] *See* Sesay Closing Brief, Paras. 508-518.
[508] *See* Sesay Closing Brief, Paras. 526-537.

presumption of guilt.[509] The evidence adduced and the findings made establishing crimes in Kenema Town during the junta period were isolated, few, and committed for personalized reasons that did not provide the basis for a reasonable conclusion that there was a generalized attack or that the criminal acts had any nexus to such an attack.[510]

179. The Chamber's approach was to accept the Prosecution case at its highest, disregarding the remainder of evidence. No proper explanation exists for this approach and none was proffered.[511] The most critical evidence ignored was Prosecution Exhibit 28: the Kenema Town Police Station Diary for 13 January to 7 February 1998. Annex F provides a summarised account of its contents.[512] Exhibit 28 was tendered into evidence by TF1-125[513] and its authenticity was not challenged. The Chamber's limited use of its contents to draw adverse inferences against the Appellant (to conclude that BS Massaquoi and other Kamajor suspects were brought to the Kenema Town police station[514]) but to disregard the remainder of its contents was a shocking abuse of discretion. It could not be reasonably argued that this Diary was either irrelevant or unreliable. The contents illustrate, without more, that the conclusion drawn that: the "control exercised by the AFRC and RUF over Kenema Town during the junta period created a permissive environment in which fighters could commit crimes with impunity"[515] is nothing less than an empty misjudgement.

180. Exhibit 28 demonstrated amongst many other relevant facts that, when the police ended a shift and began a new shift, the commanding officer would indicate how many suspects were in custody (if any) and also indicate the status of Kenema Town. At every shift change listed in Exhibit 28 (from 13th January to 7th February 1998), without exception, the commanding officer would state: "All quiet and normal," "Area seems to be quiet at the moment," "Otherwise no serious complaint [or report],"[516] or some combination of the same. This includes the shift changes on those days in which the suspected Kamajors were brought in to

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[509] E.g., Sesay Closing Brief, Para. 508-518.
[510] *See* Sesay Closing Brief, Para. 507.
[511] E.g., Sesay Defence Closing Brief, Paras. 508-518 and 526-537.
[512] Annex F: Summary
[513] Transcript/TF1-125, 12 May 2005, pp. 129.
[514] *E.g.*, Judgment, footnotes 2083, 2086, 2088, and 2089.
[515] Judgment, Para. 1100.
[516] For purposes of brevity, only the morning shift changes are listed; the evening shift changes for the day prior can be found on the same page or the page prior as the listed morning shift change: 14 January 1998, entry no. 13 at 8443; 15 January 1998, entry no 7 at 8452; 16 January 1998, entry no 7 at 8459; 17 January 1998, entry no 7 at 8467; 18 January 1998, entry no 6 at 8477; 19 January 1998, entry no 6 at 8482; 20 January 1998, entry no 10 at 8493; 21 January 1998, entry no 11 at 8500; 22 January 1998, entry no 10 at 8506; 23 January 1998, entry no 6 at 8514; 24 January 1998, entry no 6 at 8523; 25 January 1998, entry no 4 at 8527; 26 January 1998, entry no 8 at 8534; 27 January 1998, entry no 7 at 8540; 28 January 1998, entry no 2 at 8545; 29 January 1998, entry no 10 at 8558; 30 January 1998, entry no 6 at 8562; 31 January 1998, entry no 10 at 8574; 1 February 1998, entry no 7 at 8582; 2 February 1998, entry no 7 at 8587; 3 February 1998, entry no 7 at 8596; 4 February 1998, entry no 7 at 8603; 5 February 1998, entry no 7 at 8614; 6 February 1998, entry no 9 at 8621; and 7 February

the station and detained at the station.

181. The *Prosecution* evidence establishes that civilians lived, worked, and went about their daily business in Kenema Town. Civilians chose to stay there. The Town Council conducted meetings requesting the cooperation of the civilians in the interests of peace. Shops, markets, diamonds traders, pharmacies, hospitals, private medial clinics, bars, nightclubs, the women's society Bondo Bush, banks, schools, and NGOs were all operating. Civilians were traveling into Kenema Town from at least Tongo (Kenema District), and Kailahun and Daru (Kailahun District). Civil servants continued to receive their pay, food was readily available, and generally speaking, things got better over the course of the junta period.[517] The *Prosecution* evidence establishes that the civilian police functioned and, to ensure discipline among the combatants, a Secretariat, the military police, and a JSU were operating in Kenema Town.[518] It was perverse to disregard the fact that Exhibit 28 demonstrated that civilians were able to report crimes, even those committed by the AFRC/RUF armed combatants and not to explain the reason for that disregard.

182. The Trial Chamber failed to conduct an essential analysis in its assessment of whether the acts were directed against a civilian population and its analysis of whether the acts were part of such an attack. There is no evidence that the Trial Chamber had regard to whether victims were "targeted primarily for reasons pertaining to them individually rather than them being members of the targeted civilian population"[519] (for example when individuals are targeted due to being perceived as collaborators rather than a larger group of civilians[520]). There is no evidence that personal motives were excluded, such as Bockarie out of personal anger rather than in a structured or organized manner.[521] As the above submissions concerning the common purpose indicate there was ample evidence of this and other related occurrences.

183. It was critical for the Chamber to note that the crimes that the witnesses were able to locate in time were in the main towards the end of the junta. The only time-certain crimes found to have occurred in Kenema Town are the killing of Bunnie Wailer and two accomplices[522] in the early months of the junta;[523] the arrest of TF1-129 on 27 October 1997;[524] the killing of an alleged Kamajor boss during the impending Kamajor attack (the intervention);[525] the arrest

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1998, entry no 7 at 8628.
[517] *See*, Sesay Defence Closing Brief, Paras. 508-511.
[518] *See*, Sesay Defence Closing Brief, Paras. 512-517.
[519] *Haradinaj et al* Trial Judgment, *supra*, note 135, para. 114.
[520] *Ibid*, para. 122.
[521] *Ibid*, para. 120.
[522] Judgment, Para. 1061.
[523] Judgment, Para. 1061.
[524] Judgment, Para. 1048.
[525] Judgment, Para. 1044 and 1065.

of BS Massaquoi, Andrew Quee, Brima Kpaka, TF1-129, and others in late January 1998;[526] and the beating and killing of BS Massaquoi and others from 28 January 1998.[527] In summary, there was no evidence of a concerted attack from 25 May 1997 through late January 1998 – prior to these crimes. The one crime in the "early months" was the killing of Bunnie Wailer which the Chamber acknowledged was to "promote their (the AFRC/RUF) image as the law enforcement authorities active at that time"[528] This therefore was not part of an attack.[529]

No Attack at Tongo Fields

184. The Trial Chamber erred in finding that there was an attack directed against the civilian population of Tongo Fields between May 1997 and February 1998.[530]

185. Exhibit 28, the Kenema Town Police Station Diary[531] was critical to the Chamber's assessment of whether there was an attack at Tongo Fields (enslavement and killings).[532] For example, Exhibit 28 records that in November 1997, at Tongo Fields, a civilian's water baling machine[533] was stolen from him by another civilian.[534] That a civilian was in possession of a water baling machine in Tongo Fields at this time and *was able to travel*[535] *from Tongo Fields to report its theft* in the expectation that the theft would be investigated was hugely significant and comprehensively ignored. There are a number of entries indicating that civilians were in possession of diamonds after the RUF and AFRC captured the Tongo Fields area. For example, a number of entries show that civilians reported the theft of diamonds in January 1998.[536] In one such case, the owner of diamonds had intended to sell

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[526] Judgment, Para. 1066-67.
[527] Judgment, Para. 1072.
[528] Judgment, Para. 1104.
[529] There were further examples: punishment of RUF Commander AB for harassing and looting; execution of an RUF rapist; punishment of Bondo Bush looters. *See*, Sesay Defence Closing Brief at Paras. 514-515 and 526-537.
[530] Jndgment, Para. 956-958.
[531] This diary was from 13 Jannary 1998 to 7 February 1998.
[532] Judgment, Paras. 1127-1130.
[533] Baling machines are used to pump water out of mining pits so that diamond-laden gravel may be extracted.
[534] 17 January 1998, entry 21 at 8470 (a civilian reported that sometime in November 1997, at Tongo Field, a female civilian forcefully seized a Robin three inch water pump machine valued the sum of Le520,000/00 which she fraudulently converted to her own use and benefit)
[535] Other instances of civilians traveling from Tongo to the Kenema Town police station include 17 January 1998, entry 19 at 8469 (a civilian from Tomkpdon [*sic*; Tokpombu] II New Site, Tongo Field, came in to stand surety for another civilian); and 24 January 1998, entry 10 at 8524 (civilian reported that in January 1998, while traveling by vehicle from Tongo to Kenema, his traveling bag containing diamonds and money was stolen).
[536] 19 January 1998, entry 36 at 8487 (sometime in January 1998 at Tongo Field, a civilian stole four diamonds from another civilian (six carat and 75 percent; value Le4,000,000/00)); 22 January 1998, entry 23 at 8505 (in March 1997, at Tongo Fields, a civilian stole diamonds from another civilian); 24 January 1998, entry 10 at 8524 (civilian reported that in January 1998, while traveling by vehiele from Tongo to Kenema, his traveling bag containing diamonds and money was stolen); and 30 January, entry 34 at 8567 (a civilian reported that sometime between July and October 1997, another eivilian stole two pieces of diamonds from him).

them mid-January 1998 prior to their theft.[537] This – and much besides – was incontrovertible evidence that civilians had ownership rights over diamonds and was disregarded by Trial Chamber I.[538]

186. TF1-125 gave undisputed evidence that demonstrated that the police were functioning in the Tongo Fields area and civilians reported to the police about the theft of diamonds, diamond mining equipment, and incidents at the diamond mines; the police also often investigated cases in connection with the Ministry of Mines.[539] TF1-045 provided relevant exculpatory evidence, including the mechanisms for civilians to report combatants for crimes.[540] TF1-060 testified about the civilian Caretaker Committee – another civilian complaint mechanism (e.g., the Committee received reports of rape, looting, and killings.[541] [542] There was no proper basis and none was proffered to justify the disregard of the existence of the police and the Caretaker Committee, as bodies for the protection of civilians: the only reference to the Secretariat is in connection with diamonds being taken there to be valued.[543]

Overall Conclusion: Common Purpose in Sierra Leone: May 1997 – February 1998

187. For the reasons outlined above no reasonable Chamber could have concluded that the JCE members identified were acting in concert to further a criminal purpose to terrorise and collectively punish to take over the country during the junta period. Moreover, the evidence concerning the Kailahun District further supported the reasonable doubt. That the majority appeared to conclude that the RUF forces did not act jointly with the AFRC in Kailahun[544] and that Justice Boutet concluded that the evidence did not show what cooperation, if any, existed between the AFRC and RUF in Kailahun during the junta period[545] was, or ought to have been, dispositive of the issue.

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[537] 17 January 1998, entry 19 at 8470 (civilian reported that on 11th January 1998 he gave this three pieces of diamond stones valued Le300,000/00 to another person for the purpose of sales which the latter converted to his own use or benefit);

[538] 19 January 1998, entry 36 at 8487 (sometime in January 1998 at Tongo Field, a civilian stole four diamonds from another civilian (six carat and 75 percent; value Le4,000,000/00)); and 24 January 1998, entry 10 at 8524 (civilian reported that in January 1998, while traveling by vehicle from Tongo to Kenema, his traveling bag containing diamonds and money was stolen).

[539] *See*, Sesay Defence Closing Brief at Para. 599. TF1-125, a civilian police officer, was cited as a credible witness by the Trial Chamber. *See, e.g.*, Judgment, Paras. 1072-1078.

[540] TF1-045 testified about the death of the Limba man and the man on Lamin Street. These killings were reported to the Secretariat. *See* Jndgment, Para. 1080 and Transcript/TF1-045, 18 November 2005, pp. 76 ("In the morning, the report was brought to the Secretariat").

[541] The Defence disputes that the killings to which TF1-060 refers, and which were purportedly reported to the Caretaker Committee, happened in fact.

[542] *See*, Sesay Defence Closing Brief at Paras. 614-617. TF1-060, a civilian, was cited as a credible witness by the Trial Chamber. *See, e.g.*, Jndgment, Paras. 956, 1664-.

[543] Judgment, Para. 1091.

[544] Judgment, Para. 2047.

[545] Dissent, Para. 13.

188. There was no evidence to demonstrate the involvement of any AFRC or RUF commander in Kailahun during the junta period - except for Gbao, and there was no evidence that he had communicated with any of the Junta leaders during the whole of the Junta period.[546] There was no evidence to demonstrate the involvement of any RUF member committing (or using a direct perpetrator) to commit any act of terror or collective punishment in Kailahun during this period:[547] *a fortiori* there was no evidence from which a reasonable trier of fact could infer that any alleged criminal plan was furthered (or intended to be furthered).

189. The Chamber concluded that the "RUF attempted to establish good relationships with the population in order to maintain Kailahun as a defensive stronghold, ensure a steady flow of food supply to its troops and preserve control over and the loyalty of the civilian population ... schools [were opened,] [p]arents agreed to gather food as their contribution for the free education [and] the RUF 'government'' in Kailahun provided free medical services to civilians and their children at a hospital in Giema. There was no apparent discrimination in the distribution of medical care and education to both civilians and fighters."[548] Further, there was no evidence that the pattern of the crimes in Kailahun was different as a result of the AFRC/RUF alliance.

190. The crimes that were found in Bo and Kenema District – terrible though they may have been – could not sustain an inference that the identified plurality were acting in concert in pursuit of this aim. The crime of enslavement was utilitarian and the significant remainder were linked to Bockarie alone. The absence of involvement of all other JCE members is striking and probative. In the absence of overt planning at the Supreme Council or elsewhere – and the evidence was clear on that issue – it was not open to a reasonable trier of fact to conclude the involvement of the other JCE members.

The Crimes within a Common Criminal Purpose, May 1997 – February 1998

191. It follows from above that the Trial Chamber erred in law in defining the common purpose as the taking power and control. A corresponding error arose, namely the finding that all the crimes in Counts 1-14 were within the criminal purpose and intended by the participants to take power and control over Sierra Leone.[549] First, the error in defining the common purpose led to an error in concluding that Counts 1-2 were within the means. It is submitted that these were the essential aspect of the common criminal purpose.

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[546] Judgment, Para. 2040 and 2060.
[547] Judgment, Para. 2156-2157.
[548] Judgment, Para. 1384.
[549] Judgment, Para. 1982.

192. Further, as is plain from the above analysis concerning which crimes fell within the criminal purpose, the Trial Chamber made an error of law and fact in concluding that between May and August 1997 any crime, other than unlawful killings (Counts 3-5) or pillage (Count 14) fell within the common purpose. These were the only crimes that were found to have been established during this period. From May 1997 until February 1998 (prior to the intervention) the crimes were limited to Unlawful killings (Count 3-5), pillage (Count 14), Physical Violence (beatings only) (Count 2 and 11) and Enslavement (Count 13). There were no other crimes and it was not open to a reasonable trier of fact to conclude that the remaining counts fell within a criminal purpose. It is submitted that – in light of the paucity of evidence concerning the actions of the plurality and the pattern or frequency of the crimes – a reasonable trier of fact and law could not have concluded that any of the crimes were within a criminal purpose.

GROUND 33: Temporal Scope of Any Criminal Plan or Purpose

February 1998 to April 1998: Common Purpose

193. The Trial Chamber erred in law and fact in assessing the temporal scope of the joint criminal enterprise. The Trial Chamber erred by concluding beyond a reasonable doubt that the joint criminal enterprise continued until the end of April 1998.[550] The Chamber found that the common plan between the RUF and AFRC ended some weeks after the two groups had lost control of Koidu due to an ECOMOG advance and while both groups were based in camps such as Superman ground. Further, the Trial Chamber found that the last operation before the end of the common plan was an attack on Sewafe Bridge, launched from camps outside of Koidu.[551] The Trial Chamber held at it was at this point that Gullit returned to Kono, following his arrest in Buedu, and resumed control of the AFRC and thereafter the two groups separated.[552] No reasonable Tribunal, properly directing itself, could have reached the conclusion that those RUF and AFRC found to be members of the joint criminal enterprise worked in concert, and had any agreement, to commit crimes after March 1998.

194. The Defence submits that the evidence adduced *in the Prosecution case* during the course of the trial demonstrates unequivocally that the split between the RUF under Superman and the AFRC under Gullit, as marked by the departure of the AFRC to Koinadugu, occurs during

[550] Judgment, Para. 2063.
[551] Judgment, para. 2074; there are no footnoted references attached to this paragraph.
[552] Judgment, para. 817.

the time of the ECOMOG attack on Koidu which results in the RUF losing control of the town. There is, in fact, no evidence stating otherwise. The evidence is unequivocal: the split, which occurs against the background of heightened friction between the two groups, is precipitated by the fact that it becomes apparent that the two groups cannot hold Koidu against the ECOMOG onslaught. The evidence from all relevant Prosecution witnesses demonstrating the above is set out at Annex F: the Scope of the Common Purpose.

195. The Chamber's patently incorrect error of fact arose due to a misreading of the evidence of TF1-334 who, in fact, corroborated all the evidence by confirming that Gullit returned from Kailahun Town and arrived at 55 Spot in Koidu Town.[553] There is no evidence existing in the trial which indicates that Gullit returns to Kono after the AFRC and RUF has been pushed out of Koidu, as stated in paragraph 817 of the Judgment. The Appellant submits that none of the crimes found proven to have occurred in the RUF camps outside Koidu fall within any common criminal purpose shared between the RUF and the AFRC.[554]

Common Purpose in Kono

General Errors in the Assessment of Evidence –

Special Intent for Terror and Collective Punishment

Error One

196. The Chamber found that because the unlawful killings were committed "widely and openly, without rationale objective, except to terrorise the civilian population into submission" these acts were committed with the specific intent to spread terror among the civilian population.[555]

197. It does not follow that the absence of a rational reason for a crime equates with an intention to spread terror;[556] by their very nature these horrific crimes, especially those that amount to crimes against humanity, are steeped in irrationality. It was essential for the Chamber to assess the context to the crimes to assess alternative reasons for the crimes and also to assess whether the crimes were committed for personal reasons, rather than the more 'rational' reason – that terror would furthering the aim of taking power and control.

Error Two: Generalising all Sexual Violence as Acts of Terror

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[553] AFRC Transcript/TF1-334, 19 May 2005, p. 10, lines 11-28.
[554] Transcript/TF1-071, 19 January 2005, p. 51, line 15-21; *see also* Exhibit 18 which indicates the camps set up after the fall of Koidu on a map, as drawn by TF1-071. See, Judgment, Paras. 1171-72, 1174-76, 1179, 1186-89, 1191-99, 1204, 1207-10, 1277-79, 1281-82, 1288, 1297, 1299, 1311, 1318-20, 1341-43, 1352, 1357, and 1372.
[555] Judgment, Para 1342.
[556] Judgment 1342-1343.

198. The Trial Chamber's approach was fundamentally flawed in fact and law. It was not a reasonable exercise of discretion to deal with all the rapes, forced marriages and sexual violence as one body of evidence with identical motives and purposes;[557] even though this might have been inevitable given the Prosecution's failure to particularise the charges of sexual violence.[558] The majority of the evidence was stereotyped, generalized and attributable to groups of armed men, loosely defined by the name AFRC/RUF. The Trial Chamber erred by extrapolating from these discrete identifiable incidents and assessing the generalized allegations as the same as those that offered more detail. The Trial Chamber's approach reversed the burden of proof and placed a burden on the Appellant to demonstrate that the sexual violence was less severe than the more egregious, such as that committed by Al Haji and his men.[559]

199. The Chamber found proven; (Category one) rapes committed during attacks on Koidu at the entry into the town during the intervention;[560] (Category two) rapes of women forced to carry loads in the Guinea Highway area of Koidu in March 1998;[561] (Category three) specific instances of rape by named commanders or (groups of) combatants, such as Staff Alhaji;[562] and (Category four) forced marriages of abducted women, used "as domestics to do cooking or housework or forms of sexual slavery.[563] There was no evidence to suggest that the rapes and outrages on personal dignity (in Category Three) committed by Alhaji reflected "a consistent pattern of conduct openly exhibited by the rebel forees in their encounters with civilians."[564] The Trial Chamber failed to examine the crimes in Category one, two and four and erroneously *assumed* that the crimes were identical in brutality and motive as those committed in Category three. This was clear from the "analysis" at Section 5.2.6.2.1 and especially Paragraph 1347. It is not disputed that these most grave acts were intended to cause terror – this was plain, as the Chamber noted, from the perverse nature, the brutality, and the gratuitous cruelty displayed in the commission.[565]

200. There was no proper basis for a blanket conclusion that the targeting of women by the rebels and the disempowering effect of this necessarily implied that the crimes "were not intended merely for personal gratification or a means of sexual gratification."[566] The Chamber

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[557] Judgment, Para.1283 – 1308.
[558] *See Ground 39.*
[559] Judgment, Para. 1171 and 1288.
[560] Judgment, Para. 1152 and 1154-55.
[561] Judgment, Para. 1153.
[562] Judgment, Para. 1171, 1180-85, 1191-1202, and 1205-1208.
[563] Judgment, Para. 1154-55, 1178-79, 1211-1214, and 1291-1309.
[564] Judgment, Para. 1354.
[565] *E.g.*, Judgment, Para. 1347.
[566] Judgment, Para. 1348.

confused result with intention. It is always the case that rape and mass rape particularly cause terror but this is not decisive proof that this was intended by the perpetrators; especially when the crimes are as disparate as forced marriages and gratuitous rapes and physical mutilation, such as those perpetrated by Staff Alhaji. Undoubtedly, sexual violence in Sierra Leone would have had the effect of alienating victims and rendering apart communities, but this does not prove that they "were calculated consequences of the perpetrators' acts."[567] If this were the case every act of sexual violence could be categorised as an act of terror.

201. The features identified by the Chamber, concerning Categories One and Two, contradict this approach. As the Chamber found these crimes were committed alongside other self enriching or aggrandising features, indicating that the crime was primarily acquisitive in nature.[568]

202. Furthermore, the Trial Chamber failed to take into account that offences in Category Four (Forced Marriages) are legally and factually different to general crimes of sexual violence. First, as the Appeal Chamber found, "forced marriage" is an offence, committed when the "perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim. The Appeal Chamber ruled that it was "not predominantly a sexual crime."[569] These crimes could be almost exclusively acquisitive in nature, involving the primary motive of gaining domestic help and could be committed in wholly different circumstances – without the brutal sexual violence characteristic of those in Categories One to Three.[570] The Chamber was required to analyse each crime and exclude these possibilities and be sure that the offence was not so.[571] The corollary of this obligation was the duty to identify that reasoning and illustrate that exclusion of doubt. The failure to examine each crime negates each finding of terror.

Error Three: Use of Similar Fact/Consistent pattern of conduct

203. The Chamber fell into error by erroneously taking into account the body of evidence adduced in relation to the various Districts of Sierra Leone.[572] This was akin to relying upon a consistent pattern of conduct (Rule 93(A)), which cannot be invoked without prior disclosure by the Prosecution (Rule 93(B)). Further, the "fact" that rapes and sexual violence had

[567] Judgment, Para. 1349, 1350-1352.
[568] Judgment, Para. 1152, 1153 and 1155.
[569] *Brima et. al*, Appeal Judgment, *supra*, note 3, para. 196.
[570] Example: Judgment, Para. 1154-1155.
[571] Example: Judgment, Para. 1212-1213.
[572] Judgment, Para. 1347.

occurred elsewhere and with an intention to cause terror, was irrelevant to a fair consideration of the crimes in Kono. It is unreasonable to conclude that rape in Kailahun, several days travel away (by unnamed perpetrators) could be probative of rape (by unnamed perpetrators) elsewhere. A rape in Daru in 1998,[573] (that was punished by death) could not be probative of an intention in Kono. This failure negates all the findings of terror.

Error in holding 'ordinary' crimes to be part of the common purpose

204. The defence submits that the Trial Chamber, having erred in concluding that the taking power and control was the common purpose further erred by concluding that offences that were not committed with an intent to spread terror or collectively punish could still fall within the common purpose. The failure to draw this conclusion invalidates the decision that these crimes fell within the common purpose in relation to the crimes listed on pages 32689 – 32693 of the Judgment: (i) Section 4.1.1.1: (vii) and (ix); Section 4.1.1.3: (i), (ii) and (vi); Section 4.1.1.4: (i) and Section 4.1.1.5: (i), (ii) and (iii).

Error in failing to make a finding concerning essential element

205. The following crimes were not found to have been committed with the intent to take control or power and therefore could not be within the common purpose: killings by Savage and Al-Haji;[574] looting of the Tankoro Bank; killings during the attack on Koidu;[575] killing by Al-Haji;[576] killings by Rambo in Koidu;[577] killings near PC Ground;[578] amputation by Al-Haji;[579] the beating of TF1-197;[580] the flogging of TF1-197;[581] knocking TF1-015's teeth out;[582] carving on 18 civilians;[583] amputations in Sawao;[584] beatings in Sawao;[585] amputations in Penduma;[586] amputation in Yardu;[587] carving in Tomandu;[588] and pillage in Tombodu;[589]

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[573] Judgment, footnote 2509.
[574] Judgment, Paras. 1273-75.
[575] Judgment, Para. 1146.
[576] Judgment, Para. 1279.
[577] Judgment, Para. 1280.
[578] Judgment, Paras. 1281-82.
[579] Judgment, Para. 1310.
[580] Judgment, Para. 1312.
[581] Judgment, Para. 1313.
[582] Judgment, Para. 1314.
[583] Judgment, Para. 1313.
[584] Judgment, Para. 1316.
[585] Judgment, Para. 1317
[586] Judgment, Para. 1318
[587] Judgment, Para. 1319.
[588] Judgment, Para. 1319.
[589] Judgment, Para. 1335.

Error in failure to conduct essential analysis concerning crimes by non-JCE Members[590]

206. The Trial Chamber erred in fact and law in failing to conduct the requisite analysis that would have allowed it be satisfied that the following crimes could be imputed to a JCE member *and* that this JCE member was acting in accordance with the common objective. This negates any finding that the crimes could be within a common criminal purpose: (i) killing in Koidu Town of 30-40 civilians by Rocky and men and the killing and amputation of the boy;[591] (ii) killing in Tombodu of unknown number of civilians by Savage and Al-Haji;[592] (iii) killing of at least 29 civilians in Penduma, by orders of Al-Haji in April 1998;[593] (iv) rape of TF1-217's wife and unknown number in Penduma;[594] (v) amputation of at least three men in Penduma and the flogging of TF1-197 and his brother;[595] (vi) killing in Wendedu of Sata Sesay family;[596] (vii) killing of at least 29 civilians by orders of Al-Haji in April 1998;[597] (viii) killing of at least six captured civilians in Yardu in April 1998 and amputation of TF1-197;[598] (ix) Burning of civilian houses by Staff Al-Haji in Tombodu;[599] (x) rapes and outrages upon personal dignity at Bumpeh;[600] (xi) rape by Al-Haji in Tombodu in April 1998;[601] (xii) rape of unidentified female and 20 captives and cutting of genitalia of several male and female captives in Bomboafuidu; [602] (xiii) rape of TF1-195 and five other women in Sawao, the amputation of hands of five civilian men and the beating of unknown number by sticks and guns;[603] (xiv) forcible marriage of an unknown number of women in civilian camp of Wendedu;[604] (xv) beating (in Tombodu) of TF1-197;[605] (xvi) beating of TF1-197 and his brother;[606] (xvii) knocking TF1-015's teeth out[607]; (x) Rebels led by Staff Al Haji amputated the hands of three civilians;[608] (xi) AFRC/RUF rebels carving AFRC and/or RUF on bodies in Kayima;[609] (xii) Enslavement of an unknown number of civilians for forced labour

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[590] *Brđanin*, Appeal Judgement, Para. 418.
[591] Judgment, Paras. 1271-72 and 1341-43.
[592] Judgment, Para. 1165-69, 1273-75, and 1341-43.
[593] Judgment, Para. 1191-1203, 1278, 1341-43.
[594] Judgment, Para. 1191-1203.
[595] Judgment, Para. 1191-1203.
[596] Judgment, Para. 1277, 1341-42.
[597] Judgment, Para. 1191-1203, 1278, 1341-43.
[598] Judgment, Para. 1186, 1279, 1312, 1319, 1341-43.
[599] Jndgment, Para. 1159-60 aud 1375.
[600] Judgment, Para. 1205-06, 1302-06, and 1355.
[601] Judgment, Para. 1171 and 1288.
[602] Judgment, Para. 1207-08, 1307-09.
[603] Judgment, Para. 1180-86, 1289, 1316-17.
[604] Judgment, Paras. 1178-79 and 1291.
[605] Judgment, Paras. 1163, 1312-13.
[606] Judgment, Paras. 1173 and 1313.
[607] Judgment, Paras. 1177 and 1314.
[608] Judgmeut, Paras. 1172 and 1311.
[609] Judgmeut, Paras. 1190 and 1315.

between February and April;[610] (xiii) Pillage of TF1-197's property; during the attack on Koidu Town (intervention) and the looting of the Tankoro Bank.[611] Additionally the Appellant submits the following.

Crime of Terror and Collective Punishment

Killing in Koidu Town of 30-40 civilians by Rocky and men[612]

207. First, in relation to the killings at Sunna Mosque, there was no evidence that this was done at the behest of a member of the JCE or procured by them. There was evidence that Colonel Rambo was angry that a prisoner, TF1-015, was brought back alive, but this is evidence that a non-JCE member (Colonel Rambo) wanted civilians to be killed; not that he wanted the perpetrator Rocky, to cause terror and collectively punish to take power and control.[613]

208. The facts gave rise to a reasonable inference that these crimes were committed for personal reasons. Kono was controlled by the AFRC/RUF, as Rocky announced to the victims;[614] Rocky and his men reacted angrily to the civilian and every individual was killed, except for one. Further, the evidence does not support the conclusion that the victims were collectively punished. The evidence showed that the acts were based an order from Colonel Rambo to Rocky to kill all civilians found; hence the latter's annoyance at the failure to kill one of the civilians, TF1-015.[615] The evidence thus showed that this was cold-blooded killing for personal gratification or, at best, that this formed part of as a localised order from Rambo. Further the Trial Chamber found that Bockarie, upon receiving the news of these atrocities recalled Superman, Kallon, and Rocky to Buedu for punishment, implying that the killings were disapproved of and hence not part of the alleged common criminal purpose.[616]

Crimes by Savage, Al-Haji and men[617]

209. The Chamber limited its findings to a list of the crimes.[618] The fact that the crimes, in nature and degree, ranked among the worst atrocities in Kono during that time, meant that the Chamber ought to have examined their peculiarities, not just list the worst features of the

[610] Judgment, Paras. 1215-1217 and 1322-1327.
[611] Judgment, Paras. 1164 and 1363-1365.
[612] Judgment, Paras. 1271-1272 and 1341.
[613] Judgment, Para. 1150.
[614] Judgment, Para. 1147.
[615] Judgment, Para. 1150.
[616] Judgment, Para. 1151.
[617] Judgment, Paras. 1165-1169, 1273-1275, 1341-1342
[618] Judgment, Paras. 1165-1169.

atrocities. The evidence was clear that the crimes were idiosyncratic and done for personal reasons, sheer maliciousness, and twisted self-gratification. The Trial Chamber failed to address the detailed submissions advanced by the Appellant as regards the context in which the crimes occurred and which ought to have formed part of the analysis in determining whether Savage and men under his control were acting within the common purpose or whether they were operating separately, without a sufficient link to the principally alleged JCE.[619]

210. The acts had no prospect of providing any military benefit (including the illegitimate benefit of furthering the war effort through terror and collective punishment). As identified in relation to acts in Kenema Town, "individual acts of violence when committed in the context of a campaign to terrorise the civilian population may be committed without the primary purpose of furthering this campaign."[620] This was a reasonable inference from the evidence adduced which demonstrated that Savage acted ostensibly independently from the RUF and the AFRC hierarchies and garnered the disapproval that was forthcoming from senior men in Kono at the relevant time.[621]

211. The Trial Chamber's conclusion that the killing in Wendedu of Sata Sesay family[622] was a horrendous act done to "disempower President Kabbah and to 'topple' his selfish and corrupt" regime[623] was insufficient to find that the acts were within the common purpose. In light of this failing, the Trial Chamber's conclusion that the acts of Savage demonstrate that "they" (the AFRC/RUF attacking forces) were sending a message to the "the entire Sierra Leonean population that the same fate awaits whoever does not back the AFRC/RUF Junta alliance" was not a reasonable conclusion. All that could be inferred, in the absence of a finding that Al Haji and his men were acting on behalf of a JCE member, was that the *direct perpetrators* were intending to send that message – not the Appellant or any other JCE member. This conclusion – and error of law and fact – is applicable to all the crimes committed by Savage, Al Haji and the men under their command. A common objective in itself is not enough to demonstrate that the plurality of persons acted in concert with each other as different and independent groups may happen to share the same objectives.[624] It follows that a common objective amongst non-JCE members is even further from proof that the JCE members were acting in concert with each other.

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[619] Judgment, Para. 1168; *see also* Sesay Defence Closing Brief, Paras. 875-883.
[620] Judgment, Para. 1126.
[621] *See, e.g.*, Sesay Defence Closing Brief, Paras. 875-883.
[622] Judgment, Paras. 1277, 1341-1342
[623] Judgment, Paras. 1202.
[624] Judgment, Para. 257.

Beating (near Tombodu) of TF1-197[625]

212. The Chamber failed to conclude, and there is no evidence upon which they could have concluded, that the perpetrators were procured by a JCE member. The Trial Chamber concluded that TF1-197 was told that the leader of the rebels, Musa, reported to Staff Al Haji. Even if the Trial Chamber had assessed the evidence and concluded that this was reliable hearsay – as opposed to merely listing the testimony – this would not be sufficient to establish any link between the crimes and a JCE member.

Rebels led by Staff Al Haji amputated the hands of three civilians[626]

213. The Chamber failed to conclude, and there is no evidence upon which they could have concluded, that the perpetrators were procured by a JCE member.[627]

Beating of TF1-197 and his brother[628]

214. The Chamber failed to conclude, and there is no evidence upon which they could have concluded, that the perpetrators were procured by a JCE member. Further the Chamber found that the perpetrators lacked an intention to terrorise.[629]

Burning of civilian houses by Staff Alhaji in Tombodu[630]

215. The Trial Chamber found that the acts of burning in Tombodu were intended to punish civilians for failing to support the AFRC/RUF and to prevent civilians from remaining in these towns. "[A]ccordingly … the perpetrators directed these acts of violence against civilian property with the intent of spreading terror.[631] First, it was an error to infer an intention to cause terror from an intention to punish civilians. The two offences are distinct and require proof of a different intention which gives rise to an irresistible inference that this was intended to cause terror.

216. Second, the Trial Chamber's reliance upon the evidence given by TF1-012 was perverse. The content of the evidence was bizarre, inconsistent, uncorroborated and totally at odds in material respects to all other evidence.[632] The witness admitted that he had been mentally ill at the time of the events and clearly was still seriously ill at the time he testified; as was

[625] Judgment, Paras. 1163, 1312-1313.
[626] Judgment, Para. 1172,1311
[627] Judgment, Para. 1173.
[628] Judgment, Paras. 1173 and 1313.
[629] Judgment, Para. 1358.
[630] Judgment, Paras. 1159, 1160, and 1375.
[631] Judgment, Para. 1361.
[632] Annex C: Examples of indicia of unreliability in relation to TF1-012, TF1-045, TF1-093, TF1-108, TF1-141,

obvious to anyone in the courtroom and ought to have been obvious to a reasonable trier of fact. The evidence the witness gave concerning Bockarie was wholly unreliable in every respect.[633] In these circumstances there was nothing that could have properly supported the notion that the burning was committed at the behest of a JCE member.

Killing in Wendedu of Sata Sesay's family[634]

217. The Trial Chamber erred in fact and law in concluding that this killing was an act of terror that formed part of the JCE.[635] First, the Chamber found it occurred in June 1998 after the JCE had terminated. Second, the facts were plain – the killings took place as a result of the suspicion that the civilians were spies.[636]

Killing of at least six captured civilians in Yardu in April 1998 and amputation of TF1-197[637]

218. The Trial Chamber erred in fact and law in concluding that this killing was within the common purpose. There was not a single piece of evidence to attribute this offence to combatants from the RUF or AFRC. The witness was unable to identify the killers or even the grouping, if any.[638]

Rapes and outrages upon personal dignity at Bumpeh[639]

219. The Chamber failed to conclude, and there is no evidence upon which they could have concluded, that the perpetrators were procured by a JCE member. Further, the Trial Chamber erred by concluding that witness statements could be used to provide notice of new distinct bases for conviction thereby curing a defect in the indictment.[640]

Rape of unidentified female and 20 captives and cutting of genitalia of several male and female captives in Bomboafuidu[641]

220. The Chamber failed to conclude and there is no evidence upon which they could have concluded that the perpetrators were proeured by a JCE member. The crimes were committed by unidentified armed men, allegedly AFRC/RUF. Further, the Trial Chamber erred by

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TF1-263, TF1-330, TF1-330, TF1-361, TF1362 and TF1-366.
[633] Transcript/TF1-012, pp. 92-102.
[634] Judgment, Paras. 1277, 1341-1342
[635] Judgment, Paras. 1341-1342.
[636] Judgment, Paras. 1176.
[637] Judgment, Paras. 1186 ,1279,1341-1343
[638] Transcript/TF1-197, 22 October 2005, pp. 8-16.
[639] Judgment, Paras. 1205-1206, 1302-1306, 1355.
[640] Judgment, Para. 1304.
[641] Judgment, Paras. 1207-1208, 1307-1309

concluding that witness statements could be used to provide notice of new distinct bases for conviction and thereby curing a defect in the indictment.[642]

Rape of TF1-195 and five other women in Sawao, the amputation of hands of five civilian men and the beating of unknown number by sticks and guns[643]

221. The Trial Chamber failed to conclude, and there is no evidence upon which they could have concluded, that the perpetrators were procured by a JCE member.

Forcible marriage of an unknown number of women in civilian camp of Wendedu[644]

222. The Trial Chamber failed to conclude, and there is no evidence upon which they could have concluded, that the perpetrators were procured by a JCE member.[645]

Knocking TF1-015's teeth out[646]

223. The Trial Chamber failed to conclude, and there is no evidence upon which they could have concluded, that the perpetrators were procured by a JCE member.[647] This was an act found to be a "capricious punishment instilled by Banya," with no link to a JCE member and no intention to terrorise.[648]

AFRC/RUF rebels carving AFRC and/or RUF on bodies in Kavima[649]

224. The Trial Chamber failed to conclude, and there is no evidence upon which they could have concluded, that the perpetrators were procured by a JCE member.[650]

Common Purpose: Kailahun District

General Errors in the assessment of evidence: special intent for Terror and Collective Punishment

225. The Trial Chamber erred in law and fact in concluding that the crimes of Sexual Violence found proven were acts of Terror.[651] The generalising "catch-all" formulation in paragraphs 1348-1349 is irrelevant to the events in Kailahun during the indictment period, which were

[642] Judgment, Para. 1309.
[643] Judgment, Paras. 1180-1186,1289, 1316-1317.
[644] Judgment, Paras. 1178-1179 and 1291.
[645] Judgment, Paras. 1178-1179.
[646] Judgment, Paras. 1177 and 1314.
[647] Judgment, Para. 1177.
[648] Judgment, Para. 1358.
[649] Judgment, Paras. 1190 and 1315.
[650] Judgment, Para. 1190.

found to be different from that of other rebel territory.[652]

226. The Trial Chamber conducted no distinct analysis of factors motivating forced marriage *as acts of terror* in Kailahun district, as compared to other districts.[653] The general findings stating "an unknown number of women" or those addressing the specific marriages of TF1-093 and TF1-314 provide no basis for this conclusion. The Chamber had no direct evidence concerning actual "victims" in Kailahun, except, TF1-093 and TF1-314. However, the Chamber found that they were captured, abducted, and raped prior to the Indictment period.[654] The Appellant relies upon the submissions above, relating to the Chamber's identical errors in the approach to evidence concerning sexual violence in Kono District – paragraph 195 – 202.

Error in holding 'ordinary' crimes to be part of the common purpose

227. The Defence submits that the Trial Chamber erred by concluding that offences that were not committed with an intent to spread terror or collectively punish could still fall within the common purpose. This invalidates the decisions as regards the unlawful killing of an SLA solider[655] and enslavement.[656]

Killing of Alleged Kamajors in Kailahun Town: Error in failure to conduct essential analysis concerning crimes of Terror[657]

228. The Trial Chamber erred in fact and in law in concluding the killing was an act of terror, as charged in Count 1.[658] The Trial Chamber's conclusions, in this regard, are based upon an unreasonable interpretation of the evidence, for the following reasons. First, the Trial Chamber concluded, on the basis of considerable evidence, that the Prosecution had "failed to adduce evidence of terrorism in the parts of Kailahun District that were controlled by the RUF and where Gbao was located."[659] The Trial Chamber's account of the circumstances of the killings places Gbao as present throughout.[660]

229. Second, no reasonable tribunal could have concluded that the perpetrators' primary intention

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[651] Judgment, Para. 1351.
[652] *See, e.g.*, Judgment, Para. 1417.
[653] Judgment, Para. 1346: "In making its Legal Findings on sexual violence as an act of terrorism committed against the civilian population, the Chamber has considered the body of evidence adduced in relation to the various Districts of Sierra Leone as charged in the Indictment."
[654] Judgment, Para. 1405-1406.
[655] Judgment, Para. 2156.
[656] Judgment, Para. 2156.
[657] *Brđanin*, Appeal Judgement, Para. 418.
[658] Judgment, Para. 1491.
[659] Judgment, Para. 2047.
[660] Trial Judgment, paras. 1387-1397

was to spread terror. The Trial Chamber found an alternative motive: "widespread anxiety within the RUF leadership about possible Kamajor infiltrators among the civilian population."[661] Bockarie acted, according to the Trial Chamber's findings, "due to his anxiety that Kamajors had infiltrated the civilian population."[662] It is submitted that this was a competing inference that could not be excluded. Moreover, the Chamber's finding indicates the disapproval of all: unbeknownst to Bockarie, Tom Sandy and Gbao released one of the groups of those arrested, whom Sandy had concluded, were not Kamajors.[663] This was followed by the release, on parole, of the second group, pending investigation – also without Bockarie's knowledge or approval. [664] Bockarie's reaction to the releases was to order that the second group be re-arrested and killed.[665] Furthermore, it was accepted by the Trial Chamber that Sesay himself was not in Kailahun at the time of the alleged acts.[666] Any suggestion that he responded favourably to Bockarie's plans to carry out these acts must be rejected as utterly unsupported by the evidence.

Error in failure to conduct essential analysis concerning crimes by non-JCE Members[667]

230. The Trial Chamber failed to identify the perpetrators or the victims of forced marriages in Kailahun. It is submitted that the Trial Chamber failed to identify the *necessary* link with the JCE members: the factual findings are insufficient to identify the direct perpetrators or the putative JCE member.

Summary of the JCE errors and the identification of a common purpose

231. It is submitted that the submissions in 81 to 231 above demonstrate the errors that are most relevant to the assessment of the findings on the alleged common purpose between the AFRC and the RUF. It is submitted that the Chamber erred in fact and law and failed to make the relevant findings which negates the Appellant's convictions pursuant to the JCE

GROUNDS 25, 27, 34 & 36: Article 6(1), pursuant to the JCE: Errors in assessing the Appellant's participation

232. The correct approach in law to an assessment of the Appellant's contribution to the common

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[661] Trial Judgment, para. 1387, citing Transcript of 25 November 2005, TF1-045, p. 35, Transcript of 25 January 2008, DIS-157, p. 94.
[662] Trial Judgment, para. 1450.
[663] Trial Judgment, Para. 1391.
[664] Trial Judgment, Para. 1391.
[665] Trial Judgment, Para. 1392.
[666]
[667] *Brđanin*, Appeal Judgement, Para. 418.

purpose was outlined by Justice Boutet's dissent from the majority conviction of Gbao's pursuant to the JCE liability.[668] The correct approach was to assess each crime or criminal event and ascertain what contribution, if any, Sesay had made to the individual crime, attack or operation as per Justice Boutet analysis of Gbao's role and contribution to the killing of the alleged Kamajors in Kailahun Town (Counts 1 to 5)[669] and, particularly, his conclusion that Gbao's role had not had a substantial effect upon the perpetration of *that specific* crime and, hence, it could not form part of the assessment to his contribution.[670] This was the (correct) approach to an assessment of the Appellant's participation and criminal intent.[671]

233. Whilst the Appellant's actions in seeking to take over the country was relevant inasmuch as those actions might have facilitated or given substantial assistance[672] to the commission of the underlying crimes, as "knowledge [of specific crimes] combined with continuing participation can be conclusive as to a person's intent."[673] But this requires analysis of the exact role the Appellant played in pursuing the war effort and his awareness that this role was providing this level of assistance to the crimes. The "information the [Appellant] received [was] an important element for the determination of his responsibility."[674]

234. Whilst Sesay's participation in the junta period[675] might have been relevant it is only important if it demonstrated that his role was significant and directed to furthering terror and collective punishments. Equally, the fact that "he was one of the most important and influential RUF representatives on the Supreme Council"[676] might have been probative if the position was shown – rather than merely asserted – to have provided real authority *within the alleged plurality* and thereafter he had used it in the accomplishment of the goal of terror and collective punishment. The Trial Chamber's analysis neglects to make these critical findings.[677] Securing revenues, territory, and manpower for the Junta government and even "implementing the policy of eliminating civilian opposition to the Junta government" does involve the pursuit of terror or collective punishment and thereby cannot – without more – establish the necessary intent.[678]

235. The Trial Chamber had to be satisfied from a careful review of his utterances and conduct

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[668] Dissent, Paras. 5-18.
[669] Judgment, Para. 2156.
[670] Dissent, Paras. 11-12.
[671] The best example of this approach in the jurisprudence is *Miltutinovic* at the ICTY (TC).
[672] *Simić* TC Judgement, para.1000.
[673] *Krajišnik* TC Judgement, para. 1196.
[674] *Krajišnik* TC Judgement, para. 1196.
[675] Judgment, Paras. 1993-1996.
[676] Judgment, Para. 1994.
[677] Judgment, Paras. 1193-1996 and 2055.
[678] Judgment, Paras. 2001, 2055, 2090 and 2164.

that Sesay used his role and authority for the accomplishment of terror and collective punishment.[679] The factors that should have been assessed included: whether he took an active role;[680] whether there was an effective chain of command to and from him;[681] the extent of his authority (including over the troops committing crimes);[682] whether he could or did take steps to alleviate the condition of civilians;[683] whether, through his utterances, he showed his approval of the underlying crimes *and* terror and collective punishment. The Trial Chamber had to determine whether other reasonable inferences were possible. Instead the Trial Chamber disregarded all the evidence that demonstrated Sesay's de facto authority, (including all the Prosecution and Defence evidence and its own findings which clarified the hierarchy of decision making) and crucially disregarded the essential analysis that would have determined the links, if any, between the JCE members and the direct perpetrators.[684] Contribution to Acts of Terror or Collective Punishment the criminal means to further the taking of power and control was the significant issue. [685]

GROUND 25: Bo District

236. Sesay was not found to have any direct involvement in the District. Forced mining had no connection to the offences committed between 1 June and 30 June 1997 in this District.[686] There was no finding of forced mining until August 1997.[687] The nebulous reference to the use of "the levers of State power" is unsupported by evidence.[688] The only relevant finding was reference to Sesay using the levers of State power refers to his arrest of a suspected Kamajor supporter in Kenema, which was found to have occurred on 27 October 1997.[689] There was no evidence that the Appellant had any nexus to the crimes in this district.[690]

Ground 27: Kenema District

237. Sesay's actual involvement in the District, as found by the Chamber, was limited to the following: (i) planning of enslavement in Tongo Fields[691] and (ii) Sesay used the levers of

[679] *E.g.*, *Simić* TC Judgement, para. 992.
[680] *E.g.*, *Krstić*, TC, Para. 464.
[681] *E.g.*, *Krstić*, TC, Para. 269 and *Milutinović*, TC, Para. 274-276.
[682] *E.g.*, *Simić*, TC Para. 992.
[683] *E.g.*, *Simić*, TC Para. 1196.
[684] Judgment, Para. 1992.
[685] *E.g.*, Judgment, Para. 1998.
[686] Judgment, Para. 1984.
[687] Judgment, Para. 1094.
[688] Judgment, Para. 1999.
[689] Judgment, Para. 1048.
[690] Judgment, Para. 2002.
[691] Judgment, Para. 1998.

State power in an attempt to destroy civilian support for the Kamajors.[692] The conclusion that Sesay participated in this District by giving orders from 1997 onwards for civilians to be captured and taken to Bunumbu, is a patently incorrect conclusion of fact.[693] None of the evidence supports the finding that the Bunumbu training camp was opened during the junta period.[694] The Trial Chamber erred in fact and law by concluding that Sesay was not only responsible for planning the enslavement in Tongo (Count 1 and 13), but, also shared the intent of the direct perpetrators – intent to cause terror. Whilst the Chamber was correct to find that Sesay's acts in this regard would have furthered the securing of revenues,[695] it was essential, before this could be regarded as a contribution to the common purpose of terror, that there was a finding as to his specific intent. The Chamber was unable to point to any evidence which identified a specific role undertaken by Sesay in the furtherance of the mining enterprise, except that "[d]iamonds were then either given to RUF Commanders including Bockarie, Sesay and Mike Lamin."[696] In the absence of evidence, the Chamber inferred that the mining must have been a "planned and a systematic policy of the Junta government devised at the highest level" and that "Sesay, as a member of the Supreme Council, was involved in the planning and organisation of the force mining."[697] This was insufficient to be able to conclude that Sesay intended it to be in furtherance of terror.

238. Further, the Trial Chamber, in arriving at its conclusion concerning the alleged planning at the highest level, disregarded the *only piece of evidence* that explained the nature of discussions at the Supreme Council concerning the mining, namely that of Prosecution witness TF1-371, who testified on direct-examination that the issue of force was not discussed and if civilians were harassed while they were mining, the Supreme Council would *remove* the commander in that area and replace him with another commander.[698]

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[692] Judgment, Para. 1999.
[693] Judgment, Para. 2000.
[694] Judgment, Paras. 1435, 1436,
[695] Judgment, Para. 2001 and 2055.
[696] Judgment, Para. 1091. The Trial Chamber also concluded that Sesay made a significant contribution to this enterprise by his "use of child soldiers to guard mining sites and force the miners to work" but there was no evidence to support this finding and none was cited by the Chamber. As such it is a patently incorrect assessment of fact. (Para. 1998)
[697] Judgment, Para. 1997.
[698] Transcript/TF1-371, 20 July 2006, pp. 36-37 (not cited by the Trial Chamber):
Q. You said that periodically "they" updated the council; who are you referring to, when you say "they" updated the council?
A. I'm referring to those mining commanders, that were in charge of the AFRC mining. ... I can remember there was an honourable called Stone or Sammy ... but because of the frequent harassment in those mining operations where Sammy was ... the council decided to change Sammy and appointed another honourable called Cobra, alias, to take over the operations....
JUDGE BOUTET: Mr Witness, you mentioned that Sammy was relieved because of harassment by

Sesay used the levers of State power in an attempt to destroy civilian support for the Kamajors[699]

239. Sesay arrested three people.[700] Putting aside the manifest unfairness of making a finding against Sesay in relation to the "flogging of the Police Commissioner and CPO" on the basis of an un-attributed double hearsay account,[701] these three arrests do not provide a basis for the hyperbolic description of using "the levers of State power in an attempt to destroy civilian support for the Kamajors." Further the Chamber did not determine that his treatment of the three was serious enough to amount to an inhumane act, as charged in Count 11 and therefore it could not be safely inferred that he had the requisite intent for this to be a contribution to the criminal purpose pleaded.[702]

GROUND 34: Kono District

240. The Trial Chamber erred by concluding that Sesay had participated in the common purpose in Kono District from the intervention in February 1998 until its end in April 1998.[703] No reasonable trier of fact would have been able to conclude that Sesay's authority extended to Kono or that he played any effective role in the crimes that occurred in the District. The Trial Chamber disregarded, without explanation, detailed submissions concerning Sesay's lack of authority at this time, particularly as regards the military operation in Kono.[704]

Sesay's actions during the intervention

241. The Trial Chamber erred in law and fact by finding Sesay's presence during Operation Pay Yourself in Makeni and his tacit endorsement of the looting and his planning of the Koidu attack.[705] Even if the Chamber's conclusion that Sesay planned this attack was correct (and that his supposed execution of two retreating fighters could amount to a substantial contribution to the plan at both the preparatory and execution phases[706] – which it plainly

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honourables: what do you mean?
THE WITNESS: [S]ometimes [some of the honourables] disrupted the proceedings of the programmes, that is the mining and there was frequent report of they harassing and shooting in the mining district. That somehow jeopardised these smooth operations. As a result of that, in one *deliberation*, it was decided that he be changed for another senior man called Cobra, who was in charge of that operation up to the point of ECOMOG intervention of 1988 [sic].
See also, Transcript/TF1-371, 31 July 2006, pp. 40 (from TF1-371's cross-examination; not cited by the Trial Chamber). The Council member knew that mining was going on ... but they did not discuss the forced mining."

[699] Judgment, Para. 1999.
[700] Judgment, Paras. 1111, 1116-17.
[701] Judgment, Para. 1055.
[702] Judgment, Paras. 1117 and 2052.
[703] Jndgment, Paras. 2081-87.
[704] Sesay Defence Closing Brief, Paras. 806-836.
[705] Judgment, Paras. 2082-2083.
[706] *Prosecutor* v. *Brima, Kamaru and Kanu*, SCSL-2004-16-A, Appeals Chamber Judgement, Para. 301.

cannot), there was not a single piece of evidence to support a conclusion that any planning of this attack involved the planning of the underlying crimes to further terror and collective punishment. No reasonable trier of fact could have concluded that Sesay encouraged the looting, especially in light of his injury that prevented him taking command.[707] Sesay had been shot in the back whilst trying to prevent looting in Bo[708] – a fact not challenged by the Prosecution.[709] It was not reasonable to disregard this evidence and proffer no explanation for that decision. There was an alternative inference: that his injury left him with no choice.

Sesay's actions whilst present in Koidu: Sesay endorsing order by JPK

242. No reasonable trier of fact and law could be satisfied that the Appellant gave this endorsement.[710] For the substantive allegation that Sesay endorsed the order the Trial Chamber relied upon one witness, TF1-334.[711] The evidence from this witness on this point was inconsistent and the witness failed to offer an explanation that could have satisfied a reasonable trier of fact.[712] Contrary to the Chamber's findings, TF1-334 did not testify that the meeting took place at Kimberlite.[713] Given the uncorroborated nature of the evidence; the fact that it stood alone as proof of the crime;[714] and that there was a genuine and significant dispute surrounding the witnesses credibility,[715] the Trial Chamber was obliged to provide a clear, reasoned finding of fact. The Trial Chamber was obliged to demonstrate that it had not disregarded the inconsistent evidence, especially that which was given by TF1-334.[716]

243. The witness had clear motives: the witness was an accomplice, who confessed to having played a role in *those* crimes, ranking alongside Savage and Al-Haji as one of the worst perpetrators.[717] The witness had been released from Pademba road on or around the 21 August 2004, during the course of his involvement with the Prosecution, escaping prosecution for his reprehensible deeds.[718] The witness was seeking relocation.[719] Fourth, the witness had received huge sums of money by the Prosecution for "information" – at a time when he was testifying against Sesay (5-10 July 2006) including 52 separate payments from

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[707] Judgment, Para. 2083.
[708] Transcript/Sesay 8 May 2007, pp. 99-105.
[709] Sesay Defence Closing Breif, Paras. 693-716.
[710] Judgment, Paras. 799, 1141-1144, 2084, and 2092.
[711] Exhibit 119, AFRC Transcript of 18 May 2005, TF1-334, pp. 3, 7.
[712] Defence Closing, Paras. 761-767 and 778-783.
[713] Judgment, Para. 1141.
[714] Kajelijeli, TC, Para. 39.
[715] Kajelijeli, TC, Para. 39.
[716] Judgment, Paras. 478-479. *Kupreškić et al, Appeal Chamber Judgement,* para. 202.
[717] Sesay, Defence Closing Brief, Para. 756-763.
[718] Transcript/TF1-334, 5 July 2006, pp. 25-28.
[719] Transcript/TF1-334, 5 July 2006, pp. 54-55.

the OTP between 4 April 2006 and 6 November 2007. Further these and other payments were obviously improper and dishonest given the lack of explanation proffered by the Prosecution and the manifest lack of genuine explanation.[720] These payments and the separate payments from the WVS remain unexplained, as does the reason which might clarify the logic and propriety of funding him while he was in WVS case and funding the witness' own schooling.[721]

244. The fact that the witness had invented this allegation was clear: this was not part of the Prosecution's case at the commencement of the trial. The allegation was that Sesay was present but did not participate.[722] That the witness invented it was manifestly obvious. On the 11 November 2003, during an early interview, the witness denied that Sesay had endorsed the order – confirming it was only JPK. By the 18 May 2005 his evidence had changed and he implicated Sesay.[723] The Trial Chamber had an obligation to explain the reasons for accepting this evidence in the face of these obvious motives. There is nothing in the judgment that indicates that the Chamber showed the necessary caution.[724]

Mining in 1998

245. The Trial Chamber erred in concluding that Sesay involvement in mining could be counted as a contribution to the JCE.[725] There was no finding that Sesay had any involvement in the mining in Kono until December 1998.[726]

On Sesay's orders, from 1997 onwards, captured civilians were taken to Bunumbu for military training[727]/ Yengema

246. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay's contribution could be judged through his involvement with Yengema.[728] The training base at Yengema, as found by the Trial Chamber, did not commence its operations until late 1998 or early 1999. Sesay's actions towards this training base were wholly irrelevant.

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[720] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-1161, "Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses," 30 May 2008; Para. 30(i), (ii), (iii), and (iv).
[721] Transcript/TF1-334, 6 July 2006, pp. 45-50.
[722] Prosecution Supplemental Pre-trial Brief, Para. 38.g.
[723] Transcript/AFRC TF1-334, 18 May 2005, pp. 19-23.
[724] *Krajišnik*, AC, para. 146, *Niyitegeka* Appeal Judgement, para. 98. Appeal Judgement, paras 204 and 206, and *Blagojević and Jokić* Appeal Judgement, para. 82.
[725] Judgment, Para. 2086.
[726] Judgment, Paras. 1240-1259.
[727] Judgment, Paras. 2000 and 2087.
[728] Judgment, Paras. 2088 and 2092. Transcript/TF1-362, 22 April 2005, pp. 16.

No contribution to terror or collective punishment

247. The Trial Chamber failed to make a finding that actions contributing to the forced labour at Bunumbu contributed to terror or collective punishment in Kono.[729] Conversely the Chamber found that it was proved under Count 13 only and restricted to Kailahun.[730] The finding was that the training of new recruits was essential because it "ensured the maintenance of the military manpower and the success of the operations."[731] This was not capable of being a contribution to terror, only to taking over the country. Second, even if this is not accepted, the Trial Chamber concluded that about 500 people were trained at Bunumbu during its whole operation. Sesay only arrived in Kailahun in March 1998.[732] The Prosecution did not dispute that he left Sierra Leone on the 20th April 1998 and was away for up to three weeks.[733] In the absence of any further analysis, the addition of a small fraction of the 500 recruits to an army of many thousands, does not equate to a significant contribution to the maintenance of military manpower, operations or territory – never mind terror or collective punishments.[734]

Knowledge of events in Kono

248. The Chamber relied upon a single witness to sustain the finding that Sesay received regular radio reports.[735] The evidence provided by TF1-361 in this regard was wholly inadequate and could not sustain a significant finding that Sesay was involved in and aware of the operations in Kono. The evidence from this witness was highly contested and the Defence advanced detailed arguments to demonstrate the unlikelihood that Sesay had any role towards Kono at that time.[736] There is not a single reference in the judgment to any of these arguments or how it was that the Chamber resolved the doubt that existed.[737] The witness' uncorroborated evidence was nonsensical: the witness claimed that every radio message that arrived at Bockarie's house would be taken first to Sesay and then Sesay would then take it back to Boekarie's, irrespective of whether Bockarie was home or not.[738] His evidence was contradicted by every witness.[739] Finally, the Chamber's conclusions contradict the tenor of his testimony. The Trial Chamber found that Sesay was not informed about the killings in

[729] Judgment, Para. 2064.
[730] Judgment, Para. 2156.
[731] Judgment, Para. 2088.
[732] Judgment, Para. 826.
[733] Transcript/Sesay, 10 May 1997, pp. 43.
[734] Judgment, Para. 1438.
[735] Judgment, Para. 827.
[736] Sesay Defence Closing Brief, Paras. 806-844.
[737] Kajelijeli, TC, Para. 39. *Kupreškić* et al, *Appeal Chamber Judgement*, para. 202.
[738] Transcript, RUF, 15 July 2005, p. 26 - 29.
[739] *See*, Sesay Defence Closing Brief, Paras. 833-842.

Tombodu until September 1998.[740] Even Bockarie, according to the Chamber, was not informed of the crimes by Rocky and his men (committed in May 1998), until May 1998. DIS-188 informed Bockarie and testified DIS-188 that this was after May 1998.[741] The reasonable inference is that Sesay was not receiving reports on a regular basis, and certainly not in the manner suggested by TF1-361.[742]

GROUND 37: Kailahun District

249. See Grounds 25, 27, and 34 above and paras. 81 – 231.

Summary of Appellant's JCE liability

250. It is submitted that the Chamber erred in fact and law in its approach to the JCE. Consequently it failed to assess the Appellant' contribution and criminal intent. The errors undermine the convictions and the Appellant requests that the convictions be dismissed. It is submitted that the aforementioned submissions (Para. 81 – 249) demonstrate manifest errors that vitiate all the convictions.

GROUND 35: Planning Enslavement, Mining (December 1998 to January 2000)

251. The Trial Chamber erred in fact and law in finding Sesay responsible for "planning the enslavement of hundreds of civilians to work in mines in Tombodu and throughout Kono District between December 1998 and January 2000, as charged in Count 13 of the Indictment."[743] The Trial Chamber's patently erroneous interpretation of the evidence and the disregard of evidence, except that elicited during the direct examination of Prosecution witnesses, was an abuse of judicial discretion.[744] It was wholly unreasonable to disregard the evidence that would have provided support for the Appellant's case and would have rebutted the presumption that "genuine consent was not possible in the environment of violence and degradation existing in Tombodu."[745]

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[740] Judgment, Para. 1169.
[741] Judgment, Para. 1147-1151. Transcript/DIS-188, 30 October 2007, pp. 92-93.
[742] Further, the witness was an accomplice, who confessed to having played a role in *those* crimes. The witness was one of the perpetrators of the atrocities in Kono during that period. The witness was aligned with Sesay's enemy, Superman and admitted that in 1999 he had been flogged and imprisoned by Sesay. (Defence Closing Para.843).
[743] Judgment, Para. 2116.
[744] *See*, Sesay Defence Closing Brief, Paras. 1220-1321 and Annex G: Errors in the relevant conclusions concerning Enslavement in Kono.
[745] Judgment, Para. 1329. *See*, Ground 2 and Sesay Defence Closing Brief at Paras. 1220-1234 and 1252-1321.

No forced mining in Tombodu Dec. 1998 to Jan. 2000

Improper Notice of Planning Enslavement in Tombodu

252. The Defenee was not properly put on notice that the Appellant was responsible for forced mining in Tombodu at any time pre-December 1999. The Prosecution's Supplemental Pre-Trial Brief misled the Appellant was who was informed that TF1-077 was eaptured in December 1999 and his alleged enslavement occurred thereafter.[746] The Appellant was incurably prejudiced and the Chamber erred in law in not so concluding.

Mining In Tombodu Started in 2000

253. The Trial Chamber erred in fact and law by finding that Sesay was responsible for enslavement in Tombodu "between December 1998 and January 2000."[747] No reasonable trier of fact could have concluded that mining commenced in Tombodu at any stage prior to early 2000 and that the requisite indiccs of enslavement had been satisfied (Count 13).

The Findings at Paragraphs 1251-1258, "Mining in Tombdou and Bendutu"

254. The Trial Chamber's reliance on TF1-077, TF1-199, and TF1-304 to support the finding on duration (December 1998 to January 2000) and other issues was unreasonable.[748]

The Evidence of TF1-077, TF1-199 and TF1-304

255. All references to TF1-199 are crrors. TF1-199 testified about cvents in Madina Loko, Bombali District that have nothing to do with diamond mining. This would appear to be a clerical error; the relevant witness and citations refer to TF1-077.[749] The Chamber erred by disregarding the cross-examination testimony of TF1-077 and TF1-304, the evidence of TF1-012 or TF1-071, and the testimony of any Dcfence witness. No reason was proffered and none could cxist for this abuse of discretion.

256. The Chamber found that TF1-304 was mining from April 1999 onwards[750] and that after TF1-077's capture in December 1998, "while in Tombodu," TF1-077 was then instructed to

[746] Prosecution Supplemental Pre-Trial Brief, page. 1943.
[747] Judgment, Para. 2116.
[748] Section 5.1.17.3 of the Judgment ("Mining in Tombodu and Bendutu").
[749] The Defence believes that the Trial Chamber made an error when making reference to TF1-199 and had intended to refer to TF1-077 instead. Additionally, regardless of whether the correct reference would have been to TF1-077 or TF1-199, the citations to the transcript of 20 July 2004 past page 86 (e.g., footnotes 2405-2407) are incorrect as the transcript on that date ends at page 86.
[750] Judgment, Para. 1255.

mine.[751] This unreasonable conclusion was purportedly based on the direct-examination of TF1-077 and TF1-304. Had the Chamber had regard to the cross-examination of these witnesses, the *only* reasonable conclusion was that the mining commenced in 2000. On cross-examination TF1-304 testified that there was no mining in Tombodu in 1999[752] and that it started in the dry season of 2000, "between March and April 2000."[753]

257. TF1-077 testified that he was captured in December 1999.[754] The Trial Chamber stated it was "satisfied that TF1-077 is mistaken about the year, since the recapture of Koidu by the RUF occurred in December 1998."[755] This was a patently incorrect interpretation of the evidence. First, the witness' pre-trial statement stated that he was captured in December 1999.[756] Second, the Prosecution led him on this fact and commenced his examination directing the witness' mind to December 1999.[757] The Prosecution led him on that fact because it was not disputed evidence. Third, a fair appraisal of TF1-077's direct-examination and cross-examination leaves no doubt that he was testifying to being captured in December 1999.

258. During direct-examination, TF1-077 testified that following his capture he was in Tombodu for "a while" and then "one day another troop arrived, there were lots of them and they found us."[758] The time that had elapsed was not clarified. However, Officer Med was within the group of combatants that was responsible for their capture.[759] The undisputed evidence showed that Officer Med arrived to Tombodu in 2000.[760] More crucially, on direct-examination TF1-077 testified that he was mining in Tombodu for "six months"[761] "until it was August time."[762] At the point when TF1-077 was "about to start work again, we heard that there were people who were disarming and they've arrived. These disarmament officers came."[763] It would have been obvious to a reasonable trier of fact that TF1-077 was talking about 2000 since, as the Chamber's findings on a range of issues demonstrate the RUF did not disarm (or begin to disarm) in Kono during 1999. During cross-examination TF1-077

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[751] Judgment, Para. 1251.
[752] Transcript/TF1-304, 13 January 2005, pp. 94-95.
[753] Transcript/TF1-304, 14 January 2005, pp. 65.
[754] Transcript/TF1-071, 20 July 2004, pp. 77.
[755] Judgment, footnote 2404.
[756] *See*, Prosecution Supplemental Pre-Trial Brief, pp. 1943. "This witness will testify that in December 1999 he was captured by RUF rebels and taken to Tombodu." The Defence was therefore not on notice that TF1-077 was going to testify to forced mining in Tombodu prior to December 1999.
[757] Transcript/TF1-071, 20 July 2004, pp. 77. "Q. Now, do you reeall the 16th of December 1999? A. Yes."
[758] Transcript/TF1-077, 20 July 2004, pp. 78.
[759] Transcript/TF1-077, 20 July 2004, pp. 78.
[760] *E.g.*, Transcript/TF1-071, 25 January 2005, pp. 79. *See also*, Sesay Defence Closing Brief, Paras. 1227-1229.
[761] Transcript/TF1-077, 20 July 2004, pp. 81.
[762] Transcript/TF1-077, 20 July 2004, pp. 81.
[763] Transcript/TF1-077, 20 July 2004, pp. 81.

confirmed that he was "arrested" towards the end of 1999,[764] that he had thereafter been mining for six months in Tombodu, and then disarmament commenced.[765] Further, TF1-077 testified that throughout 1999 he was in Koidu.[766] Further, this evidence was corroborated by TF1-012 and TF1-071 whose testimony placed the mining in Tombodu in 2000 and beyond.[767] These witnesses were cited throughout the Judgment as being credible witnesses when incriminating the Appellant and unreasonably disregarded when not. TF1-012 testified that mining commenced in Tombodu in November 2000.[768] TF1-071 testified that the mining commenced in 2000.[769]

Mining in Kono Generally

259. At its legal findings for enslavement at Paras. 1328-1330, the Chamber references its factual findings[770] and finds enslavement in Tombodu only.[771] In contrast, the Disposition convicts on "Tombodu and throughout Kono District."[772] The Trial Chamber erred in law in failing to particularize with the requisite specificity the criminal responsibility of the Appellant.[773] Further, this lack of clarity is compounded by a lack of specificity in the factual findings purporting to explain the basis for the Appellant's responsibility. The locations of the enslavement found; the names and approximate number of the victims; the names of the supposed perpetrators (other than TF1-367, Sesay, and Kallon);[774] the system that was employed and the Appellant's alleged relationship to this widespread enslavement are unclear and insufficient to sustain a conviction. The Judgment is transparently a list of evidence that breaches the right of an accused to know the case that it had to meet and the case that was found. The Appellant's defence at trial was that there was no organized system of enslavement in Kono from at least December 1998 through 2001. It was not, as mischaracterized by the Chamber, that "no civilians were forced to mine in Kono District".[775] It was incumbent upon the Chamber to deal with the real defence and explain how (and why) it had been rebutted.

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[764] Transcript/TF1-077, 21 July 2004, pp. 15.
[765] Transcript/TF1-077, 21 July 2004, pp. 31-32.
[766] Transcript/TF1-077, 21 July 2004, pp. 14-15. Note that although TF1-077 was present in Koidu throughout 1999, he makes no mention of force in connection with mining in any location besides Tombodu.
[767] Transcript/TF1-012, 4 February 2005, pp. 46; Transcript/TF1-071, 25 January 2005, pp. 79.
[768] Transcript/TF1-012, 4 February 2005, pp. 46
[769] Transcript/TF1-071, 25 January 2005, pp. 79
[770] At Paras. 1251-1259.
[771] Judgment, Para. 1330.
[772] Judgment, Disposition.
[773] Judgment, Paras. 1240-1250.
[774] Judgment Paras. 1246-1250.
[775] Judgment, Para. 1329.

260. Instead, the Chamber amalgamated a number of findings at Paragraphs 1246-1250 that speak eloquently to the lack of clarity of the Prosecution case, but little to the critical issues: namely who was enslaved, and in which way, and what was the evidence of the exercise of powers such as the purchasing, selling, lending or bartering of a person, or some other similar deprivation of liberty.[776] The Chamber's findings are replete with obvious legal contradiction: whilst purporting to describe the system of brutal slavery the Chamber splices these findings with findings to the contrary. In the same paragraphs – and without explanation – the Chamber juxtaposes the findings that tend towards enslavement (beatings for refusals to work[777]) with those that manifestly could not; namely miners who worked voluntarily;[778] miners with weekends away and free;[779] miners were free to leave the mining sites;[780] civilians were chose to stay in the camps even though it was on condition that they assisted in the mining[781] and civilians were chose to live at the camp, despite the mining conditions[782]and civilians who could obtain permission to mine.[783]

261. It is submitted that this approach is illustrative of the lack of evidence amounting to enslavement from at least December 1998 through 2001. The Chamber had a duty to explain the guilt of the Appellant and when it could not then this was powerful proof of the existence of reasonable doubt. The failure to address these details undermines the Appellant's inviolable Article 18 right to a reasoned Judgment and reflects the Chamber's presumption of guilt.[784] These errors of law were compounded by the unreasonable dismissal – with no explanation proffered – of every aspect of the Defence case: the Chamber witnesses,[785] the Defence closing submissions,[786] and 18 92*bis* statements.[787]

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[776] Kunarac, Appeals Chamber Judgment, Para. 119.
[777] Judgment, Para. 1248.
[778] Judgment, Para. 1247. "Civilians who were not willing volunteers were captured and brought forcefully to the mining sites."
[779] Judgment, Para. 1248.
[780] Jndgment, Para. 1248.
[781] Mining in exchange for protection does not eqnate to enslavement. In any event, the evidence to which the Chamber cites supports mining in Papany Ground in pre-December 1998. *See* Annex G: Errors in the relevant conclusions concerning Enslavement in Kono.
[782] The civilians ehose to stay at the camp. In faet, the Chamber found that the eivilians "stayed with their families" (Para. 1248). Further, the evidenee doesn't support the finding that civilians had to mine beeause they were staying at the camp. *See* Annex G: Errors in the relevant conelusions concerning Enslavement in Kono.
[783] Judgment, Para. 1244. "Civilians who mined without permission from the RUF were arrested."
[784] The Proseeutinn provided notice that the Appellant was to be prosecuted for forced mining in the Kono District in Tombodu. There was no proper notice provided relating to other locations This migbt explain the lack of clarity in the Judgment. It was impossible fnr the Chamber to assess whether the Prosecution had proven their case when the case remained unknown.
[785] Judgment, Para. 527- 531 and 565-569.
[786] *See*, Sesay Defence Closing Brief, Paras. 1220-1321.
[787] *See*, Ground 20. The dismissed statements impact on the fact that civilians traveled freely to Kono District where civilians were mining voluntarily on a two-pile mining system (including the lack of forcible transfer of civilians from Makeni and Magburaka to Kono). The following statements rebut the Chamber's finding at Paras.

262. The Chamber based its findings predominantly on TF1-367.[788] However, the Chamber erred in law in disregarding critical aspects of TF1-367's evidence. Not only was TF1-367 an accomplice (thus requiring his evidence to be approached with the requisite caution), but he was exposed in his lies which implicated Sesay.[789] TF1-367 testified that Kenndy, the Overall Mining Commander, never reported to Peter Vandi,[790] (the then Brigade Commander in Kono District[791]) but instead reported directly to Sesay.[792] In direct contrast, the Chamber found that "Mining Commanders would process requests from Brigade Commanders."[793] As a second example, TF1-367 testified that the JSU in Kono District reported to Sesay.[794] Exhibit 107[795] however, cited by the Chamber for the truth of its contents,[796] demonstrated the Defence case, namely that the JSU reported to Peter Vandi instead of Sesay. As a third example, TF1-367 testified that "When we captured Koidu, [Sesay] did not leave"[797] and that Sesay was in "Kono throughout 1998 and 1999."[798] The Chamber found that Sesay was based in Makeni from December 1998 through March 1999 and again from October 1999 through February 2000.[799] The Chamber further erred in law in disregarding TF1-367's motivation to implicate Sesay. TF1-367 testified that he blamed Sesay for having been severely beaten and detained at length by the Military Police.[800] Lastly, the Chamber erred in disregarding

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1246-1250 in that these witnesses were either present in Kono District or saw people go to Kono District in 1999 and 2000. There was no force in connection with people going to and from Kono District from, e.g., Makeni. The witnesses knew or heard of civilians that went to Kono to mine. There was no suggestion that there was any force in mining; to the contrary, civilians were mining on a traditional two-pile system in Kono District in which the civilians retained a portion of the proceeds from the mining. *E.g.*, DIS-007 (24458-24464); DIS-041 (24265-24271); DIS-044 (24273-24278); DIS-071 (24485-24489); DIS-219 (24604-24608); DIS-271 (24309-24318); DIS-283 (24320-24325); and DIS-285 (24515-24521).
The following dismissed statements also impact on the Chamber's findings at Paras. 1246-1250. These statements show that markets were operating in major towns between and including Koidu and Makeni and civilians traveled between these towns to trade (including trade at Koidu and Koakoyima where the enslavement was purported to have occurred) thus rendering the Chamber's finding that there was an organized system of forced labour implausible. *E.g.*, DIS-007 (24458-24464); DIS-011 (24466-24472); DIS-012 (24474-24477); DIS-021 (24250-24255); DIS-041 (24265-24271); DIS-044 (24273-24278); DIS-047 (24280-24285); DIS-048 (24287-24290); DIS-071 (24485-24489); DIS-110 (24491-24495); DIS-158 (24497-24502); DIS-173 (24504-24508); DIS-213 (24510-24513); DIS-219 (24604-24608); DIS-271 (24309-24318); DIS-283 (24320-24325); DIS-040 (24479-24483); and DIS-285 (24515-24521).

[788] E.g., at Paras. 1246-1249.

[789] *See*, Sesay Defence Closing Brief, Paras. 1285-1291.

[790] Transcript/TF1-367, 22 June 2006, pp. 80-82.

[791] Transcript/TF1-367, 22 June 2006, pp. 84.

[792] Transcript/TF1-367, 22 June 2006, pp. 80-81.

[793] Judgment, Para. 1259. The Chamber found that these requests from the Brigade Commander to the Mining Commanders would come from senior commanders such as Seasy and Kallon. That is, the requests would not come directly from the senior commanders to the Mining Commanders.

[794] Transcript/TF1-367, 23 June 2006, pp. 81.

[795] JSU report to Peter Vandy concerning Kennedy's 5th April 1999 alleged theft of diamonds.

[796] Judgment, footnote 1317.

[797] Transcript/TF1-367, 23 June 2006, pp. 80.

[798] Transcript/TF1-367, 23 June 2006, pp. 80.

[799] Judgment, Para. 2126.

[800] Transcript/TF1-367, 22 June 2006, pp. 45-46. TF1-367 testified that his beating and detention were on

TF1-367's pecuniary motive.[801]

Findings at Paragraph 1248

263. The Chamber erred in fact and law in drawing contradictory findings. In light of the findings indicative of a lack of enslavement the findings that "there was no possibility to escape;"[802] that civilians "were beaten or sent to Yengema" to train[803] must be flawed. The Chamber failed to explain the apparent contradictions. This explanation was essential. It would have provided a proper basis for a finding of guilt, namely the enumeration of the factual circumstances that defined the enslavement and distinguished those who were enslaved and those who were not. It is submitted that the Chamber's inability to provide this detail is an error of law that vitiates the conviction.

Findings at Paragraph 1247

264. The Trial Chamber erred in failing to make clear whether the 60 to 70 miners that Kennedy brought from the bush were enslaved.[804] The Defence submitted that if there was force in Kono District, it ended upon Kennedy's arrival to the Guinea Highway prior to Koidu's capture in December 1998.[805] It was incumbent on the Chamber to assess the defence and provide an appropriate explanation. This lack of clarity was compounded by the Chamber's finding that some of the civilians that were not willing volunteers were forced[806] and the Chamber's erroneous finding (unsupported by the evidence) that civilians were forced at gunpoint.[807] This error was further compounded in that the Chamber based these findings on TF1-367's evidence[808] inasmuch as the Chamber also found that some miners worked voluntarily,[809] miners had weekends off from mining,[810] and miners were free to leave the

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Sesay's orders.

[801] Transript/TF1-367, 22 June 2006, pp. 88. TF1-367 became a contractor in Iraq in 2005 for US150/month (23 June 2006, pp. 9). In contrast, in the month-and-a-half before testifying (*see*, Exhibit 105), TF1-367 received the equivalent of US293 (i.e., Le880,000).

[802] The civilians could have escaped when they freely went to the surrounding villages on the weekends. In any event, the evidence to which the Chamber cites for this finding refers to Tombodn in 2000 only. *See* Annex G: Errors in the relevant conclusions concerning Enslavement in Kono.

[803] The evidence to which the Chamber cites does not support this finding. *See* Annex G: Errors in the relevant conclusions concerning Enslavement in Kono.

[804] Judgment, Para. 1247.

[805] Sesay Defence Closing Brief, Paras. 1226, 1248-1253.

[806] Judgment, Para. 1247; "civilians who were not willing volunteers were captured and brought forcefully to the mining sites."

[807] *See*, Annex G: Errors in the relevant conclusions concerning Enslavement in Kono.

[808] At footnotes 2384-2387.

[809] Judgment, Para. 1247. "Civilians who were not willing volunteers were captured and brought forcefully to the mining sites."

[810] Judgment, Para. 1248.

mining sites[811] also based on TF1-367's evidence.[812] It was incumbent upon the Chamber to explain how it arrived at these manifestly inconsistent findings based on the same witness' evidence.

265. The Chamber erred in fact in finding, based on TF1-367's evidence, that 200-300 civilians would be captured, forced to work, and released at the end of each day.[813] First, as found by the Chamber (based on TF1-367's evidence) miners had freedoms indicative of non-enslavement such as the ability to leave at weekends.[814] There was nothing to suggest that they were forced to return, corroborating TF1-367 who stated that some were willing volunteers.[815] The Chamber erred in failing to explain how it resolved the issue advanced by the Defence: namely, the doubt that arose from the fact that civilians were free to leave Koidu but remained waiting to be captured every morning for a day of brutal gun-toting enslavement. This was a doubt that had to be resolved by the Chamber – not ignored.[816]

Improper Application of Legal Standard – Planning

266. The Trial Chamber erred in law in applying an incorrect legal standard for planning. At Paragraph 2115, the Trial Chamber found that "Sesay's conduct was a *significant contributory factor* to the perpetration of enslavement and that he intended the commission of these crimes. The Chamber failed to apply the correct standard, which requires proof of a "substantial contribution."[817]

267. For a finding of planning, one must *contemplate* the commission of the crime at *both* the design and execution phases.[818] The Trial Chamber's factual findings do not support a conclusion (or provide a factual basis) to demonstrate that Sesay contemplated both the design and execution of this enslavement. The Appellant had to be shown to be substantially involved at the design stage of that crime in the concrete form it took, which implies that he possessed sufficient knowledge thereof in advance.[819] The Trial Chamber failed to identify with any degree of particularity the conduct that amounted to a substantial (or significant)

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[811] Judgment, Para. 1248.
[812] At footnotes 2387 and 2390-91.
[813] Judgment, Para. 1247 citing Transcript/TF1-367, 22 June 2006, pp. 52.
[814] Judgment, Para. 1248.
[815] Judgment, Para. 1247; "civilians who were not willing volunteers were captured and brought forcefully to the mining sites."
[816] Judgment, Para. 1247; "At Kaisambo, for instance, 200 to 300 civilians were captured, forced to work and released at the end of each day."
[817] Judgment, Para. 268 citing *Kordic and Cerkez* Appeal Jndgment, para. 26.
[818] Judgment, Para. 268, citing *AFRC* Appeal Judgment. *Rutaganda*, (Trial Chamber), December 6, 1999, para. 37; *Musema*, (Trial Chamber), Jannary 27, 2000, para. 119.
[819] *Brđanin* (Trial Chamber), 1 September 2001, paras. 357-358.

contribution.[820] There was no evidence that he had planned the design or the execution of the enslavement found and none was identified as such.[821]

Lack of Design

268. The Trial Chamber findings demonstrate that Sesay was not involved in the pre-December 1998 mining. The Chamber found that the RUF were mining along the Guinea Highway prior to the capture of Koidu in December 1998.[822] From May to December 1998, the Trial Chamber found that Sesay was not the BFC[823] and that he was in Pendembu (Kailahun District) with no established command or involvement in the Kono District.[824] Through August 1998, prior to his departure to the north, Superman (the Overall commander in Kono District) refused to take orders from Sesay.[825] The Trial Chamber found that Sesay was not transmitting or receiving radio messages to or from Kono District.[826] Nor was Sesay present in the District.[827] Nor was Sesay receiving diamonds.[828] The Trial Chamber further found that Sesay was not in a superior-subordinate relationship to RUF fighters in Kono District from May to December 1998.[829] The evidence demonstrated that the mining operations were organized exclusively by Sam Bockarie in Kailahun Distriet. As found by the Trial Chamber, Bockarie alone appointed Kennedy as the Overall Mining Commander.[830] Bockarie received all the diamonds.[831] The Mining Unit – the organizing entity - did not receive instructions from anyone other than Bockarie.[832]

269. The Chamber therefore erred in its inconsistent application of the Diamond Production Records (exhibits 41 and 42). For a portion prior to Dccember 1998, a Diamond Production

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[820] The Trial Chamber found that because Sesay was subordinate only to Sam Bockarie that Sesay must have been involved in forced mining, and by further implication, its planning (Judgment, Para. 2114).
At best, the Trial Chamber could point to Paragraphs 2112-13. However, the only indication of force, on Sesay's part, in those Paragraphs is that Sesay "ordered that civilians be captured from other Districts [to mine forcefully] [and that h]e arranged for transportation of the captured civiliaos to the mines." As demonstrated above, these findings are manifestly unreasonable. *See also*, Annex G: Errors in the relevant conclusions conceming Enslavement in Kooo.in connection with Paragraph 1249.
[821] Santic Appeals Judgement 23 October 2001 (Prosecutor v. Kupreškić paras 362-368).
[822] Judgment, Para. 1241.
[823] Jndgment, Para. 2126. "In the first or second week of December 1998, Bockarie recalled Scsay to Bnedu and reinstated him as BFC."
[824] Judgment, Para. 2124.
[825] Judgment, Para. 2124.
[826] Judgment, Para. 2124.
[827] Judgment, Para. 2124.
[828] Judgment, Para. 2124. The Defence notes that the only diamonds Sesay received form Kono District prior to December 1998 were those that were given to him to traosport to Monrovia.
[829] Judgment, Para. 2125.
[830] Judgment, Para. 2113.
[831] Transcript/DIS-307, 19 February 2008, pp. 77. This portion of DIS-307's transcript was cited by the Trial Chamber at footnote 2382.
[832] Transcript/DIS-307, 19 February 2008, pp. 77. This portion of DIS-307's transcript was cited by the Trial Chamber at footnote 2382.

Record was in existence.[833] The Chamber found the Diamond Production Records were dispositive of the planning and organising of forced mining.[834] There was no evidence that this involved Sesay in any shape or form. There was no evidence that would allow a reasonable trier of fact to conclude or describe the Appellant's involvement.

270. At best, the Chamber found that Sesay designed the jailing of 400 civilians in Makeni to be forcibly transferred to Kono District to mine.[835] However, the Chamber erred in making this unreasonable finding. As a preliminary matter, not a single victim or a single perpetrator, other than Sesay and Kallon, was named. The Chamber erred in relying upon TF1-041 for this finding.[836] The Chamber erred in not explaining how it resolved the following:

i) the inconsistency between TF1-041's in-court testimony and his statements to the Prosecution which indicate that 100 miners went from Makeni to Kono to mine on a two-pile system in which civilians would receive a benefit from their labour (i.e., no force);[837]
ii) the inconsistency between TF1-041's direct-examination in which civilians were jailed and his cross-examination in which there is no reference to anyone being jailed;
iii) how this forcible transfer could have occurred while, according to TF1-041,[838] civilians were moving voluntarily between Makeni and Kono (i.e., Koidu and Koakoyima where the purported forced mining purportedly occurred) to trade;[839]
iv) how this forcible transfer could have occurred in the context of the admitted Defence evidence in which civilians were voluntarily moving to Kono to mine on a non-forced two-pile system;[840] and
v) how this forcible transfer could have occurred in the context of the non-admitted Defence evidence in which civilians were voluntarily moving to Kono to mine on a non-forced two-pile system;[841]

Lack of Involvement in the Execution

Witness Evidence – Bockarie in sole control

271. The Trial Chamber's findings confirm the doubt that existed and was ignored. The *Trial Chamber cited* portions of Sesay's[842] and DIS-307's[843] testimony concerning reporting and Sesay's non-involvement in the diamond mining operations. Kennedy communicated directly

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[833] Exhibit 42; this Record starts on 30 October 1998. *See also*, Judgment, Para. 1244.
[834] Judgment, Para. 2114.
[835] Judgment, Para. 1249.
[836] Judgment, Para. 1249. Note that the finding, also at Paragraph 1249, that "from 1999 to 2000, civilians were captured and sent to Kono in order to mine diamonds for the RUF" is erroneous. The cited evidence concerns 1998. *See* Annex G: Errors in the relevant conclusions concerning Enslavement in Kono.
[837] *See*, Annex G: Errors in the relevant conclusions concerning Enslavement in Kono.
[838] Transcript/TF1-041, 11 July 2006, pp. 58-59. Civilians felt that life was returning to normal.
[839] Transcript/TF1-041, 11 July 2006, pp. 61. Should a civilian have desired to go to Kono District from Makeni, they would simply obtain a pass from the G-5 office.
[840] *See*, Sesay Defence Closing Brief, Paras. 1277-1284 and 1298-1321.
[841] *See*, Ground 20.
[842] Judgment, footnote 2387; Transcript/Sesay, 24 May 2007, pp. 27-32.
[843] Judgment, footnote 2382; Transcript/DIS-307, 19 February 2008, pp. 80.

with Bockarie about the gravel that was found in Koidu town upon Koidu's capture;[844] Bockarie gave the go-ahead to Kennedy to wash the gravel;[845] Kennedy told civilians from the Mining Unit to base at Koakoyima;[846] and Kennedy, as the mining commander, sent reports directly to Bockarie via radio in 1999.[847] These findings tend to demonstrate a lack of any role for Sesay. That Sesay had nothing to do with the mining operations until he took over command was confirmed by TF1-036[848] (see below) and TF1-071.[849] Further, the Defence notes that the Chamber did not cite any order from Sesay in connection with mining.

272. It is submitted that the Chamber erred in law and fact by inferring that the receipt of diamonds could amount to evidence of planning the enslavement.[850] Receiving diamonds, without more, is not probative of either the design or execution of enslavement.

273. Regardless, the Chamber erred in finding that Sesay collected diamonds from the mining in Kono District.[851] In making this finding, the Chamber cited to TF1-071,[852] TF1-367,[853] and TF1-371.[854] The Trial Chamber cites only TF1-071's direct-examination.[855] However, the chamber erred in disregarding TF1-071's cross-examination. On cross-examination TF1-071 made it explicitly clear that the first occasion on which Sesay received diamonds was in 2000[856] and that throughout 1999 Bockarie was in sole control of the mining operations.[857] There was no proper basis for disregarding this testimony, in preference to TF1-367. TF1-071 gave consistent testimony and had no obvious motive to lie.[858] Concerning TF1-371, the Chamber erred in finding that the pre-2000 mining operations were within TF1-371's

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[844] Judgment, footnote 2387; Transcript/Sesay, 24 May 2007, pp. 28.
[845] Judgment, footnote 2387; Transcript/Sesay, 24 May 2007, pp. 28.
[846] Judgment, footnote 2387; Transcript/Sesay, 24 May 2007, pp. 29.
[847] Judgment, footnote 2382; Transcript/DIS-307, 19 February 2008, pp. 80.
[848] Transcript/TF1-036, 28 July 2005, pp. 53-54.
[849] Transcript/TF1-071, 25 January 2005, pp. 98. (In 1999, Bockarie – while based in Kailahun District – was "contacting the commanders in Kono;" "was in command at that time;" was "keeping a watchful eye on the diamond areas;" and was "*ordering and directing the diamond mining from Kailahun.*")
[850] Judgment, Para. 2112. "Remitting the diamonds to Commanders including Sesay."
[851] *E.g.*, Judgment, Para. 2113. "Throughout 1999 and 2000, Sesay visited Kono District and collected diamonds. Sesay maintained a house in Koidu Town were he received mining Commanders for this purpose."
[852] E.g., Judgment, footnote 2381. Transcript/TF1-071, 21 January 2005, pp. 114-115.
[853] At footnote 2379. Transcript/TF1-367, 23 June 2006, pp. 80.
The Chamber also cited TF1-366 at footnote 2379. The reference to TF1-366's evidence concerns diamonds being delivered to Sesay in 2000-2002 when Peleto was the Minister of Mines (*see*, Transcript/TF1-366, 10 November 2005, pp. 14-16) and is irrelevant to mining between December 1998 and January 2000.
[854] At footnote 2379. Transcript/TF1-371, 21 July 2006, pp. 69-72.
[855] TF1-071/Transcript, 21 January 2005, pp. 114-115.
[856] Transcript/TF1-071, 25 January 2005, pp. 79.
[857] Transcript/TF1-071, 25 January 2005, pp. 98. (In 1999, Bockarie - while based in Kailahun District – was "contacting the commanders in Kono;" "was in command at that time;" was "keeping a watchful eye on the diamond areas;" and was "*ordering and directing the diamond mining from Kailahun.*")
[858] The Defence notes that the Chamber cited a portion of TF1-367's testimony (Transcript/TF1-367, 23 June 2006, pp. 80) in support of its finding that diamonds were delivered to Sesay. However, the cited portion is the beginning of a series of questions on cross-examination designed to impeach TF1-367. It was therefore improper for the Trial Chamber to cite only this portion of TF1-367's testimony without considering the entire

knowledge.[859] TF1-371 indicated that the first time he went to Kono during this period was at earliest mid-December 1999.[860] As such, the Chamber erred in imputing liability to Sesay throughout the Indictment period.

274. The Chamber erred in disregarding TF1-036's evidence.[861] The witness was best placed to know precisely the nature of the mining operations. He was intimately connected to Bockarie and was able to provide detailed evidence. There was no motive to lie. Indeed the Chamber relied upon TF1-036 in many ways - as proof of Bockarie's organisation. The Chamber cited TF1-036 as credible in connection with a myriad of other findings such as Bockarie being aggrieved when Johnny Paul Koroma ignored his recommendation to attack ECOMOG during the junta period;[862] that Bockarie remained in Kenema Town until the overthrow of the Junta in February 1998;[863] that Bockarie communicated via radio to troops throughout the country during the Junta;[864] the animosity between Bockarie and Superman;[865] that Bockarie planned the attack on Koidu in December 1998;[866] when and whether Bockarie communicated with members of the AFRC;[867] and when Bockarie announced his resignation from the RUF.[858] No proper reason existed for disregarding his evidence because it exculpated the Appellant and none was proffered by the Chamber.

275. The Chamber concluded that from about December 1998 onwards the RUF was mining in Tongo and Kono Districts. [869] TF1-036 was best placed to confirm that the mining commanders in both Tongo and Kono District would take the diamonds directly to Bockarie at the headquarters in Buedu.[870] The witness did not identify any role for Sesay in this or any diamond process. As confirmed by the witness and disregarded by the Chamber, Bockarie trusted so little that those diamonds delivered would be kept in his house.[871] The Chamber compounded this unfairness by disregarding corroborating evidence: DIS-307 and DIS-091, both members of the Mining Unit, which confirmed that the proceeds from the diamond

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exchange.

[859] Defence disputes that TF1-371 was in Kono District prior to early 2000.

[860] Transcript/TF1-371, 28 July 2006, pp. 95. Further, TF1-371 blatantly lied in connection with mining to implicate Sesay. Recall that, during the junta, TF1-371 indicated that he saw Peleto in Tongo; however TF1-366 directly contradicted TF1-371's evidence to this effect. Contrast Transcript/TF1-371, 31 July 2006, pp. 46 and Transcript/TF1-366, 11 November 2005, pp. 40.

[861] *See*, Sesay Defence Closing Brief, Para. 1257.

[862] At footnote 1467.

[863] At footnote 1481.

[864] At footnote 1484.

[865] At footnote 1610.

[866] At footnote 1699.

[867] At footnote 1732.

[858] At footnote 1774.

[869] *See, e.g.*, Exhibit 42 and Judgment, Para. 1244 ("The Diamond Production Records reveal that ... diamonds were extracted and claimed as RUF property from both Kono District and Tongo Field.").

[870] Transcript/TF1-036, 28 July 2005, pp. 53-54. *See also*, Transcript/TF1-036, 1 August 2005, pp. 8.

mining did not go to Sesay but Bockarie directly.[872] These defence witnesses were not undermined on cross examination and had no motive to lie. No proper reason existed for disregarding this evidence and none was proffered.

Error in concluding Sesay's presence in Kono in 1999

276. On the basis of Exhibits 32 and 33 the Chamber observed that the evidenee showed that Sesay was present in "Kono on two or three occasions"[873] during 1999. Notwithstanding the Chamber concluded that "on the totality of the evidence the only reasonable inference was that Sesay was regularly present in Kono District"[874] during 1999. No reasonable trier of fact could have reached this conclusion in the face of this evidence. This was the reasonable doubt.

277. In support of its finding that Sesay regularly gave orders to combatants in Kono District between December 1998 and January 2000, the Chamber cites to Paragraph 922 of the Judgment.[875] Paragraph 922 refers to particular radio messages in RUF radio logs (Exhibits 32 and 33), none of which concern the Kono District or have any relevance to diamond mining operations.

278. Additionally, the Chamber relies upon the RUF radio logs (Exhibits 32 and 33) and Sesay's associated testimony. The Trial Chamber referred to *only three* radio messages in the Judgment. Each of the three messages demonstrated Sesay *requesting and being granted permission* from Sankoh to go to Kono. They were powerful proof that he was not present in Kono on a regular basis; that his command did not extend to Kono and that he was not permitted to visit without express permission. The first two messages, both dated 17 July 1999, concern Sesay requesting and being granted permission from Sankoh (Concord) to go to Kono with OSM (Organisation for the Survival of Mankind) personnel and materials for the Kono axis.[876] The third message, dated 24 December 1999,[877] concerned a possible trip by Sankoh to Kono. Sesay was sent to Kono in anticipation of this trip.[878] Again, for Sesay to

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[871] Transcript/TF1-036, 1 August 2005, pp. 8.

[872] DIS-307: Before Sankoh came to Kono, when Kennedy was the Overall Mining Commander, the diamonds were being delivered directly to Boekarie; Bockarie once eame to collect diamonds. (Transcript/DIS-307, 19 February 2008, pp. 88-89).
DIS-091: Kennedy would report to Bockarie. When diamonds were to be delivered to Bockarie, Kennedy would request that the JSU arrange a security detail to deliver the diamonds to Bockarie. (Transcript/DIS-091, 7 March 2008, pp. 44-46). Kennedy did not report to Sesay; diamonds were meant to be taken directly to Bockarie. (Transcript/DIS-091, 10 March 2008, pp. 46-47).

[873] Judgment, footnote 3832.

[874] Judgment, footnote 3832.

[875] Judgment, footnote 3827.

[876] At pages 8683 and 8685, Exhibit 32.

[877] At page 8768, Exhibit 33.This messaged dated 24 December 1999 was

[878] The trip was postponed until January 2000. Transcript/Sesay, 23 May 2007, pp. 18.

be present in Kono he needed permission.[879]

279. The Chamber's eonelusion that the Proseeution had not established where Sesay was primarily based in the period from March to Oetober 1999[880] was correct. However, in light of the available evidenee it was not reasonable to infer his regular presenee in Kono District from 28 April 1999[881] to January 2000. The only witness that speaks to Sesay's regular presenee in Kono District is TF1-367.[882] As diseussed above, TF1-367 blatantly attempted to implicate Sesay in placing him in Kono Distriet throughout the entirety of 1999;[883] the Chamber's reliance on TF1-367 is therefore unreasonable in this regard. There was nothing to rebut Sesay's eontention that he was present.

280. It was unreasonable for the Chamber to find, based on the evidenee it considered, that Sesay had any hand in diamonds prior to early 2000 when he took over operations.[884] It was unreasonable for the Chamber to conclude that Sesay planned enslavement in Tombodu and throughout Kono District between December 1998 and January 2000 as he was not involved in designing or executing enslavement. The Trial Chamber's eonviction should be reversed.

GROUND 36: Enslavement, Forced Military Training (Dec. 1998 to Jan. 2000)

Lack of Notice

281. The Chamber erred in finding that the Appellant had notice that he failed to prevent or punish the perpetrators of enslavement of eivilians at the military base at Yengema.[885] First, the Appellant was not put on notice that forced military training was to be considered an aet of enslavement.[886] The Appellant was unaware throughout the trial who he was alleged to have enslaved; the numbers or the names (of either victim or subordinates), as well as the measures that he was alleged to have failed to take to prevent or punish. The lack of specificity in the pleading led the Chamber astray. At paragraph 1262, the Chamber found that recruits that had been captured in Kono District were trained at the base. In direct contrast to this finding, at Para. 1646, the Chamber found that recruits from Kono and Bunumbu base were trained at Yengema. This is an error of law that undermines the conviction and illustrates the

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[879] *See* Sesay's testimony in conneetion with this radio message and Sankoh's possible trip to Kono at Transcript/Sesay, 23 May 2007, pp. 18.
[880] Judgment, footnote 3826.
[881] Exhibit 32 begins on this date.
[882] Transcript/TF1-367, 23 June 2006, pp. 80. "When we captured Koidu, [Sesay] did not leave."
[883] Sesay was in "Kono throughout 1998 and 1999" and "When we captured Koidu, [Sesay] did not leave." Transcript/TF1-367, 23 June 2006, pp. 80.
[884] Paras. 1330, 2116, and Disposition.
[885] See, No Notice Annex. Statements containing the material facts were diselosed to the Defence on the 9th Mareh 2005 and Ground 44 for further arguments on the requirements of Article 6(3).

impossibility of defending the charge. Neither the Prosecution nor the Chamber has reached a conclusion on the workings of the Yengema base; who was enslaved; who were the perpetrators and therefore who the Appellant was expected to punish and prevent. Sesay was supposed to have punished the perpetrators of crimes that Trial Chamber I has yet to consistently identify.

Lack of Enslavement at Yengema

282. Further the lack of specificity extends much further. The Chamber erred in failing to identify, with at least some specificity,[887] how many captives there were, where they came from, for how long they were captive, etc. Apart from TF1-117 (whose testimony was inherently implausible[888] – as argued below), not a single victim was named. The Chamber erred in fact and law in concluding that TF1-362's assertion, limited to: "the recruits who came from Bunumbu and those captured from Kono" were trained,[889] could satisfy the indices of enslavement.[890] The witness provided few details and was could not rebut the reasonable doubt. The Chamber failed to have regard to the cross-examination. The Chamber found – by addressing only TF1-362's direct-examination - that the base was operating from December 1998.[891] On cross-examination, TF1-362 stated that the base opened at the time of the Lomé Accord.[892] The Trial Chamber disregarded other relevant evidence that created further doubt. The preponderance of evidence illustrated that civilians were moving freely throughout the Makeni to Kono district.[893] The Defence called witnesses who attended the Yengema training base who confirmed the lack enslavement. The Prosecution did not challenge this testimony.[894] Further, that normal peacetime activities resumed in Yengema was confirmed

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[886] See Ground 11.
[887] Judgment, Para. 329.
[888] The Appellant disputed that TF1-117 was ever at Yengema.
[889] Transcript/TF1-362, 22 April 2005, pp. 14. Cited at footnote 2428.
[890] Kunarac, Appeals Chamber Judgment, Para. 119.
[891] Judgment, Para. 1646, footnote 3180 referring to Transcript/TF1-362, 22 April 2005, pp. 12.
[892] Transcript/TF1-362, 25 April 2005, pp. 71.
[893] Transcript/TF1-041, 11 July 2006, pp. 58-59. The Defence notes that TF1-041's evidence was cited by the Chamber in connection with enslavement in Kono District. See Ground 35 above for a more complete analysis of TF1-041's evidence. *See* Sesay Defence Closing Brief at Paras. 1313-1314; *see also*, Ground 20 and, inter alia, the statements of DIS-041 (24265-24271); DIS-044 (24273-24278); DIS-047 (24280-24285); DIS-048 (24287-24290); DIS-283 (24320-24325); and DIS-040 (24479-24483). The statements of these witnesses were not admitted into evidence by the Trial Chamber. These statements positively indicate that civilians were not forced to train for the RUF; this includes former CDF combatants that surrendered and defected to the RUF. *See also*, the statements of DIS-007 (24458-24464); DIS-071 (24485-24489); DIS-219 (24604-24608); DIS-271 (24309-24318); DIS-283 (24320-24325); and DIS-285 (24515-24521).
[894] In particular, DIS-065 testified at length about Yengema (*see* Transcript/DIS-065, 26 February 2008, pp. 70-80) including whether there was a training base at Yengema in late 1999 (pp. 88; there wasn't). DIS-065 was cross-examined on mining at Yengema (pp. 98-103) and the school at Yengema (pp. 102-103) but not the training base.

by TF1-117[895] who testified that, on training for reconnaissance missions, recruits would go to town (Yengema) to buy salt and wares, and return to the base.[896]

283. The Trial Chamber disregarded all the evidence from independent civilians, in favour of TF1-362. The witnesses who testified to attending Yengema and confirmed the lack of enslavement had no obvious motive to lie and were consistent in their accounts. There was no proper basis for relying upon TF1-362, [897] an accomplice, who had been paid by the Prosecution – according to [redacted] own sworn testimony.[898] These errors were compounded by the Chamber's reliance on TF1-117[899] – a manifestly flawed witness. The Chamber disregarded the witness' 'collapse' on cross-examination. The witness was manifestly untruthful, including the following lies: i) in his statement to the Prosecution, TF1-117 claimed that his father died by being stabbed - in testimony, that he was shot;[900] iii) the witness claimed that from 1992 to 1995, Sesay was present at Camp Zogoda;[901] iii) that Gbao raped a woman in Makeni during the intervention;[902] vi) that Sesay was involved in the UNAMSIL attacks and destroyed the disarmament camp at Makump;[903] vii) that Superman and Gibril Massaquoi were present in Makeni collaborating on the UNAMSIL attack;[904] vii) that he knew Sesay well (but identified a photograph of Tall Bai Bureh as Sesay)[905] and that vii) he had known Gbao for over ten years – but misidentified him in court – and pointed to Kallon.[906] A reasonable trier of fact would not have relied upon this testimony, or at least would have explained how the doubts had been removed.

No Killings at the Base

284. The Chamber erred in finding, based on TF1-362's uncorroborated account, that recruits were killed on the base.[907] In an attempt to explain away a discrepancy in [redacted] statement to the Prosecution (whether it was six or five recruits that were killed), TF1-362 stated that [redacted] did

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[895] Cited by the Chamber in connection with Yengema at Para. 1648.
[896] Transcript/TF1-362, 3 July 2006, pp. 81-82, 84.
[897] Judgment, Para. 1262.
[898] See above section on Sesay's contribution to the JCE in Kono.
[899] E.g., at Judgment, Para. 1648.
[900] Transcript/TF1-117, 30 June 2006, pp. 117.
[901] Transcript/TF1-117, 29 June 2006, pp. 95-96.
[902] Transcript/TF1-117, 29 June 2006, pp. 105-106
[903] Transcript/TF1-117, 30 June 2006, pp. 31.
[904] Transcript/TF1-117, 4 July 2006, pp. 80.
[905] Transcript/TF1-117, 30 June 2006, pp. 72-73 and 83-85. TF1-117 was shown six photographs of Gullit, Gibril Massaquoi, Johnny Paul Koroma, Sam Bockarie, Five-Five, and Tall Bai Bureh Johnny Paul Koroma was the only person correctly identified.
[906] Transcript/TF1-117, 30 June 2006, pp. 81.
[907] Judgment, Para. 1264.

some "research."[908] This claim raised a reasonable doubt, since it indicated that the witness was collaborating with others in manufacturing an account. Finally, the Chamber disregarded the fact that TF1-362's was unable to provide any or any sufficient specificity concerning the timing of the crime. The doubt that existed was not given to the Appellant.[909]

No Effective Control

285. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay exercised effective control over the RUF rebels at Yengema base. The failure to identify any approximation of victims or any subordinates undermines the Chamber's findings that Sesay had knowledge or could have prevented or punished any crime. It is submitted that it was an error of law to claim that Sesay was "in a superior – subordinate relationship with RUF fighters in Kono District between December 1998 and the end of September 2000. This is assertion not analysis. The Appellant refers the Appeal Chamber to Ground 44 and the evidence that illustrates the Appellant's de facto control.

286. The relevant test is whether the superior in the circumstances had the material ability to act.[910] The Appellant's *de jure* status was an aspect of the assessment that had to be made. Whether the duty was fulfilled depended upon the degree of effective control exercised by the Appellant at the relevant time and on the severity and imminence of the crimes that were about to be committed.[911] Whether the Appellant had discharged his duty depending on his ability to intervene in a specific situation.[912] The Chamber's approach – to assess effective control – on basis of de jure command was demonstrably flawed.

GROUNDS 38 & 41

287. The Trial Chamber erred in fact and law in its findings which purport to demonstrate (i) the impact of the RUF operations upon the civilian population,[913] and (ii) the impact of RUF

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[908] Transcript/TF1-362, 25 April 2005, pp. 103.

[909] The Defence notes that, on direct-examination, TF1-362 affirmatively indicated that when these killings purportedly occurred Sesay was the High Command as "Mosquito was flushed out." Transcript/TF1-362, 22 April 2005, pp. 23. Thus, even on TF1-362's direct-examination, the reasonable inference that these killings occurred between December 1999 and disarmament (Para. 1262) was available. The Chamber disregarded it.

[910] CDF TC Judgment, Para. 246. Celebici Trial Judgement, para. 395; Limaj et al. Trial Judgement, para. 526; Halilovic Trial Judgement, para. 73. See also OTP PT para. 28.

[911] AFRC TC Judgment, para. 798.

[912] CDF TC Judgment, Para. 248. No quotes. See also Prosecution PT para.228.

[913] Trial Judgment, paras. 944: "the AFRC/RUF waged an attack encompassing horrific violence and mistreatment against the civilian population of Sierra Leone"; 946: "brutal suppression of perceived opposition by killing and beating civilians, not only in the capital but throughout Districts including Bo, Kenema and Kailahun", 950: "frequent commission of crimes against civilians such as amputations, mutilations and rapes serving no military objective". See also, similarly, paras. 945, 955, 956.

"systems."[914] No reasonable tribunal, properly directing itself, could have concluded that the crimes satisfied the requirements of Article 2 of the Statute, namely the occurrence of an attack directed against the civilian population in Kailahun (or that acts found proven had any nexus to an attack).[915] There was insufficient evidence to conclude that in Kailahun, the "AFRC/RUF waged an attack encompassing horrific violence and mistreatment against the civilian population of Sierra Leone."[916] The specific circumstances of the few crimes occurring in Kailahun do not allow an inference that they were part of a wider attack on civilians.[917] There is no attack where "the Trial Chamber has heard evidence on a relatively small number of incidents"[918] or where the evidence is insufficiently precise to conclude who was or were responsible for the incidents and whether they formed part of a larger attack against a civilian population."[919]

Disregard of evidence

288. The Chamber disregarded relevant evidence that demonstrated that transgressions were few and civilians supported the RUF, at least from 1993,[920] as was buttressed in part, by the Chamber's own findings.[921] There was no proper basis for regarding evidence of crimes in other Districts as relevant to Kailahun:[922] "amputations, mutilations and rapes"[923] were not found proven to have occurred in Kailahun during the Indictment period.[924]

289. The Trial Chamber erred, in law and in fact, in its finding that "mistreatment of civilians was [...] a well organised and permanent feature of RUF operations, sanctioned at the highest levels."[925] This conclusion was reached by failing to apply its own findings:[926] the presence and nature of institutions created and run by the RUF should have constituted probative evidence, undermining the inference of an attack. The Chamber made this finding, based on

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[914] Trial Judgment, paras. 945: "The mistreatment of civilians was particularly frequent and endemic in Kailahun District"; 946" "joint AFRC/RUF campaign to strengthen their "government""; 947: "involved a series of large-scale coucerted military actions undertaken by the AFRC/RUF in multiple locations throughout Sierra Leone, with the intensity of the violence shifting as the troops gained and lost control of various towns and Districts". Similarly, see paras. 955, 957, 958.
[915] Judgment, Para. 963.
[916] Judgment, Paras. 944 and 955.
[917] As set out in grounds 39, 40 and 41 the crimes that were committed were relatively few, against a limited number of individnals who were targeted due to being perceived as traitors or collaborators or were committed for personal reasons, rather than in a structured or organised manner.
[918] *Haradinaj et al* Trial Judgment, para. 118.
[919] *Haradinaj et al* Trial Judgment, para. 118.
[920] The Chamber mischaracterised this evidence and diminished its scope and significance: Annex: Annex B: Samples of support for the Defence Case and Ground Two.
[921] Trial Judgment, para. 650.
[922] Trial Judgment, para. 1445.
[923] Judgment, para. 950.
[924] Judgment, Para. 2156.
[925] Judgment, Para. 955.

voluminous testimony,[927] and then consistently failed to apply the evidence to the charges.[928] The provision of indiscriminate (free) medical care, protection and education is probative, whether deemed a necessity or not.[929] No reasonable trier of fact would draw adverse inferences concerning the activities of the G5[930] and yet ignore the G5's role in protecting civilians' welfare: resolving disputes between civilians,[931] issuing travel passes to facilitate civilians' trade activities[932] and monitoring their welfare.[933] These benefits could not be dismissed as applicable to "a limited few privileged people"[934] given that the G5 "was responsible for all civilians in rebel territory."[935]

290. The Chamber recognised – and then disregarded – that the RUF had an explicit ideology ("some ideal, attractive and virtuous norms"[936]), which explicitly included strict codes of behaviour regarding the treatment of civilians.[937] This finding was *uncharacteristically* supported by overwhelming evidence.[938] The Trial Chamber found that the ideology was not mere platitude, but a key factor in shaping the RUF's actions and its treatment of the civilian population. The Chamber found that RUF members who committed transgressions against civilians were punished, through "instances of *systematic* discipline" [emphasis added].[939] It mattered not that this, apparently, was "a means of keeping control over their own fighters."[940] It was incumbent upon the Chamber to analyse and apply the finding that "some crimes were punished in areas under RUF control and where no hostilities [that, is Kailahun] were taking place" [detail added].[941]

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[926] Judgment, Para. 953.
[927] Annex B: Samples of support for the Defence Case
[928] Sesay Defence Closing Brief, pp. 11-12 and 93.
[929] Judgment, Para. 953.
[930] Judgment, Para. 954.
[931] Judgment, Para. 695.
[932] Judgment, Para. 693.
[933] Judgment, Para. 692.
[934] Judgment, Para. 531.
[935] Judgment, Para. 692.
[936] Judgment, Paras. 2021 and 705.
[937] Judgment, Para 705
[938] *See* Paras. 704-706 referring to Exhibit 273, RUF Ideology Book, pp. 31041-31402; Transcript of 27 July 2005, TF1-036, p. 40 Kallon; Exhibit 367, Document with Information on Aims of the RUF, p. 4; Transcript of 3 May 2007, Issa Hassan Sesay, p. 51; Transcript of 11 July 2006, TF1-041, pp. 14-15 (CS); Transcript of 11 April 2008, Morris Kallon, pp. 54, 56; Transcript of 9 June 2006, DAG-080, p. 57; Transcript of 1 August 2006, TF1-371, p. 57 (CS); Transcript of 1 August 2005, TF1-036, p. 32 (CS); Transcript of 3 April 2006, TF1-168, p. 62 (CS); Transcript of 26 June 2006, TF1-367, p. 33 (CS); Transcript of 15 January 2008, DIS-214, p. 54 (CS). Transcript of 14 April 2008, Morris Kallon, p. 4; Exhibit 339, Kallon Handbook, pp. 25405-25410; Transcript of 29 April 2008, DMK-132, p. 6; Transcript of 19 October 2007, DIS-188, p. 76 (CS); Transcript of 29 October 2007, DIS-188, p. 75 (CS); Exhibit 212, RUF Radio Log Book, pp. 28055-28057. The Chamber notes that witnesses also referred to similar sets of principles such as the Three Points of Attention or the Three Discipline Factors and the Twenty-Five Standing Orders of the RUF: Exhibit 273, RUF Ideology Book, pp. 31041.
[939] Judgment, Para. 707.
[940] Judgment, Para. 712.
[941] Judgment, Para. 712.

291. The Chamber resolutely refused to draw favourable conclusions in favour of the Appellant and this gave rise to inconsistent findings that negate the adverse conclusions reached. Throughout its description of this "attack," the Chamber repeatedly stated that the abuse of civilians was "particularly frequent and endemic in Kailahun District."[942] Conversely – as noted above – the Trial Chamber concluded that crimes were less and more often punished where the "RUF had a relatively stable control".[943] To then find that the existence of an attack is demonstrated by a *lack* of the very characteristics of RUF (stable) control[944] (disciplinary response to transgression by fighters etc.) is a contradiction that cannot be resolved.

Motives behind constituent elements of the "attaek"

292. A large amount of cogent evidence was presented which indicated a range of motives behind the acts that the Trial Chamber deemed to constitute the "attack" – killings and forced marriage, in particular. At the very least, this casts reasonable doubt upon the view that the civilian population was the primary target of the attack, rather than an incidental target.[945] These were detailed in the Appellant's Closing Brief.[946] No proper reason existed for this disregard and none was proffered.[947] The relatively few crimes that took place in Kailahun, including, notably, the killing of civilians believed to be Kamajors, were committed against a limited number of individuals who were targeted due to being perceived as traitors or collaborators or were committed for personal reasons, rather than in a structured or organised manner.[948] The Trial Chamber erred in law and fact in failing to properly assess the motives behind the acts of particular members of the RUF, especially Bockarie.[949]

GROUND 39: Sexual Violence (Counts 1 and 7 to 9) & GROUND 42

293. No reasonable Trial Chamber, properly directing itself would have been satisfied that Counts 1 and 7 to 9 had been proven. The fact that the Prosecution was unable to call evidence from a single victim who claimed to have been abducted and forcibly married *during the*

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[942] Judgment, Para. 945: "The mistreatment of civilians was particularly frequent and endemic in Kailahun District."
[943] Judgment, Para. 707.
[944] The Trial Chamber found that the attack was constituted by mistreatment of civilians by fighters throughout the indictment period; *see* Judgment, Paras. 945-947.
[945] *Fofana et. al*, Trial Judgment, para. 299; *D. Milosevic* Trial Judgment, para. 921.
[946] Sesay Defence Closing Brief, p. 88-137.
[947] *Haradinaj et al* Trial Judgment, paras. 114, 120, 122.
[948] *See further*, Grounds 39-41.
[949] *See* submissions on Ground 37.

indictment period in (or taken to) Kailahun ought to have been dispositive of the issue.[950] The Chamber compensated for the paucity of evidence by replacing the burden of proof with a presumption of guilt and an abuse of discretion, through an unreasonable assessment of the evidence given by TF1-314 and TF1-093. The Trial Chamber created a strict offence in which all relationships between the men and women of Kailahun during the civil war were assessed as abusive and criminal, irrespective of the evidence to the contrary.

Error one: Improper pleading reversed burden – no chance of knowing case

294. The Trial Chamber erred in fact and law in concluding that the Indictment was properly pled. The pleading – that an unknown number of women from somewhere were captured by someone in the AFRC/RUF and held somewhere (for some coercive purpose), in Kailahun at sometime between November 1996 and the indictment period[951] – was manifestly inadequate in international criminal law.[952] This incurable prejudice was exacerbated by late disclosure of charges through evidence.[953] The Appellant was entitled, at a minimum, to specimen counts containing the charges relating to a representative sample, including TF1-314 and TF1-093.[954]

Error Two: Lack of specimen counts

295. The Trial Chamber justified this by concluding that the Appellant did not require these details to prepare an adequate defence.[955] The gravamen does not "hinge" on proof of every single victim but it does "hinge" on the proof of a sufficient number to show a "widespread rebel practice of abducting women and forcing them to act as 'wives' in Kailahun District."[956] Specimen charges, illustrating the gravamen of the charges, would have provided an opportunity to rebut the specific charges, demonstrating that the allegations were unfounded.

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[950] TF1-314 and TF1-093 were the only witnesses who claimed to be forced marriage victims. TF1-314 stated that she was captured in 1994 and TF1-093 in the rainy season of 1996. Their evidence is challenged below.
[951] Judgment, Para. 1459.
[952] To observe the principle of legality, the Prosecution must charge particular acts and that "these acts should be charged in sufficient detail for the accused to be able to fully prepare their defence". Kupreskic & al. Trial Judgement, IT-95-16-T, 14 January 2000, para. 626. The correct approach was that in in *Galić*, wherein the Prosecution were obliged to plead "a small number of individual incidents, representative of a course of conduct. (*Prosecutor v. Stanislav Galić*, IT-98-29-T, Indictment, 26 March 1999, para.15).
[953] The charges concerning TF1-093 were disclosed on the 13.09.05; TF1-114 – disclosure occurred 08.03.05; TF1-314 – disclosure occurred 02.05.05; TF1-369 (expert witness) – disclosure occurred 13.06.05 and TF1-371 – disclosure occurred 08.05.06.
[954] Kupreskic & al. Trial Judgement, IT-95-16-T, 14 January 2000, para. 626. In this vein, the Prosecution in *Galić* described "a small representative number of individual incideuts for specificity in the pleading." *Prosecutor v. Stanislov Galić*, IT-98-29-T, Indictment, 26 March 1999, para.15.
[955] Because the "evidence of individual victims is illustrative of the offences, but the gravamen of the charges does uot hinge on the victimisation of auy individual person at any particular time." Judgment, Para. 427.
[956] Judgment, Para. 1409.

Depriving the Appellant of notice – whilst removing the Prosecution's burden of proving victimization of a sufficient number of individuals – reversed the burden.

Error Three: Analysis of "victim-witnesses"

296. This reversal of proof was exacerbated by an error of law in the approach taken to 'victim' witness evidence.[957] Evidence of victimisation – however generalised or little and wherever in Sierra Leone it occurred – was accepted as reliable.[958] This alone subverts due process, but with a trier of fact that required only 2 victims (TF1-314 & TF1-093)[959] to prove that thousands were abused, conviction was inevitable.

297. As the gravamen of the offence did not hinge on the victimisation of *any* individual, it follows that assertions of general experience sufficed to prove the charge. Consequently, the distinctions between "acts and conduct of the accused" and "general" or "own experiences" of a witness, even if valid, were rendered illusory by the approach taken.[960]

Error Four: Overall failure to consider Defence case

298. The aforementioned prejudice was furthered by the Chamber's failure to consider the defence fairly or at all. First, the Chamber mischaracterised the defence. The Defence did not "contend that the women and girls who they captured and abducted during attacks, and who were victims of those offences, willingly consented to the alleged marriages and sexual relationships."[961] Instead the Defence, first submitted that the principal evidence adduced (the alleged abduction and forced marriage of TF1-314 and TF1-093) was unreliable, did not occur in the Indictment period and the remainder of the evidence was insufficient to prove the charge. The Trial Chamber failed to provide reasoned findings of facts as to each element, instead relying, repeatedly, upon the conclusions of TF1-369. On several issues this "expert" testimony was the sole evidence for facts upon which key findings of law were based and, as such was improperly used to determine ultimate issues.[962]

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[957] Judgment, Paras. 532-536. See Ground 22.

[958] For example: There was no direct evidence that the term 'wife' was used in Kailahun as "a deliberate and strategic aim of enslaving and psychologically manipulating the women and with the purpose of treating them like possessions" during the indictment period (Judgment, Para. 1466). Additionally, The Trial Chamber erred in fact and/or law by taking into consideration the irrelevant consideration that marriage between RUF and women in Kailahun during the war did not involve obtaining parental and family consent (Judgment, para. 1469).

[959] Judgment, Paras. 1405-1406.

[960] *See* Ground 21.

[961] Judgment, Para. 1469.

[962] Including, for example, the following key finding as basis for conviction under count 9 (outrages against personal dignity) Trial Judgment, para.1474: "Due to the social stigma attached to them by virtue of their former status as 'bush wives' and the effects of the prolonged forced conjugal relationships to which they were subjected, these women and girls were too ashamed or too afraid to return to their communities after the

299. TF1-369 could not be categorised as an expert in "forced marriage."[963] The extraneous interests of the witness were aligned with the Prosecution's cause. The methodology followed was unprofessional and irregular.[964] No reasonable tribunal could have exercised its discretion in favour of relying on this expertise.[965]

Error Seven: Circumstances within a marriage – irrelevant consideration

300. The Trial Chamber erred in fact and/or law by taking into consideration the irrelevant consideration, in relation to consent *to* a marriage, of circumstances *within* a supposedly forced marriage.[966] The circumstances to which the Trial Chamber refers are those *within* a supposedly forced marriage: "not consensual because of the state of uncertainty and

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conflict. Accordingly, many victims were displaced from their home towns and support networks", citing only Exhibit 138, Expert Report Forced Marriage, p. 12097-98. See also *Prosecutor v. Charles Taylor*, SCSL-03-1-T, "Decision on Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka or, in the Alternative, to Limit its Scope AND Urgent Prosecution Request for Decision, 19 June 2008, pg. 11, citing *Prosecutor* v. *Karemera et al.*, Case No. ICTR-98-44-T, Decision on Prosecution Motion for Reconsideration of the Decision on Prospective Experts Guichaoua, Nowrojee and Des Forges, or for Certification, 16 November2007, para. 21 and *Prosecutor* v. *Brima et al.*, SCSL-04-16-PT, "Separate and Concurring Opinion of Justice Doherty on Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73*bis*(E) and Joint Defence Application to Exclude the Expert Evidence of Zainab Hawa Bangura or Alternatively to Cross-Examine Her Pursuant to Rule 94*bis*, 21 October 2005, para 51 citing *Prosecutor* v. *Kordic and Cerkez*, Case No. IT-95-14/2, Transcripts, 28 January 2000, p. 13306, 13307.

[963] *See* Trial Chamber judgment, paras. 511-2. In admitting the witness the court as an expert, the credentials of the witness are assessed in order to decide whether the purported is a "person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute" Trial Chamber judgment, para. 511, citing Prosecutor v. Galic, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps (TC), 3 July 2002, p. 2; Prosecutor v. Norman, Fofana and Kondewa, SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures (TC), 21 June 2005, p. 4.
Expert testimony is "testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field" whose purpose "is to provide a Court with information that is outside its ordinary experience and knowledge." Trial Chamber judgment, para. 511, citing CDF Decision on Calling Additional Witnesses, p. 4. See also Prosecutor v. Akayesu, ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness (TC), 9 March 1998.

[964] The written evidence that she provided falls far short of constituting expert guidance for the Court. The report was not subject to any form of peer review Cross-Examination by Counsel for Kanu; ERN 18758-18814. The methodology that was employed to gather data can only be described as absurdly self-serving. Her selection of interviewees did not appear to be based upon anything than her own discretion ERN 18711. To complete the report the witness went to Kailahun, Makeni, Kenema and Kono. There were also meetings with CGG field staff in Freetown. Four focus group meetings were held in Kailahun. She also spoke with Paramount Chiefs, local Court Clerks and Imams, including the head of all the Imams in Sierra Leone. She also spoke with ex-combatants. TF1-369 instructed human rights officers that were to conduct interviews that were to form the basis of TF1-369's report. TF1-369 explained to the human rights officers "the information I'd like and the way in which I think they should ask the question to … get the precise information that I think is important" (ERN 18723-24). TF1-369 was only interested in those women that had crimes committed against them. She was not interested in women that actively chose to be with commanders or with rebels (TF1-369/Transcript, 25 July 2006, pp. 105, line 14 – pp. 106, line 10). As such, TF1-369 limited her report to only women that were victims against whom human rights violations were committed (TF1-369/Transcript, 26 July 2006, pp. 61, lines 8 – 11).

[965] Judgment, para. 512, citing *Prosecutor* v. *Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1, Decision on Prosecution's Motion for Exclusion of Evidence and Limitation of Testimony (TC), 3 July 2000, para. 4, and citing *Vasiljevic* Trial Judgement, para. 20.

[966] Judgment, Para. 1466.

subjugation in which they lived in captivity."[967] This assertion may have been relevant if the matter before the Court was a count of rape of a person in respect of whom forced marriage had already been established. But such an argument is circular as regards the proper question: whether there was consent to the relationship. It is irrelevant as to any possible presumption of lack of consent because of the circumstances.[968]

Error Eight and Nine: Evidence of TF1-093/ Evidence of TF1-314

301. The Trial Chamber erred in fact and in law in concluding that the elements of sexual slavery and of "forced marriage" as another inhumane act had been satisfied in relation to TF1-093.[969] The Trial Chamber further erred in its reliance upon the testimony of this witness. The witness was implausible and deeply affected by drugs.[970] The Trial Chamber failed to adhere to its own admonishment, that corroboration was required,[971] especially as regards her own forced marriage.[972] The tribunal erred in law and in fact in concluding, beyond reasonable doubt, that TF1-314 was subjected to sexual slavery and the other inhumane act of "forced marriage," as charged under Counts 7 and 8 of the Indictment. No reasonable tribunal could have entered a conviction on this basis on the evidence presented. The evidence provided by TF1-314 was palpably unreliable throughout.[973]

Error Ten: Presumption of non-consent not triggered by the facts

302. The Trial Chamber erred in fact and law by holding that "there should be a presumption of absence of genuine consent to having sexual relations or contracting marriages with the said RUF fighters."[974] No reasonable Tribunal, properly directing itself, would have concluded that the facts triggered this presumption on the basis of the evidence adduced.[975] The Trial

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[967] Judgment, Para. 1470.

[968] The Chamber then held "that in hostile and coercive circumstances of this nature, there should be a presumption of absence of genuine consent to having sexual relations or contracting marriages with the said RUF fighters" (para. 1471) – thus indicating how the Trial Chamber sought to employ evidence about the circumstances within a given marriage (which was, itself, unreliable) to support conclusions about the way in which the marriage began!

[969] Judgment, Paras. 1463-1464. The Chamber further found that, as Superman's wife, she cooked and did laundry for him and had sex with him, all of which caused her to endure physical and mental suffering, that Superman exercised the rights of ownership over TF1-093 by virtue of this exclusive conjugal relationship and that Superman gave drugs to TF1-093 which reflects his intention to further abuse and exercise control over her.

[970] Annex C: Examples of indicia of unreliability in relation to TF1-012, TF1-045, TF1-093, TF1-108, TF1-141, TF1-263, TF1-330, TF1-330, TF1-361, TF1362 and TF1-366. *See also*, TF1-093/Transcript, 1 December 2005, pp. 44, lines 2-6.

[971] Judgment, Para. 603.

[972] Judgment, Para. 1408 and Annex C: Examples of indicia of unreliability in relation to TF1-012, TF1-045, TF1-093, TF1-108, TF1-141, TF1-263, TF1-330, TF1-330, TF1-361, TF1362 and TF1-366.

[973] *E.g.*, Exhibits 49-52.

[974] Judgment, Para. 1471.

[975] The Trial Chamber erred in fact and/or law when concluding beyond a reasonable doubt that there was a

Chamber's finding of fact concerning the context was wholly unsubstantiated and, moreover, unreasonable in light of its own findings and the salient evidence in relation to the circumstances. The Chamber's conclusion that Kailahun was different from the rest of Sierra Leone in light of the RUF's well-established administration[976] and therefore the district was more stable as a result[977] was a material inconsistency which undermined the Chamber's claim that every inch of Kailahun territory was violent and coercive. On any reasonable analysis it is also apparent from the evidence that there were fewer crimes in Kailahun than elsewhere.[978]

Error Eleven: Error as to effect of presumption even if triggered

303. The Trial Chamber erred in law by proceeding on the basis that international criminal jurisprudence has relegated the analysis of consent such as to remove the burden of proof from the Proseeution entirely. The Trial Chamber further erred in applying the effects of the presumption in a blanket manner to the whole of Kailahun. The Prosecution have to prove that in the circumstances consent was not possible or that any consent was negated as a consequence.[979] The jurisprudence indicates a requirement of indicia in order to prove laek of consent, even where the presumption operates.[980] The Trial Chamber failed to analyse the evidence for such indicia. The analysis was required to foeus on the effeet of eircumstances on individual cases or localised areas – and not the hundreds of square kilometres of Kailahun and the thousands of women who therein reside.

Error Thirteen: Pre-Indictment circumstances – irrelevant consideration

304. The Trial Chamber erred in faet and/or law by treating evidence of alleged global praetices prior to the Indictment of alleged abduction, eapture, and forced relationships as decisive evidence that there was foree during the indictment period.[981] The Trial Chamber erred by failing to assess the precise circumstances of any continued "unions" during the indictment period to ascertain whether forced conjugal relationships still existed and, if so, whether they amounted to foreed marriage; whether the elements had been satisfied; and whether the intent

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widespread or systematic practice whereby acts of sexual violencc were intentionally committed against women and girls in the context of a hostile and coercive war environment in which genuine consent was not possible. Judgment, Para. 1466.

[976] Judgment, Para. 650.

[977] Judgment, Para. 707; *see also*, Para. 1385: "the RUF and some parts of the civilian population in Kailahun generally eo-habited and may have been relatively integrated".

[978] *See* ground 38.

[979] *Kunarac et al.* Appeal Judgment, para. 132.

[980] For example: indicia of threats, iutimidation, extortion and other forms of duress which may prey ou fear or desperation and may constitute coercion. (*Akayesu* TC, para. 688).

of the perpetrators was still extant.

Error Fourteen: Failure to consider context in relation to consent issue

305. In *Semanza* the ICTR held that consent "must be given voluntarily and freely and is assessed within the context of the surrounding circumstances."[982] The Trial Chamber's failure to address central aspects of context negates the findings in relation forced marriage.[983] First, to the extent that threats existed, the threat emanated from outside agencies including, in large part, the Kamajors, the CDF and from government forces. While the Trial Chamber recognised this aspect of "forced marriage" in Kailahun,[984] it failed to address the clear relevance of this to the charges relating to alleged coercion and exercise of ownership rights by RUF members.[985] Having accepted TF1-314's incriminatory testimony, the Chamber erred by failing to take into account the admission that a reason for remaining in Buedu was that civilians who attempted to escape might well be killed by the Kamajors, who were known to kill anyone who came from a rebel zone.[986] No proper reason for disregarding this evidence existed and none was proffered. For the aforementioned reasons the charges must be dismissed.

GROUND 40: Enslavement in Kailahun

306. The Trial Chamber erred in fact and in law in concluding, beyond reasonable doubt, that the RUF was responsible for acts of enslavement in Kailahun.[987] No reasonable tribunal could have drawn such a conclusion on the evidence adduced.

Error: unreasonable interpretation of evidence/extrapolation from testimony

307. No reasonable Trial Chamber would have extrapolated, from the testimony of two individuals – TF1-330 & TF1-108, a conclusion beyond a reasonable doubt of the occurrence of hundreds of crimes, occurring over a period of a decade, affecting hundreds of civilians. This was exacerbated by reliance on a witness who was willing to falsely accuse the Appellant of being responsible for the gang rape and murder of [redacted][988] and who attempted to further pervert the course of justice[989] is a powerful illustration of the resulting miscarriage of justice.

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[981] Judgment, Para. 1410 and fn. 2621.
[982] *Semanza*, para. 345.
[983] Instead the Trial Chamber found state simply that women experienced a diminished choice.
[984] Judgment, Paras. 1406 and 1460.
[985] *Brima et al.*, Rule 98 Decision, para. 109.
[986] Transcript/TF1-314, 2 November 2005, pp. 43.
[987] Judgment, paras. 1478-1486.
[988] Judgment, Para. 597.
[989] See Ground 18.

The reliance on two witnesses to prove a crime base of this magnitude was an error of law which invalidated the convictions.

308. The Trial Chamber erred by convicting the Appellant without being able to be sufficiently precise.[990] This is illustrative of a failure to be properly satisfied, as per the burden of proof. This error was the consequence of the failure to provide notice to the Appellant of the charges and the underlying material facts in support.[991] As noted above the evidence that formed the basis of these findings was provided by two witnesses, who purported to describe a system of enslavement.[992] The system was "created" through late proofing sessions but was not particularised in the indictment. The fact that the Chamber was unable to establish any greater specificity is a direct result of these defects. It was guess work and demonstrably so. It was wholly unfair to demand the Appellant to meet an allegation that could be the enslavement of 100 or, maybe, 500 people; with barely any identification of perpetrators or victims alike.

Error: failure to give reasons/rejection of huge amount of evidence

309. The Trial Chamber failed to have regard to the preponderance of evidence, both Prosecution and Defence, that contradicted the testimony of TF1-330 and TF1-108. The Defence witnesses – from a huge array of backgrounds – ran considerable risk and inconvenience to travel to Freetown to give evidence which roundly rebutted the Prosecution ease and, moreover established a clear inference that civilians in Kailhaun saw the RUF (and the Appellant) as cooperative.[993] The Trial Chamber's dismissal of this – and all the exculpatory – testimony was an abuse of discretion: the mischaracterising of the Defence case as "limited [to a] few privileged people who had access to [...] amenities"[994] was demonstrably wrong. The evidence was far ranging (in its temporal and geographical and population scope). It covered the whole of Kailahun from 1991 to 2002 and encompassed the experiences of thousands of people. Moreover it was not undermined by cross-examination. The Appellant invites the Prosecution to demonstrate otherwise.

310. The Trial Chamber clearly erred in making the key finding that civilians were not permitted to have personal crops and were given no food supply.[995] There was no evidence of mass starvation during the indictment period. The Trial Chamber ignored, without reason, the

[990] Judgment, Para. 1417: "Approximately, 100 to 500 people from all over Kailahun District were forced to work in various RUF-controlled farms."
[991] Annex B: Charges that led to convictions – no or insufficient notice.
[992] RUF Transcripts: TF1-108 (7-14 March 2006) and TF1-330 (14-17 March 2006).
[993] Annex B: Samples of support for the Defence Case
[994] Judgment, Para. 531.

overwhelming evidence given by the defence witnesses, that the cooperation between civilian and fighters was the reason that the Kailahun civilian population survived the conflict.[996] Further, the evidence was corroborated by a plethora of evidence, including Prosecution exhibits 80, 81, 82, 83, 84a, and 84b,[997] which established a system of cooperation between civilians and fighters in which labour was exchanged for services, supplies, and food. This was evidence that supported the Defence case and was relevant to an assessment of the indices of enslavement. No reasonable trier of fact could disregard this evidence and not feel obliged to explain.

Error: palpably unreliable key witnesses

311. The evidence of both TF1-108 and TF1-330 is replete with inconsistencies to such an extent that no reasonable tribunal could have afforded it probative value at all.[998] The fact that the Chamber, in almost all respects, disregarded these frailties speaks eloquently to the evidence that was improperly ignored. The inconsistencies between TF1-330's evidence and statements were marked on Exhibit 85; which were roundly ignored by the Chamber. This is notwithstanding that the witness was unable to provide evidence of enslaved farming in any village in Kailhun but Talia[999] and unable to identify more than a handful of "slaves."[1000] Further the witness, who was illiterate, produced Exhibits 81-84, which supported the Appellant's case; showing cooperation (not chain-ganging) and food in exchange for work (not brutality).[1001] Moreover, the witness has strong, extraneous reasons to provide compromised, partisan testimony, having stated his hope that the Prosecution would provide necessary medical treatment.[1002] No proper reason existed for disregarding this evidence as to the complete lack of credibility of key Prosecution witnesses and no reason was proffered.

Errors of fact & law: remuneration & rewards

312. The Trial Chamber repeatedly erred in law and fact by failing to assess indices of

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[995] Judgment, Para. 1418

[996] Annex B: Samples of support for the Defence Case

[997] (p.17502); dated 13 February 1999, (p 35, line 27 – p 36, line 10). Exhibit 84B, among many other examples, was an instruction from the Agricultural Secretary-General to the Master Farmer, instructing him to provide two bushels of husk rice from the RUF rice for the brushing of the CDS farm.

[998] Annex C: Examples of indicia of unreliability in relation to TF1-012, TF1-045, TF1-093, TF1-108, TF1-141, TF1-263, TF1-330, TF1-330, TF1-361, TF1362 and TF1-366.

[999] Transcript, RUF, TF1-330, 15 March 2006, pp. 13-16.

[1000] Transcript, RUF, TF1-330, 15 March 2006, pp. 22. Coincidentally most were claimed to be family members of the witness or dead, except TF1-108.

[1001] Transcript, RUF, TF1-330, 16 March 2006, pp. 13-42.

[1002] 16.03.06 p 55, lines 19 – p 56, line 2

enslavement. The Defence case was disregarded in its totality.[1003] The Prosecution have yet to respond to these submissions. The evidence was not undermined by cross-examination. The Chamber selected the high points of the Prosecution case and improperly disregarded the remainder.

313. The Chamber failed in considering irrelevant, in terms of indicia of enslavement, certain forms of remuneration and benefits received by workers. The Trial Chamber itself – in direct contradiction of its own findings that workers received no rewards or any benefits for their work – recognised that "government" farms were "organised to support the fighters and civilians."[1004]

314. The Trial Chamber erred in concluding that provision of medical and other services "cannot be exculpatory or excusatory for the forced labour."[1005] The Trial Chamber further erred in concentrating, in particular, upon *financial* remuneration to the exclusion of other forms of benefit which were equally or more contradictory of the indices of enslavement. Key inferences were drawn from the lack of money earned by farm workers[1006] and load carriers.[1007] As pointed out in the Defence Closing Brief, the Sierra Leonean constitution sensibly excludes communal labour from the definition of forced labour. Similarly, the Sierra Leonean Prohibition of Forced Labour Ordinance 1956 recognises the importance of communal labour for public purposes. Moreover, the Trial Chamber ignored cogent evidence to indicate that the national currency was not in use at the time[1008] and material goods and labour were the only conveyors of value.

315. The Trial Chamber erred in ignoring Exhibit 83, produced by TF1-330 himself, as a result of which the witness reluctantly conceded that civilians were provided with seedling rice in exchange for their labour.[1009]

316. The Trial Chamber erred in ignoring Exhibit 196, which attested the to the setting up of schools by the RUF, as well as Exhibits 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, and 256, all of which were indicative of cooperation between civilians and the RUF over the whole period of occupation. These alone give rise to

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[1003] Defence Closing, Para. 243 – 278 and 138 – 154. Please see Ground 34 and 37 for related submissions forced training as enslavement.
[1004] Judgment, Para. 1417.
[1005] Judgment, Para. 1421.
[1006] Judgment, Paras. 1480, 1420
[1007] Judgment, Paras. 1483, 1420.
[1008] TF1-114/Transcript, 28 April 2005, pp. 99. lines 3 – 11. TF1-114, agrees that farmers were bartering as the SL currency was not of value there. Agrees it was surviving by trading goods in difficult war circumstances.
Q: It is right, isn't it, that it was normal for all at that time in the absence of a Sierra Leonean currency, people were fed instead of being paid?
A. Yes, sir. You were fed to work, so that you have energy to do the work. There was no other reward.
[1009] TF1-330/Transcript, 16 March 2006, pp. 35 – 36.

reasonable doubt as to occurrence of enslavement in Kailahun.

317. The Trial Chamber erred in concluding that workers in fact received no other kinds of benefits, such as food,[1010] ignoring Prosecution evidence that supported the Defence case, including that which attested to the provision of food to workers[1011] as and other benefits:[1012] free medical care and free schooling.[1013]

318. The Trial Chamber failed to recognise that participation in the system of colleetive provision was also repaid by protection from non-RUF threats in the form of the Kamajors, the CDF and government forces.[1014] In light of the context, this was of considerable value to civilians.

GROUND 42

319. This ground is incorporated into Ground 39.

GROUND 43: Child soldiers

320. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay was liable under Article 6(1) of the Statute for planning the use of persons under the age of 15 to participate actively in hostilities in Kailahun, Kono, Kenema and Bombali Districts between 1997 and September 2000, as charged in Count 12.[1015] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

Error One: Crimes within framework of plan

321. The Trial Chamber failed to make any or adequate findings as to whether use or conscription by others of child soldiers was within the framework of any plan made by Sesay. In *Galic*, the ICTY Trial Chamber stated that individual criminal responsibility for planning requires that "the crime was actually committed within the framework of that design by others."[1016] In *Akayesu*, it was stated that "Article 6(1) implies that the planning or preparation of the crime actually leads to its commission."[1017] It is precisely "the requirement of *specificity* [that] distinguishes 'planning' from other modes of liability."[1018]

[1010] Trial Judgment, para. 1480, 1424.
[1011] TF1-045/Transcript. 24 November 2005, pp. 71, line 10 – pp. 72, line 26.
[1012] TF1-371/Transcript, 28 July 2006, pp. 129, line 24 – pp. 130, line 19.
[1013] *See*, generally, DIS-074, DIS-077, DIS-078, DIS-080, DIS-128, DIS-149, DIS-157, DIS-163, DIS-164, DIS-177, DIS-178, DIS-187, DIS-188, DIS-191, DIS-225, DIS-252, and DIS-301.
[1014] TF1-371/Transcript, 21 July 2006, pp. 60, line 1 – pp. 62, line 4.
[1015] Judgment, para. 2230, and Corrigendum, para. 9.
[1016] *Galic*, Trial Chamber Judgment, para. 168.
[1017] *Akayesu*, Trial Chamber Judgment, para. 473.
[1018] *Brdjanin*, TC at para. 358 (emphasis added). As a result, the ICTY found "the evidence before it insufficient to conclude that the Accused was involved in the immediate preparation of the concrete crimes".

322. The Trial Chamber made several errors in this regard. First, the Trial Chamber approached the evidence in such a way as to prevent consideration of whether crimes were within the framework of Sesay's plan. The necessary finding of *actual commission* of specific crimes (see above) depends, of course, upon the identification of victims. While international criminal law recognises some exceptional circumstances in which this is impossible, it then demands use of specimen counts. This was erroneously not required by Trial Chamber I. This lack of notice is incurable.

323. The consequence was that the Chamber was unable to identify a representative sample of child soldiers that precluded the Chamber from making proper and valid findings on the Appellant's actual commission. It could not then decide whether the use/conscription of any such child was within the framework of Sesay's design.

324. Second, the Trial Chamber erred in fact in holding Sesay responsible for the use/conscription of child soldiers in Bombali and Kenema. Its findings on Sesay's responsibility referred to no acts outside Kailahun and Kono.[1019] The Trial Chamber specifically found that "no liability can be attributed to the Accused in relation to crimes committed in ... Bombali."[1020]

325. Third, and in the alternative, even if one excuses the Trial Chamber's non-identification of specified crimes, there remains the failure of the Trial Chamber to convincingly approximate the number of child soldiers used pursuant to Sesay's plan. This invalidates any finding that the crimes concerned were within the framework of Sesay's design. It would be absurd to assert that the acts for which the Appellant was to be held responsible[1021] affected "thousands of children of varying ages"[1022] and not only because the Prosecution relied upon the evidence of only three victims: TF1-141, TF1-263, and TFI-117. It was wholly impermissible, in light of the insuperable problems caused by the lack of specificity and notice, to extrapolate from this figure to these thousands. The maximum number of victims identified, with any proper degree of (culpable) precision, must be a small fraction of this number.[1023] Even before considering other errors, the attribution of liability for "thousands"

[1019] Judgment, paras. 2224 2228.
[1020] Judgment, para. 1692.
[1021] Those being only in Kono and Kailahun (and as to Kailahun only Daru). See Judgment, paras. 2226-2229.
[1022] Judgment, Para. 1617.
[1023] Example: As evinced by the Appellant's activities at Bunumbu, presumably the focus of his alleged culpability, the Trial Chamber states that "in all, about 500 people were sent to train at Bunumbu" during its

of child soldiers must be inaccurate, improper, and invalid.

Error Two: Failure to allege any 'acts' which could constitute "planning"

326. The Trial Chamber erred in fact and law in concluding that any of the acts that it associated with Sesay could be deemed "planning".[1024] A command role in a military unit, including capacity to give orders, does not alone meet the substantial contribution standard necessary to establish planning.[1025] Planning means "one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases."[1026] It "envisions one or more persons formulating a method of design of action, procedure, or arrangement for the accomplishment of a particular crime."[1027] As to the remaining acts, the Trial Chamber failed to identify evidence that Sesay himself planned the design or implementation of a strategy utilising child soldiers.[1028] the Chamber appears to have disregarded a reasonable inference that the Appellant simply adapted his conduct to an existing strategy to use child soldiers, the formulation and execution of which was planned by others. The Chamber's finding support no other interpretation. The jurisprudence indicates that this is not "planning."[1029]

Error Three: Orders constituting planning

327. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that "Sesay gave orders that 'young boys' should be trained at Bunumbu"[1030] and that this constitutes planning the use or conscription of child soldiers. The Trial Chamber found that the "young boys" to whom Sesay issued orders at Bunumbu "were 15 years of age and above."[1031] In any event, the Trial Chamber cites only one piece of valid evidence for this finding,[1032] the evidence of TF1-366. It is submitted that no reasonable trier of fact could have arrived at this

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operation and the witness estimated that "45 percent" of those taken there were under the age of 15 (Judgment, para. 1438).

[1024] Giving orders, receiving reports and giving speeches at training camps, personal use of child soldiers as bodyguards, distribution of drugs as "morale boosters" as well as anything resulting from being "one of the most senior RUF commanders, Judgment, paras. 2226 and 2227.

[1025] Santie Appeals Judgement 23 October 2001 (Proseeutor v. Kupreskic paras 365)

[1026] *Akayesu,* Trial Chamber Judgment, para. 480; see also, the following ICTY decisions: *Prosecutor v. Tihomir Blaskic,* Case No. IT-95-14-T, Judgement, Trial Chamber, 3 March 2000, para. 279; *Kordic,* at para. 386.

[1027] *Semanza,* at para. 380.

[1028] Significantly, the Trial Chamber asserts no evidence of a planning meeting that Sesay attended or that the crime took plaee in an area where Sesay had overriding authority, which seems to be the evidence most often cited when establishing that someone contributed to the planning of something.

[1029] Proseeutor v. Simba, ICTR TC , Para. 405: The Prosecution argues that Simba partieipated in the planning of the three massacres on 21 April. There is no direet evidence of this. Moreover, the Chamber is not satisfied that this is the only reasonable inference available from the evidence. It is also possible that loeal authorities formulated a plan of attack and then requested Simba to assist in implementing it."

[1030] Judgment, para. 2227.

[1031] Judgment, Para. 1638.

[1032] Judgment, para. 1638.

conclusion. No such evidence arises from the testimony cited of TF1-199.[1033] Additionally the Trial Chamber also relies upon TF1-371, purportedly in further support.[1034] Although TF1-371 asserted that SBUs accompanied Sesay, he states *on the very next page of his testimony*, that those concerned were over 15 years of age.[1035] The sole basis for the findings thus rests upon TF1-366. No reasonable trier of fact would have based findings on such a basis. This constitutes a miscarriage of justice.[1036]

Error Four: Sesay's receipt of reports re Bunumbu as "planning"

328. The Trial Chamber erred in fact and/or law when concluding reports from Bunumbu were hand-delivered or communicated to Sesay, and delivery confirmations communicated back to the base.[1037] This finding was based solely on the evidence of TF1-362, and must be unreasonable as a result.[1038] To base such a significant finding – without the benefit of corroboration – is not, in light of the burden of proof, a reasonable approach to findings of fact.[1039] The unreasonable nature of the Trial Chamber's findings become clearer in light of the fact that Prosecution witnesses, who contradicted TF1-362's account of Sesay's involvement in the training base, were relied upon to support a conclusion that the training was forced,[1040] but disregarded when the Chamber was purportedly assessing the reliability of

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[1033] Transcript/TF1-199, 20 July 2004, pp. 37
[1034] Transcript/TF1-371, 21 July 2006, pp. 63.
[1035] Transcript/TF1-371, 21 July 2006, pp. 64.
[1036] Annex C and see Defence Closing, Para. 348 – 389 (Training Base submissions).
[1037] Judgment, paras. 2227, 1639; Transcript of 22 April 2005, TF1-362, p. 12 (CS).
[1038] See Defence Closing, Para. 348 – 389 and also Ground 34.
[1039] RUF Prosecution Witness TF1-362 received an unknown quantity of money from the SCSL Prosecutor, the latter saying to [redacted] "Please put it into good use and take care of yourself" (Prosecutor v. Taylor, 03.03.08, p.5147) This payment was not disclosed to the Defence and the witness could provide no reason for it. On myriad occasions, evidence emerged of express hostility by the witness towards Sesay 22.04.05, p.74, line 29 - p. 79, line 15, XX-Sesay: [redacted]. (pp61 line 13-15 & 22) Witness agrees that Sankoh was imprisoned in Freetown in May 2000 and that the RUF disarmed under Sesay's leadership, leaving Foday Sankoh in prison from where he never came out. Witness stated that 'if only Foday Sankoh was the leader that would have stayed throughout the disarmament, the peace would have been good....It was highjacked. Foday Sankoh's revolution was ruined by men like General Issa.' Witness stated that the revolution [redacted] believed in for over ten years was ruined by General Issa and Mosquito. Witness elaborates that "if a revolution has come in a country and derailed many people's causes, teaches students who had joined the revolutions and it fails because -- it is painful. And more so he was doing the right cause, but later it failed. It was not in place. He spoiled it". 22.04.05, p.76 line 15 – p.80, line 9, Witness also suggests that Sankoh's revolution failed because Sesay followed Taylor's advice to release the UNAMSIL hostages, rather than use them to bargain for Sankoh's freedom. 25.04.05, p.76 line 15 – p.80, line 9, XX-Sesay: Witness says [redacted] was punished by Sesay in 1998 for ill [redacted]. Witness believes that Sesay did not treat [redacted] fairly as he punished [redacted] with no investigation. TF1-362 says Sesay never treated [redacted] fairly. 26.04.05 59:20 -60:9, XX-Sesay: 362 [redacted]. The witness admits making false allegations against him 25.04.05, XX-Sesay: Witness is referred to [redacted] first statement dated 18th May 2004, 10714, where she accused Sesay of capturing [redacted] and forcibly recruiting [redacted] into the RUF (pp107 line 24-29). Witness admits [redacted] lied and joined the RUF willingly and that [redacted] first statement was made out of fear. The witness offered no explanation for implicating Sesay other than the non sequitor that he was the commander at the end. (pp.108 line 21-29 pp111 line 14-17, pp112 line 10-20).
[1040] Example, TF1-114 (see Judgment, fn. 2723 – 2728, 2729) and TF1-108 (Judgment, fn. 2724)

this incriminatory thesis.[1041] The Chamber inappropriately selected evidence to construct a case, in breach of their duty of impartiality and the presumption of innocence.

Error Five: Reporting and orders in relation to Yengema

329. The Trial Chamber erred in fact and law in concluding that the training Commander at Yengema, Monica Pearson, reported directly through Sesay to Bockarie[1042] and later to Sesay only.[1043] This conclusion – a cornerstone of the Trial Chamber's findings as to the substantial role of Sesay in planning the conscription and use of child soldiers – was based solely on the evidence of TF1-362. The Trial Chamber similarly erred in finding that Sesay issued orders to move the RUF training base from Bunumbu to Yengema in Kono District and that Sesay personally discussed the creation of the new Yengema base with the training Commander.[1044] As set out above, any use – let alone *uncorroborated* use – of this witness is manifestly unreasonable, to the point of absurdity.

Error Six: Receipt of reports substantially contributed to crimes

330. Notwithstanding the abovementioned factual errors, the Trial Chamber further erred in concluding that receipt of reports substantially contributed to crimes. As mentioned above, the Trial Chamber had to be satisfied to the criminal standard that the alleged planning *actually led to the commission of specific crimes.*[1045]

Error Seven: Findings that Sesay's visits to Bunumbu constituted "Planning"

331. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay participated in the training bases.[1046] This participation, according to the Trial Chamber, was

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[1041] See Defence Closing, Para. 377 (TF1-114) and Para. 374 (TF1-168).
[1042] Transcript of 22 April 2005, TF1-362, p. 16 (CS).
[1043] Trial Judgment, para. 1647.
[1044] Trial Judgment, para. 1646.
[1045] *Brdjanin*, Trial Chamber at para. 358: "Although the Accused espoused the Strategic Plan, it has not been established that he personally devised it. The Accused participated in its implementation mainly by virtue of his authority as President of the ARK Crisis Staff and through his public utterances. Although these acts may have set the wider framework in which crimes were committed, the Trial Chamber finds the evidence before it insufficient to conclude that the Accused was involved in the immediate preparation of the concrete crimes. The requirement of *specificity* distinguishes 'planning' from other modes of liability."
[1046] Judgment, paras. 1441 & 1643. Para. 1643: "On occasion RUF Commanders including CO Vandi, CO Denis and Sesay visited Camp Lion and addressed the recruits. Commanders generally identified themselves at the outset of their addresses. Sesay on one occasion informed the recruits that his security "boys" were capturing civilians and sending them to the camp. TF1-141 further recalled: "Then he also said that if at all anyone had [...] gone through the training, if you go to the front line to the battlefield, whatever you were told to do is what you will do. If you failed to do it, like, he himself, he will not accept that. He even set an example, he said he would execute you if you failed to do what you were told to do"". (citing Transcript of 12 April 2005, TF1-141, pp. 30-32). Judgment, Para. 2226 - Sesay also visited Camp Lion and addressed the recruits. Sesay told the trainees that they would be sent to the battlefield and that if they failed to comply with orders, they would be

principally in the form of speeches made at the Bunumbu training camp and the passing and receipt of messages – see above. The Trial Chamber erred in drawing this conclusion and in basing it upon the testimony of TF1-141. Reliance upon this witness, which appears repeatedly in the judgment, was wholly unreasonable given his frailties.[1047] The witness constantly contradicted himself – including when describing the purpose for Sesay's visit to the camp. No reasonable trier of fact would have relied upon this evidence to sustain a finding as significant as this. The Chamber, not only disregarded the significant contradiction that emerged during cross examination,[1048] but further erred in selecting the most incriminatory aspect of the testimony – that Sesay had threatened the recruits – whilst ignoring the obvious credibility issues.[1049]

Error Eight: Findings on visit to fighters preparing attack on Daru as "planning"

332. The Trial Chamber erred in law and fact in concluding that beyond a reasonable doubt that "in December 1998, Sesay visited RUF fighters including children under the age of 15 who were preparing to conduct an attack on Daru." The Trial Chamber further erred in finding that Sesay "distributed drugs as 'morale boosters' for these fighters."[1050] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced. In fact, TF1-141 did not state that Sesay provided drugs – only tobacco and alcohol.[1051]

Errors Nine & Ten: Findings on Sesay's own child soldiers and failure to consider Defence case/failure to give reasons

333. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay's bodyguards, including persons under the age of 15, participated with Sesay in the attack on Koidu in December 1998 and accompanied Sesay as his security at Yengema in May 2000.[1052] No reasonable Tribunal, properly directing itself, could have reached this

executed.

[1047] Annex C: Examples of indicia of unreliability in relation to TF1-012, TF1-045, TF1-093, TF1-108, TF1-141, TF1-263, TF1-330, TF1-330, TF1-361, TF1362 and TF1-366.

[1048] Transcript RUF, TF1-141, 12 April 2005, p. 30– 33, compared to Transcript RUF, TF1-141, 15 April 2005, p. 93.

[1049] Annex C: Examples of indicia of unreliability in relation to TF1-012, TF1-045, TF1-093, TF1-108, TF1-141, TF1-263, TF1-330, TF1-330, TF1-361, TF1362 and TF1-366.

[1050] Judgment, para. 2227.

[1051] Judgment, para. 1650.

[1052] Judgment, para. 2227. Likewise, "During the attack on Koidu Town in December 1998, Sesay was accompanied by his security guards, which included children between the ages of 12 and 15 years. Sesay's security guards accompanied him to ensure his safety Judgment, Para. 1671 and 1735; Transcript of 22 June 2006, TF1-367, pp. 34-35 and "there were armed boys between 10 and 12 years of age who accompanied Sesay when he visited the Zambian detainees at Yengema in May 2000 and they were acting as his bodyguards and

conclusion on the basis of the evidence adduced. The Trial Chamber erred in law/procedure by failing to consider the plethora of cogent Defence evidence indicating a complete lack of responsibility, on Sesay's behalf, for planning, use or conscription of child soldiers.[1053]

334. The Trial Chamber ignored the cogent evidence of senior ranking members of the peacekeeping force, including, DIS-310[1054] and General Opande,[1055] that Sesay did not have child soldiers. The Trial Chamber erred in preferring the evidence of Prosecution witnesses who, by and large, placed the use of those soldiers in Kailahun District in which there was no "attack" against the civilian population[1056] and who were principally insiders & accomplices. There was no principled basis for this stance. In so doing, the Trial Chamber subverted its own findings on the legal requirements as to analysis of the testimony of accomplices and insider witnesses – it having asserted awareness of the legal requirement to exercise great caution – and to consider whether the witness had an ulterior motive to testify.[1057]

Error Eleven: Failure to require notice of Prosecution case

335. The Trial Chamber further erred in failing to require the Prosecution to provide notice to the Defence, thereby precluding the possibility for Sesay to respond to the Prosecution's allegations. In particular, the Trial Chamber erred in failing to require the Prosecution to provide specimen counts and in permitting the Trial Chamber to continually adduce an avalanche of new allegations throughout the course of the trial. As regards crimes that are alleged to be continuous, it is very easy to have self serving accomplices allege and difficult to defend. It is however much more difficult to substantiate with specimen counts that require names and details that can be defended. The Trial Chamber erred in fact and law in not recognising the pleading requirements, and finding Sesay responsible for planning the use and conscription of child soldiers.

GROUND 44: UNAMSIL (Counts 15 and 17)

336. The Trial Chamber erred in law and fact in concluding that Sesay was liable under

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were therefore actively participating in hostilities",.Judgment, Para. 1736

[1053] Annex B: Samples of Support for the Defence Case.

[1054] DIS-310/Transcript, 6 March 2008, pp. 41, line 22 – pp. 42, line 10.

[1055] DIS-249/Transcript, 11 March 2008, pp. 124, lines 10 – 13 General Opande testified that the one or two kids that he saw that were under 15 and totting AKs "were just hanging around on the roadblocks or being used like -- or they were pretending to be in charge of that particular roadblock carrying or they have a rope in across the road."

[1056] See Ground 38 and accompanying submissions.

[1057] Trial Judgment, para. 498 "The Chamber has approached the assessment of the reliability of the evidence of accomplice witnesses with caution and has always considered whether or not an accomplice has an ulterior motive to testify such as assurances of a quid pro quo from the Prosecution that they will not be prosecuted. Where possible, the Chamber has looked for corroboration of the evidence of accomplice witnesses", citing

Article 6(3) of the Statute for failing to prevent or punish his subordinates for directing 14 attacks against UNAMSIL personnel and killing four UNAMSIL personnel in May 2000, as charged in Counts 15 and 17.[1058] In particular, the Trial Chamber erred in law by not requiring this alleged commission, namely the reasonable and practical measures which ought to have taken, to have been pled. Further the Trial Chamber misapplied the requisite legal elements[1059] and disregarded salient facts in determining the Appellant's 6(3) liability.

337. No reasonable Tribunal, properly directing itself, could have reached the conclusion that: (a) the Appellant had effective control over all or any of the perpetrators; (b) the Appellant did not issue the appropriate orders to prevent the attacks; and (c) that it was reasonable to have expected him to have initiated investigations, in light of the prevailing circumstances.

Lack of pleading of "events" and the "reasonable and practical measures"

338. The Trial Chamber correctly identified that the Prosecution must plead material facts with a "sufficient degree of specificity"[1060] which requires that an Indictment contain "a concise statement of the facts of the case and of the crime with which the suspect is charged"[1061] and the requirement that the Prosecution must plead "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" with a sufficient degree of

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AFRC Appeal Judgement, paras 128-129 and Muvunyi Appeal Judgement, para. 98.

[1058] Judgment, Para. 2284.

[1059] Kordic and Cerkez, ICTY Appeals Chamber Judgment, December 17, 2004, para. 839; Kordic and Cerkez, ICTY Appeals Chamber Judgment, December 17, 2004, para. 827; Blaskic, ICTY Appeals Chamber Judgment, July 29, 2004, para. 484; Limaj et al., ICTY Trial Chamber Judgment, November 30, 2005, para. 520; Halilovic, ICTY Trial Chamber Judgment, November 16, 2005, para. 56; Strugar ICTY Trial Chamber Judgment, January 31, 2005, para. 358; Brđanin, ICTY Trial Chamber Judgment, September 1, 2004, para. 275; Galic, ICTY Trial Chamber Judgment, December 5, 2003, para. 173 (similar); Stakic, ICTY Trial Chamber Judgment, July 31, 2003, para. 457; Kordic and Cerkez, ICTY Trial Chamber Judgment, February 26, 2001, para. 401; Blaskic, ICTY Trial Chamber Judgment, March 3, 2000, para. 294; Delalic et al., ICTY Trial Chamber Judgment, November 16, 1998, para. 346; Blagojevic and Jokic, ICTY Trial Chamber Judgment, January 17, 2005, para. 790.

[1060] *See* Judgment, Paras. 321-327; *AFRC* Appeal Judgement, para. 37. The Appeals Chamber also considered the required degree of specificity in an indictment at paras 41, 81-87, 99-110, 114-115 of the *AFRC* Appeal Judgement and in the *CDF* Appeal Judgement, paras 442-443. This Chamber also has considered the specificity with which the Indictment must be pleaded in the *Sesay* Decision on Form of Indictment; *Prosecutor* v. *Kanu*, SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 19 November 2003 [*Kanu* Decision on Form of Indictment]; and in *Kondewa* Decision on Form of Indictment; *Kamara* Decision on Form of Indictment; and in *Prosecutor* v. *Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment (TC), 29 November 2004, paras 22-29 [*Norman* Decision on Service and Arraignment], which findings were not disturbed on appeal: *Prosecutor* v. *Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Decision on Amendment of the Consolidated Indictment (AC), 16 May 2005, esp. para. 53 [*Norman* Appeal Decision on Amendment of Indictment].

[1061] *Prosecutor v. Kvočka, Kos, Radic, Zigic*, IT-98-30/1, Decisions on Defence Preliminary Motions on the Form of the Indictment (TC), 12 April 1999, para. 14 [*Kvočka et al.* Decision on Form of Indictment], cited with approval in the *AFRC* Appeal Judgement, para. 37.

specificity,[1062] and then disregarded these admonishments. The Prosecution were permitted to adduce allegations and new evidence, throughout the trial and throughout the Kallon and Gbao case, depriving the Appellant of any opportunity to meet the charges. At no time, whether in the pleadings or the evidence were the Prosecution required to indicate the measures that Sesay had failed to take. At no time was Sesay cross-examined on his failure and asked to account for it. In short the Appellant was deprived of the notice that would have allowed for effective preparation.

Superior-Subordinate Relationship[1063]

339. The Trial Chamber erred in fact and law in concluding, beyond a reasonable doubt, that as "Sesay was effectively the overall military Commander of the RUF on the ground"[1064] this equated to effective control over all the perpetrators. The Trial Chamber disregarded all the relevant evidence that would have established Sesay's lack of control over the vast majority of the RUF Commanders responsible for the UNAMSIL attacks or, having regarded it, failed to draw reasonable inferences. In particular:

340. The Trial Chamber failed to examine and expressly exclude the reasonable doubts raised by the Appellant and Exhibit 212 (the relevant radio log book). The latter was – in the circumstances – the most cogent and undisputed evidence of his relative impotence.[1065] The conclusion that "RUF Commanders reported to Sesay;" "that Commanders often sent messages to Sankoh and Bockarie through Sesay;" and that "Sesay's ability to discipline is demonstrated by the evidence that on one occasion a Commander sought his assistance with respect to recalcitrant troops"[1066] was a demonstrably inadequate analysis to base a conclusion of effective control of thousands of combatants. Moreover such analysis was manifestly flawed.[1067]

[1062] *AFRC* Appeal Judgement, para. 39. *See also ,Krnojelac* Second Decision on Form of Indictment, para. 18.
[1063] *Kordic and Cerkez*, ICTY Appeals Chamber Judgment, December 17, 2004, para. 840; *Blaskic*, ICTY Appeals Chamber Judgment, July 29, 2004, para. 375; *Blagojevic and Jokic*, ICTY Trial Chamber Judgment, January 17, 2005, para. 791
[1064] Judgment, Para. 2268.
[1065] *See*, Annex H: UNAMSIL evidence
[1066] Judgment, Para. 923.
[1067] Sesay's lack of authority to control certain commanders is evident in those messages in above in footnote 8 starting with RUF Radio Log, pp. 8742, Smile to Survival, dated 4 November 1999; see for example RUF Radio Log, pp. 2768 00008843, 12 October 1999, Smile to Isaac (Sankoh instructs Isaac to meet Sesay at Magburaki and to take Sesay to Makeni and take orders from Sesay, in comments Sesay states that Superman, Gibril Massaquoi and Isaac did not accept Sankoh instruction to take orders from Sesay, they went looting); RUF Radio Log, pp. 2861?, 16 October 1999, to Concord from SSS (Sesay sent Kallon to meet with Superman and Isaac to fight out what the problem is, they have been looting); RUF Radio Logs, pp. 2772 00008848, Smile to SSS/TB (in comments states that the looting of the property of the bishop and the NGOs was due to Sankoh order to attack AFRC at Makeni, Sesay states that he never trusted Superman et al after April 1999, during this period he lived at Teko Barracks during the day and went to Magburaki at night to sleep. Insofar as the looted

341. The Trial Chamber's assessment under article 6(3) was based almost exclusively on an erroneous perception of the Appellant within a chain of command. This was not a sufficient analysis. First, the Chamber failed to impute any authority to Sankoh. It was unreasonable to conclude – and irrelevant to the issue – that Sankoh's role was limited to "primarily political issues and oversight of the RUF organisation as a whole."[1068] No reasonable trier of fact could have arrived at this conclusion.[1069] Foday Sankoh was in direct contact with and giving direct orders to the Commanders over whom the Accused was held to have had effective control.[1070] Further, in concluding that "the chain of command with Sankoh as the Leader, Sesay as BFC and Kallon as BGC functioned effectively prior to Sankoh's arrest on 8 May 2000"[1071] was operative and significant was a conclusion that failed to address alternative and more relevant inferenees.[1072]

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goods are concerned Sesay failed to retrieve the NGO vehicles from Superman et al. as they did consider him a commander); RUF Radio Log, pp. 2659 00008735, 21 October 1999, to Smile from Survival (Sankoh had to intervene regarding the stolen vehicles, Superman claimed to have retrieved them); RUF Radio Logs, 2793 00008868-69, 19 November 1999, Smile to Superman (instructed to release vehicle of Col. Nya, Sesay not involved here).

[1068] Judgment, Para. 2268.

[1069] *See*, Annex H: UNAMSIL evidence.

[1070] Transcript of 25 May 2007, Issa Hassan Sesay, pp. 65-68 (Komba Gbundema, the commander responsible for capturing the UNAMSIL peacekeepers had been in direct contact with Sankoh and had received orders from him); RUF Radio Log, pp. 18644, From Kallon to Sankoh, dated 3 May 2000; RUF Radio Log, pp. 2833 00008097, 3 May 2000, From Makeni to Leader (explanation to Sankoh as to why fighting broke out from Makeni to Maghuraka, "UNAMSIL attacked us and forcefully disarmed my men")

[1071] Judgment, Para. 2268.

[1072] Transcript of 23 May 2007, Issa Hassan Sesay, pp. 13, L.6-8 (Sesay states that Sankoh was operating a system of divide and rule, giving instruetions to Sesay and also directly to, say, Gbundema);Transcript of 23 May 2007, Issa Hassan Sesay, pp. 16, L. 1 (Sesay states that he only had authority after the arrest of Sankoh on 8 May). Transcript 25 May 2007, Issa Hassan Sesay, pp. 9 (Kallon did not communicate to Sesay the information he had received from Lieutenant-Colonel Turay that he had stopped the UNAMSIL peacekeepers in Magburaki from taking over the Arabic College and was awaiting orders from his commanding officers); Transcript of 25 May 2007, Issa Hassan Sesay, pp. 12 (Sankoh did not consult Sesay with his decisions rather he just instructed him on what to do, he did not heed Sesay's advice not to arrest military observers); Transcript of 25 May 2007, Issa Hassan Sesay, pp. 16-17 (evidence of communieations between Sankoh and Kallon that bypassed Sesay as well as orders from Kallon to his subordinates given without the knowledge of Sesay, these communications were dated 12 February 2000 and eoncerned UNAMSIL in Masingbi and Makeni); Transcript of 25 May 2007, Issa Hassan Sesay, pp. 30-31 (Sankoh was consistently changing his mind regarding the UNAMSIL deployment to such an extent that Sesay did not know how to treat his orders); RUF Radio Log, pp. 2780 00008856, 28 October 1999, Black Moses to SSS(Sesay in Makeni, concerns complaints of people in town of Gbanti Kamaranka under control of Komba Gbundema, Sesay states he had no control over Gbundema, the latter only took orders from Sankoh and Superman); RUF Radio Log, p. 18639, from the Sankoh to Kallon, dated 16 April 2000 (Sankoh contacted Kallon directly and through Sesay coneerning the DDR programmes, it could he inferred that Sankoh saw fit to contact Kallon directly as Sesay's order did not suffice, Sankoh's orders were that only he could give "the green light" where disarmament was eoncerned, see Transcript of 25 May 2007, Issa Hassan Sesay, pp. 36, L.17-21); RUF Radio Log, p. 18642, Chairman (Sankoh?) to Kallon, dated 29 April 2000 (Sankoh (?) ordered Kallon, thus bypassing Sesay, to release certain soldiers and to send a Vanguard trained by Sankoh to his location); RUF Radio Log, pp. 2608 00008685, 17 July 1999, Smile to SSS (Sesay still seeking permission from Sankoh to travel from Buedu to Koidu and baek as late as July 1999); RUF Radio Log, pp. 2704 00008779, 10 January 2000, Komba Gbundema to Leader (Guineau ECOMOG intercepted, carrying a lot of ammunition, not sent to Sesay); RUF Radio Log, pp. 2809; RUF Radio Log, pp. 2718 00008793, 9 February 2000, Smile to Komba (concerning low flying low over Rokpur Market the day before putting army and civilians in disarray, not sent to Sesay); RUF Radio Logs, pp. 2815 00008892, 1 March 2000,

342. In concluding that between February and May 2000 "it was Sesay who most regularly transmitted orders to RUF fighters including orders to "all stations" and "all commanders,""[1073] "that during this period Commanders implemented Sesay's orders, reported back to him and actively sought orders from him,"[1074] and that "Sesay was able to assign commanders to particular Brigades" the Trial Chamber erred. The Chamber ignored the relevant evidence.[1075]

343. The conclusion reached, "that Sesay exercised effective control over RUF fighters in the Makeni area, including Kallon, who perpetrated the attacks direeted against UNAMSIL personnel on 1, 2 and 7 May 2000"[1076] was not supported by evidence. The evidence

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Smile to Col. Rogers (tell commanders to exereise restraint, not sent to Sesay); RUF Radio Log, pp. 2733 00008811, 26 March 2000, Kalloo to Smile (re handover of red cross vehicle); RUF Radio Log, pp. 2738 00008813, 1 April 2000, Rashid Sandy to Smile (colonel telling Sankoh he has arrived in Kailahun, not sent to Sesay); RUF Radio Log, pp. 2740 00008815, 3 April 2000, Smile to Kposowa (inquiry about food for soldiers); RUF Radio Log, pp. 2740 00008815, 4 April 2000, Rashid Sandy ro Smile (situatioo report, not sent to Sesay); RUF Radio Log, pp. 2741 00008816, 5 April 2000, Komba to Sankoh (report to Sankoh that Rambo is harassing civilians); RUF Radio Log, pp. 2742 00008817, 5 April 2000, Sandy to Smile (regarding arrangements for "rwo brothers" travelliog got Sankoh from Monrovia); RUF Radio Log, pp. 2742 00008818 5 April 2000, Moriba Koroma to Sankoh (Safe arrival in Magburaki); RUF Radio Log, pp. 2845 00008053-56, 6 April 2000, Chairman RUFP (Sankoh?) to all Commanders (instructions to treat civilians and NGOs well, don't take property, "anyone who violates will be subject to discipline"); RUF Radio Log, pp. 2751 00008826, 14 April 2000, Gbao to Smile (reports that he could meet Gadafi, not sent to Sesay); RUF Radio Log, pp. 2819 00008896, 16 April 2000, Smile to Sparrow (Kallon) (Don't let anyone fool yon on disarmament); RUF Radio Log, pp. 2756 00008831-32, 18 April 2000, Gbao to Sankoh (informing Sankoh that Supermans wife arrived in Port Loko, not sent to Sesay); RUF Radio Logs, pp. 2833 00008096, 23 April 2000, Chairman & Secretary of Bo to Sankob, (report of situation on ground to FD from Chairman & Secretary of Bo); RUF Radio Log, pp. 2764 00008739, 23 April 2000, From Kallon to Smile (Kallon reports conflict between UNAMSIL and 'our men', oo report to Sesay); RUF Radio Log, pp. 2763 00008836, 22 April 2000, MK(Kallon?) to Smile (Kallon coutacts Sankoh re farming in Magburaka).

[1073] Judgment, Para. 2269.

[1074] Judgment, Para. 2269.

[1075] Transcript of 23 May 2007, Issa Hassan Sesay, pp.46-47 (After the meeting with Sankoh and the other Commanders at Teko Road which occurred as late as February 2000 Sesay complained to Lawrence Womandia and Edwin Bockarie that he had been demoted from the position of field commander to that of unit commander in charge of mining in Kono);Transcript of 23 May 2007, Issa Hassan Sesay, pp. 38 (Sesay's satellite phone conld only receive calls), Transcript of 23May 2007, Issa Hassan Sesay, pp. 42-48; Transcript of 23 May 2007, Issa Hassan Sesay, pp. 55-56 (Sesay did not have total the power to just appoint Martin George to go to take over Kailabun as commander, was the appointment of Martin George as Commander of Kailahun the appointment of a Brigade commander?). Defence Exhibit 65, p. 28017(onc of these communications to "all stations" and "all ops commanders" enjoined rccipienrs to "not to harass, neither molest nor intimidate" UNAMSIL peacekeepers). Transcript 25 May 2007, Issa Hassan Sesay, pp. 7-8 (whilc Scsay was transmitting Sankoh's orders hc himself did not know which areas Sankoh did not want UNAMSIL to go to); Transcript of 25 May 2007, Issa Hassan Sesay, pp. 44, L. 19-22 (Sesay statcs that his position was such that he could not go to Freetown without an invitation from Sankoh, indeed between October 1999 and May 2000 Sesay was not did not invite Scsay to Freetown);Sankoh messages to "all stations/commanders"; RUF Radio Log, pp. 2845 00008053-56, 6 April 2000, Chairman RUFP (Sankoh?) to all Commanders (instructions to treat civilians and NGOs well, don't take property, "anyone who violates will be subject to discipline");). RUF Radio Log, pp. 2810 00008887, 17 January 2000, from Gaffa through Smile info all stations (all commanders/operators to send messages direct to Leader through Sesay, stop sending "false messages" to SSS [Sesay] for informatioo of the leader);); RUF Radio Log, pp. 2615 00008691-92, 21 July 1999, Smile to Brig. Mani info all (Sesay does not rccognisc a message sent to all commanders, there is a note questioning whether he got it but there is no answer); RUF Radio Log, pp. 2827 00008084-85, 12 April 2000, Leader to Makeni Kono and Kailahun (stand by to take part in peace meeting).

[1076] Judgment, Para 2273.

disregarded was clear: Sesay's command over key Commanders was wholly contingent on the good will of Sankoh and, consequently, fluctuating at best and non-existent at worst and would depend at all times upon ineffective communication[1077] and recalcitrant troops. As the Chamber concluded the disarmament caused consternation amongst the RUF and even Sankoh's orders, at that time, were resisted.[1078] There was an overwhelming mass of evidence that showed that the Accused did not have effective control over many thousands of RUF fighters and many of the key Commanders. The Appellant testified that he could not control Komba Gbundema. This assertion was supported by cogent evidence, which demonstrated beyond a doubt, that Gbundema reluctance to subordinate himself to anyone but Sankoh.[1079] The ICTY Trial Chamber in *Halilovic* held that "the main factor in determining a position of command is the 'actual possession or non-possession of powers of control over the actions of subordinates.'"[1080] Accordingly there was no proper reason to disregard this evidence and none was proffered by the Chamber.

344. The Trial Chamber erred in law and fact in concluding, beyond a reasonable doubt, "that Sesay was in command of and exercised effective control over the perpetrators of the attacks on 3 and 4 May 2000."[1081] The analysis was manifestly flawed. The reliance on three messages between Sesay and the Brigade Commander in Kono over a two-day period in order to establish "the regularity with which Sesay was in contact with his Commanders and the detailed extent to which he monitored and controlled the events unfolding with the

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[1077] RUF Radio Log, pp. 18644, dated 2 May 2000, SP to Colonel Big (SP stands for Sparrow who, according to Sesay, is Kallon. In this message Kallon ordered Colonel Big to bring 100 troops, a tank and a twin barrel to his location that same day. Colonel Big was in Kono, Sesay was also in Kono although he knew nothing of this message despite the fact that he had a radio set).

[1078] Judgment, Para. 1766.

[1079] RUF Radio Log, pp. 2780 00008856, 28 October 1999, Black Moses to SSS (Sesay in Makeni, concerns complaints of people in town of Gbanti Kamaranka under control of Komba Gbundema, Sesay states he had no control over Gbundema, the latter only took orders from Sankoh and Superman); RUF Radio Log, pp. 2678 00008775, 4 December 2000, Shining Star to Leader (Gbundema reports directly to Sankoh that he was in an accident on the Makeni Highway); RUF Radio Log, pp. 2704 00008779, 10 January 2000, Komba Gbundema to Leader (Guinean ECOMOG intercepted, carrying a lot of ammunition); RUF Radio Log, pp. 2809 00008886, 14 January 2000, Leader to Shining Star (directions re delivery of arms to UNAMSIL and to grant them free passage to Port Loko which was under Komba's command); ; RUF Radio Log, pp. 2718 00008793, 9 February 2000, Smile to Komba (concerning low flying low over Rokpur Market the day before putting army and civilians in disarray); RUF Radio Log, pp. 2724 00008799, 7 March 2000, From Komba to Smile (info. re. delegates to a meeting); RUF Radio Log, pp. 2727 00008702-03, Komba to Leader (report on working state of some tools); RUF Radio Logs, pp. 2732 008808, 24 March 2000, Smile to Komba (wants to know where his brigade adjutant will be dispatched); RUF Radio Log, pp. 2737 00008812, 27 March 2000, Komba to Smile ("important matter to discuss about movement and people to introduce you to"); RUF Radio Log, pp. 2741 00008816, 5 April 2000, Komba to Sankoh (report to Sankoh that Rambo is harassing civilians); RUF Radio Log, pp. 2753 00008828, 14 April 2000, Komba to Smile (contingent of UBNAMSIL have arrived at Kambia); RUF Radio Log, pp. 00008837-38, two messages from Shining Star to Smile (re Kambia district meeting and request for machinery respectively).

[1080] *Halilovic*, ICTY Trial Chamber Judgment, November 16, 2005, para. 58; *Strugar*, ICTY Trial Chamber Judgment, January 31, 2005, para. 360;

[1081] Judgment, Para. 2277.

UNAMSIL peacekeepers"[1082] and his "effective control over the Brigade Commander of Kono District, who in turn was the Commander of the RUF fighters who detained the peacekeepers at Yengema and Small Sefadu"[1083] was so unreasonable to be perverse.

345. The Trial Chamber erred in law and/or fact in concluding, beyond a reasonable doubt, "that Sesay effectively controlled RUF fighters in the Magburaka area and accordingly the perpetrators of the attacks on UNAMSIL peacekeeping personnel on 9 May 2000."[1084] The Trial Chamber fails to point to any material evidence in the days preceding the attack in Magburaka, which might be capable of establishing the Appellant's liability under article 6(3).[1085] The reliance on one radio message on 10 May 2000 to satisfy itself of the Appellant's effective control over the attacks of the previous day[1086] was so unreasonable as to be perverse.

346. In summary the Chamber erred in failing to have regard to the salient evidence and apply it to the circumstances found. As the Chamber observed when dismissing the Appellant's testimony, he was the Commander of "an insurgent movement in which there was continuous infighting, suspicion, mistrust and rivalry."[1087] It was incumbent upon a reasonable trier of fact to apply this conclusion, even when it undermined an inference of guilt. In these circumstances, the failure of analysis is fatal.

The superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof

347. The third element of the doctrine of command responsibility is "the failure of the accused to take the necessary and reasonable measures to prevent or stop the crime, or to punish the perpetrator."[1088] The ICTY Trial Chamber in *Halilovic* determined that the doctrine of command responsibility gives rise to two distinct legal obligations: to prevent the commission of the offence and to punish the perpetrators thereof.[1089] The same Trial Chamber observed that this duty to prevent "arises when the commander acquires actual knowledge or has reasonable grounds to suspect that a crime is being or is about to be committed."[1090] In view of the fact that the Appellant was put on notice of the crimes against

[1082] Judgment, Para. 2275
[1083] Judgment, Para. 2275.
[1084] Judgment, Para. 2278.
[1085] Judgment, Paras. 1860-1862 & 1900.
[1086] Judgment, Para. 2278.
[1087] Judgment, Para. 608.
[1088] *Bagilishema*, ICTR Trial Chamber Judgment, June 7, 2001, paras. 38 and 47-50; *Blaskic*, ICTY Appeals Chamber Judgment, July 29, 2004, para. 72.
[1089] *Halilovic*, ICTY Trial Chamber Judgment, November 16, 2005, para. 72:
[1090] *Halilovic*, ICTY Trial Chamber Judgment, November 16, 2005, paras. 72, 79, 90

the UNAMSIL peacekeepers as late as 3 May 2000[1091] the Trial Chamber erred in law and/or fact in finding the Appellant guilty beyond a reasonable doubt under Article 6(3) of the Statute for failing to prevent the attacks on UNAMSIL peacekeepers 1 and 2 May 2000 and 3 and 4 May 2000 under Count 15 as well as the unlawful killings of UNAMSIL peacekeepers on 1 and 2 May 2000 under Count 17.

Preventing

348. The Trial Chamber's erred in concluding "that Sesay made no attempt to prevent or punish the attaeks against UNAMSIL peacekeepers." The Appellant raised a reasonable case: that he did what he could to contain the violence and that the eontrol he had (or laek thereof) meant that he could not stop it. As the Chamber found, Sesay, on 3 May 2000, sent a message indicating that he was travelling to Makeni to "put situation [sie] under control in the best way possible."[1092] The Chamber demanded the impossible from the Appellant. There were several thousands of RUF involved;[1093] Sankoh was elearly in charge and giving orders to attack;[1094] there were many eombatants who would not take orders from even Sankoh;[1095] in an atmosphere of combatant mistrust[1096] and concern by all the RUF that the UNAMSIL troops would use arms against them.[1097] The Appellant removed the troops from danger and held them as prisoners of war. As the Chamber found, there were no hostage demands and no bargaining for Sankoh's release.[1098] The Appellant did not hesitate to release the troops to the international community, as soon as the opportunity arose.[1099] These facts raised a reasonable doubt and demonstrated that Sesay took effective steps to prevent the attacks. No reasonable Tribunal could have concluded that "Sesay actively prolonged the attacks on the captured peacekeepers at Yengema by ordering that they be kept as 'prisoners of war.'"[1100] The proposition that, instead, Sesay should simply have issued an "order" for the *Sankoh-inspired attacks* to cease is patently absurd.

Punishing

349. Similarly the Trial Chamber erred in law and/or fact in concluding in finding the Appellant

[1091] Judgment, Para. 1844. *See also* Para. 1857 where it was held that it was on 3 May 2000 at Tekko barracks that Sesay and Kallon enquired as to why the Zambian peacekeepers had been abducted.
[1092] Judgment, Para. 1847.
[1093] *E.g.*, Judgment, Paras. 1834 and 1847.
[1094] Judgment, Para. 1768.
[1095] Judgment, Para. 1766.
[1096] Judgment, Para. 1764.
[1097] Judgment, Para. 1767.
[1098] Judgment, Para. 1964-1969.
[1099] Judgment, Para. 1869.

guilty under article 6(3) for failing to punish the perpetrators of the attacks against the UNAMSIL peaeekeepers. The ICTY in *Hadzihasanovic* determined that, in order for a Trial Chamber to reach a finding of guilt under the doctrine of command responsibility on the part of a superior for failing to punish crimes, it is bound to establish that the superior had control over the perpetrators of the crimes in question both at the time of their commission and at the time that measures to punish were to be taken.[1101]

350. Serious doubts existed – and were not displaced – as to the Appellant's effective control of those responsible for the attacks in Counts 15 and 17. The arrest of Foday Sankoh on 8 May 2000 and the increase in responsibility this brought for the Appellant does not in itself establish the Appellant's material ability to punish those responsible for the attacks against the UNAMSIL peacekeepers. The Appellant took control of a fractious movement with various parties opposed to his leadership[1102] who retained the ability to rally fighters against the Appellant's decision to "betray" Foday Sankoh[1103] and strive towards disarming the RUF.[1104] This decision left the peace process balanced on a knife edge and the Appellant's own life in danger.[1105] The Prosecution proffered no evidence that could have displaced this defence.

351. The Trial Chamber's failure to explain the measures that the Appellant should have been taken that he ought to have "instigated investigations," is evidence of the impossibility that faced the Appellant and the lack of effective punishment mechanisms.[1106] The perpetrators involved were thousands of men, including – as the Chamber found – key Commanders of the RUF.[1107] The Chamber disregarded the obvious: the Prosecution failed to prove what the Appellant could have done.

GROUND 45: Protective Measures

[1100] Judgment, Para. 2283.
[1101] *Hadihasanović* Trial Chamber Judgement, 15 March 2006, para. 194, *see also*, *Oric*, Trial Chamber Judgment, 30 June 2006, paras. 335 and 574.
[1102] Transeript/Sesay, 29 May 2000, pp. 60 (coucems the meeting at which Sesay was 'elected' as leader of RUF in Sankoh's absence).
[1103] Transcript/Sesay, 29 May 2000, pp. 84, L.22-27 (there were mauy within the RUF who felt that Sesay had betrayed Sankoh).
[1104] Transcript/Sesay, 29 May 2000, pp.70-71 (Sesay sent Gibril Massaquoi to Monrovia to get him out of the armed RUF; he was wary of Massaquoi's ability, together with Superman, to orgauise fighters that would break away from the RUF and destroy the peace process).
[1105] Transeript/Sesay, 29 May 2000, pp. 72-73 (Sesay's jeep was shot at by Sankoh's bodyguard killing one passenger, Sesay and the others in the car all believed that Sesay was the target).
[1106] Tranaeript/TF1-045, 24 November 2005, pp. 27-30 (Sesay informed General Opande that TF1-045, Gibril Massaquoi's brother, aud Peleto were planning to atrack Sesay and derail the peaee proeess. General Opande aided Sesay by sending a helicopter to collect those arrested and take them tn Makeni, where they were flogged); see also Transcript/Opande, 10 March 2008, pp. 130-132 (confirming the account).
[1107] Judgment, Paras. 1786-87, 1790, aud 1856.

352. The Appellant submits that the Appeal Chamber erred reaching it decision. It is submitted that the decision is a substantial departure from settled law and was a breach of Appellant's Article 17 rights. It is standard practice for the ICTR and the ICTY to have access to confidential material related once the forensic nexus has been shown.[1108] It is impermissible to compromise an accused's rights to exculpatory material and ultimately a fair trial on the basis that he is unable, through lack of resources or otherwise, to prove that the proteetive measures are no longer required.

APPEAL AGAINST SENTENCING

GROUND 46

Assessment of gravity of offenees (Counts 1-15 and 17)

353. The Trial Chamber erred in law and fact and/or procedure in its assessment of the gravity of the offences in Counts 1-15 & 17. The Trial Chamber erred in its conclusion that the Sesay had the "highest level" of culpability.[1109] The Trial Chamber acknowledged that "the sentence should be individualised and proportionate to the conduct of the Accused".[1110] Determination of the gravity of the offence requires "consideration of the particular circumstances of the case, as well as the form and degree of participation of the Accused in the crime".[1111]

354. Although some of the crimes committed during the conflict were particularly "heinous and brutal",[1112] none of the most graphic involved Sesay or troops under his command and control. Indeed the Sentencing Judgment focused predominantly on descriptions of crimes in Kono and, as noted by Hon. Justice Itoe in his Separate Concurring and Partially Dissenting Opinion, on the crimes of Staff Al Haji Bayoh, a member of the Sierra Leone Armed Forces.

355. In its discussion concerning the Appellant's form and degree of participation, the Trial Chamber failed to consider form and degree of participation *in the crime* but instead focused

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[1108] See fnr instance Prosecutor v. Perisic's: Dccision on Momcilo Perisic's Motion Seeking Access to Confidential Material in the Blagojevic and Jokic Cases and Decision on Nsengiyumva's Extremely Urgent and Confidential Motion for Disclosure of Closed Sessinn Testimony OX and the Witness' Unredacted Statements and Exhibits.

[1109] *E.g.*, Sentencing Judgment, Paras. 211 and 215.

[1110] Scntencing Judgment, para. 18

[1111] *Ibid.*

[1112] *Ibid.* para 104.

on only the crimes. In finding Sesay to have contributed significantly to the JCE, the Chamber found that "his culpability thus reaches the highest level".[1113] In approaching its deliberations in this manner, the Trial Chamber regarded Sesay's role in the JCE as concomitant with having himself committed the killings at Savage pit, the gang rapes supervised by Staff Alhaji and the amputations in Kono. In respect of the crimes for which the Appellant stands convicted as a result of participation in a JCE, he did not act as architect, abuse his leadership position or encourage the crimes. Sesay's contribution was remote and he should have been sentenced accordingly.

356. Determination of the gravity of a crime requires consideration of the particular circumstances of the case and form and degree of the participation of the Accused in the crime.[1114] The Trial Chamber should consider the *specific role* played by the Accused *in the commission of the crime*,[1115] including functions and duties performed by the Accused and the manner in which those tasks and duties were carried out.[1116] In doing so, the Trial Chamber must look at the relative culpability of the Accused, as repeatedly confirmed by the ICTY, leading to those Accused convicted under the extended JCE doctrine being entitled to reduced sentences. The Trial Chamber found Krstic guilty but not as culpable as his superiors who devised the genocidal plan or others who actively and enthusiastieally executed it.

357. The Appeals Chamber reduced Krstie's sentence after considering the degree and form of his participation. It stated that it was incumbent upon Trial Chambers to assess the culpability of the Accused relative to other partieipants in the criminal conduct – whether or not they had been tried – and whether or not a JCE was alleged.[1117]

358. The Trial Chamber erred in its approach to determining the gravity of the offences. Sesay's participation in the JCE and other criminal conduct was remote and minimal. His sentence therefore should have been reduced accordingly. In determining gravity of conduct, it was incumbent upon the Trial Chamber to assess Sesay's responsibility in light of the culpability of his co-defendants Kallon and Gbao, as well as that of former co-aceused Sankoh and

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[1113] *Ibid.* para. 215.
[1114] *Prosecutor v Stakic*, Appeals Judgment, 22 March 2006, IT-97-24-A ('*Stakic* Appeals Judgment') para. 380; *Prosecutor v Blaskic*, Appeals Judgment, 29 July 2004, IT-95-14-A ('*Blaskic* Appeals Judgment), para. 683.
[1115] *Prosecutor v Blagojevic and Jokic*, Trial Judgment, 17 January 2005, IT-02-60-T ('*Blagojevic* Trial Judgment'), para. 833.
[1116] *Prosecutor v Nikolic-Dragan*, Trial Sentencing Judgment, 2 December 2003, IT-94-2, para. 114.
[1117] See Annex I: Reduction of Sentences for JCE 3 Liability and the Accused's Relative Culpability and *Prosecutor v Radislav Krstic*, Appeals Judgment, 19 April 2004, IT-98-33-A ('*Krstic* Appeal Judgment'),

Boekarie, as well as Johnny Paul Koroma, SO Williams, the Honourables and other leading members of the JCE, as well as the AFRC aeeused Brima, Kanu and Kamara. The inability to bring the widely-reeognized arehiteets of the eivil war to trial does not mean that a less culpable aeeused sueh as Sesay should be punished for their crimes, just as General Krstic and other Serbian defendants were not punished for the erimes of the fugitive Mladic and the dceeased Milosevic.

359. Hon. Justice Itoe, in his Separate Coneurring and Partially Dissenting Opinion, noted the Defenee Submissions that "the liability and penalty to be inflicted on an indirect perpetrator, like was found in favour of the Aceused Persons in the CDF case, should be indeed be less than that of the direet perpetrators of the crimes charged under the JCE". Justice Itoe held that "the same measure of mitigation should, in this regard, and on this score, be aeeorded to the three Appellant's in this case".[1118] This was the correct approaeh.

Manifestly exeessive and disproportionate sentenees

JCE sentencing

360. For the reasons set out above, the Appellant submits that the sentences in respect of convictions pursuant to Sesay's participation in a JCE are manifestly excessive. The sentenees levied against the accused are wholly disproportionate to eulpability. This is further demonstrated by comparison with sentences handed out in other international tribunals. [1119]

361. The Appellant notes that the AFRC Defendants, Brima, Bazzy and Kamara, received lighter sentences though they were found to be the direct perpetrators of the crimes themselves. The three AFRC defendants were found guilty of committing, ordering, planning, aiding and abetting and (in the case of Kanu) inciting the most serious crimes. The crimes found committed were seriously aggravated and each convicted person were found to have no mitigation.[1120] Against this background, the Trial Chamber sentenced Brima, Kamara and Kanu to 50, 45 and 50 years' imprisonment, respectively.[1121] Instead of reflecting the disparity in culpability between Sesay and other SCSL accused, the Trial Chamber's sentence

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para. 254.

[1118] Sentencing Judgment, Separate Concurring and Partially Dissenting Option of Hon. Justice Benjamin Mutanga Itoe ('Separate Opinion of Justice Itoe'), paras. 86 and 88.

[1119] Annex I.

[1120] *AFRC* Sentencing Judgment, paras. 51, 91, and 105.

[1121] *AFRC* Sentencing Judgment, Disposition.

reversed it.

362. The culpability of the AFRC accused far outweighs that of Sesay, particularly given their demonstrations of mutilation, orders to kill young girls and implementation of a system where women could be taken like books in a library. Not only did they fail to punish or prevent attacks on international troops, the accused directly ordered and participated in the murder of unarmed ECOMOG soldiers. It is submitted that the form and degree of Sesay's participation in the crimes is significantly less than that of the AFRC Defendants.

363. Similarly, the Appellant notes that the co-Accused Morris Kallon was convicted of direct participation in the most serious crimes charged, including: "direct involvement" in killing of civilians, which "transformed this brutal policy into reality";[1122] responsibility for mounting ambushes of ECOMOG troops;[1123] bringing child soldiers for training,[1124] being actively engaged in the abduction of children for training as soldiers,[1125] using child soldiers to attack UNAMSIL troops;[1126] endorsing and encouraging rape of civilians by his troops;[1127] controlling fighters who enslaved civilians.[1128] Despite directly participating in the most serious crimes,[1129] Kallon's sentence was significantly less than Sesay's.

364. Unlike the accused in Rwanda, Sesay clearly did not directly participate in any genocidal activities, nor did he order the mass murder or rape of civilians, which is a hallmark of the highest-level Rwandan accused. Even the worst offenders at the ICTY have received significantly lower sentences than Sesay. This includes collaborators at the highest levels of the JCE to establish a greater Serbia, who were not only aware of the enterprise, but planned, organized and then directed the actual criminal acts at the local level. The only one of these accused to receive a life sentence engaged in sustained, repeated, daily attacks that specifically targeted civilians for a period of two years. Such circumstances are wholly incomparable to Sesay's.

[1122] Trial Judgment, para. 2006.
[1123] *Ibid.* para. 2094.
[1124] *Ibid.* para. 2095.
[1125] *Ibid.* para. 2096.
[1126] *Ibid.* para. 2232.
[1127] *Ibid.* para. 2099.
[1128] *Ibid.* para. 2146.
[1129] *Inter alia* ordering, directing and participated in numerous attacks on UNAMSIL and kidnapping of multiple UNAMSIL peacekeepers, assaulting peacekeepers, ambushing UNAMSIL commanders and attacking a UNAMSIL convoy. Trial Judgment, paras. 2242, 2248, 2249, 2252, 2255, and 2258.

Sentences in relation to convictions for Counts 15 and 17 (UNAMSIL)

365. The sentences in relation to Count 15 and 17 are manifestly excessive and fail to represent Sesay's minimal culpability. Sesay was not present at and did not order, instigate, encourage or aid and abet the attacks. The crimes were planned and perpetrated by others in the JCE, and they were found liable for the attacks under both Article 6(1) and Article 6(3) whilst Sesay was only found liable under Article 6(3).

366. Kallon was found responsible under Article 6(1) and 6(3). He was both *de jure* and *de facto* third-in-command of the RUF, but was also bypassing Sesay and taking orders directly from Foday Sankoh.[1130] Kallon ordered, directed and participated in numerous attacks on UNAMSIL and kidnaps of multiple UNAMSIL peaeekeepers, including assaulting peacekeepers, ambushing UNAMSIL commanders and attacking a UNAMSIL eonvoy,[1131] as well as using child soldiers to attack UNAMSIL.[1132] Despite his direct involvemcnt in repeated attacks on UNAMSIL, Kallon's sentence was 11 years less than Sesay's. Despite lack of direct participation or even coordination, Sesay's sentence is in effect a sentenee for direct commission, especially when compared with Kallon's.[1133] Moreover, a sentence of 51 years for an offence under Articlc 6(3) is manifestly exeessive and disproportionatc when compared to other sentences under the same mode of liability. Only two ICTY convictions under 7(3) have led to sentences of over ten years – *Krnojelac* (15 years) and *Obrenovic*, (17 years) – one third of Sesay's sentence for a single count.

367. The Defence therefore submits that Sesay's relative culpability as neither architect nor direct perpetrator of the crime was of the lowest level. The Trial Chamber erred in passing a sentence that is manifestly excessive whcn compared to sentences passed for crimes with graver consequences. Even without regard to Sesay's culpability relative to Kallon's, the sentences are manifestly excessive when compared to the sentences Sesay received for other crimes involving more victims, more violence and with a longer duration.

368. The crimes against UNAMSIL personnel were limited in scope and duration, with four deaths. The remainder of the violence was mild (in the context of intcrnational crimes) and thereafter pcriods of detention. Nonetheless Sesay's sentence for these attacks was only one

[1130] *Ibid*. paras. 2286 and 2288.
[1131] *Ibid*. paras. 2242, 2248, 2249, 2252, 2255, and 2258.
[1132] *Ibid*. para. 2232.
[1133] *Ibid*. paras. 2286 and 2288.

year less than the 52 year received for the crime of acts of terror against a civilian population. Those acts involved hundreds of victims over an extended period with much greater violence found. Similarly, this sentence was one year more than the sentences handed for the crimes of mutilation, enslavement and child conscription, all which involved far more victims and violence and took place over a far greater period of time.

369. The sentence of 51 years for attacks on UNAMSIL should be reduced to reflect both Sesay's minimal culpability and the greater gravity of other crimes for which he was convicted.

Sentences in respect of convictions for Count 12 (Child Soldiers)

370. The Defence further submit that the sentence in relation to Count 12 is manifestly excessive. Sesay was found to have been responsible under Article 6(1) for planning the conscription of child soldiers, and was sentenced to 50 years on this single count. This was a manifest error of law.

371. The Trial Chamber found that conscription "was conducted on a large scale and in an organised fashion"[1134] through "a well-run system of training bases";[1135] that there was documentary evidence of orders issued by Bockarie and other senior RUF commanders regarding these bases[1136] and that recruitment of child soldiers was "an entrenched and institutionalised practice".[1137] Sesay's role therein was very limited in comparison with that of other RUF members. The system clearly pre-dated Sesay attaining any level of influence within the RUF, and was firmly established by the time he had attained any sort of leadership role. The Trial Chamber made no finding as to whether Sesay's subsequent involvement in the system either significantly altered or enhanced it in a way such that this new system of conscription would not have arisen without his involvement. This was a manifest error of law.

372. Given the sentence of 50 years, Sesay was found to have the highest level of culpability for planning the conscription. However, given the findings of the court and that the system of conscription predated the sole finding of planning by seven years, the Defence submit that the Trial Chamber erred in imposing a sentence that found Sesay to have the highest level of

[1134] Trial Judgment, para. 2223.
[1135] *Ibid.* para. 2224.
[1136] *Ibid.*
[1137] *Ibid.* para. 1621.

responsibility for planning an 'entrenched and institutionalised' system.

"double counting" of the mens rea requirements

373. The Trial Chamber stated that "where a particular act amounting to criminal conduct within the jurisdiction of the Court, such as murder or rape as a crime against humanity has also, because of the additional element of intent necessary for a conviction for acts of terrorism or collective punishments as a war crime, amounted to a crime as alleged in Counts 1 and 2 of the Indictment, for purposes of sentencing we will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence."[1138] This decision amounts to the double counting of the *mens rea* requirements for one set of crimes so as to permit the conviction and sentencing of the Accused on counts that were never pleaded.

374. In assessing gravity, the court must have regard to the role of the accused in the crime; the impact of the crimes on the victims; the scale of the crime; and the form and degree of participation in the crime. There is no legal precedent for adopting the *mens rea* for a crime not pleaded and using that to enhance the gravity of criminal conduct on a separate conviction. This was a manifest error of law.

Failure to give adequate weight to significant mitigation

375. The Trial Chamber failed to give adequate weight to the Appellant's mitigating circumstances, in particular the role that Sesay placed in disarming the RUF and bringing the movement through the peace process successfully.

Comparison of 'Considerable' Contribution to the Peace Process.

376. The Trial Chamber found that "the Defence have proved mitigating circumstances on the basis of a balance of probabilities in relation to Sesay's real and meaningful contribution to the peace process in Sierra Leone following his appointment as interim leader of the RUF".[1139] Despite this finding, the Trial Chamber failed to give any or any noticeable weight to this significantly mitigating factor as it imposed a custodial sentence which would see the Appellant imprisoned until nearing this 90th birthday. This was a manifest error of law.

377. The submission of the Defence is bolstered by the Separate Concurring and Partially

[1138] Sentencing Judgment, para. 106.

Dissenting Opinion of Justice Benjamin Mutanga Itoe, who held as follows:

The Majority Judgment in this regard very conspicuously fails to make mention of whether this mitigating circumstance which the Chamber found to be proved, on the balance of probabilities, entitles Mr. Sesay to take benefit of mitigating circumstances with a view to reducing the sentences which we have to impose on him.

Since I consider this silence to which I made no contribution, on the part of the Chamber Majority to make a pronouncement on this issue, as a rejection of Sesay's plea for mitigation which I find very deserving and well founded on this ground, I would like to dissent from that decision rejecting or refusing to grant mitigating circumstances in his favour after the Chamber had unanimously found, that Sesay's defence have proved mitigating circumstance on the 'Facilitation of the Peace and Reconciliation Process' ground in question.[1140]

378. The Trial Chamber's decision does not take into seminal case-law on post-conflict conduct as developed at the ICTY. This was a manifest error of law. Subsequent conduct is not only relevant if it alleviates the suffering of victims[1141] but if there is "a considerable contribution to peace in the region",[1142] although more than mere agreement to cease-fire is required.[1143] The leading case on the subject is *Plavsic*,[1144] and the Trial Chamber's should have recognised the tremendous similarities between the circumstances in that case and the unchallenged evidence of Sesay's role in bringing peace to Sierra Leone.[1145]

379. The Defence therefore submits that the Trial Chamber in its Majority Judgment, erred in law in failing to give any or adequate weight to the Sesay's role in bringing the RUF successfully through the peace process in the face of considerable internal opposition, a mitigating factor found to exist by the Trial Chamber.

Reliance upon convictions under Counts 15 and 17

380. The Trial Chamber failed to accord significant mitigation to this conduct on the basis that it did not accept "Sesay's explanation of his reasons for failing to prevent or punish the

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[1139] Sentencing Judgment, para. 228

[1140] Separate Opinion of Justice Itoe, paras. 60-61. See also paras. 62-69.

[1141] *Prosecutor v Milan Babic*, Appeal Judgment, 18 July 2005, IT-03-72-A ('Babic Appeal Judgment'), para. 59.

[1142] *Babic* Appeal Judgment, para. 56.

[1143] See *Prosecutor v Miodrag Jokic*, Appeal Judgment, 30 August 2005, IT-01-42/1-A ('*Jokic* Appeal Judgment'), para. 52, where the accused's contribution to peace was limited to agreeing to a cease-fire after he participated in an attack on civilians.

[1144] *Prosecutor v Biljana Plavsic*, Sentencing Judgment, 27 February 2003, IT-00-39&40/1-S ('*Plavsic* Sentencing Judgment').

[1145] See Annex I: Reduction of Sentences for JCE 3 Liability and the Accused's Relative Culpability.

perpetrators of the attacks against the UNAMSIL personnel."[1146] In disregarding this obviously 'considerable contribution' the Trial Chamber errs in confusing *potential* contribution to peace with *actual* contribution. The fact that Sesay could have contributed *more* to the peace process does not mean he failed to meet the "considerable contribution" standard laid down in *Plavsic*.

381. Moreover, Trial Chamber failed to reconcile its assessment of the UNAMSIL incident with the statement of Alpha Konaré, the UN Special Representative to the Secretary-General in Sierra Leone immediately before the UNAMSIL attack (and General Opande and Hassan, who testified on his behalf) and for the following three years, in relation to the peace process:

> My understanding of Sesay from having worked with him was that he was trustworthy and genuine in wanting peace to return to Sierra Leone. Sesay worked closely with General Opande, Force Commander of UNAMSIL, during this time and I am aware that General Opande held Sesay in high regard. Later, in 2003, Sesay would assist the Government of Sierra Leone by informing them of rumours of a coup attempt coming out of the army.[1147] [emphasis added]

382. The Trial Chamber failed to refer to this important factor. It did not explain how it managed to depart from this view. This is an error of law - especially given its characterisation of the incident as an "affront" to the peace process.[1148] It is submitted that findings of guilt with regards to the UNAMSIL killings did not negate Sesay's actual contribution to the peace process. Every accused who pleads such mitigation does so because he or she has been convicted. Such a finding of guilt carries with it the implication that the accused somehow impeded the peace process. The legal standard is not whether the accused was perfect in his or her contributions to peace, but whether or not the accused made a 'considerable contribution'.

Failure to give any weight to Sesay's reputation as a moderate

383. Numerous witnesses provided evidence of Sesay's reputation as a moderate and the opposition he faced from other senior RUF commanders. This material is wholly canvassed below. The evidence included in those grounds is conclusive proof that Sesay was a moderate in the RUF. This should have been taken into account in assessing his character and prospects

[1146] Sentencing Judgment, para. 228.
[1147] Sesay Sentencing Brief, Annex B.
[1148] Trial Judgment, para. 228.

for rehabilitation.[1149]

Sesay's protection of civilians during the conflict

384. The Trial Chamber ought to have given significant weight to the positive evidence of Sesay's character and acts during the war. This is supported by long-standing practice in the ICTY. In *Cesic*, the ICTY cited numerous judgments of the Tribunal to support this proposition:

> The Trial Chamber notes that the jurisprudence of this Tribunal accepts that saving the life or reducing the suffering of victims may mitigate punishment. In the *Sikirica* Judgement, the Trial Chamber found that the alleviation of the appalling conditions of detainees in the Keraterm Camp [in Prijedor] weighed heavily in favour of a substantial reduction in sentence. In the *Krnojelac* Judgement, the Trial Chamber held that the accused's attempts to secure more food for the detainees, even though it had little practical effect, mitigated his criminality. The Trial Chamber also notes that the *Banovic* Judgement held that assisting some individual detainees in the Keraterm camp mitigated criminality.[1150]

385. In *Krstic*, a sentence for convicted of aiding and abetting genocide was reduced to 35 years imprisonment in part because the Appeals Chamber found that the accused's orders to treat civilians humanely – even as he aided and abetted genocide and forcibly removed them from a UN safe haven – was an important mitigating factor.[1151] In *Obrenovic*, the accused persuaded his superiors to open a corridor for Muslim refugees fleeing Serbian-held territory, allowing them to reach the safety of Muslim territory - "an important mitigating factor".[1152] In *Brdjanin*, the accused contributed to a decision to shelter Bosnian Muslims while ethnic tensions were inflamed was a mitigating factor.[1153] Protection and assistance to civilians is a mitigating factor even if the accused is simultaneously responsible for other crimes against civilians. The Chamber erred in law in failing to take this factor into account.

Evidence from prosecution and defence witnesses adduced during trial

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[1149] See *Prosecutor v Delalic et al.*, Appeals Judgment, 20 February 2001, IT-96-21-A, para. 788: "The Trial Chambers of the Tribunal and the ICTR have consistently taken evidence as to character into account in imposing sentence"; and, *Prosecutor v Blaskic*, Trial Judgment, 3 March 2000, IT-95-14-T, para. 780: "The character traits are not so much examined in order to understand the reasons for the crime but more to assess the possibility of rehabilitating the accused. High moral standards are also indicative of the accused's character."

[1150] See *Prosecutor v Ranko Cesic*, Sentencing Judgment, 11 March 2004, IT-95-10/1-S, para. 78. See also *Prosecutor v Miroslav Bralo*, Sentencing Judgment, 7 December 2005, IT-95-17-S, para. 59.

[1151] *Krstic* Appeal Judgment, para. 273.

[1152] *Prosecutor v Dragan Obrenovic*, Sentencing Judgment, 10 December 2003, IT-02-60/2-S ('*Obrenovic* Sentencing Judgment'), paras. 89, 134.

[1153] *Prosecutor v Radoslav Brdjanin*, Trial Judgment, 1 September 2004, IT-99-36-T ('*Brdjanin* Trial Judgment'), para. 1119.

386. In the course of the RUF trial, both Prosecution and Defence witnesses gave evidence concerning Sesay's concern for and protection of civilians. In respect of these Defence witnesses, the Chamber held that they were not credible in relation to their evidence of the absence of crimes.[1154] This was an erroneous assessment - see Grounds against Conviction.

387. The Defence submits that the Chamber erred in failing to accord any or adequate weight to this evidence. It was relevant and probative and showed, even if the evidence was not assessed as reliable, that Sesay had significant civilian support. Logic dictated that this was the result of the good behaviour or kind deeds.[1155]

388. The majority of witnesses hailing from Kailahun were civilians with no military or ideological links to the RUF, aside from living in occupied territory. The witnesses from Bombali and Tonkolili districts were religious authorities, ex-CDF combatants, traders and housewives. The evidence of Sesay's protection of civilians was corroborated by evidence coming from Prosecution witnesses. Several Prosecution witnesses spoke of Sesay's care for the civilian communities in his area of responsibility.[1156]

389. The Trial Chamber erred in not giving any or adequate weight to the positive evidence of Sesay's character and acts during the conduct of the war, as described by Prosecution witnesses - found credible otherwise.

Statements and other evidence adduced.

390. The Sesay Defence annexed to its Sentencing Brief statements of mitigation which referred to Sesay's care and protection of civilians in Bombali and Tonkolili districts during the conduct of the war.[1157] The Trial Chamber erred in dismissing the evidence that related to Bombali and Tonkolili from late 1998. These witnesses were not rebutting allegations of indicted crimes but giving evidence in relation to civilian life in areas under Sesay's command post December 1998. The Chamber had made no finding that these were not relevant: 18 had not been considered previously by the Chamber – see Ground 20 (appeal against conviction).It was a manifest error of law not to have regard to these and other witness from the trial who had not been considered as relevant to the charges. [1158]

[1154] Trial Judgment, paras. 530-532
[1155] Annex B: Samples nf support for the Defence Case
[1156] Annex B: Samples of support for the Defenee Case
[1157] Annex B: Samples of support for the Defence Case
[1158] *Prosecutor v Miroslav Deronjic*, Appeal Judgment, 20 July 2005, IT-02-61-A, para. 8. See also *Prosecutor*

391. The Trial Chamber refused to admit into evidence numerous statements of witnesses regarding quality of life for civilians living under RUF control and the care and protection shown them by Sesay. This refusal was solely because of their repetitious nature.[1159] The evidence in these statements corroborated the Accused's testimony regarding his care and protection of civilians during the December 1998, as he moved from Kono to Makeni. In particular, they corroborated testimony that civilians returned from the bush to their towns and villages after ECOMOG retreated and the RUF took control. These towns and villages included: Koakoyima, Koidu, Bumpe, Masingbi, Matototoka, Magburaka Makoni Line, Makoni Junction, Mamori and Makeni.[1160] It corroborated much of the trial testimony.[1161]

392. The Defence submit that the Trial Chamber erred in failing to acknowledge the contents of this volume of statements at the sentencing stage, even after expressly stating their content describing Sesay's care for civilians was repetitive.

393. The parallels between the established case law and Sesay's treatment are striking. As with General Krstic, Sesay gave orders against raping, looting or otherwise harming civilians. As with others before the ICTY, Sesay protected civilians at various times throughout the conflict. In fact, the evidence is that Sesay's assistance to and protection of civilians throughout the conflict was ongoing. Even where it was isolated, and even where the Trial Chamber may find that the accused committed crimes against civilians at the same time, the protection warrants mitigation, as in *Brdjanin*. The Trial Chamber erred in failing to give any or sufficient weight to these factors, either individually or as a whole.

Coercive treatment of Sesay by the Prosecution as mitigation

394. The Trial Chamber failed to accord any or appropriate weight to the violations of Sesay's rights when he was first incarcerated. The Trial Chamber recognised that violations had occurred, but misapprehended their scope and nature and erred in deciding that an appropriate remedy had already been granted. While the Trial Chamber addressed its mind to whether these interviews, later excluded through Defence Application, constituted substantial

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v Nikolic-Dragan, Appeal Judgment, 4 February 2005, IT-94-2-A, paras. 9 and 27.

[1159] Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92*bis*, 15 May 2008, paras. 47 – 48.

[1160] Transcript/Sesay, 17 May 2007, p. 88, lines 26 – 29; p. 91, lines 16 – 18, 21 – 26; and, p. 95, lines 2 – 5.

[1161] Annex B: Samples of support for the Defence Case

cooperation with the Prosecution[1162], the Chamber erred by failing to make a finding on whether Mr. Sesay's 6 week period of being interviewed under coercive conditions by the Proseeution warranted a reduction in his sentence.

395. The Trial Chamber held that exclusion of the evidence in question was a sufficient remedy, but this remedy was applied only to the eonsideration of whether Sesay substantially eooperated with thc Proseeution.[1163] Whether or not he made any admissions and whether those admissions were expunged, a separate violation of Sesay's rights arose from the circumstances of the detention and questioning. Violations of an Accused's rights are a factor in mitigation of any future sentence. Leading cases of the ICTR have shown that Aecused who suffered similar violations of their rights have received reduced sentences.[1164]

396. The Defence submit that the treatment that Mr. Sesay received at the hands of agents of the Court – found to be highly procedurally improper – ought to have been found to be a substantially mitigating factor and warranting a reduction in his sentence. Given the ongoing nature of the violations, as in *Barayagwiza* and *Semanza*, and that the violations of Sesay's rights left him in a position where he needed urgent psychiatric care, the Trial Chamber erred in failing to consider whether the Prosecution's treatment of Mr. Sesay was a mitigating factor and consequently in failing to aeeord it any weight

Likelihood of serving sentence abroad as a mitigating factor

397. The Trial Chamber held that, while it "seems more likely than not at this stage that the convicted person in this trial will serve sentences outside of Sierra Leone", it was unable to speculate. As a result, it did not give any weight to this factor in consideration of sentences of any of the convicted persons. The Trial Chamber agreed, in general terms, that sentences served abroad "would normally amount to a factor in mitigation". The Defence submit that it proved *on a balance of probabilities* that the Appellant will serve his sentence abroad. This submission is buttressed by the Registry's submissions that therc is no suitable placc of detention in Sierra Leonc, that there are no plans to build such a place, that the Government of Sierra Leone has requested that the convicted persons serve their sentences abroad, that the Registry has concluded agreements with 4 countries to allow convicted persons to serve their sentences abroad and is seeking to conelude further agreements, and finally, from the

[1162] Sentencing Judgment, paras. 222-224.
[1163] Sentencing Judgment, para. 222.
[1164] Annex I.

Chamber's own finding that it is "more likely than not" that the Appellant will serve his sentence abroad.

398. In *Mrda*, the ICTY held that serving sentenee in a country separate from that of one's family and children is commonplace, but must be taken into account by the Trial Chamber at sentencing.[1165] The Trial Chamber erred by failing to make a specific order or provision regarding the likelihood that Sesay would serve his sentence abroad. This determination ought to have been made at the time of issuing the sentence, or at least granted the accused the possibility to revisit the sentence once an agreement requiring the sentence to be served abroad was finalised. The Trial Chamber acknowledged that this would ordinarily lead to a reduction in sentence, but avoided dealing with the issue by suggesting that there was no finalized agreement for the accused to serve sentence abroad.

399. The Defence submit that there will be no option except for Sesay to serve his sentence abroad, and the Trial Chamber cannot abdicate its responsibility to account for this factor by suggesting otherwise. This was a manifest error of law.

400. The Trial Chamber avoided a determination on the issue even while admitting it is likely to occur and would therefore benefit the Appellant, thereby making a discernible error. The Defence submit that the Appeals Chamber should reduce Sesay's sentence definitively to account for the loeation of his ineareeration.

Failure to give any weight to Sesay's statement of remorse

401. The Trial Chamber erred in failing to give any weight to Sesay's statement of remorse. The ICTY has stated that such testimony may properly be applied to the question of an Accused's remorse.[1166] Sesay clearly expressed his remorse for the suffering of victims during the war. That it was not expansive enough for the Trial Chamber's liking does not negate its sincerity. In *Brdjanin*, the ICTY made it clear that it is sufficient for the Aceused to extend his sympathy for victims of the conflict.[1167] Moreover this remorse was buttressed by substantial peace-building, "humanitarian orders",[1168] and other efforts to atone,[1169] and even the

[1165] *Prosecutor v Darko Mrda*, Trial Judgment, 31 March 2004, IT-02-59-S, paras. 109 and 126.
[1166] *Jokic* Appeals Judgment, para. 82.
[1167] *Prosecutor v Brdjanin*, Trial Judgment, 1 September 2004, IT-99-36-T, para. 1139.
[1168] *Blaskic* Appeals Judgment, para. 705.
[1169] *Bralo* Sentencing Judgment, paras. 69 and 71.

Accused's testimony during the proceedings.[1170] The Trial Chamber erred in failing to consider Sesay's cooperation and other acts, including his orders against rape, looting and harassing civilians, and his peace-building efforts, as further evidence of his remorse.

Dated 15th June 2009

Wayne Jordash
Sareta Ashraph
Jared Kneitel

[1170] *Jokic* Appeals Judgment, para. 82.

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Effective, Efficient, and Fair? An Enquiry into the Investigative Practices of the Office of the Prosecutor at the Special Court for Sierra Leone, by Penelope Van Tuyl, War Crimes Studies Center University of California, Berkeley, September 2008

LIST OF ANNEXES

A: 1. Allegations for which the Defence had *no* notice, and which were the basis of positive findings against the Appellant in the Judgment.
2. Allegations for which the Defence had *insufficient* notice, and which were the basis of positive findings against the Appellant in the Judgment.
3. Notice of Allegations through the Indictments and Prosecution Pre-Trial Briefs
Annexes A1 and A2 have been filed confidentially

B Document showing corroboration of Sesay's testimony by both Prosecution and Defence witnesses
This has been filed confidentially

C: Examples of indicia of unreliability in relation to
1. TF1-012,
2. TF1-093,
3. TF1-108,
4. TF1-141,
5. TF1-263,
6. TF1-330,
7 .TF1-361,
8. TF1-362,
9. TF1-366.
This has been filed confidentially

D [removed]

E Selected Improper Findings as they Relate Sesay's Purported Planning of Euslavement at Cyborg Pit (Grounds 31-32)

F Table of Evidence demonstratiug that AFRC departed to Koiuadugu immediately prior to the ECOMOG capture of Koidu. (Annex to Ground 33)

G Selected Improper Findings as they Relate Sesay's Purported Planning of Enslavement in Kono District (Ground 35)

H Radio messages from Exhibit 212 demonstrating Sesay's lack of de facto command and control during the time of the May 2000 attacks on UNAMSIL (Ground 44)
Evidence showing that Sankoh's role as Leader of the RUF involved hands on miero-management of day-to-day military affairs. (Ground 44)

I Reduction of Sentences for JCE 3 Liability and the Accused's Relative Culpability

J Exhibit 28 (Grounds 27 -32)

Annex A3: Notice of Allegations through the Indictments and Prosecution Pre-Trial Briefs

This table sets out the notice given of allegations in relation to Bo, Kenema, Kailahun and Kono Districts and in relations to allegations concerning child soldiers (Count 12) and the attacks on the UN peacekeepers (Counts 15 and 17). TF1 number typed in bold indicate that the witness gave evidence. It does not however mean that the allegations as set out below are the same or even similar to the evidence adduced through the witness in court.

Pre-Trial Notice					
Indictment		**Pre-trial brief (27/02/04)**	**Supplemental pre-trial brief (01/03/04)**	**TFI**	**Supplement Pre-Trial Brief – Annex A Summary**
Bo					
Unlawful killings					
46. Between about 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembehun, Gerihun and Mamboma unlawfully killing an unknown number of civilians;	*General*				
	69	There were several instances of AFRC/RUF executing civilians perceived to be working or sympathising with the CDF throughout the District in the Junta time.			
	70	In approximately June 1997, there were attacks on Sembehun, Tikonko, Mamboma, Gerihun and Telu	19. In June 1997, AFRC/ RUF forces attacked Sembehun, Tikonko, Mamboma, Gerihun and Telu		
	71	In these attacks, the AFRC/RUF intentionally killed many civilians that were remaining in the villages. Victims were usually by shot to death.			
	Gerihun				
	71	In an attack on Gerihun, the father of the former Vice President Demby was killed by AFRC/RUF forces.	20. SLA/Junta forces killed at least 5 civilians on an attack on Gerihun	005	SLA/junta forces attacked Gerihun. W saw Alhaji Sidikie fatally wounded and fled and returned to see 4 bodies incl. that of Sidikie and Chief Demby. (p.1915)
				006	About 2 months after the coup, W was in Gerihun when he saw a soldier in combats enter and shoot his (cv) friend twice, killing him. W fled and on his return saw the bodies of 3 men who had been shot and heard that Chief Demby had been shot. (p.1916)
				053	On 26 June 1997, W saw men in uniform enter Chief Demby's house and hear a shot. He saw 3 soldiers coming out and later saw 5 corpses of those killed by the soldiers. W identified AB Kamara, AF Kamara and Mohammed as those who attacked. (p. 1916)
				054	In July 1997, W was in Chief Demby's house when soldiers, including Boisy Palmer, AF Kamara, AB Kamara and Bo Yagah entered. W saw soldiers shoot Chief Demby twice and were then ordered to stab him. W heard a gunshot and heard a shot from the caretaker and fled. W later found the caretaker dead. On his return he was told of 5 deaths and saw 5 bodies.
	Tikonko				
	71	In one instance, an entire family of 11 people was shot and killed in a house in Tikonko by AFRC/RUF	20. Bockarie participated on the attack on Tikonko where SLA soldiers in combat killed at least 19 civilians.	001	After the coup, W saw soldiers in uniform attack Tikonko. The following day, he saw approx 12 corpses,

	forces.			including 3 Kamajors near the junction. (p. 1918)
			003	In July 1997, soldiers in combat entered W's house where they questioned his wife and 2 other women. W heard them threaten to kill Hawa Momoh and heard 2 shots. Later, he saw two of women dead. He also saw other bodies in the village including a woman who was burnt. (p. 1917)
			004	W was at Tikonko junction when soldiers came. He saw them kill 5 civilians and 3 Kamajors. After the attack he went to his neighbour's house and found 11 dead bodies. A woman who had been eviscerated said soldiers had killed them. W saw more bodies of people killed by soldiers. 19 people would later be buried in a mass grave. (p. 1918)
			047	W saw armed men come to Tikonko led by Bockarie. W heard shooting and later found 11 people dead in his house. 11 people were buried in a mass grave. (p. 1919)
			048	W fled when Tikonko was attacked and returned to find her brother fatally wounded. W saw two women Hawa Momoh and Hawa Santigue dead. (p.1917-8)
			050	About a month after the coup, W saw 3 soldiers in combat enter his house and saw soldiers kill Mama Momoh and Mama Mansaray. (p. 1917)
	Sembehun			
		20. Bockarie led the attack against Sembehun where at least 8 civilians were killed by those describing themselves as the Peoples' Army.	008	W saw Bockarie enter Sembehun after the coup. W heard them firing. When he returned to town, W saw 4 dead bodies and was told of other killings. His cousin was seriously wounded. (p. 1922)
			009	W saw Bockarie entering Sembehun and Bockarie introduced himself to the W. W fled. In the bush a man in plain clothes shot W's wife and W recognised the man as part of Bockarie's group. W's brother was also killed (p. 1921)
			049	In 1997, W heard the People's Army was coming. He saw men in combat and half combat with red ties on their heads entering his son's house looking for W. He later found his son shot. He heard the attack was led by Mosquito. (p. 1921)
			051	W was in her house when attackers entered. Her son was shot and killed. She heard the group was led by Mosquito. (p. 1921)
	Mamboma			
		20. SLA soldiers killed at least 3 civilians during the attack on Mamboma.	007	W saw 200 men in combat entering Mamboma. W sew soldiers shooting his mother and 2 other civilians. (p.1922)
	Telu			
		20. Bockarie was present in Telu and gave orders to his soldiers before the attack in which several civilians were killed by the AFRC/RUF.	010	After the attack on Telu, W saw dead bodies of civilians. He heard that Mosquito said that 'the Kamajor base in Telu must be destroyed'. (p.1920)
			C11	6 mths after the coup, Telu was attacked. W saw a woman shot dead and saw the corpse of another civilian. He heard others were killed. (p.1920)

35 o.f

				054	After the coup in 1991, W was hiding in the bush and heard soldiers saying that anyone they met in Telu would be killed. He heard shooting and heard the soldiers saying they had killed all the 'Kamajors'. He saw one dead body and heard 2 more were killed. There was a 2nd attack 3 weeks later when soldiers in combat entered. W saw 5 dead. (p. 1919)
				107	Telu was attacked in July. W's father was shot in the hand and hid but was discovered and killed. (p.1920)
	Linkage				
			21. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF not limited to any one District, which engaged in widespread killing of civilians as part of a campaign of terror and collective punishment		
			b. that after the AFRC/RUF came to power in May 1997 the AFRC/RUF warned civilians that they would not tolerate the harbouring of Kamajors;		
			c. that Bo District was under the control of the CDF/ Kamajors for large periods of the conflict		
			d. that the Kamajors were present in Bo District during June 1997		
			e. that Bockarie, was present in Bo district and directly controlled at least 3 of the attacks on Bo district villages		
			f. Bockarie was heard to say that the Kamajor base in Telu must be destroyed.	010	After the attack on Telu, W saw dead bodies of civilians. He heard that Mosquito said that 'the Kamajor base in Telu must be destroyed'. (p.1920)
			g. that during the junta period Morris Kallon was present in Bo District, including at the AFRC/RUF base at Koribondo and reported directly to Bockarie.		
			h. prior to the attack on Tikonko the AFRC/RUF announce over the radio that they were going to attack Tikonko		
			i. that the civilians killed were not Kamajors		
			j. that the civilians killed included the Paramount Chief of Bo District		See above
			k. any matters arising from the evidence disclosed.		
			22. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position as BGC of the RUF, Deputy Army Chief of Staff of AFRC/RUF Junta and a member of the Supreme Council		
			b. his communication with Bockarie in the field		
			c. he was responsible for sending ammunition to RUF in the field		
			d. any other matters arising from the evidence		
			Article 6.3 of Sesay can be reasonably inferred from:		
			a. the announced AFRC position with respect to the harbouring of Kamajors		
			b. his position of command and authority within the AFRC/RUF and the fact that his subordinates engaged in the killing of civilians		
			c. his subordinates were in regular communication with the		

			AFRC/RUF leadership during the commission of these crimes		
			d. one of the AFRC/RUF soldiers leading the attacks was a subordinate specifically identifiable to Sesay		
			e. the presence of Bockarie, the RUF BFC and troops in Bo district in June 1997		
			f. During the entire junta period Sesay was in regular communication with Bockarie		
			g. during the junta Sesay was in regular contact with Bockarie		
			h. During the junta period Sesay provided logistical support from Freetown to Bockarie in the field		
			i. any matters arising from the evidence disclosed		
Pleaga					
78. Between 1 June 1997 and 30 June 1997 AFRC/RUF forces looted and burnt an unknown number of civilian houses in Telu, Sembehun, Mamboma and Tikonko;	72	Also in most of the attacks the AFRC/RUF looted and burned houses in the villages.	248a. Bockarie gave orders to his soldiers prior to and was present on the attack on Telu that resulted in the burning of about 50 civilian houses.	010	W saw soldiers looting and burning when they attacked Telu. (p.1920)
				011	W saw some houses burnt in the attack 6 mths after the coup. There were other attacks and in those attacks, properties were looted. (p.1920)
				054	W saw properties looted on the attack on Telu in 1997 after the coup. 3 weeks later there was a 2nd acttack and W saw soldiers leaving carrying looted property and launching RPGs on to thatched huts, setting them alight (p.1919)
				107	W saw a house burning the day of the attack on Telu
			248b. Bockarie led the attack on Sembehun in which soldiers describing themselves as People's Army looted items on trucks and burned at least 47 houses	**008**	W saw that about 47 houses were burnt in the attack on Sembehun. (p.1922)
				009	On his return to Sembehun after the attack, W saw burnt houses. (p. 1921-2)
				049	W saw soldiers looting property from houses. (p. 1921)
			248c. At least 26 civilian houses were burned in Mamboma and looted goods were placed in vehicles	007	W saw soldiers burning 26 houses. (p.1922)
			248d. Bockarie participated in the attack on Tikonko where items were looted and civilian houses were burned	003	W saw that many houses were burnt in Tikonko (p. 1917)
				004	W saw soldiers with looted items. (p. 1918)
				047	W saw a lot of houses burnt (p. 1919)
				048	During the attack, personal property was stolen and houses had been burnt down. (p. 1917-8)
			248e. Morris Kallon looted bank property		
	Linkage				
			249. Article 6.1 responsibility can be reasonably inferred from:		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, in which food and other goods were taken from civilians and in which civilian dwellings were burned		
			b. After the AFRC/RUF came to power in may 1997, the AFRC warned the civilians that they would not tolerate the harbouring of the Kamajors.		
			c. Bo district was under control of the CDF/Kamajors for large periods of the conflict		
			d. the Kamajors were present in Bo district in June 1997		
			e. Bockarie was present in Bo district and directly controlled at least 3 of the attacks on Bo District villages		

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			f. Bockarie was heard to say that the Kamajors in Telu must be destroyed	010	After the attack on Telu, W saw dead bodies of civilians. He heard that Mosquito said that 'the Kamajor base in Telu must be destroyed'. (p.1920)
			g. in 1997 and 1998 Morris Kallon was based in Bo and reporting directly to Bockarie		
			h. prior to the attack on Tikonko the AFRC/RUF announced over the radio that they were going to attack Tikonko		
			i any matters arising from the evidence disclosed		
			250. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. The overall conduct of the AFRC/RUF, not limited to any one District, in which food and other goods were taken from civilians and in which civilian dwellings were burnt		
			b. his position of command and responsibility within the AFRC/RUF hierarchy		
			c. any other matters arising from the evidence disclosed showing specific participation in the JCE		
			253. Article 6.3 of Sesay can be reasonably inferred from:		
			a. The overall conduct of the AFRC/RUF, not limited to any one District, in which food and other goods were taken from civilians and in which civilian dwellings were burnt		
			b. his position of authority and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in looting and burning		
			c. his subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes		
			d any matters arising from the evidence disclosed.		
Kenema					
Unlawful killings					
47. Between about 25 May 1997 and about 19 February 1996, in locations including Kenema town, members of the AFRC/RUF unlawfully killed an unknown number of civilians;	*Kenema town*				
	111	Following their 2nd arrest, several community leader including a former Cabinet Minister and Town Council Chief, who were accused of supporting the CDF/Kamajors, were killed on the orders of an AFRC/RUF leader.	28b. At least 5 civilians, alleged to be CDF/Kamajor supporters, were tortured and killed on the order of Bockarie	037	W heard that BSM and others were re-arrested on the orders of Bockarie . He heard that they were later killed. (p. 1928-9)
				039	W was informed that BSM had been killed and went to the mass grave near Donwaila and saw 9 corpses and identified BSM. (p.1928)
				120	W effected the 2nd arrest of BSM and later heard that BSM and others were killed on the orders of Bockarie. (p.1923)
				121	W was present at the arrest of Andrew Quee by Bockarie. That evening W went to the Secretariat and saw wounds on Quee. He never saw Quee again. (p.1925)
				122	W heard that BSM and others were killed and saw the corpses. (p.1924)
				123	After BSM and others' 2nd arrest W heard that they were killed. (p.1924)
				125	BSM and others re-arrested in Feb 1998 and taken from the police station. W saw a soldier stab BSM on the head and heard later that all 5 of them had been

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					killed. (p.1925)
				126	When BSM and others were re-arrested, W was told they were transferred to the AFRC Brigade HQ. On Feb 8th 1998, W was told they had been killed. In March 1998 family members exhumed the remains. (p.1925-6)
				127	W was one of those first arrested with BSM and others and witnessd the beatings and was beaten himself. W was in hospital at the time of the second arrest and heard that BSM and the others had been killed. (p.1923)
				128	W heard that BSM and others had been killed by the AFRC/RUF. HE was present at the exhumation and identified BSM's remains. (p.1926)
				168	W will give evidence that BSM and others were killed in Kenema on Bockarie's orders. (p.1994)
	112	One CDF/ Kamajor supporter was beaten to death with a rubber tyre.	28b. On the order of Bockarie 1 civilian was beaten to death with strips of a rubber tyre.	127	W saw Fambuleh beaten with outer strips of tyre on the orders of Bockarie. Fambuleh later died. (p.1923)
	112	Other Kamajor supporters were shot on the spot.		124	There were skirmishes between the AFRC/RUF and the Kamajors. W saw 3 dead bodies of Kamajors and 13 others in the area of Mambu st. (p.1923)
				128	W heard one Muhalem was killed by Bockarie in Kenema. W saw Mulahem's mutilated remains. (p.1926)
	112	Civilians were also killed when AFRC/RUF forces set guns and fired indiscriminately on a main street in Kenema town, in a retaliation of a previous CDF/Kamajor attack on a AFRC/RUF camp.	28d. Civilians were killed on the main street in Kenema town by indiscriminate firing by AFRC/RUF forces.		
	112	4 civilians were executed extra-judicially at Kenema police station for allegedly participating in larcenies in the locality.	28c. Civilians were killed for allegedly stealing from other civilians.	**122**	W was present when Bunnie Wailer and 3 others accused of committing larceny and impersonating members of the junta were shot and killed at the Kenema police station by the AFRC/RUF (p.1924)
				123	W was present at the execution of Bunnie Wailer and 3 others at the Kenema police station. (p.1924)
				125	W present at the executions of Bunnie Wailer and 3 others at the Kenema police station.
		Tongo			
	113	There was widespread forced labour of hundreds of captured civilians in the Tongo diamond fields. [...]Many people died as a result of deliberate killings that were undertaken by AFRC/RUF forces to terrorise and subordinate captured civilians.	28e. Many civilians were shot while mining for diamonds for the AFRC/RUF in Cyborg pit.	031	SBUs who were around 10 yrs old with guns were brought by Bockarie and guarded Cyborg pit. They would shoot people who went there without authorization. Many people were killed when guns were fired and grenades thrown at the miners (p.1928)
				034	People who refused to mine for the AFRC/RUF were killed. Others were killed for no reasons. W saw a friend shot to death. Rebels shot at civilian mining randomly just to terrorise them into submission. (p.1927)
				035	The AFRC/RUF open fire on people mining at least 20 times. 200 people died from mine collapse and shooting. Morris Kallon was present particularly when

					civilians were killed. During 1997, W saw Kallon give an order to shoot civilians, including children. (p.1929)
				060	W says hundreds of people died when the sands collapsed and buried people in the pits. Many people were shot by armed small boys. W saw 2 corpses of people killed by rebels. (p.1926-7)
				062	Sometimes rebels shot in the general mining area. 200 civilians died in landslides caused by civilians running away. (p.1927)
				211	W will give evidence about small boys guarding Cyborg who also killed civilians mining in the pit (p.1982)
				299	AFRC/RUF would shoot people digging for diamonds at Cyborg, daily. W believes people were shot if they got tired of working. W saw them shooting more than 15 times. The RUF who were guarding did the shooting. (p.1926)
		Linkage			
	113	About the end of 1997 to around early 1998, AFRC/RUF leaders transported diamond mining proceeds out of Kenema District to Kailahun district and eventually to bordering Liberia.	29. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF not limited to any one District, which engaged in widespread killing of civilians as part of a campaign of terror and collective punishment.		
			b. the announcement of AFRC/RUF area leaders at a community meeting in Kenema that the civilians were to accept the AFRC/RUF government and that this government would "close the eyes forever" of anyone who did not cooperate		
			c. between May 1997 and February 1998 there was fighting between the AFRC/RUF and Kamajor forces in Kenema District		
			d. a number of civilians tortured and killed in Kenema District, including BS Massaquoi were prominent in the community and were perceived by the AFRC/RUF to support the Kamajors		See above
			e. civilians were killed on a main street in Kenema town when AFRC/RUF forces fired indiscriminately in retaliation for a previous CDF/Kamajor attack on a AFRC/RUF camp		
			f. the regular visits of high level AFRC/RUF commanders to Tongo field/ Cyborg mining sites	034	From August to December 1997, Bockarie would come 4 times a month to collect diamonds. W heard from others that Sesay would visit Tongo. (p.1927-8)
				035	In August 1997, Bockarie came to Tongo/Cyborg Kallon was present at the mining sites, particularly when people were killed. W often saw Sesay in Tongo collecting diamonds and heard that Gbao would visit the mines. All the big commanders resided at Labo Vamp, 30-40 yards from Cyborg (p.1929)
				045	Civilians were mining at Cyborg, especially for Bockarie. W saw Bockarie collecting diamonds. (p1929)
			g. any matters arising from the evidence disclosed.		
			30. Article 6 1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position as BGC of the RUF, the Deputy Chief of Staff of the AFRC/RUF Junta and a member of the Supreme		

			Council		
			b. his communication with Bockarie in the field		
			c. he was responsible for sending ammunition to the RUF in the field		
			d. he was a frequent visitor to the AFRC Secretariat and Bockarie, the de facto RUF commander, in Kenema town	037	Sesay was one of Bockarie's top commanders who stayed with Bockarie during the AFRC time in Kenema (p.1928-9)
				123	W saw Sesay visit Kenema town from time to time. (p.1924)
				129	Sesay in Kenema town for the arrest of TF1-129. (p.1928)
			e. any matter arising from evidence disclosed showing specific participating in the JCE		
			33. Article 6.3 of Sesay can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in the killing of civilians		
			b. the overall conduct of the AFRC/RUF, not limited to any one District, which engaged in the widespread killing of civilians as part of a campaign of terror and collective punishment		
			c. His subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes		
			d. His frequent visits to the AFRC Secretariat and Bockarie	037	Sesay was one of Bockarie's top commanders who stayed with Bockarie during the AFRC time in Kenema (p.1928-9)
				123	W saw Sesay visit Kenema town from time to time. (p.1924)
				129	Sesay in Kenema town for the arrest of TF1-129. (p.1928)
			e. any matters arising from the evidence disclosed.		
Physical violence					
63. Between about 25 May 1997 and about 19 February 1998, in locations in Kenema district, including Kenema town, members of the AFRC/RUF carried out beatings and ill-treatment of a number of civilians who were in custody;	*Kenema town*				
	112	Following a community meeting where the locals were ordered to accept the AFRC/RUF government and told that the AFRC/RUF government would "close the eyes forever" of anyone who did not cooperete, the AFRC/RUF detained several community leader including a former Cabinet Minister and Town Council Chief, who were accused of supporting the CDF/Kamajors. Those delained were repeatedly beaten and subjected to ill treatment, some were beaten with strips of outer tire and pistols, others were tied up tightly with pieces of rope.	142a. the torture of civilian captives in Kenema town carried out on the order of Bockarie.	121	W was present at the arrest of Quee and later saw him at the Secretariat, bleeding (p.1925)
				122	W went to the Secretariat after the 1st arrest of BSM and others and saw them tied and bloody. (p.1924)
				123	BSM, Quee and others were arrested, beaten and tortured (p.1924)
				124	After the arrest of BSM and others W saw wounds on them at the Kenema police station. (p.1923)
				125	After the 1st arrest when BSM and others were transferred into police custody, W saw wounds on them. (p.1925)
				126	W visited BSM and others when they were being held at the Secretariat. He saw that BSM and the others had been seriously tortured. (p.1925-6)
				127	W was arrested with BSM and others on the 1st occasion and was beaten and tortured and witnesses the beating and torture of the others including Bockarie beating BSM with his pistol. (p. 1923)

				129	W assaulted by Sesay and taken to the Secretariat where he was given a severe beating by Bockarie and his men. (p.1928)
	Tongo				
	113	The evidence will demonstrate widespread forced labour of hundreds of captured civilians in the Tongo diamond fields. About August 1997, AFRC/RUF forces took control of Tongo town and began mining operations in the area, including "Cyborg pit". These mining operations were sustained through the forced labour of hundreds of captured civilians, who mined without pay, under threats of death and acts of physical violence by the AFRC/RUF.	142b. the beating and physical punishment of civilians at Cyborg mining pit	031	W was beaten with sticks, rubbers and wires at Cyborg. People were subjected to threats and molestation by Bockarie and his men. (p. 1928)
				035	The AFRC/RUF maintained a punishment pit for civilians in Tongo. (p.1929)
		Linkage			
			143. Article 6.1 liability can be reasonably inferred from:		
			a. the overall conduct of the AFRC/RUF not limited to any one District, which subjected civilians to physical violence, both as a punishment and as a tool of instilling fear in the civilian population		
			b. the beatings and ill-treatment of civilians in custody were carried out on the orders of Bockarie, the then de facto RUF leader, and targeted at civilians perceived to be a threat to the AFRC/RUF government		
			f. the regular visits of high level AFRC/RUF commanders to Tongo field/ Cyborg mining sites	034	From August to December 1997, Bockarie would come 4 times a month to collect diamonds. W heard from others that Sesay would visit Tongo. (p.1927-8)
				035	In August 1997, Bockarie came to Tongo/Cyborg. Kallon was present at the mining sites, particularly when people were killed. W often saw Sesay in Tongo collecting diamonds and heard that Gbao would visit the mines. All the big commanders resided at Labo Vamp, 30-40 yards from Cyborg (p.1929)
				045	Civilians were mining at Cyborg, especially for Bockarie. W saw Bockarie collecting diamonds. (p1929)
			g. any matters arising from the evidence disclosed.		
			144. Art 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy		
			b. the assault committed by Sesay in October 1997 on a civilian who was a prominent member of the Town Council after the civilian was arrested by him on the instruction of Bockarie	129	See above and at p. 1928.
			c. any matters arising from the evidence disclosed showing specific participation in the JCE		
			146. Art 6.3 of Sesay can be reasonably inferred from:		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which subjected civilians to physical violence, both as a punishment and as a tool of instilling fear in the		

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			civilian population		
			b. His visits to the AFRC Secretariat and Bockarie in Kenema town	037	Sesay was one of Bockarie's top commanders who stayed with Bockarie during the AFRC time in Kenema (p.1928-9)
				123	W saw Sesay visit Kenema town from time to time. (p.1924)
				129	Sesay in Kenema town for the arrest of TF1-129. (p.1928)
			c. his position of responsibility and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in physical violence		
			d. His subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes		
			e. any matters arising from the evidence disclosed.		
Enslavement					
69. Between 1 August 1997 and about 31 January 1998, AFRC/RUF forced an unknown number of civilians living in the District to mine for diamonds at Cyborg pit in Tongo field;	*Tongo*				
	113	The evidence will demonstrate widespread forced labour of hundreds of captured civilians in the Tongo diamond fields. About August 1997, AFRC/RUF forces took control of Tongo town and began mining operations in the area, including "Cyborg pit". These mining operations were sustained through the forced labour of hundreds of captured civilians, who mined without pay, under threats of death and acts of physical violence by the AFRC/RUF. Many people died as a result of deliberate killings that were undertaken by AFRC/RUF forces to terrorise and subordinate captured civilians. Small Boys Units, comprising of young armed child combatants, were employed to guard the abducted civilians.	191a. An attack led by Bockarie in August 1997 in Tongo field resulted in the capture of many civilians who were forced to mine without pay and under armed guard at Cyborg pit.	031	Child soldiers around 10 yrs of age guarded Cyborg pit and shot anyone who went there without authorization. (p.1928)
				034	Between August 1997 and January 1998, the AFRC/RUF forced people to mine for them. People who refused were killed. Diamonds were taken to Kenema and given to Bockarie. W was forced to mine almost everyday and received no pay. (p.1927-8)
				035	In August 1997 Bockarie came to Tongo/Cyborg. Civilians were forced to mine for the AFRC/RUF for 5 hrs/day. 1000s were forced to work. (p.1929)
				045	W saw civilians forced to mine at Cyborg for the AFRC, especially Bockarie. Civilians and sometimes junior officers were arrested and made to mine at gunpoint. (p.1929)
				060	Bockarie led the attack on Tongo on 11 August 1997. Civilians were captured and made to work at Cyborg. (p.1926-7)
				062	After the AFRC/RUF pushed the Kamajors out of Cyborg, the AFRC/RUF mined with forced labour, as the Kamajors had done. People were forced to mine for 2 days a week for the government. (p.1927)
				211	W will give evidence about forced mining at Cyborg. He received food in the morning and no pay. Small boys guarding Cyborg also killed civilians mining in the pit (p.1982)
				299	In Feb/March 1997 the RUF/AFRC took control in Tongo and forced civilians to work for them, digging diamonds and clearing land. (p.1926)
			191b. the AFRC/RUF would fire randomly at Cyborg pit to terrorise the civilians into submission	034	Rebels shot at civilian mining randomly just to terrorise them into submission. (p.1927)
			191c. the civilian miners were subject to physical discipline	031	W was beaten with sticks, rubbers and wires at Cyborg. People were subjected to threats and molestation by Bockarie and his men. (p. 1928)
				035	The AFRC/RUF maintained a punishment pit for

					civilians in Tongo. (p.1929)
		Linkage			
			192. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which abducted civilians and forced them to work for AFRC/RUF forces		
			b the need in Kenema District to establish a workforce sufficient to mine diamonds at the Tongo diamond fields, including the Cyborg pit		
			c. the conditions under which the civilians were used to mine diamonds, including the use of physical violence and death as punishments and that no civilians were paid for the work performed		See above
			d. any matters arising from the evidence disclosed		
			193. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy		
			b. in particular, his position as chief of mining for the RUF		
			c. his knowledge of the forced civilian mining labour used in Kono district		
			d. his frequent visits to Tongo fields to collect diamonds	034	From August to December 1997, Bockarie would come 4 times a month to collect diamonds. W heard from others that Sesay would visit Tongo. (p.1927-8)
				035	In August 1997, Bockarie came to Tongo/Cyborg. Kallon was present at the mining sites, particularly when people were killed. W often saw Sesay in Tongo collecting diamonds and heard that Gbao would visit the mines. All the big commanders resided at Labo Vamp, 30-40 yards from Cyborg (p.1929)
			e. any matters arising from the evidence disclosed showing specific participation in the JCE		
			196. Art 6.3 of Sesay can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in abduction of civilians and used them as forced labour		
			b. his subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes		
			c. in particular, his position as chief of mining for the RUF		
			d. his knowledge of the forced civilian mining labour used in Kono District		
			e. his frequent visits to Tongo fields to collect the diamonds	034	From August to December 1997, Bockarie would come 4 times a month to collect diamonds. W heard from others that Sesay would visit Tongo. (p.1927-8)
				035	In August 1997, Bockarie came to Tongo/Cyborg. Kallon was present at the mining sites, particularly when people were killed. W often saw Sesay in Tongo collecting diamonds and heard that Gbao would visit the mines. All the big commanders resided at Labo Vamp, 30-40 yards from Cyborg (p.1929)

			f. any matters arising from the evidence disclosed		
Kailahun					
Unlawful killings					
49. Between about 14 February 1998 and 30 June 1998, in locations including Kailahun town, members of the AFRC/RUF unlawfully killed an unknown number of civilians;	102	The evidence will show killings of civilians by AFRC/RUF forces as part of their campaign of terror and collective punishment. Many civilians were deliberately killed on orders from senior AFRC/RUF commanders for their alleged membership or support for civil militia forces, the CDF/Kamajors, including a mass execution that was undertaken in Kailahun town.	44a. There was a mass killing of people accused of being Kamajors in Kailahun town	**108**	Before the January 1999 invasion at the end of the dry season, Gbao, Kallon, Sesay and Bockarie were involved in the killing of 60 Kamajors held for screening. (p.1970)
				113	W saw the killing of 10 of the 67 detainees in Kailahun town and saw Gbao and Bockarie present at the scene. Gbao was the overall commander when these people were killed (p.1969)
				168	In December 1997, the RUF on orders of Mosquito detained 65 men on suspicion of being Kamajors and that in February 1998, the MPs killed these men. Gbao was not present. (p.1994)
				210	W will give evidence of killing of 20 "Kamajors" in Kailahun while Gbao was present and in command o the area (p.2003)
				246	W knows that 65 men accused of being Kamajors were detained. He later heard they were killed.
				313	Gbao was Chief Security Officer for the RUF; Sesay was the BFC and Kallon the BGC. Gbao had detained Kamajors in Kailahun town. 3 weeks later, a RUF rebel collected 3 of W's relatives, saying he had instructions to collect all Kamajors. W heard that Sesay, Gbao and Bockarie shot the Kamajors and that Gbao ordered the removal of their bodies. (p.1971-2)
				325	W will give evidence about the killing of the Kamajors on Bockarie's orders and the Sesay was not in favour of it and wanted the Kamajors released (p.1997)
				330	After July 1999 W heard that 40 people alleged to be Kamajors had been killed. W heard that Sesay and Bockarie ordered the killings and the Gbao, who he saw in Kailahun town after the killings, was present. W's brother was killed in the killings. (p.1971)
			44b. The killing of 10 civilians in Buedu	327	In 1998, W saw the killing of 10 people by the AFRC in Buedu on the orders of AFRC commander Captain Sesay. (p.1972)
			44c. The shooting of 2 abducted boys because they were unable to carry loads.	**108**	W was told that 2 young boys were shot because theyw were unable to carry their loads. (p.1970)
			--------	**114**	In 1999, W saw the execution of soldiers and a civilian medic for theft. (p.1971)
			------	**117**	W was abducted in Tongo aged 10 yrs and given military training. W says he was taken to Liberia to fight for 6 mths and Mosquito was there. W returned to Kailahun where he saw Gbao give an order for a woman to be cut open and her liver removed. In an attack on Kulahun, Gbao ordered civilians to be shot at random. After the 1997 coup, W went to Makeni and was later taken to Freetown to loot. W also saw looting in Makeni. (p.1990)

			----------	200	W was abducted in Kailahun in 1997 and in the attack on his village the RUF killed 7 people. W's uncle was killed. (p.1972)
		Linkage			
			44. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which engaged in the widespread killing of civilians as part of a campaign of terror and collective punishment		
			b. following the ECOMOG intervention the main AFRC/RUF base was located in Kailahun and was the main point of contact and communication for the AFRC/RUF especially for allies in Liberia		
			c. meetings of senior AFRC/RUF commanders in Kailahun District following the 1998 ECOMOG intervention which established command structures and gave military responsibility to Bockarie		
			d. the mass killing in Kailahun town of people accused of being Kamajors		See above.
			e. any matters arising from the evidence disclosed		
			46. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy, particularly that he was at the time the RUF BGC and the Mining Commander for the RUF		
			b. his presence when about 60 civilians accused of being Kamajors were killed		See above
			c. any matters arising from the evidence disclosed showing specific participation in the JCE		
			49. Article 6.3 liability of Sesay can be reasonably inferred from:		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which engaged in the widespread killing of civilians as part of a campaign of terror and collective punishment		
			b. his subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes		
			b. his presence when about 60 civilians accused of being Kamajors were killed		See above
			c. his position of responsibility and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in the killing of civilians		
			d. any matters arising from the evidence disclosed		
Sexual violence					
58. At all times relevant to this Indictment, an unknown number of women and girls in various locations in the District were subjected to	103	The evidence will show how throughout 1997, 1998, 1999, hundreds of women were routinely abducted from the other parts of Sierra Leone and brought to Kailahun District, where they subjected to sexual violence and/or forced into "marrying"	109a. the use of women as "wives" by the rebels in Buedu	**108**	W were captured during RUF attacks on villages. Their job was to go to the front to fight and cook for the soldiers and sleep with the commanders. (p.1970)
				111	One of W's wives told him she was raped during the time they spent 1.5 yrs with the RUF after being

sexual violence. Many of these victims were captured in other areas of the Republic of Sierra Leone, brought to AFRC/RUF camps in the District and used as sex slaves and/or forced into "marriages. The "wives" were forced to perform a number of conjugal duties under coercion by their "husbands";		their rebel captors. These women were also forced to perform conjugal duties in their roles as "bush wives".			captured in Pendembu in December 1998. W was told that rebels took captive women as wives. (p.1969)
				114	W went to Kailahun after the 1998 intervention in Freetown. Women were used as wives and for domestic purposes by the rebels. (p 1971)
		Linkage			
			110. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which subjected women to rape and other forms of sexual violence and routinely distributed captured women amongst rebels to serve the sexual needs of the AFRC/RUF rebels		
			b. many of the women and girls used as sex slaves were brought to Kailahun District from other parts of Sierra Leone		
			c. The presence of training camps and the AFRC/RUF High Command in Kailahun District where large numbers of AFRC/RUF forces were present		
			d. any matters arising from the evidence disclosed		
			111. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy		
			b. his frequent presence in Kailahun District throughout the period of the indictment		
			c. any matters arising from the evidence disclosed showing specific participation in the JCE		
			114. Art 6.3 of Sesay can be reasonably inferred from:		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which subjected women to rape and other forms of sexual violence and routinely distributed captured women amongst rebels to serve the sexual needs of the AFRC/RUF forces		
			b. his frequent presence in Kailahun District throughout the period covered by the indictment		
			c. his position of responsibility and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in sexual violence		
			d. his subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes		
			e. any other matters arising from evidence disclosed		
Enslavement					
74. At all times relevant to this Indictment, captured civilian men, women and children were brought to various locations within the District and used as forced labour;	100	Kailahun district served as a main base for the AFRC/RUF, where senior AFRC/RUF commanders were regularly based, and through which significant support for AFRC/RUF operations was maintained by the forced labour and/or conscription of hundreds of captured men, women and children.	223a. over 200 civilians were captured in Pendembu and forced to work	111	W was captured in Pendembu in December 1998 along with 200 other civilians. W was forced to work. (p.1969)
	104	Throughout 1997 and 1998, hundreds of captured men, women and children were routinely taken to	223b. over 500 civilians were brought to Kailahun from all over Sierra Leone	113	After the February 1998 intervention, more than 500 abductees from all over Sierra Leone were taken to

		various locations in the Kailahun District and used as forced labour, also known as "man power", which included carrying loads, road work and farming on plantations, including farms belonging to senior AFRC/RUF commanders and/or their families.			Kailahun. W said she also saw civilians being forced to work. (p. 1969)
			223c. Civilians were forced to carry loads of ammunition and other goods, work on the rice farm of Bockarie and Morris Kallon and perform domestic tasks.	**114**	W saw abductees brought to Buedu by various commanders. Kallon brought the biggest group. Sesay was also involved. Captives, including children were sent for military training. Civilians were used as slave labour on a rice farm of Bockarie and Kallon. (p.1971)
				210	W will give evidence about forced labour on farms in Kailahun (p.2003)
	105	Kailahun district operated as a major training location where forcibly conscripted men, women and children were held and given military training. Bases were stationed at locations such as Beudu town, a major base for the AFRC/RUF leadership. Pendembu, Kailahun town, Bunumbu and Kangama. In addition to shipments of arms and natural resources, captured civilians were taken across the border to engage in military training and fighting for the AFRC/RUF or in support of military forces under the leadership of Charles Taylor.		**114**	Captives, including children were sent for military training. (p.1971)
				200	W was abducted in Kailahun in 1997. He had to transport goods for the RUF. In Yaama, the rebels gave military training to men and children for 3 mths. W was trained by early 1999 and given a gun. (p.1972)
				330	W saw forced labour up to 2000 and the conscription and military training of women and young children by rebels. (p.1971)
		Linkage			
			224. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which abducted civilians and forced them to carry goods and perform domestic labour for AFRC/RUF forces		
			b. the need in Kailahun District to establish a workforce sufficient to mine diamonds		
			c. Kailahun District was a significant base for the AFRC/RUF and large numbers of civilians were required to perform labour for the AFRC/RUF High Command and forces		
			d. any matters arising from the evidence disclosed		
			225. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy		
			b. his presence at the camps and AFRC/RUF bases where civilians were forced to carry goods and perform domestic labour		
			c. he witnessed more than 500 abductees from all over Sierra Leone in Kailahun district following the February 1998 ECOMOG intervention		
			d. he personally had unpaid civilians farm cocoa, coffee and palm oil for him		
			e. if he required civilians for work he would pass an order for such through the local G5 commander		
			f. at one point he ordered AFRC/RUF fighters not to kill civilians but to instead capture them		
			g. any matters arising from the evidence disclosed showing specific participation in the JCE		

			228. Article 6.3 liability of Sesay can be reasonably inferred from:		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which abducted civilians and forced them to carry goods and perform domestic labour for AFRC/RUF forces		
			b. his position of responsibility and command with the AFRC/RUF hierarchy and the fact that this subordinates engaged in abduction of civilians and used them as forced labour		
			c. his subordinates were in regular communication with the AFRC/RUF leadership during the commission of crimes		
			d. his personal use of unpaid civilians to farm		
			e. the orders he issued to his subordinates to gather "manpower".		
			f. any other matters arising from the evidence disclosed		
External links					
	100	The evidence will demonstrate how control by the AFRC/RUF forces of both dishicts [Kailahun and Kono] facilitated the procurement of arms, ammunition and other logistics through transactions in natural resources, in particular, diamonds.			
	101	The evidence demonstrates a general pattern during 1998, 1999 and 2000, where arms/ ammunition and supplies were shipped to Kailahun District, usually to Buedu town, from Liberia, usually through "Lofa County". The evidence will show how shipments travelled across the Liberian border to AFRC/RUF units throughout Sierra Leone, and were usually transported by helicopter, trucks and/or carried as loads by civilians. In return, throughout later 1997, 1998, 1999 and 2000, evidence will show how diamonds from Kono and Kenema Districts and other natural resources were transported to Liberia, usually through Kailahun district.	:	036	W will provide evidence of trips by Bockarie during 1998 and 1999 to Liberia and his return with ammunition on commercial trucks. (p.2001)
				139	During 1990-1, Taylor planned, organised, trained and directed the RUF both financially and logistically. Tayor designated Sankoh as the head of the RUF and this support continued throughout the 90's. Taylor issued operational orders and was in frequent communication with Sankoh, Bockarie and other RUF and junta leaders either directly or through Yealen. Taylor met with Bockarie inn February/ March 1998 for the RUF/AFRC to protect Kono. W will provide evidence on arms-diamonds transactions from 1997-9 including specific shipments between Taylor, Bah and Bockane and the proceeds of the diamonds shipments would go to Taylor. (p.1995)
				141	W will given evidence of Bockarie's radio communication with Taylor and Taylor ordering Bockane to attack a village in Kailahun in 1997-8. In 1998-9, Bockane traveled to Liberia to obtain arms and returned to Buedu. Taylor visited Buedu twice between 1997-9. On the 2nd visit, taylor said Bockarie should continue the revolution and he would support it. W has indirect knowledge on that on the same visit Bockane gave Taylor an unknown quantity of diamonds. 203 days after this visit, Bockarie returned to Buedu with weapons. (p.1986-7)
				167	W will give evidence about mining and the transport of diamonds through Bockarie to Taylor in Liberia in

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					exchange for arms and ammunition (p.2000)
				271	W will give evidence about the transfer of diamonds to Liberia for Charles Taylor (p.1979)
				276	Taylor provided assistance, arms, medicine and personnel to the RUF W will give evidence on arms and diamond transactions.
				323	Helicopters with the colours of the Liberian flag brought rebels armed and ammunition W was told that diamonds and money given to Mosquito would be used to buy ammunition from Charles Taylor. (p.1982)
				325	W will testify to RUF training in Liberia and the provisio of arms from Taylor and Yeaten to Sankoh. Throughout the war, instructions were given from Taylor through to Bockarie concerning the transfer of diamonds in return for arms and ammunitions. W will give evidence of Taylor's support throughout the war including a November 1998 arms shipment. (p.1997)
	106	Throughout 1998, AFRC/RUF leaders communicated with commanders located in other districts from Kailahun. In December 1998, Kailahun was the location for the planning of the major AFRC/RUF offensive that led to the subsequent takeover of much of the country including Koidu, Makeni and eventually the invasion of Freetown.		325	A meeting was called in 1998 where Bockarie announced 'Operation Spare no Soul' with Kallon and the AFRC present. The Freetown attack was not planned by the RUF. (p.1997)
Kono					
General					
	128	After the ECOMOG intervention in February 1989, AFRC/RUF forces retreating from Freetown and Makeni regrouped and travelled through Bombali and Koinadugu District to Kono District, specifically Koidu town. Following the capture of Koidu town, meetings were held in the District where senior commanders established a joint-command structure for AFRC/RUF operations. AFRC/RUF forces proceeded to spread over the entire District.			
	129	AFRC/RUF terrorization of the civilian population enabled geographic control of the Kono area, particularly the diamond mining areas, where forced mining of civilians was being undertaken under the supervision of senior AFRC/RUF command. Movement of arms and ammunition from Kailahun District were in turn sent to Kono District.			
	133	Diamond proceeds were sent through senior AFRC/RUF commanders to Kailahun and onwards to Liberia in exchange for arms, ammunition and supplies, such as food and blankets.			

Unlawful killings					
48. About mid February 1989, 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, Tombudu, Foindu, Willifeh, Mortema and Biaya;	130	The evidence will demonstrate widespread killing of civilians, which were frequently undertaken by AFRC/RUF forces as part of "Operation No Living Thing" in towns and villages throughout the District, including Bumpeh, Farandu, Foendor, Kindea, Sawa, Somoya and Wondedu.	36a. There were widespread killings throughout Kono district as part of 'Operation No Living Thing' and 'Operation Pay Yourself'.	270	W was abducted from Sulukunda after 'Operation Pay Yourself' in 1996. Prior to her capture she saw rebels burning houses and people being killed. (p.1931)
	130	The evidence will also outline the mass killing of civilians which took place in Foendor, Koidu town, Mortema and Tombudu town.			See below.
	130	Civilians were forced into houses and massacred, sometimes by being burned alive, by AFRC/RUF forces in towns and villages throughout the District, including Koidu town and Tombudu town.	36f. Many civilians were burned alive in houses throughout the District	**217**	After the Feb 1998 intervention and RUF/AFRC occupation of Koidu, W was captured. 26 people from W's group were put into a house and the house set on fire. *Location unclear.* (p.1930)
				307	W heard that people were burnt alive in houses in Koidu, including her parents and that Colonel Issa had given the order for 'Operation No Living Thing'. (p.1935)
	130	Scores of civilians died as a result of deliberate amputations of limbs by AFRC/RUF forces.	---		
	132	Widespread looting of food items resulted in death by starvation of civilians in some areas.	---	**071**	W will give evidence of deaths of civilians from starvation and exhaustion during the mining. (p.1941)
				078	W was captured on 28 March 1998 and was taken to Koidu where he saw other captured civilians. People died of starvation. (p.1941)
	133	Mining operations were overseen by senior AFRC/RUF commanders were particularly brutal: captives were routinely stripped naked and beaten, they were killed if ever tired, nor were they fed or paid for mining activities. Captives labored under gunpoint by SBUs, child combatants under the age of 15 who were employed to guard the captured miners.	36g. Many civilians were killed through indiscriminate shooting in the diamond mines.	**012**	People died in the mines in Tombudu because they were not fed. W saw Savage and Gullit kill people in connection with mining. W says Sesay visited the mines everyday. (p.1944)
				077	W was forced to mine in Tombudu after he was captured in December 1999. W saw miners killed on the orders of the officer in charge. W said Sesay came regularly to the mines to collect diamonds. Sick people were killed. W saw SBUs kill people in the mining pits and throw their bodies into the water. (p.1943)
				304	W will give evidence of people dying in the mines and that during that period Sesay would come to the mines regularly to collect the diamonds. (p.1941).
	134	Some women were beaten to death following these rapes.	---	**195**	Of 7 women who were raped, 5 were beaten to death afterwards. (p.1931)
	Koidu town				
	130	Over 100 people were massacred together in Koidu town.	36b. Over 100 civilians were killed in Koidu town	014	In March 1998, W was captured by rebels and taken to Koidu. He saw many dead bodies. He was taken to Major Rocky at Kamachende st. Men, women and children were separated and Rocky opened fire and about 100 civilians were killed. Rocky reported the killing to Rambo who had to consult with Bockarie. W said civilians were made to carry loads and if anyone complained he was tired, he would be shot. (p.1940)
				071	W will give evidence of killings in Kono after the

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					intervention, including the killing of over 60 people in Koidu and that these events were reported to Kallon. W will say that for rape and innocent killings (p.1941)
				078	W learnt of a mass killing in Koidu by CO Rocky. Many civilians were killed on the December 1998 attack on Koidu led by Sesay. (p.1941)
				217	W was captured at the time of the intervention in Koidu. W saw the dead bodies of 20 civilians. (p.1930)
				222	In 2001, W found bones and skulls in his compound behind Kamachende St, Koidu. He heard that rebels killed people in the compound. (p.1930)
				263	W was abducted in February 1998 from Koidu. His older sister and uncle were killed by the rebels. W saw rebels killing civilians in areas around Koidu town under the command of Sesay and Kallon. W saw older men with their hands tied behind their backs shot in the presence of Sesay. (p.1940)
				303	Shortly after Kabbah was overthrown, the rebels started killing in the Koidu area. When W fled from ECOMOG with the rebels, she heard the rebels taking about the number of people they had killed. (p.1930)
	130	Residents accused of voting for President Kabbah were also killed in Koidu town on direct orders from senior AFRC/RUF commanders.			
	Tombudu town				
	130	Tombudu town became known as a "killing zone", where dead bodies were thrown in a hole known as "Savage Pit".	36c. Tombudu became a "killing zone" where dead bodies were thrown into a hole known as "Savage pit".	012	After the ECOMOG intervention, JPK came to Tombudu and ordered Gullit, Savage and others to kill 6 people who did not support the AFRC. They were all shot. W saw people who tried to escape, be killed. W saw Savage kill people incl locking people in a house and setting the house on fire. Savage also ampulated and killed people and dumped their bodies in a pit. Gullit also killed a lot of people. Tombudu was a killing zone. (p.1944)
				013	W was captured by the rebels in Tombudu in September/October 1998 when JPK, Kallon and Sesay entered. 4 men and 2 women who tried to run were killed. JPK ordered the burning and killing of Tombudu and W saw people burnt to death. (p.1987)
				014	Sometime in 1998, W saw a group of captives brought to Tombudu. W identified Staff Alhaji There were 27 people, incl one of boy of 11 yrs. Staff Alhaji ordered their hands tied behind their backs and to have them put in a house. The house was then burnt and all died (p.1936)
				019	W heard that 50-60 people were abducted from Somoya and taken to Tombudu where they were put into a house by Staff Alhaji, a soldier, and burnt alive. (p.1937)
				072	W was captured by men in combat on 8 March 1998.

					He was taken to Tombudu with 14 captives where he met Savage. After W being amputated, people started to run and the fighters started firing and 11 people were killed. (p.1937)
				216	W was captured in Paema, near Tombudu and saw his children burnt alive in his presence. In April 1998, he was taken to Tombudu, where 5 people were amputated. 3 died almost immediately.
				217	W found the beheaded bodies of captives killed by rebels in Tombudu. (p.1930)
				197	W saw rebels killed 2 civilians in Tombudu after the ECOMOG intervention. W saw 3 bodies in a parking ground in Tombudu. (p.1936-7)
				302	W was captured in Waterloo and taken to Tombudu where there were 200-300 civilians. Some who had tried to escape had been killed. They had been beheaded and their heads placed on sticks. Some days up to 10 civilians would be killed on the orders of Savage. W saw captured civilians burnt to death in a house. (p.1935)
	Foendor				
	130	A group of civilians in Foendor were beheaded by AFRC/RUF forces.	36d. Many civilians were beheaded in Foindu and the severed heads were carried in a bag to Tombudu.	**064**	In the dry season of 1998, 17 men, women and children were machete to death. This included 2 of W's children. The victims were beheaded and the heads placed in a bag. W was ordered to carry the heads to Tombudu. The boss in Tombudu was in combat and surrounded by men in combat. W saw the body of another victim who had been beheaded. (p.1933)
				067	In the dry season of 1998, rebels captured and killed members of W's family at Foendor. The heads were reportedly put in a bag to be given to the rebels to their boss in Tombudu. W heard the killings. Later he saw many dead bodies, some beheaded but was only able to confirm 2 as family members. W's wife confirmed he killings to him. She carried the heads in a bag to Tombudu. The commanders were Savage, CO Alhaji and CO Jbonda. (p.1933)
	Mortema				
				219	W was in Motema when rebels attacked. Villagers told the W of a massacre in the house where his wife was hiding. He found family members dead. He heard one rebel called Issa say 'let's go' and the rebels call 'Operation No Living Thing'. (p.1941-2)
			36e. 32 people were shot in a house in Mortema.	308	Rebels attacked on 6 June 1998. W was in a house with 50 people when rebels came in. One was called 'Colonel Issa'. This was the time of 'Operation No Living Thing'. The rebels asked if they were Kamajors and opened fire. 32 people were killed. W was told this by her younger brother who helped bury the dead in a mass grave. (p.1934)
				307	W was in Motema in 1998 when rebels attack Col. Issa entered that civilians would pay the price for rejecting AFRC rule and that lots of people were killed in the

				house. (p. 1934-5)
Location unclear/ unmentioned in Indictment or PTB				
			019	On 16 April 1998, rebels came to Yardu. Rebels slit W's grandmother's throat with a knife. Another man was also killed (p.1937)
			068	On 15 June 1998, a group of men attack W's house, shooting, W's sister was killed. Afterwards W counted 21 bodies, 6 of whom were family members. W heard one of the attackers yell 'Operation No Living Thing'. (p.1934)
			192	W was captured in April/May 1998 in Boimafuidu. He saw a 60 yr old woman murdered. (p.1939)
			197	W was taken to Yardu where he saw rebels shoot 6 men to death. (p.1936-7)
			198	W's village was attacked by rebels at the end of the 1998 dry season. W's husband was taken to Yardu and later told her that he saw 5 men killed. W saw people arrested and burnt. (p.1936)
			202	W saw rebels kill one person in Farandu village. (p.1932)
			206	W's village was attacked on April 1998 by rebels pretending to be Kamajors. He saw them cut a old woman's throat. When they started to perform amputations, those who protested were killed outright with machetes. (p.1939)
			217	W watched as his wife and other women who had been raped were stabbed to death. Other people were shot dead. (p.1930-1)
			218	W was captured in an attack on Bumpeh. Later W's son told her that others had been shot and killed and that villagers had been burnt alive in Bumpeh.(p.1938-9)
Linkage				
		37. Article 6.1 liability can be reasonably inferred from		
		a. the overall conduct of the AFRC/RUF, not limited to any one District, which engaged in a widespread killing of civilians as part of a campaign of terror and collective punishment		
		b. the declaration of ownership of all mining areas in Sierra Leone by the AFRC/RUF during the Junta period		
		c. the continuation of the AFRC/RUF alliance after the February 1998 ECOMOG Intervention and the flight of the AFRC/RUF from Freetown		
		d. the announcement by the AFRC/RUF leadership of "Operation Pay Yourself" during the retreat to Makeni and then Koidu	**334**	JPK ordered Operation Pay Yourself to the SLA and RUF at the start of the 1998 intervention. (p.2004)
		e. the execution by the AFRC/RUF forces of "Operation No Living Thing" while the AFRC/RUF regrouped and controlled Koidu Town and Kono District following the ECOMOG intervention		
		f. the settlement of AFRC/RUF forces in Kono District and specifically Koidu town in 1998		
		g. the meetings of senior AFRC/RUF commanders in Kono and Kailahun Districts during this period which established a		

			command structure for AFRC/RUF operations aimed primarily at maintaining control of Kono district		
			h. that Sesay told civilians at a public meeting in Koidu that he was present to ensure that diamonds were mined to finance the movement and that all civilians must cooperate		
			i. that at the same meeting, Sesay said that disciplinary measures would be taken against those working in the mines and the measures included execution		
			j. that the AFRC/RUF used diamonds mined from Kono District to fund arms, ammunition and medicine		
			k. any matters arising from the evidence disclosed		
			38. Art 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy , particularly that he was at the time the RUF BGC and the Mining Commander for the AFRC/RUF		
			b. the general instruction issued by Bockarie to Sesay at the time of the February 1998 ECOMOG intervention to ensure that the AFRC/RUF did not lose Kono		
			c. Sesay passed this instruction on to other AFRC/RUF commanders		
			d. the arrival of Sesay, along with other senior AFRC/RUF commanders in Kono from Bombali District, approximately one week after the start of the ECOMOG Intervention		
			e. [Sesay's] presence at a meeting in Tombudu town following the arrival of JPK which all civilians were forced to attend and where four civilian men and two civilian women who attempted to run were killed by armed AFRC/RUF men in front of the crowd	013	W was captured by the rebels in Tombudu in September/October 1998 when JPK, Kallon and Sesay entered. 4 men and 2 women who tried to run were killed. (p.1987)
			f. his participation in meetings with other senior AFRC/RUF commanders in Kono in February/ March 1998		
			g. [Sesay] was present as the top RUF commander when JPK told other AFRC/RUF commanders that the people of Koidu were not good people and that any civilian close to their location should be killed	334	JPK and Sesay ordered that Kono be burnt down and the people of Kono killed as they had betrayed them. (p.2004)
			h. [Sesay's] presence in Koidu town when older men had their hands tied behind their backs and were then shot	263	W was abducted in February 1998 from Koidu. His older sister and uncle were killed by the rebels. W saw rebels killing civilians in areas around Koidu town under the command of Sesay and Kallon. W saw older men with their hands tied behind their backs shot in the presence of Sesay. (p.1940)
			i. [Sesay's] frequent presence at the diamonds mines were civilians were indiscriminately fired upon		See above
			j. [Sesay's] travel with Bockarie to Liberia in January 1998 to secure an arms shipment that assisted the AFRC/RUF to defend Kono district		
			k any matters arising from the evidence disclosed showing specific participation in the JCE		
			41. Article 6.3 liability (failure to prevent) of Sesay can be reasonably inferred from:		
			a. his position of responsibility and command within the		

			AFRC/RUF hierarchy and the fact that his subordinates engaged in the killing of civilians		
			b. his subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes		
			c. his presence at planning meetings in the District		
			d. the instructions he received from JPK as detailed above		
			e. the instructions he gave to subordinates		
			f. his presence at Koidu town, Tombudu town and at diamond mining areas at or around the time killings were being carried out by his subordinates		
			g. any matters arising from the evidence disclosed		
			42. Article 6.3 liability (failure to punish) of Sesay can be reasonably inferred from:		
			a. civilians made complaints directly to Sesay about mining conditions and the treatment of workers		
			b. reports made to Sesay by subordinates of atrocities committed in villages geographically close to Koidu		
			c. any matters arising from the evidence disclosed		
Sexual violence					
55. Between about 14 February 1998 and 30 June 1998, members of the AFRC/RUF raped hundreds of women and girls at various locations throughout the District, including Koidu, Tombudu, Kissi-town (or Kissi town), Foendor (or Foendu), Wondedu and AFRC/RUF camps such as "Superman camp" and Kissi-town (or Kissi town) camp. An unknown number of women and girls were abducted from various locations in the District and used as sex slaves and/or forced into "marriages". The "wives" were forced to perform a number of conjugal duties under coercion by their "husbands";	134	Women and girls were routinely raped and paired with "rebel husbands" throughout the District. During captivity, many were also subjected to rapes from rebels other than their "bush husbands". AFRC/RUF forces terrorized the local population by committing gross acts of sexual violence against women and young girls, often at gunpoint and under threat of death. Methods included forcing women to strip naked and committing sexual abuses in the open, forcing family members either to watch or participate, along with beatings, and/or raping with foreign objects such as sticks. Some women were beaten to death following these rapes. Recent mothers, young girls and virgins were also targeted for sexual violence. There was a pattern of routine abductions of women and girls from their families to camps, such as "Superman Camp", for distribution amongst the rebels was undertaken to serve the domestic and sexual needs of AFRC/RUF forces, while undermining the civilian morale and collectively punishing local communities.	85a. the gang rape of women in Koidu town	014	W was abducted and taken to Koidu. There he saw many young girls used for sex and captured women forced to become sex partners. (p.1940)
				217	Rape became frequent in Koidu after the intervention. W saw his wife raped by 8 men. Other women were also raped. (p.1930). *location of rapes unclear*
			85b. The rape of a woman in Koidu town 23 days after she had given birth.	202	W's husband's 2nd wife was raped by 2 rebels 23 days after having given birth. *Location unknown* (p.1932)
			85c. The widespread use of captured girls as "wives"	**012**	W was in Tombudu after the ECOMOG intervention. Women were abducted from families and forced to become rebel wives. (p.1944)
				016	W was captured in Tomandu and taken to Kissi town where women were distributed to rebels as wives. A rebel leader took W's 11 yr old daughter to a house and raped her. W could hear her screaming. W was given to a rebel as his wife. Along with other captured women, she was forced to find food and cook, wash clothes. At 3 different times, rebels tried to force W under the threat of death to have sex (p.1938)
				018	W was captured and taken to Tomandu where rebels sexually abused women who were taken into houses one by one. On the way to Kissi town the rebel commander ordered the women to be divided amongst the men as wives. Each armed man took possession of a woman (p.1938)
				270	W was captured and brought to Koidu from Sulukunda in 1996 after "Operation Pay Yourself". The girls were given to rebels as wives and domestic labour. W performed chores along with captured children. W was taken at Borbu where she saw Sesay and Bockarie (p.1931)

				303	W was captured and brought to Koidu after the intervention where she was held at gunpoint and raped every night for a week. She became a rebel's 'woman' and fled with the AFRC/RUF to the bush when ECOMOG took over Koidu. There W heard rebels speak about the number of people they had raped. (p.1930)
			85d. The rape of 7 women at Sawa	**195**	W and 6 other women were raped with foreign objects and W raped by 2 rebels. *No location given.* (p.1931)
			85e. The rape of women and girls found hiding in the bush in the District	066	W was in the bush near Foendor and saw his sister raped by rebels there. (p.1933)
				076	W raped by rebels wearing mixed combat in the bush near Foendor She was a virgin at the time. (p.1933)
				306	W saw his niece raped by rebels in the bush near Foendor after the March 1998 attack on Koidu. (p.1934)
			85f. The rampant sexual abuse of women and girls at Cyborg mining pit.		
			---	017	W was captured in Tombudu in 1998 when she was 16 yrs old and raped by rebels. She was taken to Superman ground before going to Buedu. (p.1943)
			---	019	In 1997 shortly after the takeover of the AFRC/RUF W and his wife were captured by the RUF and some soldiers. W witnessed the rape of his wife. *Location unknown* (p.1937)
			---	**071**	W will provide evidence of rapes and that for rapes and innocent killings, action was taken and RUF perpetrators were executed on high command from Sesay. (p 1942)
			---	**192**	W was captured in April/May 1998 in Boimafuidu, W was forced with 12 others to strip and have sex with captured girls. He saw the sexual mutilation of one girl for failing to arouse a man. Captured women were taken to a farmhouse and he sew a rebel insert a stick into the vagina of one girl. (p.1939)
			---	197	W was captured and taken to Tombudu where he saw rebels rape a woman. (p 1936)
			---	198	W's village (not named) was attacked at the end of the dry season 1998. W was stripped and when she refused to have sex, had a stick inserted into her vagina by a rebel. This was witnessed by a neighbor. W saw another civilian forced to rape that neighbor. (p.1936)
			---	206	W's village (*unnamed*) was attacked in April 1998 by rebels. Men and women were separated and forced to strip. People were then forced to have sex. W was forced to have sex with a neighbor's sister. (p.1939)
			---	**218**	W was abducted and taken to Cookery Junction. There rebels forced a couple to have sex in public and abused the couple's 10 yr old daughter. Rebels then raped W vaginally and anally. (p.1938)
			---	302	W was publicly raped in Tombudu by 3 rebels. She knows of 2 others who were raped. (p.1935)
				305	In 1998 dry season AFRC rebels abducted W. She was raped by 8 rebels. She was a virgin at the time. *No*

					locations given. (p.1939-40)
	Linkage				
			86. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which subjected women to rape and others forms of sexual violence and routinely distributed captured women amongst the rebels to serve the sexual needs of the AFRC/RUF forces		
			b. the presence of military training camps in Kono District, such as "Superman camp" and Kissi-town (of Kissi town) camp where large number of AFRC/RUF were present		
			c. any matters arising from the evidence disclosed		
			87. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy		
			b. his presence in Kono District between February and September 1998		
			c. his presence at the military training camps in Kono District during this period		
			d. any matters arising from the evidence disclosed showing specific participation in the JCE		
			90. Article 6.3 liability of Sesay can be reasonably inferred from:		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which subjected women to rape and others forms of sexual violence and routinely distributed captured women amongst the rebels to serve the sexual needs of the AFRC/RUF forces		
			b. his frequent presence in Kono District, including at military training camps, between February and September 1998		
			c. his position of responsibility and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in sexual violence		
			d. his subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes		
			e. any matters arising from the evidence disclosed		
Physical violence					
62. Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombudu, Kaima (or Kayima) and Wondedu The mutilations included cutting off of limbs and carving "AFRC" and "RUF" on the bodies of civilians;	131	Throughout the AFRC/RUF attacks in Kono in 1998, the evidence will show widespread acts of physical violence.			
	131	Civilians were routinely beaten upon capture by AFRC/RUF forces.		066	W was captured by rebels in the bush near Foendor and was beaten severely with a weapon. (p.1933)
				078	W was captured on 28 March 1998 by the RUF and was beaten up. (p.1941)
				197	W was captured in the bush near Tombudu and beaten by rebels. Later on he saw injuries sustained by his friends and neighbours, one whose hand was amputated and another who was burnt when rebels

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					poured kerosene on him. (p.1936)
				218	W was captured by rebels at Bumpeh and beaten. (p.1938)
				219	W was in Motema when rebels attacked. He was wounded by a child soldier and said the rebels threw acid in his wounds. (p.1941)
				306	W was captured in the bush near Foendor after March 1998 and was severly beaten by twoo rebels. W saw his nephew being escorted at gunpoint by a man and returned with a bleeding wound on his head. W's nephew said the man had wounded him with a gun. (p.1933-4)
	131	Abducted civilian men and young boys were given markings of "AFRC", "RUF" or both with razors, cutlasses and knives to identify captives as such and discourage their escape.	-----	014	W was captured and taken to Koidu by rebels in march 1998. W saw men and women marked with RUF and AFRC using razor blades, knives or pieces of metal. (p.1940)
			-----	**016**	W was captured in Tomandu and saw captured men being marked with 'RUF'. (p.1938)
			134b. the marking of 15 captives in Yomandu by sword blades with "RUF" and "AFRC";	**074**	W was captured in Yomandu and taken to Kaima with his younger brother. There were 13 other captives there. An AFRC man arrived and W and the others were marked. Sword blades were used to disfigure W and other with the words 'RUF' and 'AFRC'. W was given to Captain Barry and saw Barry in possession of amputation tools and 7 amputated hands. (p.1932)
			134c. the marking by razor blade of 10 to 15 civilians with "RUF" who had attempted to escape to Tombudu	302	In Tombudu, an order was given to mark civilians who tried to escape with 'RUF'. They were marked with a razor blade. W saw 10-15 people including children who had been marked. (p.1935)
	131	Throughout the District, AFRC/RUF forces carried out organised amputations of limbs, including the chopping of hands of those accused of voting for President Kabbah. Civilians who were present at the scene were forced to clap or laugh during amputations, while victims were told to return to President Kabbah and request their limbs back.	134a. the amputation of many civilians throughout Kono District, including the amputation of 6 men captured from Sawa which was observed by captured women forced to clap and laugh by the AFRC/RUF soldiers	**012**	W was in Tombudu and saw people who tried to escape be amputated. Savage also amputated people. (p.1944)
				072	W was captured on 8 March 1998 and brought to Tombudu where he was beaten by Savage. Savage also slashed his leg ith a machete and stabbed him with a bayonet in his side. Savage also amputated the W saying it was because he voted for Kabbah. (p.1937)
				192	In April 1998 W's village was attacked. One boy was cut on his back for refusing to have sex. W's hand was amputated and rebels also cut W's younger brother's hand but it was not amputated. W knows 14 people who were either amputated or were the subject of attempted amputations. (p.1939)
				195	W saw the amputation of 6 men. The rebels made the women laugh and clap at the amputations. Rebels tried to amputate W's arm. (p.1931)
				197	W was captured and taken to Yardu where he was amputated and given a letter to be given to Kabbah. W later saw 5 amputees in Koquima. (p. 1937)
				198	W's village (*unnamed*) was attacked at the end of the 1998 dry season. A rebel beat W and stabbed her in her right shoulder blade. W's husband was taken to Yardu and was amputated there. (p.1936)

				216	W was captured and taken to Tombudu in April 1998 where he saw 5 people amputated, 3 of whom died. W was also amputated on 14 April 1998. (p.1935)
				217	W's had his arm amputated and was also wounded when a rebel struck him with a bayonet. W saw at least 4 others amputated. (p.1930-1)
				218	W's uncle was amputated on the attack on Bumpeh (p.1938)
				263	W was abducted by the RUF in February 1998 from Koidu. His father was amputated (p.1940)
				303	W fled with the rebels to camps when ECOMOG came into Koidu and heard that Bockarie had said they the rebels were to start chopping off hands and feet and putting padlocks on people's mouths. Following later raids, W would hear rebels talk about the number of people whose hands or feet they had chopped off. (p.1930)
	133	Mining operations were overseen by senior AFRC/RUF commanders were particularly brutal: captives were routinely stripped naked and beaten, they were killed if ever tired, nor were they fed or paid for mining activities. Captives labored under gunpoint by SBUs, child combatants under the age of 15 who were employed to guard the captured miners.		012	Civilians were forced to mine in Tombudu and people were beaten up if they refused to work. Sesay visited the mines each day. Sesay issued instructions to discipline those who did not work. (p.1944)
				071	W will give evidence about forced mining by civilians who were stripped naked, beaten and not given food (p.1942)
				077	In December 1999, W was captured by RUF and taken to Tombudu to mine. No payment or food was given to the miners and the miners were constantly subjected to beatings and starvation. Sesay would come to collect diamonds and would order that people who he found not working be disciplined and beaten. (p.1943)
				078	While in Koidu, many civilians were captured and forced to work in the diamonds mines for the RUF and AFRC. People were tied up and beaten if they refused. Sesay was there and as the overall commander, knew about the abuses. (p.1941)
				304	After February 1999 rebel forced civilians to mine and workers were beaten by the rebels. Complaints were made to Sesay but no action was taken. (p.1942)
	Linkage				
			135. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which subjected civilians to amputations, both as a revenge for perceived support of President Kabbah and as a tool of instilling fear in the civilians population;		
			b. the overall conduct of the AFRC/RUF, not limited to any one District, in which abducted civilians were given markings of "AFRC" and/or "RUF" with razors, cutlasses or knives to identify captives and discourage escape		See above
			c. the large numbers of abducted civilians in Kono District, both at military camps and diamonds mines		
			d. the instruction of Brima to AFRC/RUF troops prior to an advance towards Koinadugu that they were going to take revenge on the civilian population because the civilians had		

			betrayed them		
			e any matters arising from the evidence disclosed		
			136. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy		
			b. his presence in Kono District between February and September 1998		
			c. his presence at the military training camps in Kono District during this period		
			d. any matters arising from the evidence disclosed showing specific participation in the JCE		
			139. Article 6.3 liability of Sesay can be reasonably inferred from:		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which subjected civilians to amputations, both as a revenge for perceived support of President Kabbah and as a tool of instilling fear in the civilians population;		See above
			b. the overall conduct of the AFRC/RUF, not limited to any one District, in which abducted civilians were given markings of "AFRC" and/or "RUF" with razors, cutlasses or knives to identify captives and discourage escape		See above
			c. his frequent presence in Kono District between February and September 1998		
			d. his position of responsibility and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in physical violence		
			e. the fact that his subordinates were in regular communication with the AFRC/RUF leadership during the commission of the crimes		
			f. any matters arising from the evidence disclosed		
Enslavement					
71. Between about 14 February 1998 to January 2000, AFRC/RUF forces abducted hundreds of civilian men, women and children, and took them to various locations outside the District, or to locations within the District such as AFRC/RUF camps, Tombudu, Koidu, Wondedu, Tomendeh. At these locations civilians were used as forced labour, including domestic labour and as diamond miners in the Tombudu area;	133	Hundreds of people were abducted and forced into labour by AFRC/RUF forces from locations throughout the Kono district, including Baima, Duwadu, Foendor Kaima, Koidu, Tomandu, Tombudu and Wondedu. In an organised manner, captured civilians were taken to centralized AFRC/RUF camps and forced to provide support to AFRC/RUF operations, including carrying loads, finding food, cooking, cleaning, washing and mining for their AFRC/RUF captors.	198a. civilians were captured from Sulukundu and taken to Koidu town where they were forced to perform domestic labour	270	W was abducted from Sulukundu and taken to Koidu. Women were given to rebels as wives and domestic labour. At Koidu, W had to perform domestic chores along with captive children. (p.1931)
			198b. civilians, including children, abducted from Farandu were forced to carry looted items.	202	W and others were captured in Farandu. Rebels abducted over 2 children, aged 7 yrs and up. The abducted children were forced to carry looted items. (p.1932)
			----	013	W was captured by the rebels in Tombudu in September/October 1998 when JPK, Kallon and Sesay entered. More than 100 civilians were forced to carry looted property for rebels.(p.1987)
			----	**014**	In March 1998 W was captured by the RUF and taken to Koidu. Captured civilians were used as labourers or taken on food-finding missions. They carried the loads back on their heads. (p.1940)
			----	**016**	W was captured in Tomandu along with 12 others. The captives were made to carry food for the rebels to

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					Tomandu. W was made to find, food, cook and wash clothes for the rebels. (p.1938)
			-----	074	W and his family were captured in May 1998 in Yomandu and taken to Kaima. There he was given to Captain Barry and used for domestic work. Some other men were trained to fight and were given weapons. (p.1932)
			-----	198	Rebels attacked the W's village (*unnamed*) at the end of 1998 dry season. The rebels forced civilians to carry looted items. W's husband and other men were abducted and forced to carry looted items. (p.1936)
			-----	263	W and his 3 brothers were abducted from Koidu in Feb 1998. 2 of his brothers were forced to fight or used as domestic labour. Civilians were forced to go to Kailahun *for military training* (p.1940)
	133	Mining operations were overseen by senior AFRC/RUF commanders were particularly brutal: captives were routinely stripped naked and beaten, they were killed if ever tired, nor were they fed or paid for mining activities. Captives labored under gunpoint by SBUs, child combatants under the age of 15 who were employed to guard the captured miners.		012	Civilians were forced to mine in Tombudu and people were beaten up if they refused to work. Sesay visited the mines each day. Sesay issued instructions to discipline those who did not work. (p.1944)
				013	W was captured by the rebels and forced to mine diamonds in Kono. W was only given gari to eat (p.1987)
				071	W will give evidence about forced mining by captured civilians who were stripped naked, beaten and not given food (p.1942)
				077	In December 1999, W was captured by RUF and taken to Tombudu to mine. No payment or food was given to the miners and the miners were constantly subjected to beatings and starvation. Sesay would come to collect diamonds and would order that people who he found not working be disciplined and beaten. Each week about 100 people were brought by force to *mine in* Tombudu. (p.1943)
				078	While in Koidu, many civilians were captured and forced to work in the diamonds mines for the RUF and AFRC. People were tied up and beaten if they refused. Sesay *was there and as the overall commander. knew about* the abuses. (p.1941)
				276	Sesat organised mining in 1999 in Kono where civilians were forced to mine and were given soap and food. (p.1998)
				304	After February 1999 rebel forced civilians to mine and workers were beaten by the rebels. Complaints were made to Sesay but no action was taken. If there was a reduction of manpower, Sesay gave instructions to go and forcibly bring in other workers. (p.1942-3)
	Linkage				
			200. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which abducted civilians and forced them to carry goods and perform domestic labour for AFRC/RUF forces		
			b. the need in Kono District to establish a workforce sufficient		

			to mine diamonds		
			c. the public meeting in Koidu where Sesay told civilians that they must cooperate with the AFRC/RUF to mine diamonds for the movement		
			d. the rules for the civilian mining workforce established by Sesay which included that no one was to be paid, laziness would be punished by public flogging and anyone stealing a diamond would be executed		
			e. any matters arising from the evidence disclosed		
			201. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy		
			b. his presence at military camps and AFRC/RUF bases where civilians were forced to carry goods and perform domestic labour		
			c. he was in charge of mining in Kono district		
			d. the announcement made to civilians in Koidu as detailed above		
			e. his instruction to subordinate AFRC/RUF soldiers that whenever there was a loss in "manpower" at the mines, more workers were to be forcibly brought in		
			f. any matters arising from the evidence showing specifically participation in the JCE		
			204. Article 6.3 liability of Sesay can be reasonably inferred from:		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which abducted civilians and forced them to carry goods and perform domestic labour for AFRC/RUF forces		
			b. the need in Kono District to establish a workforce sufficient to mine diamonds		
			c. his position of responsibility and command in the AFRC/RUF hierarchy and the fact that his subordinates engaged in abduction of civilians and used them as forced labour		
			d. the fact that his subordinates were in regular communication with the AFRC/RUF leadership during the commission of the crimes		
			e. his position in Kono as in charge of mining		
			f. his instruction to forcibly bring in more civilian workers whenever there was a loss in "manpower" in the mines		
			g. any matters arising from the evidence disclosed		
Pillage					
80. Between about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including	132	Often undertaken as part of "Operation Pay Yourself", AFRC/RUF forces looted food items and personal properties and destroyed public buildings and private homes by burning in the towns and villages of Baima, Biaya, Duwadu, Foindu,	264a. "Operation Pay Yourself" took place in Kono District	202	W saw armed soldiers looting stores in Koidu in 1997. This was during 'Operation Pay Yourself'. W and her family fled to Farandu where soldiers were also looting. (p.1932)
				216	Rebels came to Paema after the ECOMOG intervention

Tombudu where virtually every home in the village was looted and burned;		Tombudu, Sandu, Yardu and nearby villages.			and started 'Operation Pay Yourself' They looted properties there. (p.1935)
				270	W was abducted from Sulukundu in 1996 just after 'Operation Pay Yourself'. Prior to her capture she saw rebels burning houses. 'Operation Pay Yourself' was used in reference to the looting and burning carried out by rebels when they attacked Kono when W was abducted (p.1931)
			264b. many villages in the District were looted	**012**	Many houses were burnt in Tombudu after the ECOMOG intervention. (p.1944)
				013	W was captured by the rebels in Tombudu in September/October 1998 when JPK, Kallon and Sesay entered. JPK ordered the burning and killing of Tombudu. Civilians properties were looted. (p.1987)
				019	In 1997, shortly before the coup, AFRC men captured W and stole his goods. On 16 April 1998 AFRC/RUF men came to W's house in Yardu and burnt houses (p.1936)
				066	Rebel soldiers confronted W in the bush near Foendor and took his property. (p.1933-4)
				071	W will give evidence of looting during the AFRC/RUF retreat to Kono in 1998. W will also give evidence about the burning of homes. (p.1942)
				078	W was captured by the RUF on 28 March 1998. His and several other civilians had their belongings looted. (p.1941)
				195	W was captured with 13 others. A soldier sold money and some small items from W. (p.1931)
				197	W was captured in the bush and had his valuables stolen. (p.1936)
				198	Rebels attacked villages at the end of the 1998 dry season, they looted civilians for supporting President Kabbah. W and her husband were captured in the bush by rebels who stole their belongings. (p.1936)
				217	On pushing the Kamajors out of Koidu, the rebels burnt the town. (p.1930)
				218	W was captured in Bumpeh and taken to Cookery junction. The rebels were looting villages at the time. (p.1938)
				206	W's village (unnamed) was attacked in April 1998. The houses were looted by rebels pretending to be Kamajors. (p.1939)
				303	After Kabbah was overthrown, rebels started looting and burning in the Koidu area. When W fled with rebels from ECOMOG, W would heard rebels speaking about the number of houses they burnt. (p.1930)
	Linkage				
			265. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, in which food and other goods were taken from civilians and in which civilian dwellings were burned		
			b. the announcement of "Operation Pay Yourself" in which AFRC/RUF troops were encouraged to loot food items and		

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			personal goods from civilians		
			c. any matters arising from evidence disclosed		
			266. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy		
			b. any matters arising from the evidence disclosed showing specific participation in the JCE		
			269. Article 6.3 liability of Sesay can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in looting and burning		
			b. his subordinates were in regular communication with the AFRC/RUF leadership during the commission of the crimes		
			c. the overall conduct of the AFRC/RUF, not limited to any one District, in which food and other goods *were taken from* civilians and in which civilian dwellings were burned		
			d. the announcement of "Operation Pay Yourself" in which AFRC/RUF troops were encouraged to loot food items and personal foods from civilians		
			e. any matters arising from the evidence disclosed		
Child soldiers					
68. At all times relevant to the Indictment, AFRC/RUF routinely conscripted, *enlisted and/or used* boys and girls under the age of 8 to 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters.	*General*				
			182a. thousands of children were abducted from all over Sierra Leone		*See below for evidence of child soldiers, divided by district.*
			182b. thousands of children underwent military training at AFRC/RUF camps		*See below for evidence of child soldiers, divided by district.*
			182c. children were formed into SBU and SGUs		*See below for evidence of child soldiers, divided by district.*
			182d. Armed SBUs and SGUs were used in combat		*See below for evidence of child soldiers, divided by district.*
			183. Article 6.1 liability can be reasonably inferred from		
			a. the overall conduct of the AFRC/RUF, not limited to any one District, which routinely conscripted, enlisted and/or used boys and girls under the age of 15 *to participate in active* hostilities		
			b. the advice of Charles Taylor to Foday Sankoh that soldiers trained from childhood are very loyal		
			c. the teaching and instruction of Sankoh that even children have the right to bear arms		
			d. the widespread abduction of children by AFRC/RUF forces		
			e. the military camps set up to train children in the use of weaponry		
			f. the drugging of child soldiers by the AFRC/RUF troops *during the attacks*	026	W was abducted in 1993 with other boys and girls. W will give evidence about the use of child soldiers and military training for children, including giving them drugs and their participation in crimes. (p.1985)
				130	50 children were abducted from Kamakwie in 1998. Just before his 15th birthday, W was given training and

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					forced to fight and kill civilians who could not carry loads. W was given drugs. (p.1991)
				200	W was abducted in 1997 in Kailahun and was 13 yrs old at the time. W was trained in early 1999 and given a weapon. After the RUF attacked, they would call the small boys to come and get goods from the villages. They gave drugs to children to make them braver. Tom Sandy gave reports to Sesay about the attacks.(p.1972)
			g. the widespread use of children to carry ammunition for AFRC/RUF troops during attacks		
			h. the establishment of SBUs and SGUs		
			i. any matters arising from the evidence		
			184. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy		
			b. his presence at military camps where children underwent training		
			c. his presence during attacks where child soldiers were used		
			k. any matters arising from evidence disclosed showing specific participation in the JCE		
			187. Article 6.3 liability of Sesay can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in the conscription of children		
			b. his subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes		
			c. his presence at military camps where children underwent training		
			d. his presence during attacks where child soldiers were used		
			e. his 1998 request that a SBU be established specifically for him		
			f. any matters arising from the evidence disclosed		
	Kenema				
		Tongo			
	113	The evidence will demonstrate widespread forced labour of hundreds of captured civilians in the Tongo diamond fields. About August 1997, AFRC/RUF forces took control of Tongo town and began mining operations in the area, including "Cyborg pit". These mining operations were sustained through the forced labour of hundreds of captured civilians, who mined without pay, under threats of death and acts of physical violence by the AFRC/RUF. Small Boys Units, comprising of young armed child combatants, were employed to guard the abducted civilians.	184. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			e. his presence at Cyborg pit in Kono District where SBUs were used to guard and discipline the civilian workforce	031	W was chairman at Cyborg and saw child soldiers called SBUs brought by Bockarie. They were around 10 yrs old and armed with guns. They guard Cyborg and shot anyone who went there without authorization. (p.1928)
				034	W heard from others that Sesay came to Tongo field (p.1927-8)
				035	Bockarie and Kallon were present at the mines. W often saw Sesay in Tongo collecting diamonds. W was told that Gbao also visited the mines. The big commanders resided at the Labo camp, 30-40 yards away from Cyborg. (p.1929)

				060	At Tongo field mines, many people were shot by small boys who were armed with guns. (p.1927)
				211	W will give evidence about small boys guarding Cyborg who also killed civilians mining in the pit (p.1982)
	Kailahun				
	100	The evidence will further show now Kailahun district served as a main base for the AFRC/RUF, where senior AFRC/RUF commanders were *regularly based, and through which significant* support for AFRC/RUF operations was maintained by the forced labour and/or conscription of hundreds of captured men, women and children.	184. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			g. his presence with armed child soldiers as young as 10 yrs *old in Kailahun*	330	W saw the conscription and military training of women and young children by rebels. W would see children as young as 10 yrs old carrying guns. They were mostly with RUF commanders like Sesay. (p.1971)
			---	110	W will testify to abductions and training of abductees (including children) at a camp where Sesat was the commander in 1992. W headed a group of children and stayed in Kailahun training children.
			---	**114**	In Buedu after the AFRC left Freetown in 1998, captives including children were sent for military training. (p.1971)
			---	115	W was captured as a young boy by Liberians and carried looted properties. He saw SBUs in Kailahun and will testify to events prior to 1997. W says children were used for labour and has evidence of use of children by Gbao and Kallon.
			---	**117**	W was abducted in Tongo aged 10 yrs and given *military training. W says he was taken to Liberia to fight* for 6 mths and Mosquito was there. W returned to Kailahun where he saw rapes and burning of houses. Gbao gave an order for a woman to be cut open and her liver removed. In an attack on Kulahun, Gbao ordered civilians to be shot at random. After the 1997 coup, W went to Makeni and was later taken to Freetown to loot. W also saw looting in Makeni. (p.1990)
			---	**168**	Between June and November 1998, the RUF conducted military training of about 200 people. *including boys as young as 10 yrs, at Bunumbu under a* Liberian woman named Col. Monica Pearson. (p.1994)
			---	200	W was abducted in 1997 in Kailahun and was 13 yrs old at the time. W had to transport goods for the RUF. W was trained in Yaama. From the 100 children in W's group, 30 died. W was trained in early 1999 and given a weapon. After the RUF attacked, they would call the small boys to come and get goods from the villages. They gave drugs to children to make them braver. Tom Sandy gave reports to Sesay about the attacks.(p.1972)
			---	313	W observed that child soldiers were used in different areas such as houses of commanders and on the front line. (p.1971-2)
	Kono				
	133	*Mining operations were overseen by senior* AFRC/RUF commanders were particularly brutal: captives were routinely stripped naked and beaten, they were killed if ever tired, nor were they fed or	184. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			d. his 1998 request that a 24 member SBU be prepared for him while he was in Kono	---	---

		paid for mining activities. Captives labored under gunpoint by SBUs, child combatants under the age of 15 who were employed to guard the captured miners.	e. his presence at Cyborg pit in Kono District where Small Boys Units were used to guard and discipline the civilian workforce		*Cyborg is in Kenema – see Kenema section for allegations of SBUs guarding pits.*
				077	Sesay came to the Tombudu mines post Dec 1999 with bodyguards who were child soldiers from the SBU. SBU were used at the mines. Small boys were instructed to kill people whenever the RUF command desired. W saw SBU kill people in the mining pits and throw the bodies into the water (p.1943)
			f. this use of SBUs in an attack on Koidu in December 1998	276	W will testify that SBUs, including bours aged 10-12 yrs, were used in the Kono attacks led by Sesay and Kallon. (p.1998)
			----	140	W was abducted by Savage in Tombudu at the end of 1998 dry season. He saw child soldiers as young as 14 among the rebels. (p.1986)
				206	When W's village (unnamed) was attacked in mid-April 1998 by 100-200 rebels pretending to be Kamajors, W said there were many small boys as young as 20 yrs old. (p.1939)
				219	W was in Motema when the rebels attacked. There were some child soldiers, about 10 yrs old. (p.1941)
				263	W was captured in February 1998 in Koidu. He saw rebels killing civilians in the Koidu area which was under the command of Sesay and Kallon. There were many child soldiers under the age of 15 yrs there (p.1940)
				297	W saw small boys guarding the UNAMSIL held at Yengema (p.1953)
	135	There were routine abductions of men and young boys under the age of 15 who were later forcibly conscripted by the AFRC/RUF under threats of bearing and death. Captured civilians were taken to camps for military training where senior AFRC/RUF command were present. Child combatants were used in military operations throughout the District, with knowledge of superior AFRC/RUF commanders.		305	In the 1998 dry season, AFRC rebels captured W. There were several child combatants there. (p.1939)
	Koinadugu				
	123	Throughout the operation of the Northern Jungle, [there were] routine abductions of young boys under the age of fifteen for use as child combatants. Hundreds of children underwent training at Koinadugu town and Serekolia and were later used in active hostilities, including fighting and carrying loads of ammunition. Use of children in active hostilities occurred openly before senior AFRC/RUF commanders.	184. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			j. the training of hundreds of children at Koinadugu and Kerekolia who were later used in active hostilities	020	W was captured in Kono and taken to Kabala with about 100 other children (aged 9-14yrs). There he saw over 200 children given military training. W will testify about troop movements towards Freetown in January 1999 including child soldiers under the command of SAJ Musa, 55 and 05. (p.1989)
				130	W was abducted, aged 12, from Katombo II. Abductees were forced to carry loads. W saw military training of children and gave give evidence of crimes of killings, rape, amputation burning in Koinadugu, Bombali end into Freetown for January 1999 (p.1990)

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				133	W was captured in Kumalu and was made Mammy Queen of abducted women in Koinadugu town. She heard that RUF commanders SAJ Musa and Superman ordered some children (about 15 yrs old) to be trained. (p.1968)
				146	W was abducted from Kabala. She heard from rebels that abducted children were given military training in Koinadugu. (p.1966-7)
				209	W saw child soldiers who had received military training involved in the killing on the attack on Koinadugu prior to the Jan 1999 invasion of Freetown (p.1967)
			----	026	W was abducted in 1993 with other boys and girls. W will give evidence about the use of child soldiers and military training for children, including giving them drugs and their participation in crimes. (p.1985)
			-----	085	W was abducted in Koinadugu District at aged 11 yrs by SAJ Musa's soldiers. He was given drugs and went on attacks. (p.1955)
			----	135	In 2000 dry season, W encountered Savage near Kasimbeck village. Child soldiers 10-14 yrs were used by the rebels at Kaataoya. (p.1960)
			---	142	Rebels based themselves in Helma Kono and there were child soldiers in the group, aged 5-10 yrs with heavy guns that were dragging on the ground. (p.1984)
			---	143	W was captured in September 1998 with 50 people with more people W's age (10 yrs) than adults. W will give evidence how abductees including boys and girls were given arms and sent to kill people. W was ordered to rape and burn houses. W was part of the group that moved through Bombali into Freetown for January 1999. (p.1979-80)
			----	147	During attacks on Kabala in July and September 1998, many boys and girls from 5 yrs old were abducted. (p.1959)
			----	180	W was abducted with other children before the AFRC coup. He received military training. He went to Kabala and fought with the AFRC. In Makeni W saw Sesay, Superman, 55 and others. All the big commanders knew about the use of children. W would amputate of killed while food-finding missions in Kabala. (p.1980-1)
				199	W was abducted at age 10 with other children. He will give evidence on the military training of children and use of children on attacks on villages to get food and the killing of civilians. (p.1989)
				212	In October 1998 Superman ordered 'Operation No Living Thing' in Koinadugu. Boys and girls aged 122-15 yrs were taken away. There were child soldiers with the rebels (p.1960-1)
			---	225	W was abducted at age 10 yrs and trained at Koribondo under Monica where he saw 300 trained, 100 of whom were W's age or younger. (p.1989)

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	Bombali				
	78	The group established a base at Rosos where they engaged in the forced labour and military training of abducted civilians, including children.	184. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			i. the use of children in "foodfinding missions" in Bombali District	251	W was captured and taken to Makeni to a commander who was under Kallon. He assisted on food-finding missions W will testify about the Freetown invasion and says the commanders in Freetown were Superman, Rambo, Gbudema and Bai Bureh and some AFRC commanders (p.1986)
			-----	031	W was captured in Karina. Small boy soldiers ordered the women to undress. (p.1950)
			----	085	W was abducted in Koinaudugu District at aged 11 yrs by SAJ Musa's soldiers. He was given drugs and went on attacks. Later he went to Kamakwie town. There he and other abductees were given drugs and given 3 weeks of training. (p.1955)
			-----	130	50 children were abducted from Kamakwie in 1998. Just before his 15th birthday, W was given training and forced to fight and kill civilians who could not carry loads. W was given drugs. W saw civilians beaten and given drugs by other small boy combatants. (p.1991)
			-----	143	W was captured in September 1998 with 50 people with more people W's age (10 yrs) than adults. W will give evidence how abductees including boys and girls were given arms and sent to kill people. W was ordered to rape and burn houses. W was part of the group that moved through Bombali into Freetown for January 1999. (p.1979-80)
			-----	149	W was in Kamabai area after December 1998. He was told Savage was the overall commander. W saw more than 20 child soldiers who were aged 10+ yrs. (p.1946)
			----	157	W was captured in Bornoya and taken to Rosos where he and 64 small boys were trained in weaponry and military tactics. W participated on the Freetown attack. Gullit and 55 were part of the group that planned the attack. (p.1987-8)
			-----	158	W was captured in Bornoya and taken to Karina. At Rosos, W and other children received military training. W heard it was ordered by 55. W and boys were also used for food-finding missions. (p.1988)
			-----	159	W was abducted and taken to Rosos. There was a military training camp there operated by the soldiers and rebels. He saw adults and children, all boys, being trained in tactics and weaponry. W estimates there were over 30 boys of various ages. (p.1950)
			----	164	W was a UN personnel held hostage at Tekko barracks in May 2000. There SBUs threatened to kill the hostages (p.1958)
			----	165	W was a UN personnel held hostage at Tekko barracks in May 2000. There SBUs threatened to kill the hostages (p.1957)
			-----	174	in Makeni after December 1998 W saw many small boys being sent for military training. (p.1952)

			----	180	W was abducted with other children before the AFRC coup. He received military training. He went to Kabala and fought with the AFRC. In Makeni W saw Sesay, Superman, 55 and others. All the big commanders knew about the use of children. W would amputate of killed while food-finding missions in Kabala. (p.1980-1)
			-----	186	W was involved in negotiations for the release of children from Makeni in July/August 1999. Armed RUF including Gbao and Kallon intervened saying that these were their children and would belong to their SB units and they wanted them back. (p.1954-5)
				196	W was hiding in the bush near Malama when she was captured. She saw armed child soldiers with the rebels. (p.1948)
				271	W was abducted when he was very young, took drugs and committed crimes including killing, amputating and raping. (p.1979)
			----	323	W was captured in 1996, aged 12, and sent to fight in the Northern Jungle. Every commander had 5 SBUs and there were rapes by SBU. W became a SBU commander. W was in Kambia in 1998. He was on the Freetown invasion. (p.1981-2)
	Western Area				
	96	Throughout their operations in Freetown, the AFRC/RUF used children under 15 yrs old in hostilities.	184. Article 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			h. the use of armed child soldiers in the Jan 1999 Freetown invasions	022	W was in Kissy on 6 January 19999 and saw armed children with the rebels. (p.1902)
				020	W was captured in Kono and taken to Kabala with about 100 other children (aged 9-14yrs). There he saw over 200 children given military training. W will testify about troop movements towards Freetown in January 1999 including child soldiers under the command of SAJ Musa, 55 and 05. (p.1989)
				085	On 9 January 1999 W was in Wellington area when she was attacked by rebels. There were many armed children with the rebels, including one that was about 5 yrs old. (p.1912-3)
				097	W was near the Kissy mental hospital on 6 January 1999. The big commanders were at Ferry Junction. There were many armed children with the rebels. Some in uniform were as young as 10 yrs old. (p.1904)
				143	W was captured in September 1998 with 50 people with more people W's age (10 yrs) than adults. W will give evidence how abductees including boys and girls were given arms and sent to kill people. W was ordered to rape and burn houses. W was part of the group that moved through Bombali into Freetown for January 1999. (p.1979-80)
				157	W was captured in Bornoya and taken to Rosos where he and 64 small boys were trained in weaponry and military tactics. W participated on the Freetown attack. Gullit and 55 were part of the group that planned the attack. (p.1987-8)

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				251	W was captured and taken to Makeni to a commander who was under Kallon. He assisted on food-finding missions. W will testify about the Freetown invasion and says the commanders in Freetown were Superman, Rambo, Gbudema and Bai Bureh and some AFRC commanders (p.1986)
				323	W was captured in 1996, aged 12, and sent to fight in the Northern Jungle. Every commander had 5 SBUs and there were rapes by SBU. W became a SBU commander. W was in Kambia in 1998. He was on the Freetown invasion. (p.1981-2)
				227	On 29 January 1999, W was at Kola tree. There he saw the 'burning squad' tasked with burning houses. There were 2 children aged 14-5 yrs there. He was taken to Waterloo where he saw many SBUs who were about 10 yrs old (p.1914)
	Port Loko				
	---	---	---	252	W was captured by rebels. While in Nonkobas she saw several child soldiers beating up an old man. (p.1976)
				261	W was captured (not location given). There were children among the rebels. (p.1976)
UN attacks					
83. Between about 15 April 2000 and about 15 September 2000, AFRC/RUF engaged in widespread attacks against UNAMSIL peacekeepers and humanitarian assistance workers within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko and Kono Districts. These attacks included the unlawful killing of UNAMSIL peacekeepers, and abducting hundreds of peacekeepers and humanitarian assistance workers who were then held hostage.	82	Bombali District From May 2000, AFRC/RUF forces attacked UN peacekeepers and humanitarian assistance personnel operating under UNAMSIL at locations in Makeni/ Magburaka area. These attacks included coordinated abductions, killings, beatings, ill-treatment of peacekeepers and humanitarian assistance personnel. AFRC/RUF attacked camps belonging to the UNAMSIL personnel and humanitarian assistance workers, in addition to looting and destroying official and personal property. Hostages were delivered to senior AFRC/RUF commanders in Kono District and released through Liberia.	289. Article 6.1 liability can be reasonably inferred from		
			a. the Makeni DDR camp, Morris Kallon threatened peacekeepers and told them to dismantle the camp within 72 hrs	**165**	Kallon threatened peacekeepers and told them to dismantle the camp within 72 hrs at the Makeni DDR camp. (p.1957)
			b. orders were then passed over radio to Sesay and Sankoh for the arrest of the UNAMSIL personnel.		
			c. Morris Kallon and Augustine Gbao were present when UN Milobs were taken hostage, mistreated and tied together	**042**	Kallon and Gbao in an argument with MILOBS. Kallon tried to stab one and ordered the arrest of one MILOB. W was dragged into a car. Other abducted peacekeepers were harassed by Kallon, one limping and the other bleeding from his mouth. 20 peacekeepers were detained. They were mistreated and tied together. They were given little food. Kallon ordered the detention of UN vehicles (p.1956)
	107	Kailahun District [There were] organised attacks UN peacekeepers and humanitarian assistance personnel operating under UNAMSIL from May 2000. UN peacekeepers and humanitarian personnel were abducted, subjected to threats, physical violence and ill treatment, including prevention by AFRC/RUF forces of the evacuation of the casualties and the sick. Over ten weeks, AFRC/RUF attacks on UNAMSIL positions lead to the death and serious bodily injury of UNAMSIL personnel in addition to looting and destruction of official and personal properties.	d. Morris Kallon abducted the UN Milobs and drove them to the RUF base at the Tekko barracks in Makeni	**042**	Kallon and Gbao in an argument with MILOBS. Kallon tried to stab one and ordered the arrest of one MILOB. W was dragged into a car. Other abducted peacekeepers were harassed by Kallon, one limping and the other bleeding from his mouth. 20 peacekeepers were detained. They were mistreated and tied together. They were given little food. Kallon ordered the detention of UN vehicles (p.1956)
				164	W was a Gambian MILOB who went to speak to RUF on 1 May 2000 and was held. The hostages were stripped and tied with electric cable. (p.1958)
				165	The UN at Makeni DDR were abducted by Kallon and taken to Tekko barracks. The hostages were stripped and tied with electric cable. (p.1957)
	143	Port Loko	e. the Makeni DDR was surrounded and attacked by the RUF under the command of Gbao	033	W will give evidence about Gbao attacking the UNAMSIL. (p.1993)

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		From May 2000, AFRC/RUF forces attacked UN peacekeepers and humanitarian assistance personnel operating under UNAMSIL at locations in Port Loko district, including around or near Rogberi. Coordinated attacks against peacekeeping units resulted in death, serious bodily injury and abductions of peacekeepers. These attacks also resulted in looting and destruction of official and personal property. AFRC/RUF forced used civilians in such attacks as human shields.	f. the RUF commander in the area erected checkpoints and posted AFRC/RUF personnel at the checkpoints in order to cut off escape routes for UNAMSIL troops	160	W observed the abduction and confinement of the UNAMSIL peacekeeper at the Panlamp area with the RUF commander, erecting checkpoints and posting RUF personnel at the checkpoints in order to cut off escape routes for UNAMSIL troops. Sesay, Kallon and Gbao paid visits to the RUF commander during the UNAMSIL's confinement (p.1953)
			g. Sesay gave orders to Kallon to mobilize men to attack the Kenyan peacekeepers in Magburaka	276	Sesay gave Kallon orders to mobilize men to attack UN peacekeepers in Magburaka and brought ammunition for the fight in Magburaka (p.1998)
			h. Sesay supplied the ammunition for the fight in Magburaka	276	Sesay gave Kallon orders to mobilize men to attack UN peacekeepers in Magburaka and brought ammunition for the fight in Magburaka (p.1998)
			i. Kallon and Gbao communicated the orders to attack the UN peacekeepers in Magburaka	040	RUF seized a number of UNAMSIL vehicles on Gbao's order. W saw Zambian UN in their vehicles being escorted by RUF. W heard Zambians were taken to Tekko barracks and on to Kono. (p.1954)
				041	W heard Gbao and Kallon gave instructions to fight the UNAMSIL. (p.1954)
			j. that peacekeepers were abducted in both Magburaka and Makeni		*See above*
			k. that Sesay ordered the movement of detained Zambian peacekeepers to Kono	294	W heard news all over Makeni that Sesay had instructed that the Zambians be taken to Kono. (p.1955)
			l. Sesay gave an instruction to arrest and hold UN personnel in Kailahun	210	Sesay gave instructions to arrest and hold the UN peacekeepers in Kailahun (p.2002-3)
				274	Sesay gave orders to arrest the UN peacekeepers in Kailahun (p.2003)
			m. that the release of the abducted UN personnel was negotiated by Sesay	043	W will testify to the negotiation of the release of humanitarian personnel from the RUF with Sesay and Kallon ad Kallon later took USD 5000. (p.1959)
				166	The Emergency Response Team negotiated the release of the peacekeepers with Kallon and Sesay (p.1957)
			n. any matters arising from the evidence disclosed	166	The Makeni DDR camp had been attacked by Gbao. Peacekeepers in Magburaka had also been attacked. The RUF bodyguards were wearing UNAMSIL uniforms and the RUF had stolen UNAMSIL equipment and the money and personal items of the peacekeepers. (p.1957)
				271	W will testify about Gbao's planning of the UNAMSIL attacks (p.1979)
				288	W's Zambian contingent was abducted and stripped of their combat. Sesay ordered the hostages be taken to another place and ordered their gradual release (p.1958)
				294	W was told that some UNAMSIL personnel were abducted by the RUF and taken to the RUF HQ. W saw UNAMSIL vehicles coming from the Freetown direction. RUF personnel were at the sides and on board the vehicles and had seized the weapons from the abducted troops (p.1955)
				297	W saw the Zambians held at Yengema where they were being guarded. They were dressed in undershirts and

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					shorts W was told there were also UN at No. 11. Sesay was RUF BFC at the time (p.1953-4)
			290. Art 6.1 liability of Sesay and/or his participation in a common plan can be reasonably inferred from:		
			a. the orders given by Sesay as to attacks and abductions as outlined above	276	Sesay gave Kallon orders to mobilize men to attack UN peacekeepers in Magburaka and brought ammunition for the fight in Magburaka (p.1998)
			b. his presence in Makeni, Magburaka and other places where the abducted UN personnel were kept or moved		*See above*
			c. as the peacekeepers were being transported to Kono he addressed them and said that he could have killed all of them without questions being raised.	042	When the peacekeepers were brought to Sesay, Sesau ordered them untied but said they had brought problems to Africa and if they wanted to fight they were ready. (p.1956)
				164	On the road to Kono, Sesay met the peacekeepers and said "I could have killed all of you and nobody would question me". They were then loaded back on the vehicle and taken to Kono. There was a crash and W's leg was broken (p.1958)
				165	On the road to Kono, Sesay met the peacekeepers and said "you have killed many of my men, I could have killed all of you and nobody would question me". They were then loaded back on the vehicle and taken to Kono (p.1957)
			d. his position in May 2000 as head of the RUF		
			e. any matters arising from the evidence disclosed showing specific participation in the JCE		
			293. Article 6.3 liability of Sesay can be reasonably inferred from:		
			a. his position of responsibility and command within the AFRC/RUF hierarchy and the fact that his subordinates engaged in attacks on UNAMSIL personnel		
			b. his subordinates were in regular communication with the AFRC/RUF leadership during the commission of crimes		
			c. his radio communications with Sankoh prior to the attacks	--	---
			d. orders given by Sesay to attack the peacekeepers	276	Sesay gave Kallon orders to mobilize men to attack UN peacekeepers in Magburaka and brought ammunition for the fight in Magburaka (p.1998)
			e. his supply of ammunition for the attack on Magburaka	276	Sesay gave Kallon orders to mobilize men to attack UN peacekeepers in Magburaka and brought ammunition for the fight in Magburaka (p.1998)
			f. his order to move the abducted peacekeepers from Makeni to Kono	294	W heard news all over Makeni that Sesay had instructed that the Zambians be taken to Kono. (p.1955)
			g. his involvement in the negotiations for the release of the peacekeepers	043	W will testify to the negotiation of the release of humanitarian personnel from the RUF with Sesay and Kallon ad Kallon later took USD 5000. (p.1959)
				166	The Emergency Response Team negotiated the release of the peacekeepers with Kallon and Sesay (p.1957)
			h. any matters arising from the evidence disclosed		

Annex E

Selected Improper Findings as they Relate Sesay's Purported Planning of Enslavement at Cyborg Pit (Grounds 31-32)

Judgment Paragraph	Trial Chamber's Finding	Reasons Why The Trial Chamber's Findings Are Improper; Comments on the Trial Chamber's Findings
756	"The Council did not vote on issues as significant decisions were made by Koroma, SAJ Musa and certain other Honourables." "The major issues discussed by the Council were the security of the Junta; revenue generation; the resolution of conflicts between the AFRC and the RUF; looting; and harassment of civilians."	This is a correct finding. There is no mention of force in connection with mining at the Supreme Council. However, the finding concerning what was discussed at the Supreme Council meetings is misleading. The Council did not discuss looting and the harassment of civilians with an aim to loot and harass, but to prevent such looting and harassment: The major issues that were discussed during those meetings bordered on security of the junta, revenue generation for the sustainability of the junta, as well as resolutions of conflicts between the AFRC and the RUF, called Peoples' Army and, frequently, *issues relating to the misbehaviours* of the so-called honourables, *regards looting and harassment of civilians.*[1]
1088	"The Junta's Supreme Council therefore decided to appoint senior members to supervise alluvial diamond mining in Kono and Kenema and to use the revenue to pay for the salaries of members of the Council, the government, and logistics for military and the fighters, including the procurement of arms and ammunition."	This finding is incorrect. It was not the Supreme Council, but JPK alone, that made the appointments. TF1-371: [T]hat appointment was arbitrarily done by the chairman of the council, Johnny Paul Koroma.[2] The Supreme Council was not informed that civilians were being forced to mine. Thus, the Trial Chamber correctly concluded [by absence on the point] that the Supreme Council did not discuss the use of force.

[1] Transcript/TF1-371, 20 July 2006, pp. 34.
[2] Transcript/TF1-371, 20 July 06, pp. 36.

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1089	"After the AFRC/RUF assumed control of Tongo Field in August 1997, mining was conducted pursuant to a centralised system. This system was announced by Bockarie at a meeting at the NDMC football field attended by approximately 1000 civilians." "He then ordered everyone present to go to the mining site at Cyborg Pit." "The civilians, comprising men, women and children, were marched to the pit where they started mining."	This finding is unreasonable. The Trial Chamber cites to only TF1-035's direct-examination for this finding. On cross-examination TF1-035 testified that the civilians were not captured: A. It was the playing [sic; plane] field that *we were gathered. We were not captured.* It was in the playing field that we were gathered and he introdueed himself as Mosquito and he said now they had taken over the town and the whole of the eountry. I did not say that they captured anyone. I said it was in the playing field that we were gathered.[3] Although TF1-035 refuted it, his November 2004 statement to the Prosecution stated that "Then Mosquito said that they were not there to disturb anybody or hurt anybody."[4] Further, TF1-060 (not cited by the Trial Chamber) did not testify that force was used in having the civilians attend this meeting.[5] In addition, TF1-060, a member of the Caretaker Committee, reported to the Paramount Chief in Kenema Town ten days after the entry of the RUF and AFRC into Tongo Fields. TF1-060, in a closed door meeting with the Paramount Chief (with no RUF or AFRC combatants present) informed him of the looting, killing, and burning that occurred on the RUF and AFRC's entry. There was no mention of any forced mining.[6]
1090	"The AFRC/RUF Secretariat in Tongo Field, headed by Gullit and Sergeant Junior and composed mainly of RUF rebels, created a Committee to oversee the mining and reported	The Trial Chamber's reference here to a "Committee" is with reference to the Mining Committee. Wholly absent from the Judgment is reference to the Caretaker Committee.[7] However, neither of the Trial Chamber's citations here refer to any committee (Mining or Caretaker). Absent from the evidence to

[3] Transcipt/TF1-035, 5 July 2005, pp. 111.
[4] Transcipt/TF1-035, 5 July 2005, pp. 111.
[5] Transeript/TF1-060, 29 April 2005, pp. 56.
[6] Transcript/TF1-060, 29 April 2005, pp. 63.
[7] See, Sesay Defence Closing Brief at Paras. 616-618.TF1-060, a member of the Caretaker Committee, testified about the Caretaker Committee. Without explanation, TF1-060's evidence was wholly ignored by the Trial Chamber.

	directly to Bockarie."	which the Trial Chamber cites is any reference to anyone reporting to anybody, no less Bockarie. Please *see* the Defence submissions in connection with the Mining Committee[8] and the Caretaker Committee.[9] The citation to TF1-045 doesn't refer to the [Mining] Committee. Rather, the Citation to TF1-045 refers to resolving problems between civilians and soldiers (detracting from the Trial Chamber's finding of enslavement) and that trucks would coming from outside of the Tongo Fields area would pay a commission to enter (indicating travel to and from the Tongo Fields area and that vehicles were coming to Tongo Fields for the purposes of conducting business): Q. You had also said something about Sergeant Junior and the OC secretariat. What do you mean by that? A. Well, the OC secretariat, according to what I saw, he was in charge of all the administration that had to do with civilians which was going on, together with the AFRC soldiers who were in Tongo. They custom duties, everything. When a truck came or a motor car came, they would stop there and they would give some commission there. Any time that a problem arose between civilians and soldiers, I would see them going there and they would sit together and discuss it. So he was in charge of that. That is Sergeant Junior as the OC secretariat. The citation to TF1-371 refers to mining in the Tongo Fields area during the junta being conducted predominantly by the RUF;[10] refers to bodyguards and their responsibilities;[11] and the events in Koidu after the Intervention (e.g., the looting of the bank in Koidu).[12]

[8] Sesay Defence Closing Brief at Paras. 609-612.
[9] Sesay Defence Closing Brief at Paras. 616-618.
[10] Transcript/TF1-371, 20 July 2006, pp. 52.
[11] Transcript/TF1-371, 20 July 2006, pp. 76.
[12] Transcript/TF1-371, 20 July 2006, pp. 76-77.

1090	"The Committee was made up of predominantly elderly civilians who had been captured in Tongo, and its mandate was to assist the fighters in obtaining civilian labour, to identify potential mining sites and to help assess the diamonds found."	This finding is unreasonable. The Trial Chamber was selective in the portions of TF1-045's testimony it chose in arriving at this finding. Even on direct-examination, TF1-045 made significant concessions detracting from the Trial Chamber's finding. The Trial Chamber's reference to TF1-045's evidence properly supports its finding. However, the Trial Chamber cited to only a portion of TF1-045's direct-examination.[13] On the page following the cited portion of TF1-045's testimony, TF1-045 testified that after a time, members of the Mining Committee abdicated in their responsibility and no longer assisted the combatants in identified civilian labour: They would give arms to AFRC soldiers, those that they assigned to go along with the civilians so as to go and fetch their fellow civilians. This was the way it was done *initially*. They would go there, they would see them, they would come with civilians at the secretariat. *Later*[14] it turned out to be a great problem. When according to Sergeant Junior, he said the type of civilians that they got when the committee had not been set up, *now they don't get them at all*.[15] For this reason, the Mining Committee, according to TF1-045, was reduced to identifying diamondiferous areas: So the committee was only there to show where mining was going on, or when they got a diamond they would be able to value it for them.[16] On cross-examination, TF1-045 testified that the committee was formed to prevent the harassment of civilians: Q. Thank you. Isn't the truth, Mr Witness, that this committee you talk about

[13] Transcript/TF1-045, 18 November 2005, pp. 69.
[14] See the discussion below on TF1-045's cross-examination in connection with this finding. An interpretation of TF1-045's cross-examination indicates that after one or two instances, member of the Mining Committee no longer assisted the fighters in locating civilian labour. *See* Transcript/TF1-045, 23 November 2005, pp. 36.
[15] Transcript/TF1-045, 18 November 2005, pp. 70.
[16] Transcript/TF1-045, 18 November 2005, pp. 70.

		was in fact a device by the AFRC to do their best *to prevent harassment* of civilians by troops? A. That was why it was mainly formed, but it was unworkable.[17] Further, members of the Mining Committee didn't respect the combatants and contravened their purported orders: A. Their colleague civilians were not respecting them. They did not take their orders seriously and at times members of this committee could tell their colleagues to hide, civilian colleagues to hide. So when it occurred onee, twice, they said they were no longer responsible to go in search of their colleague civilians, that they would only be there to help them mine, identify mining sites, value diamonds for them. That was the situation at the time.[18] The citation to TF1-371 does not refer to any committee. The Trial Chamber's finding is unsupported by this evidence. TF1-371's cited evidence states that there was an AFRC Secretariat in Tongo[19]
1090	"The Committee also gathered the proceeds from the diamonds and delivered them over to Bockarie."	This finding is unreasonable. (NB, the Trial Chamber had intended to cite to page 35 of DIS-069's 25 October 2007 testimony instead of page 31). DIS-069 states that proceeds from the mining were handed to Bockarie when he arrived to Tongo.[20] However, DIS-069's knowledge of Tongo is limited to only the first two weeks upon its capture. After those first two weeks, DIS-069 left the Tongo Fields area.[21] Thus, it was unreasonable for the Trial Chamber to cite to DIS-069's evidence for the proposition that throughout the time the RUF and AFRC were present in Tongo that Bockarie was receiving diamonds. Further,

[17] Transcript/TF1-045, 23 November 2005, pp. 40.
[18] Transcript/TF1-045, 23 November 2005, pp. 36.
[19] Transcript/TF1-371, 20 July 2006, pp. 53.
[20] Transcript/DIS-069, 25 October 2007, pp. 35.
[21] Transcript/DIS-069, 22 October 2007, pp. 84.

		there is no affirmative finding from the Trial Chamber that these diamonds came from forced mining at Cyborg Pit.
1090	"Other Commanders in Tongo included Peleto and Major Goyeh, OG, BCH, Boyce – the last two being bodyguards to Sesay."	This finding is unreasonable. Even if it were true that Sesay's bodyguards were in Tongo, there is no finding that these bodyguards engaged in forced mining. Rather, the evidence to which the Trial Chamber cites suggests that the mining in which Boys (but not BCH) engaged in was private mining unconnected to the government mining and unconnected to force. First, the Trial Chamber cites TF1-367 for the proposition that BCH and Boys were bodyguards to Sesay.[22] However, BCH was never a bodyguard to Sesay. TF1-367 is the only witness that ever testified to this effect. Second, the Trial Chamber cites to TF1-366 for the proposition that Boys (but not BCH) was engaged in private mining for Sesay while in Tongo. Q. So Musa [Boys] was specifically mining for Issa Sesay, private mining? A. [Yes.] It was for Issa. It was not for the government, but for Issa.[23] However, TF1-366 did not suggest the use of force in connection with this private mining. For the government mining, on the other hand, TF1-366 suggested that Major Goi [Goyeh] carried a gun to guard the miners.[24] In any event, TF1-366 conceded that he didn't go to Tongo while the RUF and AFRC

[22] Transcript/TF1-367, 21 June 2006, pp. 59. The Defence notes that the remainder of TF1-367's evidence to which the Trial Chamber cites states that civilians, RUF, SLAs, and Kamajors were mining freely:
Q. What can you tell the Court about the mining of diamonds in Tongo?
A. Tongo, at the time that they did the overthrow, the place was free for everyone. The SLA soldiers were there. RUF soldiers were there. Even the Kamajors were there, but they were not armed. So everybody was together with civilians. Everybody was busy mining for diamonds."
[23] Transcript/TF1-366, 11 November 2005, pp. 40.
[24] Transcript/TF1-366, 11 November 2005, pp. 40.

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		were present: A. Throughout the AFRC period, I didn't go to Tongo. Okay, may the Lord bless you.[25] The Trial Chamber's citation to TF1-371 is incorrect; TF1-371's cited testimony refers to refers to Sesay's bodyguards (including Boys) being in Buedu most of the time (i.e., not in Tongo).[26] *See also* the discussion concerning Para. 1092.
1091	"Diamonds were then either given to RUF Commanders including Bockarie, Sesay and Mike Lamin, or taken by AFRC Commanders to senior AFRC official Eddie Kanneh in Kenema."	This finding is incorrect. The evidence to which the Trial Chamber cites supports the finding that only Mosquito and Eddie Kanneh received diamonds. The cited portion of TF1-045's states that TF1-045 saw Mosquito receive a diamond once.[27] Otherwise, they went to Kannch. The citation to TF1-041 is correct for the proposition that Eddie Kanneh received diamonds.[28] The Trial Chamber's citation to TF1-371 is incorrect. There is no suggestion of diamonds being given to anyone in TF1-371's cited evidence. Rather, this portion of TF1-371's evidence refers to mining updates to the Supreme Council.[29] Note that there is no suggestion of the use of force.

[25] *Transcript/TF1-366*, 11 November 2005, pp. 40.

[26] *Transcript/TF1-371*, 20 July 2006, pp. 76.

[27] *Transcript/TF1-045*, 18 November 2005, pp. 73. "At one time, *the one that I saw*, when the first diamond -- what I saw at the secretariat when it has been valued at one time I saw Mosquito he himself came when all of us sat together, they gave him the parcel."

[28] *Transcript/TF1-041*, 10 July 2006, pp. 20. *See also* discussion of Paragraph 1092. The Trial Chamber cited the same portion of TF1-041's evidence.

[29] *Transcript/TF1-371*, 20 July 2006, pp. 54:

Q. This morning you talked about mining commanders giving reports at the Supreme Council. What sort of report were you talking about?

A. I'm talking about the AFRC mining commanders giving an update regards the mining that was going on in Kono and subsequently in Tongo Field that AFRC was specifically in charge of.

Q. Who was given -- or to whom were these reports given?

A. During the council meeting, the mining update, those that were supervised by the AFRC, report, was given to the chairman of the council and that report shared with the members of the council.

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		The Trial Chamber's citation to Sesay is incorrect. The cited portion of Sesay's testimony concerns whether rank or assignment was more important to combatants in the RUF.[30] The Trial Chamber's citation to DIS-188 is incorrect. The cited portion of DIS-188's testimony concerns Sesay being demoted in 1996 for allegedly having embezzled goods meant for civilians.[31]
1092	"In addition to the 'government' mining, some AFRC/RUF Commanders operated mining sites for their personal profit during the Junta period. Diamonds from these mines went directly to the Commanders: Sesay, Bockarie, Kallon, Colonel Banya and Eddie Kanneh all had bodyguards mining diamonds for them in Tongo Field."	This finding is incorrect. As was the case with Paragraph 1091, the Trial Chamber cites the same portion of TF1-041. As indicated in connection with Paragraph 1091, the only persons that received diamonds was Eddie Kanneh. The Defence notes that although the remainder of the cited portion of TF1-041's testimony indicates that other commanders had civilians mining for them (e.g., Lamin, Sesay, Kallon), there is no suggestion that these commanders were given diamonds. In any event, any mining to which TF1-041 here refers is not in connection with Cyborg Pit. TF1-041 arrived to Tongo in "late December, 1997."[32] However, TF1-045 testified that when he returned to Tongo in December 1997[33] that there was no longer mining at Cyborg Pit.[34]
1092	"The Commanders were also given civilian	This finding is unreasonable.

For further evidence that forced mining was not discussed at the Supreme Council, *see also* Transcript/TF1-371, 31 July 2006, pp. 40:
"people knew, I mean, the council members knew that mining was going on. they knew about that, *but they did not discuss the forced mining*. I mean, how you operated and what and what, what it -- the people that were doing the mining there. That was never a discussion. All the council were concerned about was the product."

[30] Transcript/Sesay, 22 June 2007, pp. 21.

[31] Transcript/DIS-188, 26 October 2007, pp. 45-51.

[32] Transcript/TF1-041, 10 July 2006, pp. 19.

[33] Traneript/TF1-045, 18 November 2005, pp. 94.

[34] Traneript/TF1-045, 18 November 2005, pp. 98. "Now Cyborg is finished."

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	manpower to mine for them."	Implicit in this finding is the use of force. However, the Trial Chamber did not expressly find that force was used; contrast this finding to Para. 1093 in which the Trial Chamber expressly finds the use of force in "government" mining. In addition, this finding was not made in connection with Cyborg Pit. Assuming that there is force implicit in the Trial Chamber's finding, please consider the following: In making this finding, the Trial Chamber cited a portion of TF1-366's testimony. This cited portion states that civilians that escaped combatants that were forcing them to mine confided in other combatants of their escape: Q. How do you know the civilians were being captured? A. Whenever they came from these places, *they would come and tell us*. And civilians were escaping from these places because they said they are being forced to mine for them, so some of them escaped.[35] Why would a civilian, that allegedly escaped forced mining, reveal such confidences and risk being forced to mine. This is an entirely unreasonable proposition. The Trial Chamber cites to TF1-045's direct-examination.[36] At page 59, TF1-045 indicates that there was centralized mining for the AFRC in Tongo and personal mining for commanders (e.g., Mosquito) unconnected to the centralized

[35] Transcript/TF1-366, 7 November 2005, pp. 94.
[36] Transcript/TF1-045, 18 November 2005, pp. 59 and 77-78.
[37] **LATE NOTICE.** *See also, e.g.*, the objection raised concerning this late allegation at Transcript/TF1-045, 22 November 2005, pp. 18-19.
[38] The Defence submissions appear not to have been considered. *See*, Sesay Defence Closing Brief, Para. 661. While Boys was in Tongo, Sesay didn't know that he was in Tongo. Sesay nor any other Defence witness was cross-examined on this point (*see*, Sesay Defence Closing Brief, Para. 662).
[39] Transcript/TF1-045, 23 November 2005, pp. 29.
[40] Transcript/TF1-045, 23 November 2005, pp. 30.
[41] Transcript/TF1-041, 10 July 2006, pp. 20-21.
[42] Judgment, Para. 1120.
[43] Transcript/TF1-041, 11 July 2006, pp. 39

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mining. At page 77-78, TF1-045 testified that Boys (who TF1-045 didn't know was a bodyguard to Sesay at the time) was given civilians to mine with in the morning at the Secretariat. However, TF1-045 testified that he did not know how the civilians with Boys were treated because he didn't mine at the same mining sites as Boys. Instead, TF1-045 relies on his global proposition that all civilians were being forced to mine.

First, that Boys engaged in forced mining (either "government" mining or private mining) was a late allegation;[37] on this basis alone this finding should be reversed. Second, the Trial Chamber did not make any finding that Sesay knew Boys was mining in Tongo, that otherwise Boys was operating on his behalf, or that Boys was otherwise reporting to Sesay.[38] Thus, any criminal intent on Boys' behalf cannot be imputed to Sesay.

Third, there is no express reference in TF1-045's testimony that Boys was mining at Cyborg. That TF1-045 was purportedly at Cyborg further detracts from the suggestion that Boys was also mining there as TF1-045 indicated that Boys mined at other mining sites.

Fourth, TF1-045's cross-examination was not cited. On cross-examination TF1-045 testified that some civilians freely engaged in personal mining:

> Q. How many civilians were doing their personal mining when you were there?
>
> A. Well, like, the committees which were set up, it comprised civilians. Some had civilians who were with them. They were doing their own personal mining.[39]

TF1-045 also testified on cross-examination that some civilians mined voluntarily with the combatants:

> Q. So there were people in the Tongo Field area when you were there who were mining willingly?
>
> A. Yes, some of them.
>
> Q. Were some of those civilians mining willingly with soldiers?

		A. Yes.[40] The Trial Chamber also cited TF1-041's direct evidence. Other than expressly stating that Mike Lamin's senior bodyguard, OG, was heading up a gang of civilians, TF1-041 stated that the other commanders had "people who were digging diamonds." One cannot glean from this evidence whether these people were civilians or combatants and whether they were forced or not forced.[41] The Defence recalls the Trial Chamber's finding allowing for the possibility that some civilians voluntarily mined.[42] If these people were civilians and they were forced, the Trial Chamber should have found, based on the evidence elicited, that the Prosecution failed to prove this. In any event, on cross-examination, TF1-041's statement that he gave to the Prosecution in May 2005 was referenced. In that statement, TF1-041 indicated that "There were civilians mining and the witness was told they kept some of the proceeds."[43] Although TF1-041 refuted every making this comment, it is nonetheless indicative of a lack of force; it was incumbent upon the Chamber to explain this inconsistency. Lastly, the mining to which TF1-041 refers could not have been at Cyborg as there was no longer mining at Cyborg by the time TF1-041 arrived.
1093	"The AFRC/RUF "government" system was markedly different to the civilian mining that had occurred prior to the Junta period. Previously, mining sites were operated by civilians as private enterprises. The civilian bosses who owned the mining site were responsible for negotiating remuneration with the workers and providing them with food and medical assistance. Workers generally handed diamonds to their bosses in return for a share of the profits from the sale of the diamonds. After	This finding is incorrect. The Trial Chamber cites to TF1-035 for these findings. While TF1-035 may have given evidence that supports the Trial Chamber's findings that, prior to the junta, miners were not paid and worked in exchange for food, medical assistance, and a share of proceeds from the sale of diamonds that were discovered, it was unreasonable for the Trial Chamber to conclude that this form of mining never resumed during the junta. Implicit in this finding is that forced government mining lasted throughout the time the AFRC and RUF were present in the Tongo Fields area. However, as discussed in detail in the brief, TF1-035 testified that the forced "government mining" occurred only on the first three days upon the RUF and AFRC's entry

	the AFRC/RUF Junta began in 1997, this form of civilian mining came to an end. In the 'government' mining that was instituted by the AFRC/RUF, there was no negotiation between the civilians and the government. Civilians were captured and forced to mine without any payment."	into the Tongo Fields area and one day after that. All of this force concluded by the end of August.
1094	"During the period from August to December 1997, up to 500 civilians in Tongo Field worked in the mining sites under the supervision of a mixture of armed AFRC and RUF fighters.	This finding is unreasonable. In a classic reversal of the burden of proof and presumption of innocence, the Trial Chamber takes the height of the Prosecution evidence. The evidence to which the Trial Chamber cites supports between 100 to 200 civilians being forced to mine (instead of the up to 500 as found by the Trial Chamber). Further, there is no finding on how many civilians were forced to mine at Cyborg Pit. For the finding that 500 civilians were forced to mine, the Trial Chamber cites TF1-045's evidence: Q. You've already told the Court that you saw civilians mining in Tongo. Can you say about how many civilians that you saw mining? A. Yes, I would just give an estimate; 300, 400, 500 every day.[44] Also note that, on cross-examination, TF1-045 indicated that some civilians mined willingly.[45] As such, it was unreasonable for the Trial Chamber to find that 500 civilians were forced to mine based on TF1-045's direct-examination alone. The Trial Chamber also cites TF1-041: Q. Are you able to estimate about how many civilians were doing this work at the time?

[44] Transcript/TF1-045, 18 November 2005, pp. 68-69.
[45] *E.g.*, Transcript/TF1-045, 23 November 2005, pp. 30 (cited by the Defence above in connection with Para. 1092).

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		A. I would estimate there were more than 100. Let's say 100 to 200. Let's say 200, because there were many.[46] Further, the Chamber cited the evidence of TF1-367: Q. I'm just asking you to approximate; to say about how many civilians were mining when you were in Tongo. A. They captured 200 to 300 every morning.[47] As shown, the Chamber took the most excessive example of the Prosecution evidence on direct-examination. The benefit of doubt (from cross-examination or other witnesses) was not given to Sesay.
1094	"Civilians were forcefully captured from the surrounding villages and taken to the mining sites. Those who were caught hiding in the bush were tied with ropes and taken to the sites."	This finding is unreasonable. The Trial Chamber cites only TF1-045's direct-examination[48] (NB, the citation to page 98 is in error; the correct cite is to page 97). On cross-examination, TF1-045 indicated that : Q. If the civilian [that was hiding] was not found, could the civilian go and do their own personal mining? A. Yes. If you were not caught and you were able to hide and you were not found, then you can do it.[49] That civilians could engage in personal mining at the mining sites in Tongo Field in the midst of combatants controlling a purported system of enslavement (not just government mining but also private mining) fundamentally belies this finding.

[46] Transcript/TF1-041, 10 July 2006, pp. 20.
[47] Transcript/TF1-367, 21 June 2006, pp. 60-61.
[48] Transcript/TF1-045, 18 November 2005, pp. 98.
[49] Transcript/TF1-045, 23 November 2005, pp. 29.

		To be sure, TF1-045 also testified (again on cross-examination) that some civilians were mining willingly with the soldiers.[50] Further, on direct-examination, TF1-045 indicated that the practice of tying civilians together with ropes only occurred in December 1997.[51] The Defence notes however, that these civilians were not mining at Cyborg as there was no longer mining at Cyborg in December 1997.[52]
1094	"Civilians who attempted to escape were detained, stripped and left naked so that they would not be able to hide."	This finding is unreasonable. Only TF1-045's evidence supports this finding. TF1-045 is the only witness that suggests witnesses were stripped naked. In contrast, the Trial Chamber's findings preceding and succeeding this finding (although both concern escape and clothing) make no mention of miners being stripped naked. Further, TF1-045 testified that when civilians were captured, they were brought to the mining sites as they were: From there, so if you do not have a shirt -- if you are caught without a shirt -- if you are caught without shorts this is the way you will have to be. If you do not have anything on you, the way you were captured is the way they are going to take you to mine.[53]
1094	"The civilians were treated badly and almost all of them were haggard and shabbily dressed."	This finding is unreasonable. Implicit in this finding is the use of force. One doesn't wear nice clothing when they mine; it will ruin the clothing.
1095	"Rules were established to control the times when civilians were to mine at the various pits.	This is a correct finding. The Trial Chamber cites to DIS-293's evidence. These rules were instituted for the protection of miners in efforts to prevent sands

[50] Transcript/TF1-045, 23 November 2005, pp. 30 (cited by the Defence above in connection with Para. 1092).
[51] Transcript/TF1-045, 18 November 2005, pp. 97. TF1-045 returned to Tongo in December 1997 (*see*, pp. 94) and indicated that the forced mining practices in December 1997 were "worse than previously" (pp. 97).
[52] Transcript/TF1-045, 18 November 2005, pp. 98. "Now Cyborg is finished."
[53] Transcript/TF1-045, 18 November 2005, pp. 72 (cited by the Trial Chamber at footnote 2130).

	... Miners were not allowed to work at night, and if they attempted to do so, they were punished."	collapsing on them. Q. Would I be correct that people were not allowed to mine at night? A. Yes. The people were not allowed to work at night beeause -- so that the sand might not drop on them. That was for people's life. That was why we were not allowed to work at night.[54]
1095	"Anyone who violated the rules was severely punished, and some civilians were killed."	This finding is unreasonable. At best, TF1-045's evidence cited by the Trial Chamber (if taken as true) supports the proposition that, in total, two eivilians were punished for mining outside of the *sehedule mining times*.[55] However, as diseussed above, this rule was imposed for the *protection* of the miners. The Trial Chamber neglects to here find that combatants were also killed for attempting to mine outside of the allotted mining hours. However, the Trial Chamber eorrectly makes this finding at Paras 1087 and 1106. In connection to DIS-293's evidence (cited by the Trial Chamber at footnote 2135), if a eivilian attempted to mine at night, they would be punished but this would not include beatings or death: If you are caught working at night, they would punish you. Either they will take you to a guardroom but they will not beat you. They will put you into the guardroom and they would advise you that next time don't work there at night. Why we stop you from working at night, it is for your own life beeause at night there is too much risk. That was the only law. But to say they will beat you or kill you, no, they will hold you at night and then they will keep you at night.[56] Please *see* the Defence submissions in conneetion with the purported unlawful killings at Cyborg Pit. Miners died as a result of sand collapsing on them.
1997	"Furthermore, the Chamber is satisfied that the	This finding is correct. In this finding there is no suggestion of the use of force

[54] Transcirpt/DIS-293, 13 November 2007, pp. 92 (cited by the Trial Chamber).
[55] Transcrip/TF1-045, 18 November 2005, pp. 74-75.
[56] Transcript/DIS-293, 13 November 2007, pp. 93.

	government mining in Tongo Field provided an important source of revenue for the Junta Government and that this topic was discussed in AFRC Supreme Council meetings when Sesay was present."	in connection with mining at Tongo Field. Such a finding would not have been supported by the evidence.[57]
1997	"The Chamber finds that Sesay, along with Bockarie, received diamonds from Tongo Field at the AFRC Secretariat."	This finding is incorrect. The Trial Chamber cites to the same evidence as it did for its finding in Para. 1091. As discussed in connection with Para. 1091 the evidence to which the Trial Chamber cites does not refer to diamonds being given to anyone other than Mosquito and Eddie Kanneh. (The Defence notes that the Trial Chamber did not cite all of the witnesses to which it cited at Para. 1091; TF1-045 and TF1-041 were excluded). The Trial Chamber's citation to TF1-371, Sesay, and DIS-188 are all incorrect: TF1-371's cited evidence refers to mining updates to the Supreme Council (there is no suggestion of force and no diamonds transferred).[58] The cited portion of

[57] Transcript/TF1-371, 20 July 2006, pp. 54:
Q. This morning you talked about mining commanders giving reports at the Supreme Council. What sort of report were you talking about?
A. I'm talking about the AFRC mining commanders giving an update regards the mining that was going on in Kono and subsequently in Tongo Field that AFRC was specifically in charge of.
Q. Who was given -- or to whom were these reports given?
A. During the council meeting, the mining update, those that were supervised by the AFRC, report, was given to the chairman of the council and that report shared with the members of the council.
For further evidence that forced mining was not discussed at the Supreme Council, *see also* Transcript/TF1-371, 31 July 2006, pp. 40:
"people knew, I mean, the council members knew that mining was going on, they knew about that, *but they did not discuss the forced mining.* I mean, how you operated and what and what, what it -- the people that were doing the mining there. That was never a discussion. All the council were concerned about was the product."
[58] Transcript/TF1-371, 20 July 2006, pp. 54:
Q. This morning you talked about mining commanders giving reports at the Supreme Council. What sort of report were you talking about?
A. I'm talking about the AFRC mining commanders giving an update regards the mining that was going on in Kono and subsequently in Tongo Field that AFRC was specifically in charge of.
Q. Who was given -- or to whom were these reports given?
A. During the council meeting, the mining update, those that were supervised by the AFRC, report, was given to the chairman of the council and that report shared with the members of the council.
For further evidence that forced mining was not discussed at the Supreme Council, *see also* Transcript/TF1-371, 31 July 2006, pp. 40:

		Sesay's testimony concerns whether rank or assignment was more important to combatants in the RUF.[59] The cited portion of DIS-188's testimony concerns Sesay being demoted in 1996 for allegedly having embezzled goods meant for civilians.[60]
1997	"Sesay was personally engaged in mining for his personal benefit in Tongo Field."	This finding is incorrect and unreasonable. The only crime for which the Trial Chamber found that Sesay was personally involved in Kenema District was the arrest of TF1-129.[61] As such, this is an incorrect finding inasmuch as the Trial Chamber contradicts itself in finding, here, that Sesay personally engaged in mining. The Trial Chamber cites to the same evidence to arrive at the conclusion that "commanders were ... given civilian manpower to mine for them [in Tongo Field]."[62] As discussed above in connection with Para. 1092 this is an unreasonable finding not supported by the evidence.
1998	"The Chamber therefore finds that Sesay made a significant contribution to the criminal means employed by the members of the joint criminal enterprise by his planning of the enslavement of civilian miners and the use of child soldiers to guard mining sites and force the miners to work at Tongo Fields."	This finding is incorrect. As discussed in connection with Grounds 27, 28, 31, and 32, Sesay was not involved in the planning of any enslavement in the Tongo Fields area. Further, there is no evidence to support, and the Trial Chamber makes no finding on, Sesay's use of child soldiers to guard sites or force miners to work at Tongo Fields.

"people knew, I mean, the council members knew that mining was going on, they know about that, *but they did not discuss the forced mining*. I mean, how you operated and what and what, what it -- the people that were doing the mining there. That was never a discussion. All the council were concerned about was the product."

[59] Transcript/Sesay, 22 June 2007, pp. 21.

[60] Transcript/DIS-188, 26 October 2007, pp. 45-51.

[61] Judgment, Para. 2052.

[62] Judgment, Para. 1092.

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Annex F

Annex to Ground 33:

Table: Evidence that AFRC departed to Koinadugu immediately prior to the ECOMOG capture of Koidu.

Witness name/ number	Transcript date	Transcript reference	Transcript
TF1-071	19.01.05	p.40, lines 13-26	MR HARRISON: Q. Did you go to Koidu? THE WITNESS: Sorry, I went to Koidu. Q. When did you arrive there? A. I went to Koidu around March. Q. For the sake of completeness, would you be kind enough to refer to which year you're referring to? A. That was 1998. PRESIDING JUDGE: Witness, it's good to tell us always March, the year. THE WITNESS: Yes, March 1998.
		p.51, lines 15-21	THE WITNESS: The bombing ranges of the air raiding, as well as the ground forces of the ECOMOG was getting very closer to in our positions at Koidu. We couldn't bear the tensions, you know, so we fled into bush, into hiding places around Koidu. One of the main places we later assembled was a village called Meyior. That was another name given to Superman's Ground.
	21.01.05	p.29, lines 9-11	There was an intensive battle between the RUF, the junta and even the ECOMOG forces. The RUF could not stand the fighting and went into the bush, it was at Mayoh.
		p.29, line 29 – p.30 line 14	A. After that there was an intensive fighting between the ECOMOG, the RUF so we went into the bush. There we established the Superman ground and other various camps. Q. Was there a person in command at that time in Kono District?

			A. Yes, at that time I say we have Superman was the battle group. ..... Q. You've mentioned Superman ground. How many people were there? A. Nearly every combatant of the RUF were present atSuperman ground. *(Witness goes on to list the camps which were set up at this point which included Superman ground, Wendedu and Kunduma. See p.32-37. Maps with markings exhibited as Exhibit 18)*
George Johnson	14.10.04	p.76, lines 3 -9	Q. How long were you in Kono? A. We were in Kono for a month and a half. Q. And when you left Kono, where did you go? A. We went to a village called Mansofinia. Q. Why did you leave Kono? A. We left Kono because we couldn't gain control over Kono when the ECOMOG forces penetrated into Kono.
		p.76, lines 26-29	I went to Mansofinia with Ibrahim Bazzy Kamara, Alex Tamba Brima, Brigadier Five-Five, Brigadier Woyoh, Brigadier Abdul Sesay. Those were the High Commands that I went with to Mansofinia from Kono.
		p.77, line - p.78, line 2	A. Mingo went -- Mingo was at the outcast of Koidu, whilst ECOMOG had captured central Koidu Town. Q. Do you know if there's a name for the location of where Mingo was? A. No. *Johnson believes the AFRC and RUF captured Koidu in late March 1998 and arrived in Mansofinia in early May 1998 p.78, lines 5-7.*
		p.80, lines 19-21	A. At the time the ECOMOG troops took over Koidu, we pulled out to Mansofinia and the route to Mansofinia we had to pass through Tombodu.
		p.81, lines 2-6	When ECOMOG troops were advancing from Sewafe to Koidu Town, Savage was one of the commanders fighting back the ECOMOG troops from coming in Koidu Town, but unfortunately for us, the ECOMOG troops forced their way into Koidu Town whilst we all pulled out from Koidu Town.

George Johnson	19.10.04	p.29, line 18 – p.31, line 5	A. No. At that stage, when we lost Kono, we all SLAs and some few mid-level fighters of the RUF went to join SAJ Musa. Command structure, everything break down at that point. Q. And, in fact, Superman had tried to order the SLAs to go to Kailahun after the fall of Kono; that order was ignored. A. Yes. Q. And at that stage the SLAs went towards SAJ Musa and Superman went to Sokobeh; is that correct? A. Yes. SLAs went to Superman and -- SLA went to SAJ Musa while Superman pulled out from the ceutral part of Koidu Town to Sokobeh. PRESIDING JUDGE: And where was SAJ Musa at the time? Can we have that precision, please? THE WITNESS: He was at Krubola. .... PRESIDING JUDGE: And Superman went to? THE WITNESS: The outskirts of Koidu Town in a village called Sobokeh. ..... JUDGE BOUTET: What timeframe are we talking about now? MR JORDASH: Could I just ask the witness that? Q. Mr Johnson, when was that, do you know? A. No. JUDGE BOUTET: Are we in '97, '98, '99, 2000? MR JORDASH: Q. That was in 98, wasn't it? A. '98. Q. Yes. It would have been the mid to late 1998; is that right? A. I cannot give a specific month about that, but I know it's '98. Q. Approximately -- the SLAs, including yourself, moved towards Krubola and SAJ Musa in April, May of 1998; is that correct? A. Yes.
TF1-334	18.05.05 (Exh119D)	p.33, lines 31-	A. I, the SLA command, RUF commanders, both RUF fighters and RUF fighters. All of us got this information about the advance of ECOMOG troops towards Koidu Town.

		29	Q. Now this second communication, what was said during this second communication? A. Well, as Mosquito called through his call sign, he ordered that Kono should be a stronghold by the junta forces; we should ensure that the commanders, both the RUF and SLA, should put down the Sewafe Bridge. MS PACK: Sewafe I have spelt before, Your Honours. S-E-W-A-F-E. Q. Was anything else said on this communication, apart from this? A. He said we should make sure that the SLA, the RUF made a strong defence and to make sure that the bridge would be completely broken down so that the ECOMOG forces would not have any way to enter Koidu.
TF1-334	19.05.05 (Exhl 19D)	p. 8, lines 1-21	A. Well, it was close to May, mid-May. And that was the time when there was confusion between the RUF and the SLA in Koidu. Q. So what happened when Gullit -- MR FOFANAH: Excuse me, Your Honours. Again the witness has mentioned a month and we don't know what year. MS PACK: Q. If you would identify the year, witness. A. 1998. Q. Witness, do you know what position Gullit had when he arrived in Koidu Town close to the middle of May? A. Well, yes, he came as advisor for both the SLA and the RUF. And as he came, indeed, he took command from Bazzy. Q. Took command of what from Bazzy? A. I mean, he immediately became the SLA commander. Q. Do you know where in the hierarchy in Kono he fell as an advisor for the RUF and the SLA? PRESIDING JUDGE: I don't quite understand the question, Ms Pack. Did you say fell? MS PACK: Yes. THE WITNESS: Well, immediately he came the seeond man in Koidu.
TF1-334	19.05.05 (Exhl 19D)	p. 10, lines 11-28	A. When Gullit came to Kono he went directly to the place where we were, closer at that time they had moved from Masingbi Road at Five-Five spot. And he called an immediate meeting together with Bazzy. Q. Pause a moment. Five-Five is what your Honours have heard before. Now just before we get to

			the meeting you are about to talk about I want to ask you about Five-Five spot. I don't want to muddle you, but just to ask you how come you'd moved to Five-Five spot? A. The question again. Q. How come you had moved to Five-Five spot? A. Well, after the operation at Koidu Geiya and we returned together, I returned with my operations commander back to Koidu. And when I returned my operation commander, myself and other soldiers, we met Masingbi Road was completely burnt down and Bazzy monitored the burning of that place. So because the jets had started raiding and they were bombarding their positions. And so we should move directly to Five-Five spot.
TF1-334	19.05.05 (Exh119D)	P.14, lines 4-29	A. At this meeting Gullit informed me and the authorities who were there that when he heard of this problem in Koidu he used this as a strategy so that he could come from Mosquito in Kailahun. He said Mosquito had beaten him in Kono and he's declaring to us that even Johnny Paul is under threat in Kailahun. So that was why he had decided to tell Mosquito that he could control the SLAs, that he should be sent by Mosquito to come and control the two parties. And that was why Mosquito had sent him, so that he could be an advisor for both the SLAs and the RUF. ..... Q. Apart from describing what had happened to him in Kailahun -- and obviously that is a name you've heard before, Your Honours, K-A-I-L-A-H-U-N. Apart from describing what had happened to him in Kailahun did Gullit say anything else at this meeting that you recall? A. Yes, he said -- Gullit said that this was the time that the SLAs should come together and if ECOMOG continues to penetrate Koidu, that we should withdraw and join SAJ Musa in Koinadugu.
TF1-334	20.05.05 (Exh119E)	p.3, lines 22-27	Q. Witness, I am going to ask you about what happened in Kono while you were there. Just to clarify, can you remember roughly the month it was that you arrived in Kono District? A. Well, it as early in March -- it was early in March. Q. Which year? A. 1998.
TF1-334	20.05.05 (Exh119E)	p.27, line 25 - p. 28 line 24	Q. Did anything else happen in Sewafe before the last operation that you have already spoken about following the radio communication from Mosquito? A. We just fought with the ECOMOG forces.

			Q. By "we", who are you referring to? A. The RUF and the SLA troops which were based in Kono. Q. Do you know who in particular went on this operation? A. Yes. Q. Who in particular went on this operation? A. Bazzy, the commander for the SLA, was on this operation. The operation commander for the SLA was in this operation. And the other military supervisors for the SLA were also on this operation. Q. How do you know that these individuals were on this operation? A. I myself went with them. Q. Do you know who was in command of this operation overall? A. Yes. Q. Who was in command? A. Superman was in total control. He was the commander. Q. What happened on this operation? A. Well, during this operation, as Gullit had informed us earlier about the latest development about how we should pull out from Kono, there was a plan that as ECOMOG presses on, all SLAs should withdraw to Tombodu where Gullit was waiting for us. Together with my colleagues; soldiers. Q. Pause there. Are you therefore talking about the last operation before you pulled out of Kono District? A. Yes.
TF1-334	20.05.05	p.37, line 22 – p. 38 line 12	Q. Witness, I left off asking you a question which I am going to make more specific. Towards the time that ECOMOG were entering Kono, do you recall any other orders being given by any of the other commanders in Kono? A. Yes. Q. Can you explain, please, what orders or order was given? A. Well, for the SLA, Gullit informed us that myself and the other soldiers, that as ECOMOG was penetrating we should withdraw to Tombodu, the other soldiers and myself. Whilst in Tombodu we will move further together with the other soldiers to Mansofinia and meet SAJ Musa. Q. Pause. Now, you have mentioned Tombodu as a location and also a new plaee; Mansofinia, which is spelt, Your Honours, M-A-N-S-O-F-I-N-I-A. You have talked earlier, in faet, it might have been yesterday or the day before, about a meeting which took place at Five-Five spot with Gullit.

			Is this the same meeting or is it a different meeting, the meeting to which you are now referring? A. Well, it was this -- it was at this meeting that Gullit gave these orders.
TF1-334	20.05.05	p.50, line 29 – p. 56 line 18	Q. Now, you've mentioned an occasion when Gullit brought what you called logistics from Kailahun. When was this? A. This was in mid-May 1998, and this was at the time when ECOMOG was suppressing us as there was confusion between the SLAs and the RUFs. Q. Was this the time when Gullit came from Kailahun to Kono, or was it another occasion? A. This was at the time when Gullit had arrived from Kailahun. ..... Q. Now, Witness, you have talked about previously the operation that Mosquito ordered in a communication with Superman to break Sewafe Bridge. Please remind the Chamber when did this communication occur in terms of your -- in relation to your departure from Kono. A. Well, this was in mid-May when it happened. Q. Now, following the communication, what happened? A. Immediately the RUF artillery commander, that is Colonel Isaac Mongor, and myself, the SLA commander, and the operation commander and other soldiers, and the other RUF went to this bridge as Colonel Isaac was driving one of the Caterpillars towards the bridge, directly into the bridge. Q. Pause a moment. What do you mean by "Caterpillar"? A. Well, it was a D8 Caterpillar, a bulldozer. Q. So you've described Colonel Isaac, this is Colonel Isaac Mongor, driving a Caterpillar. What happened after that? A. Well, the Caterpillar arrived. We arrived together, I and the operation commander, together with Isaac Mongor and the other soldiers with the Caterpillar at Sewafe Bridge. There was one civilian operator who had been recruited for him to put down the bridge. Q. Meaning what? What do you mean by "put down the bridge"? A. To destroy the bridge. Q. How -- what did he do? A. Well, the Caterpillar should hit the pillars in accordance with the directive given to him. So this civilian started the engine of the Caterpillar, and he found that the Caterpillar had some technical problems. Later, he escaped, and he was not seen thereafter. .....

Q. Finally, what happened on this operation?
A. As this operator had run away, later I, the RUF commander, and the RUF operation commander, together with the SLA commander and the operation commander and the other military supervisors present, it was ordered that we should dig up right in the middle of the bridge. We dug the bridge together with the other soldiers. We brought some old bombs that had no fuse and placed these bombs in the hole which we had dug. Later, we tied a rope. And myself and the other soldiers were loeatcd far off from the hole.
Q. What did you do?
A. We lit -- we lit the bomb, and it exploded and caused a very big hole in the bridge, just to create an obstacle from allowing the ECOMOG forces advancing towards us.
Q. Did the ECOMOG forces subsequently advance towards you?
A. Yes.
Q. What did you do as a result of their advancing towards you?
A. Well, since this obstacle didn't work, the ECOMOG had their own engineers, and they went through the bridge. No sooner they did that, we created a defensive position, and we started withdrawing taetieally from Sewafe.
Q. Where did you withdraw to?
A. Well, I, the operation commander, with whom I was and the other soldiers, we started moving tactically retreating – we eontinued retreating --
Q. To where?
A. We went directly to Dabundeh Street.
.....
Q. You've described what you mean by tactical withdrawal. What, in fact, happened on this occasion when you withdrew from Sewafe Bridge?
A. Well, whilst we were withdrawing tactically, I and the operation eommander, together with the SLA commander, started withdrawing whilst Bazzy moved directly to Tombodu. And I and the operation commander and the other soldiers went to Dabundeh
Street to see --
Q. Pause, please. Before we get to Dabundeh Street, I'm just going to ask you on this specific occasion when you used the language "tactical withdrawal," what do you mean in relation to this specific withdrawal from Sewafe Bridge? Just explain what you mean on this oceasion.
A. Well, we didn't just retreat. We were shooting at the enemy positions, and withdrawing at the same time.

			Q. Now, Witness -- I'm sorry I interrupted you. If you're about to continue, please do so. A. This slowed down the advaneement of the enemy troops towards our positions. Q. Now, Witness, you mentioned then going to Dabundeh Street. MS PACK: It has been spelled before, Your Honours, D-a-b-u-n-d-e-h Street. Q. Did you see anything at Dabundeh Street? A. Yes. Q. What did you see there? A. Well, to our surprise, there was no RUF. We met all the houses on fire. Q. Where did you go next after Dabundeh Street? A. This gave my operation commander the [indiseernible] that the RUF had withdrawn. So I moved together with my operation commander directly to Tombodu. Q. And you've already said that you went with your operational commander and other soldiers to Tombodu. Who else went to Tombodu? A. Well, already Gullit didn't go there. He was in Tombodu the withdrawal of all soldiers. Q. And did all soldiers eventually get to Tombodu? A. Well, whilst I and the operation commander returned, we were informed that Savage had gone out to look for the operation commander and his squad. So Savage was the only person we didn't see around. But we met Bazzy and the other soldiers, including Gullit and the military supervisors. They were all at Tombodu waiting for the operation commander. Q. Did you stay in Tombodu? A. Well, we waited for some time looking out for Savage. And later, Gullit said we should move further. Q. Where did you go next? A. Well, I -- the other soldiers, including the SLA eommander and Bazzy and the operation commander left for Yomadu. From Yomadu, we moved to Mansofinia.
TF1-334	20.05.05	P.85, line 13 – p. 86 line 6	Q. What happened when you arrived in Mongor Bendugu? A. SAJ Musa immediately summoned me and these -- and the commanders I've named who went to Mongor Bendugu. Q. Summoned you for what purpose? A. Well, as he ealled us, he had to address the whole – me and the eommanders, we that were present during that time. Q. So having called you to address you, did you attend any meeting with him?

			A. Yes. He held a closed-door meeting. Q. What happened at that meeting? A. Well, in that meeting, Gullit explained to him how we were treated in Kailahun and also about the present condition of Johnny Paul in Kailahun. Q. Pause a moment. You said that Gullit told him "how we were treated in Kailahun". Now, what do you mean by that? A. He told them about the ill treatment about how he was beaten and how his ammo was taken from him. Q. This is Gullit? A. Yes, yes. Q. What else was said at this meeting? A. Gullit informed SAJ Musa that he has come with the troops, which comprised the SLAs and he was waiting for further instructions from SAJ Musa.
TF1-360	20.07.05	p.17, lines 8-15	A. ....The very day I arrive in Kono I met Superman and it was there I was able to get a place when I came from Makeni. Q. Can you say what month that was? A. It was late February to March. Q. Now, you talked about -- JUDGE ITOE: Let's be precise. Late February to March of what year? THE WITNESS: 1998.
		p.22, line 1- p. 23, line 7.	Q. Going back to what happened in Sefadu, can you tell the Court the next thing you remember taking place in Sefadu? A. Yes. During the time these people had received this order, Kallon used to call formations. We were with the AFRC. But some men refused to attend the formation. So, as a result, he fired at one person and killed him. Q. Who was the person killed? A. I don't know his name, but he was a member of the AFRC. Q. Where did this happen? A. In the town itself. Q. And why did this happen?

			A. Because Kallon said he has called a formation for war plan arrangement, but the man refused to go there. JUDGE ITOE: He said Kallon said what? THE WITNESS: He said he had called a formation for all the soldiers to gather, but the man refused to go there. Because of that he fire -- he gun him down. What we saw after that, the people that we referred to as the AFRCs, most of the authorities of those people were around during that time. During that time, Gullit, Bazzy, Five-Five, all of them were there. So what did they do? Their boys came to them and said what had happened, we don't favour that idea. As a result of this, we are going. These people whose names I have called - Gullit, Bazzy and Five-Five and their authorities - with majority of the personnel, they took off. They said they were going to open their own jungle. They took off to Sefadu. But still AFRC people were among the RUF people in Kono and the number were a good one, including some commanders of the AFRC. THE INTERPRETER: Correction, interpreter. One segment of the witness's statement which was interpreted as they took – as they went to Sefadu should have been interpreted as they took off from Sefadu. MR HARRISON: Q. When was it did they leave Sefadu? A. It was in March. Gullit and the people that I have named, it was in Mareh 1998 when they left.
	25.07.05	p.3, line 22 – p.4 line 9	A. But you also told us about an incident where you say Morris Kallon had shot an AFRC member for not turning up at formation; is that correct? A. Yes. That was in Koidu Town, Kono District. Q. And that wasn't the person who -- the person who was killed was not a commander of the AFRC; is that right? A. No, he was a subordinate for the AFRC. Q. So would you agree then that in Koidu Town, February 1998, men from the AFRC who were not commanders refused to obey, at times, commanders of the RUF? A. Yes. Those that refused to take command from the RUF commanders went away. Q. Would you agree with this: Separate command structures when the RUF and AFRC arrived in Koidu Town leading eventually to Gullit, Bazzy and Five-Five taking off and refusing to work with the RUF? A. Yes.
TF1-	26.07.05	p. 7, lines	Q. Do you remember how many days it took you to get to Koidu

360		7-19	when you took off from Makeni? A. Yes. Q. How many days? A. Well, it was late in the evening that I left Makeni. We left Makali in the night. When we reach [indiscernible] -- I'm sorry. When we left Makeni, we slept in Makali. Late in the evening we started off. Q. How long was the journey, just about? How many days? A. It was a day. Early the next morning we arrived. Q. It was the morning of the other day that you arrived in Koidu? A. Yes.
TF1-361	11.07.05	p.79, lines 4-19	When you got to Koidu Town where did you go? A. I went directly to my commander, that is Superman, and I stayed with him. Q. Do you recall where he was staying? A. He was staying just after Opera, towards Colonel Mani Park. There is a street there, from there you go Sahr Lebbie Street, there was a street. That was where he stayed, but I can't remember the street now. Q. When you were staying with Superman in Koidu Town, what were you doing there? A. I was still a radio operator. Q. How many radio sets did Superman have in Koidu Town? A. Superman had one general radio that he used and we had a temporary one that we used for operations. Q. How long did you spend in Koidu Town? A. We spent about three weeks there.
	12.07.05	p.2, lines 16-12	Q. Witness, when you were in Koidu Town, did any operations take place? A. Yes, an operation took place in Koidu because ECOMOG pressed us to leave there. Q. When did this operation take place? A. That was the time we left Makeni and went there and within two weeks, the third week, finally we gave up and left the town.

		p.5, lines 13-19	A. The message that was sent, that we transmitted through radio, was that Superman said he was not able to control the situation in Kono again because the ECOMOG strength was very heavy and the area was also heavy. He was not able and the soldiers were panic-strieken. So that was the message that was sent. So Sam Bockarie said, "Let us bring Superman by the set so that for them to talk." 5:13-19
		p.10, line 16 – p. 11, line 18.	A. After 4.30, after the jet has raided. It was the time that the burning -- the fighting started. When Super advanced to them, when we were trying to come out, so Brigadier Morrison Kallon came and began to burn their houses and asked everybody to burn the houses in whieh he was living. During that time, the fighting was still going on, but we later left the town. Q. You say "we left town". Who left town? A. We, the radio operators and the wounded soldiers. The women who were powerless, so we went behind. Q. Where did you go? A. We went to the main road that goes towards Jagbwema Fiama. It stopped at a town, but I don't know the town's name, but it was Superman Ground. It was there we went and stayed. ..... Q. You said it went to a place. What was the name of the place the road went to? A. Jagbwema Fiama. ..... Q. You said you went to a place ealled Superman Ground. Are you able to say roughly where Superman Ground was? A. Yes, from Koidu Town to go to Jagbwema Fiama, if you leave Koidu town to go to Superman Ground, it is roughly about two and a half miles. Q. Did you stay in Superman Ground? A. At that night, some people slept there, but I passed. We went to the next village and the commander who I was with, we went there together.

Annex G

Selected Improper Findings as they Relate Sesay's Purported Planning of Enslavement in Kono District (Ground 35)

Judgment Paragraph	Trial Chamber's Finding	Reasons Why The Trial Chamber's Findings Are Improper; Comments on the Trial Chamber's Findings
1240	"As early as August 1997, the AFRC/RUF Junta forced civilians to conduct alluvial diamond mining throughout Kono District."	This finding is patently incorrect. The Sesay Defence cannot find any support for this finding in the Judgment. Indeed, the Trial Chamber does not provide a citation in support of the finding. *See also*, Sesay Defence Closing Brief at Paras. 564-587. It is possible that, with reference to August 1997,[1] that the Trial Chamber intended to refer to Kenema District instead of Kono District.
1241	"Superman gave a written order to Commanders on 30 March 1998 to hand over all civilians for mining."	This finding is unreasonable. The exhibit to which the Trial Chamber cites, Exhibit 341, requests that "all civilians in your care [be turned over] to G5." The remainder of the legible portions of the Exhibit concerns commencing mining operations and the *cooperation* of the civilians. The Chamber did not affirmatively find that any civilians were in fact handed over for mining. Even if they were, there is no suggestion that these civilians were handed over for mining against their will and that they were forced to mine. Additionally, the use of evidence presented by the Kallon Defence to support a conviction against Mr. Sesay would violate his separate trial guarantee. In any event, the Chamber did not affirmatively indicate that

[1] The Defence notes that the Trial Chamber found that the Tongo Fields area, in Kenema District, was captured by the RUF in August 1997 (Judgment, Para. 1089).

		there was any diamond mining in Kono District in March or April 1998.
1241	"After ECOMOG forces had pushed the AFRC/RUF out of Koidu in April 1998 and the AFRC departed Kono District, the RUF conducted mining operations in parts of Kono District including Papany Ground and Superman Ground, where a mining "zoo bush" or "zo bush" was established.	The Trial Chamber did not find affirmatively when the mining in Papany Ground or Superman Ground started.
1242	"The practice continued throughout 1998, but it intensified after the recapture of Kono by the RUF in December 1998."	The Trial Chamber did not affirmatively find that there was forced mining in Kono District prior to December 1998. Thus, "the practice" merely refers to mining as opposed to forced mining.
1242	"In December 1998, MS Kennedy was appointed Overall Mining Commander."	The Trial Chamber found that Kennedy was appointed by Sam Bockarie: "We have found that in December 1998, Bockarie appointed MS Kennedy as the Overall Mining Commander in Kono District."[2]
1242	"Forced mining for the RUF continued until disarmament in 2002."	This finding is unreasonable. The testimony to which the Trial Chamber cites for this finding refers to Kailahun District: Q. When did diamond mining start in *Kailahun District*? A. '96. Q. And did it continue after 1996? A. Yes. Q. Please tell the Court how long it continued? A. 2002.[3]

[2] Judgment, Para. 2113.
[3] Transcript/TF1-366, 10 November 2005, pp. 9.
[4] Transcript/TF1-366, 10 November 2005, pp. 16.
[5] Transcript/TF1-366, 10 November 2005, pp. 14.
[6] Transcript/TF1-366, 10 November 2005, pp. 16. "When we were washing the diamonds, they would be guarded by armed men. If you found a diamond, they would take it from you."

		and refers to Peleto being the Minister of Mining in 2000, 2001, and 2002.[4] There is no suggestion of force in this portion of TF1-366's testimony. TF1-366 did, however, testify that there was force in 1999,[5] but when concerning 2000-2002 diamonds were merely confiscated.[6]
1242	"Between December 1998 and 2002, the RUF also had main mining offices in Tongo in Kenema District and in Kamakwie in Bombali District."	This finding is unreasonable. The cited portion of TF1-366's testimony refers to when Peleto was the Minister of Mines. As found by the Trial Chamber, Peleto first beeame the Minister of Mines in 2000.[7] Thus, it is misleading for the Trial Chamber to find that there was a mining office in Tongo or in Kamakwie prior to 2000. In any event, the Defence notes that the Trial Chamber did not make any finding that there was forced mining by the RUF in Kenema District (other than the period August to Deeember 1997) or in Bombali District.
1243	"Within each RUF mine, there were groups of nine persons called gangs, each with a leader. Every diamond found had to be handed over by the worker to the gang leader who then gave it to the Operation Commander."	Implicit in this finding is a degree of control or coercion over members of the gangs; this finding is unreasonable. The Trial Chamber cites to the direct-examination of TF1-367 for this finding.[8] The Trial Chamber does not cite to TF1-367's cross-examination. On cross-examination, TF1-367 testified that gang leaders, civilians themselves, were a liaison of sorts between the civilian miners and the RUF. If the civilians had any problems or complaints, the gang leader would take those eomplaints to the RUF. There was thus an opportunity to report malfeasance: Q. You are saying that ... there was an overall gang leader. What position was that? A. You know the eivilians, he controlled the civilians. At any time that -- wc are not controlling the civilians at every time. *They were*

[7] Judgment, Para. 1242.
[8] Transcript/TF1-367, 22 June 2006, pp. 38.

		his colleague civilians, so he knows how to talk to them. So he was a kind of mediator. He would go to find out what their problems were and he would come and tell us.[9] Q. Okay. Let's move on. How many men in a gang? A. Nine people. Q. So this would be nine civilians? A. Yes. Q. Some of whom worked voluntarily; is that correct? A. Yes, *there were those who wanted to work for their survival.*[10] In addition, the miners in these gangs, "were in the bush with us for long [and the ones] *whom we trusted.*"[11] The Trial Chamber did not affirmatively find when civilian miners were no longer arranged in gangs. The Defence notes that the Trial Chamber found that "[a]fter the two pile system was in place, personal mining re-emerged."[12] The Defence submits that civilians were no longer arranged in gangs at latest by the time mining changed to a two-pile system.
1243	"Each mining site had an Operation Commander and a Deputy Commander, who provided security to the mines, collected and weighed diamonds before reporting and passing them to the Overall Mining Commander and his team of diamond evaluators and clerks."	This finding is unreasonable. The Trial Chamber cites TF1-366's evidence for this finding. However, the cited portion of TF1-366's testimony states that, in pre-December 1998, gunmen were sent three mining sites: PC Ground, Yardu Road, and Tombodu. It is unclear from TF1-366's testimony whether there were gunmen at Superman Ground.

[9] Transcript/TF1-367, 23 June 2006, pp. 47.
[10] Transcript/TF1-367, 23 June 2006, pp. 67. The Defence notes that TF1-367 then stated that the only willing miner was the gang leader and that per each gang of nine, only the gang leader was a willing miner (pp. 68). However, at page 72 (when faced with his August 2004 statement to the Prosecution), TF1-367 stated that some of the miners were happy to mine.
[11] Transcript/TF1-367, 23 June 2006, pp. 79.
[12] Judgment, Para. 1251.

		There is no suggestion in the cited portions of TF1-071 or TF1-367's evidence[13] that security was provided at mining sites. Thus, it was improper for the Trial Chamber to rely on TF1-366's evidence alone, which concerns pre-December 1998 only and is unclear whether security was provided at three of four mining sites or four of four sites, and extrapolate that evidence into security being provided at *each* of the mining sites post-December 1998.
1244	"The Overall Mining Commander was in charge of deploying civilians to the mining areas and provided all logistics to be used for the mining, including shovels, diggers, boots and petrol."	This finding is misleading. The Chamber cites to TF1-366 for support of this finding. The full passage from which this finding comes states that the Overall Mining Commander was also supplied the miners with *food and medicine*: The shovels which were used in the diamond areas, the baling machines, *the food that they ate, the medicines they used*, diesel, petrol, [the Overall Mining Commander] supplied them with all these things. [the Overall Mining Commander] deployed people in all those areas to do mining.[14]
1244	"Civilians who mined without permission from the RUF were arrested by the Overall Mining Commander."	For this finding, the Chamber refers to DIS-089. DIS-089 testified that he heard that if people engaged in mining without a legal document that they would be arrested.[15] A variety of conclusions must necessarily be drawn from this finding: i) it was possible to procure a legal document entitling a person to mine; ii) a person with a legal document engaged in mining would not be arrested; iii) it was possible to mine legally; and iv) there was a choice for miners to mine legally or illegally. It goes without say that if one is seeking permission to do something legal, and does that legal

[13] The citation to TF1-367's evidence, which concerns whether MILOBs demobilized disarmed RUF men in secret, is incorrect. The Defence submits that the Trial Chamber intended to cite to TF1-367's evidence on 22 June 2006. Notwithstanding, there is no suggestion of security at the mines.
[14] Transcript/TF1-366, 10 November 2005, pp. 14.
[15] *Transcript/DIS-089*, 29 February 2008, pp. 56.

		something, that person has chosen—with consent—to do that thing. Although the Defence submits that the Chamber's findings with respect to forced mining in Kono District from Deeember 1998 to January 2000 are patently incorrect based solely on the Prosecution evidence, the Defence nonetheless explores DIS-089's testimony momentarily beeause the Chamber cited to his evidenee. The Defence draws attention to the same page of DIS-089's testimony to which the Chamber referred which indicates that the only complaints DIS-089 heard from civilians concerning mining under Kennedy was that the civilians were mining too close to the main road which, in turn, was destroying the road. Kennedy was told *by* the civilian authorities to arrest anyone that was mining too close to the road.[16] DIS-089 eonfirmed that he didn't receive any eomplaints about forced mining in 1999 nor was he aware that civilians in Koakoyima in 1999 were forced to mine.[17]
1244	"... diamonds were extracted and claimed as RUF property from both Kono Distriet and Tongo Fields in Kailahun District."	Tongo Fields is in Kenema District.
1246	"Approximately 200 civilians worked in each major pit."	This finding is unreasonable. The numbers the Trial Chamber cite in connection with forced mining (e.g., 200 civilians in each major pit),[18] are totally implausible. As found by the Trial Chamber, and confirmed by TF1-366, Peleto took over all of the mining responsibilities from Kennedy.[19] TF1-366 testified that when Peleto assumed command of

[16] DIS-089, 29 February 2008, pp. 56-58.
[17] DIS-089, 29 February 2008, pp. 39.
[18] Judgment, Paragraph 1246.
[19] Judgment, Para. 1245. Note that the Trial Chamber cites TF1-366's 10 November 2005 testimony here.

		the mining, there were only "three hundred manpower" in the mining area.[20] It is therefore unreasonable for the Trial Chamber to conclude, looking at only the Prosecution evidence as it has done, that "[a]pproximately 200 civilians worked in each major pit."[21] In support of this finding, the Trial Chamber cited to TF1-071's testimony in connection with 200 miners mining in Tombodu *only*.[22] The Trial Chamber, inappropriately, then extrapolated that there would be 200 civilians mining in each major pit. In any event, as discussed in the Brief, TF1-071 was speaking about non-forced mining in Tombodu in 2000 onwards. The Trial Chamber's finding is thus even more unreasonable.
1247	The up to 300 civilians were "forced to work at gunpoint."	This finding is patently incorrect. For this finding, the Trial Chamber cites to three Prosecution witnesses (TF1-366, TF1-071, and TF1-367) and Sesay. Of these three Prosecution witnesses, only TF1-366 makes explicit reference to a weapon. TF1-366 testified that, in pre-December 1998, Kallon ordered civilians to be captured and brought to the mining sites to mine forcefully. There were armed men at the mining sites.[23] For post-December 1998, TF1-366 states that the civilians were mining in

[20] TF1-366/Transcript, 10 November 2005, pp. 20. Although the Trial Chamber did not cite this portion of TF1-366's testimony, the Trial Chamber did not provide reasons as to why it would not be credible especially in light of the many instances in which TF1-366 was cited as credible.

[21] Judgment, Paragraph 1246.

[22] Transcript/TF1-071, 21 January 2005, pp. 120.

Q. Can you estimate for the Court the number of miners who would have been at these sites.

A. The figure cannot be very accurate because the strength of the work, the town is most working force. So I cannot determine the actual figure.

Q. Can you take one of the mining sites as an example and give an estimate of the approximate number of persons who would be mining there.

A. Like Tombodu, it was mined by one Officer Med. That was 1999 to 2000. 2001. Roughly, I can say we should have over 200 workers to a pit.

[23] Transcript/TF1-366, 10 November 2005, pp. 12-13.

		the same locations as pre-December 1998; however, as TF1-366 was no longer in Kono District at this time[24] and the Trial Chamber did not provide reasons as to how TF1-366 would have known abont the mining in Kono Ditsrict in 1999, it is unreasonable for the Trial Chamber to base its findings of force in Kono District in 1999 on TF1-366. TF1-071's definition of force does not include the nse of a weapon: Q. Tell the Court what you mean by "forced labour"? A. Forced labour I mean is that you are not working at your own time and you do not know who you are going to work for and what you going to work for you do not know, exeept by command. You have no specifie time of leaving a job.[25] The portion of TF1-367's testimony to which the Trial Chamber refers is in eonnection with those miners of the additional 230 to 240 miners that were not willing volunteers. Again, there is no mention of any weapon: Q. Can you say anything else abont how they were treated? A. That work that we were doing, it's not like they would say, "You're going to agree to go and do it." If you were going to do it by yourself, you would say "Yes, I'm going to do it." But just for you to survive, you would have to force him before he does it.[26]

[24] After Koidu was captured in December 1998, TF1-366 was part of the group that left Koidu to attack the ECOMOG at Masingbi, Makalia, and Matotoka (see, Transcript/TF1-366, 9 November 2005, pp. 19). TF1-366 did not return to Kono District until 2000.

[25] Transcript/TF1-071, 21 January 2005, pp. 117.

[26] Trauscript/TF1-367, 22 June 2006, pp. 38.

[27] *Transcript/Sesay, 24 May 2007, pp. 32:*

Q. Were any of the men armed?

A. Well, he had Kennedy's securities; that was the mining security. Because Kennedy had been an area commander at Peyama, and he had his own bodyguards. And when Bockarie had appointed him as mining commander, since June '98, his guards were among members of the unit. So, they had guns.

[28] Transcript/Sesay, 24 May 2007, pp. 31:

Q. Did you -- let me ask you this: Did you observe the miners and did you observe anything which indicated to you that they were under gunpoint and being forced to mine?

MR HARRISON: The Proseeution would suggest that that is an objectionable question; it's a leading question.

		The closest approximation of any foree (under gunpoint or otherwise) of civilians mining for the RUF in the portion of Sesay's testimony to whieh the Trial Chamber refers, at best. is that while eivilians were moving from the bush to Koakoyima (ineluding miners), Kennedy's armed bodyguards (also members of the Mining Unit) were also moving from thc bush to Koakoyima.[27] The Defence also notes that, when Sesay was asked whether the civilians were under gunpoint or whether they were foreed to mine, the Prosecution objeeted.[28] The Prosecution did not pursue this line of questioning when cross-examining Mr. Sesay.
1247	"At Kaisambo, for instance. 200 to 300 civilians were eaptured, foreed to work and released at the end of each day."	The Defence submits that it did not have notice that the Prosecution was going to allege foreed mining at Kaisambo, let alone upwards of 200 to 300 civilians. Indeed, the first time that TF1-367 made such an allegation was during his direct-examination.[29] Notwithstanding, the strength of this finding is significantly weakened by the following logical corollaries from the finding that people were being captured and released each day: i) people knew that they might be captured; ii) they stayed in the area even though there was the risk that they would be captured; and iii) they mined for a day and were then released. That the Trial Chamber made this finding, espeeially in the context of the Defence submissions, is unreasonable.

[29] Transcript/TF1-367, 23 June 2006, p. 89. This reference is to TF1-367's eross-examination which refers back to his direct-examination:
Q. The point is this, Mr Witness: *Until two days ago* you have not ever said to the Prosecution that there was 200 to 250 to 300 people private mining at Kaisambo, have you?
A. You know what I'm telling you. When they are taking statement there is nobody who will say since the war started we would would be able to remember everything. But just as when you are talking, it would jog your memory. That's how you would
recall some of the things.
Q. So two days ago was the first time your memory was jogged as to that number; correct?
A. Yeah, that's what I've told you.

1248	"Civilians who refused to mine were beaten or sent to Yengema to undergo military training."	This finding is patently incorrect. For this finding, the Trial Chamber cites TF1-071 and TF1-366. The citation to TF1-071 refers to the change to the two-pile system.[30] There is no reference to Yengema. The citation to TF1-366's testimony states that, *for 2000 onwards*, if a civilian refused to mine that civilian would be sent to the base at Yengema. The Defence notes that TF1-362 did not testify to civilians that refused to mine arriving at the Yengema training base. This absence is compelling. The Trial Chamber is therefore left with TF1-366's uncorroborated 2000 account; it is thus incorrect for the Trial Chamber to conclude that civilians were sent to Yengema in 1999 for refusing to mine.
1248	"The conditions for the hundreds of civilians forced to mine were poor; they were neither paid nor given adequate housing, food or medical treatment."	This finding is misleading. The witness to which the Trial Chamber refers for this finding, TF1-367, states that the miners were given whatever food and medicine the RUF had available: Q. Okay. And am I right that you would give them food, medicine and shelter, but no pay? A. We were not paying them. We were not paying them. Even the food that we gave to them was not enough, but we used to give them. We were not paying them. Q. No, but you'd give them food and you'd give them medicine when they were sick; no? A. *The little that was there we would give to them, but it was not enough.*[31] The RUF did try to provide for the miners. In addition, the miners were able to supplement their food – as found by the Trial Chamber[32] – by foraging for food on the weekends.

[30] Transcript/TF1-071, 21 January 2005, pp. 120-123.
[31] Transcript/TF1-367, 23 June 2006, pp. 50.
[32] Judgment, Para. 1248. "Civilians would go to the surrounding villages on the weekends to find food and would then return to work."

		In any event, according to TF1-035's testimony concerning traditional two-pile mining arrangements, miners weren't paid unless a diamond is found: Q. So your employees only get paid if they find a diamond; is that correct? A. Well, that is the arrangement. When they find a diamond, they sell it to me or we sell it and we share the money. I did not employ them to pay them daily - on a daily basis. Q. So you don't pay them wages as such? If they don't find a diamond they don't earn; correct? A. Yes, that is the proeedure in the mining area. That is what obtains all over the area. Q. Would you agree that your staff are much poorer than you? A. Well, the proeedure in the mining area, we don't pay people. We don't get money to pay them. It is an agreement. If we work and find a diamond all of us go and sell it; we share the money amongst ourselves or they sell to me because I have the lieence. Not that we are going to pay them, we don't pay them. All of us are poor. We are just trying to get something to sustain ourselves.[33] It is unreasonable for the Trial Chamber to eonelude that, although miners were not paid with money, mining was nonetheless a livelihood. Furthermore, RUF combatants weren't paid. For example, the Trial Chamber found that "guerrilla army soldiers were not paid, they lived on whatever they captured."[34]
1248	"As they were constantly supervised by armed men there was no possibility of escape."	This finding is unreasonable. For this finding, the Trial Chamber cites to TF1-012 and TF1-077. As discussed in the Brief in connection with

[33] Transcript/TF1-035, 5 July 2005, pp. 103.
[34] *See*, Judgment, footnote 3709, citing TF1-366.

		Paragraphs 1251-1258, these two witnesses testified about mining in 2000 in Tombodu only. It is unreasonable for the Trial Chamber to find, based on these two witnesses alone, that it was not possible (assuming there was force) for any miner to escape. Indeed, in this same paragraph (i.e., Paragraph 1248), the Trial Chamber found that "civilians would go to the surrounding villages on the weekends [Friday, Saturday, and Sunday] to find food and would then return to work."[35] For support of that finding, the Trial Chamber cites TF1-367: A. During weekends they didn't do anything. All they did was to go to the surrounding villages to find food for themselves *or wherever they wanted to go*. But when it was time to work they would all come back.[36]
1248	"At some sites, such as Koakoyima, the civilians had to live in camps by the mines, where they erected their own shacks and stayed with their families."	This finding is unreasonable. There was only one camp in which members of the RUF and civilians lived. According to TF1-367: "It was a camp. That was where we were. It was like a refugee camp. That was where we were with them in that camp." "Q. And the civilians, therefore stayed there in some kind of refugee camp? A. Yes, with us."[37] As the civilians were able to leave on the weekends and could go wherever they wanted to go,[38] this significantly detracts from the finding that the civilians *had* to live in the camp.
1248	"At Papany Ground civilians were forced to	This finding is patently incorrect. Implicit in this finding is forced

[35] Judgment, Para. 1248. No citation is given for this finding; however, *see* Transcript/TF1-367, 23 June 2006, pp. 50-51.
[36] Transcript/TF1-367, 23 June 2006, pp. 51.
[37] Transcript/TF1-367, 23 June 2006, pp. 50.
[38] Judgment, Para. 1248; and Transcript/TF1-367, 23 June 2006, pp. 51.

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	assist in mining as a condition for staying in the camps and receiving security."	mining at Papany Ground in 1999. First, this mining occurred prior to December 1998.[39] Second, the testimony to which the Trial Chamber cites, contravenes the Trial Chamber's findings. In fact, on the page immediately following the testimony cited by the Trial Chamber for its finding, the witness testifies that civilians mined in *exchange* for proteetion: Testimony eited by the Trial Chamber: Q. Okay. Now, was it also the case that as a condition for staying in the camps, some of the civilians had to assist with the mining? A. Yes.[40] Testimony one page subsequent: Q. So had civilians also *sought some kind of protection* in Papanni Ground? A. Civilians, if the civilians were looking for protection at Papanni Ground? Q. Like the other civilian camps? A. *Yes*, because they had men who would take care of them, who were the mining commanders and the mining commanders, he had bodyguards in that place, and in that same base they had the artillery. These are the heavy weapons. Because the mining unit was on one side, and the artillery unit was on the other side. That was how they were arranged.[41] The Defence also recalls that the Trial Chamber found that civilians and

[39] The witness was clearly testifying about mining along the Guinea Higbway prior to the capture of Koidu in December 1998. *See*, Transcript/TF1-041, 11 July 2006, pp. 29-31.
[40] Transcript/TF1-041, 11 July 2006, pp. 32-33.
[41] Transcript/TF1-041, 11 July 2006, pp. 34. The Defence notes that the Trial Chamber cited this portion of TF1-041's testimony at footnote 2395. However, it appears to have been ignored.
[42] Judgment, footnote 2367.
[43] *See*. Transcript/TF1-041, 11 July 2006, pp. 29-31.

		combatants lived together in semi-permanent communities in the bush to evade ECOMOG and Kamajor attaeks.[42] Indeed, TF1-041 testified that civilians and combatants worked together to ensure their survival while in the bush.[43] *See also, e.g.*, Sesay Defence Closing Brief, at paragraph 801.
1248	"Some civilians were forced to live at the camps, and therefore mine for the RUF, as their houses had been burned down."	This finding is unreasonable. There was only one camp. There is no suggestion in TF1-367's testimony that *because* eivilians' homes had been burnt (prior to the December 1998 captured of Koidu) they had to live at the camp in Koakoyima. Further, there is no suggestion that as a result of living at the camp in Koakoyima, they were forced to mine. To be sure, TF1-367's testimony certainly doesn't support the proposition that eivilians' homes were burnt in order for those civilians to be without shelter so that they would mine for the RUF in exehange for shelter.
1249	"From 1999 to 2000, civilians were captured and sent to Kono [District] in order to mine diamonds for the RUF."	This finding is patently incorrect. The Trial Chamber cites the evidence of TF1-366 for this finding.[44] However, the cited portion of TF1-366's testimony merely states that miners were brought to the mining sites; there is no suggestion that these miners eame from outside of Kono District. TF1-366 is also here referring to mining in 1998: Q. And in 1998 do you know how those people doing the mining at those loeations were treated? A. They were working and they were not happy. And we were foreing them to do the work for us. We eaptured them -- we captured them and brought them to the site for mining forcefully. All we were interested in was the diamond. That was the order given to us by Morris Kallon.[45]

[44] Transcript/TF1-366, 10 November 2005, pp. 13.
[45] Transcript/TF1-366, 10 November 2005, pp. 13.

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1249	"On one occasion during this period, Sesay sent a message to Kallon in Makeni requiring civilians to be gathered and sent to Kono for mining. Approximately 400 civilians were gathered by Kallon from Makeni and its surrounding villages; they were jailed and then taken daily to Kono in trucks sent by Sesay."	This finding is unreasonable. It is unreasonable for the Trial Chamber to conclude, based on TF1-041's direct-examination to which it cites,[46] that Sesay was in any manner involved in sending civilians from outside of Kono District to Kono District, against their will, for the purposes of forcing them to mine. First, TF1-041 testified that when the civilians were moving from Makeni and Magburaka to Kono District, Sesay was based in Kono, Kallon was based outside of Kono Distriet, and people were waiting for disarmament: Q. Witness, can you just try to explain when this happened, that civilians were used for mining? A. Yes, sir. When we had settled there now, *we had been waiting for the disarmament*. Everybody in the place had been hoping to disarm, but yet still, Issa sent a message from Kono. *At that time, Issa was based in Kono.* He sent a message to Morris Kallon, so that we could gather people to go and mine for diamond. Then we, ourselves -- because during that time, the men that were there, the youth, who were in Makeni, they had started reducing in number. So what happened was that we went to the various villages.[47] The only time subsequent to Deeember 1998 that Sesay was based in Kono District, as found by the Trial Chamber,[48] was in February 2000 to May 2000. Thus, based on the Trial Chamber's own findings, it is unreasonable to conclude that these miners came to Kono District prior to February 2000.

[46] Either alone or in combination with other witnesses. Even if it were reasonable, based on TF1-041's evidence, that Sesay did arrange for the forceful transfer of civilians from Makeni to Kono to mine, there is no evidence to support the finding that these civilians actually did mine. In addition, the Defence notes that TF1-041 does not state that these civilians were taken daily; TF1-041's evidence is unclear on this point but, at best, the transfer of civilians happened on one instance.
[47] Transcript/TF1-041, 10 July 2006, pp. 62.
[48] Judgment, Para. 2126.

		The context in which this finding is alleged to have occurred is also stripped away. On cross-examination, one cannot find any suggestion that civilians were secured in jail for any period of time. Further, during the time period in question, Sesay was pleased with the activity in Makeni and that the harassment of civilians was actively being prevented:[49] Q. Sorry, what was [Sesay] happy with? The fact that [the G5] *managed to prevent civilians from being harassed*? A. Yes. At that time all units were operating. If you realise that you were harassing the civilian write it down. *Write about it and send it* and we will arrest you and investigate you. Q. Okay, just pause there. Pause there. Who would arrest you? A. We had MP, military police, that we used to call MPs, they would arrest you, after we had written about you.[50] TF1-041 stated that – at the time the civilians were allegedly forcibly transferred – civilians were moving voluntarily through Tonkolili District between Bombali and Kono Districts: Q. So this was in what, just immediately around the period of the Lome Peace Accord? Sorry, I should say late 1999?

[49] *See*, generally, Transcript/TF1-041, 11 July 2006, pp. 56-59.
[50] Transcript/TF1-041, 11 July 2006, pp. 58.
[51] Transcript/TF1-041, 11 July 2006, pp. 58-59.
[52] Transcript/TF1-041, 11 July 2006, pp. 59.
[53] Transcript/TF1-041, 11 July 2006, pp. 61.
[54] Transcript/TF1-367, 23 June 2006, pp. p. 77.
[55] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1125, "Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92*bis*", 15 May 2008.
[56] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-1031, "Written Decision on Sesay Defence Application for a Week's Adjournment – Insufficient Resources in Violation of Article 17(4)(b) of the Statute of the Special Court," 5th March 2008. In particular, see paragraph 46(f): "[R]epetitiveness in testimony includes:" "That civilians who were involved in diamond mining were not forced by the combatants to perform this task but rather, did so voluntarily and not at gun point and that they did id in their interests because they took a share in the proceeds on a conventional quota – 2-pile system that was agreed upon with their 'Supporters' who employed, supported and took care of them."

		A. Yes, after the Lome peaee, yes. Late 1999 this did happen. Q. Thank you. And so ... civilians felt somewhat reassured to try to return to normal life as much as they could? A. Yes. Business was going on. Some were moving to go to Freetown and back -- Guinea and baek. Normal life was on. Q. And people were travelling to Kono to do trade, weren't they? A. Yes. People were travelling to go to Kono to trade. This was happening.[51] According to TF1-041, should Sesay have made a request for civilians to go to Kono District voluntarily, they likely would have: Q. And eould I suggest that around that time Mr Sesay did assist the administration in that he arranged for workers to go willingly to Kono. Could I suggest that he did that? A. He didn't tell me about that and I don't know. If he had told me, and I had known, maybe, yes, might well be happy at that time, but he didn't tell me and I don't know.[52] For those civilians that wanted to voluntarily go to Kono, still according to TF1-041, they simply obtained a pass from the G5 office: Q. Could I suggest that you don't know whether the eivilians went to Kono voluntarily or not? A. Yes, I want to tell you that the civilians that were sent to [the G5], [armed military police] would go about collecting them, and when you do that that means they did not go voluntarily. *Those who went willingly, they would come to obtain a pass from the office informing us that they want to go to Kono* but thosc you are saying went to Kono willingly, I don't know about that.[53] TF1-366 testified that when Pelcto assumed command of the RUF mining in 2000, there were, in total, only 300 civilians mining for the RUF. Thus, if on the occasion referred to by the Trial Chamber

		"approximately 400 civilians" were taken to Kono District, this must have happened after the early stages of 2000. TF1-367 also testified that not all of the miners from Makeni and Magburaka came to mine in Kono District against their will: Q. Do you know whether they were working voluntarily or not? Yes or no. Were they working voluntarily or not? A. *Some of them were willing to work.* Some of them were not willing at all.[54] In addition, there is no radio message recorded in the radio log books (Exhibits 32 and 33) to the effect that Sesay was requesting civilians to mine in Kono District, voluntarily or against their will. Lastly, the Defence notes that 18 statements concerning Kono, Tonkolili, and Bombali Districts during the period 1999-2000 requested to be tendered under Rule 92bis were excluded (*see* Ground 20).[55] These statements support the context in which no forced mining; also, that miners came from outside of Kono District to Kono District to mine. The Trial Chamber also ordered the Defence to ensure that unnecessary duplication of evidence concerning voluntary mining not be called.[56] In addition, the admitted Defence evidence on this point appears to have been ignored. The Trial Chamber was unreasonable in rejecting all of the above evidence (i.e., cross-examination of TF1-041, testimony of TF1-366, TF1-367, radio logs, excluded 92*bis* statements, and testimony of Defence witnesses) to find that Sesay arranged for the forcible transfer of civilians to Kono District for the purposes of forced mining.
1250	"[From 1998 to 2000 a]ll diamonds found were handed over to the RUF Commanders in what	This finding is unreasonable. The Defence first notes that confiscation of diamonds does not equate to forcing someone to mine diamonds. The

	was known as the "one-pile system," meaning that the RUF confiscated the entirety of the diamonds extracted."	Defence second submits that it was unreasonable for the Trial Chamber to find that the diamonds found during the one-pile mining operations were "confiscated" as this implies that the diamonds were appropriated without consent. To the contrary, miners operating on the one-pile system knew full well that if they found a diamond the diamond would not be their property. The miners engaged in the mining with this understanding. In exchange, they would receive food, drinks, cigarettes, and even money.[57] Please *see* Sesay Defence Closing Brief at Paras. 1292-1297. The Defence notes that DIS-091 also testified about a two-pile system coming into effect in July or August of 1999.[58] Having cited DIS-091, without providing reasons why only parts of his testimony were credible, it was unreasonable for the Trial Chamber to conclude that the changeover to a two-pile system didn't occur much sooner than found by the Trial Chamber.[59]
1250	"After the two-pile system was in place, personal mining re-emerged, and civilians were allowed to keep the diamonds for resale. However, on Sesay's order, checkpoints were put up by the RUF around the Koidu mines. At these checkpoints, the RUF would take	This finding is patently incorrect and unreasonable. The Trial Chamber's findings imply a degree of coercion not supported by the evidence cited by the Trial Chamber. The Trial Chamber cites the direct-[60] and cross-examination[61] of TF1-071. First, when asked whether, in 2000, the mining changed "to

[57] Transcript/DIS-091, 10 March 2008, pp. 43.
[58] Transcript/DIS-091, 10 March 2008, pp. 47-48. The mining changed to a two-pile system when Foday Sankoh arrived to Kono District, approximately three weeks after the signing of the Lomé Peace Accord.
[59] The Defence notes that the Prosecution's case was that a two-pile system never existed in Kono District while the RUF were present (Transcript/DIS-091, 10 March 2008, pp. 72): "Q. I put it to you, Mr Witness, that there was no two-pile system in Kono ever."
[60] *See*, Judgment, footnote 2403. The reference to pages 120-123 should be on 21 January 2005.
[61] *See*, Judgment, footnotes 2402-03.

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	diamonds found on civilians or force the sale of the diamonds to the RUF at prices fixed by the RUF agents."	mining which gave the people mining some of the products of their labour?" the witness responded "Of course, yes."[62] The witness agreed that people could feed themselves with the mining in 2000.[63] Second, TF1-071 is explicitly clear in his testimony,[64] that the checkpoints were *not* mounted around the mining sites but between Koidu and Makeni: A. As I have told you, even up to 2000 -- from 1999 up to 2000 there were checkpoints mounted from Koidu up to Makeni in search of diamonds that leaving Koidu, even though it might be sold or not sold to the RUF.[65] A. Yes, with even more evidence to that, I told you already there were mounted checkpoints from Koidu Township to Makeni for escaping diamonds.[66] Third, the RUF agents would not be at the checkpoints: If you don't sell the diamonds to RUF, there were so many checkpoints from Koidu Township directly into Makeni searching out for diamonds leaving Koidu or Kono.[67]

[62] Transcript/TF1-071, 25 January 2005, pp. 72.
[63] Transcript/TF1-071, 25 January 2005, pp. 72.
[64] Note, the portions of TF1-071's testimony here referred were cited by the Trial Chamber.
[65] Transcript/TF1-071, 25 January 2005, pp. 69.
[66] Transcript/TF1-071, 25 January 2005, pp. 75.
[67] Transcript/TF1-071, 25 January 2005, pp. 75.
[68] Transcript/TF1-071, 21 January 2005, pp. 122.
[69] Transcript/TF1-071, 21 January 2005, pp. 123.
[70] Judgment, footnote 2403.
[71] Transcript/DIS-091, 10 March 2008, pp. 52.
[72] Transcript/DIS-091, 10 March 2008, pp. 52.
[77] Transcript/DIS-091, 10 March 2008, pp. 53.

		Nor was the price set, as "fixed" implies, such that the miners could not bargain over the price of a diamond found: Q. I think he wants to know how was the price fixed, who fixed the price? A. The RUF agents. Q. *Was that subject to negotiation*? A. *Yes*.[68] Indeed, TF1-071 is clear that when a civilian mined for an RUF commander, one could sell the diamond to that commander at a mutually agreeable price: Q. In what way were they mining? A. They support their people that were living with them, civilians. And so once we have the proceeds from mining, it's between the commander and the people that were living with him. *Also negotiable*.[69] That civilians were able to keep proceeds from their mining and that they could sell their diamonds at a mutually agreeable price was confirmed by DIS-091, also cited by the Trial Chamber.[70] Indeed, the civilians would sell their diamonds to agents at the Mining Office or to traders that came to Kono (again, not to agents at checkpoints surrounding the mining sites): A. That time when the two-pile came in to -- came in to existence, everybody was mining for himself. Even the civilians who had no machines, nobody asked them to -- they too said it was their own pay.[71] A. Okay. It was said at that time the soldiers were mining for themselves. When you got your diamond you would take it to the office to sell.[72] A. The civilians, if they too wanted, they would sell it to the office.

		Q. If they didn't want to sell it to the offiee, was there anywhere else they eould sell it? A. Traders were eoming in who were buying diamonds. They were coming in from all over.[73]
1259	"Mining in Kono was not limited to 'government' mining organised by the RUF. Most of the bodyguards worked as mining bosses for their commanders and civilians were forced to mine for them and were poorly treated. The Mining Commanders would process requests from Brigade Commanders to provide civilian manpower for mining requested by Sesay, Kallon, Superman, Alpha Fofana and other senior Commanders. Throughout 1999 and 2000, Scsay sent his own men, such as Bukero, Colonel Lion, Small Kamara, Officer Med, Captain Bayo, and Colonel Gibbo, to mine in Kono."	This finding is a patently incorrect and misleading interpretation of TF1-071's testimony. The only commanders that made such requests were Officer Med, Captain Baylo, and Colonel Gibbo.[74] These requests would have been made in connection with Tombodu and Number 11[75] in 2000 only.[76] Arguably at best, the only private mining to which TF1-071 refers is in connection with Kallon, Superman, and Alpha Fofana (SLA).[77] Superman's presence indicates that this mining would have been in 1998. It would be unreasonable to conclude otherwise based solely on Superman's presence. No locations were given for where these commanders mined. With reference to CO Med,[78] TF1-071 stated that CO Med controlled the mining for Sesay at Tombodu. There is no indication that this is private mining. Furthermore, according to TF1-071, when CO Med (i.e., Officer Med) was mining in Tombodu it was in 2000 on a two-pile non-forced mining basis.[79] Thus, there is no indication that, even if there was private mining in Tombodu and Number 11, that it was forced.

[74] TF1-071/Transcript, 21 January 2005, pp. 126.
[75] TF1-071/Transcript, 21 January 2005, pp. 125.
[76] TF1-071/Transcript, 21 January 2005, pp. 126. "[Sesay] was the only master in the RUF at that time". Thus, Sesay would have been the Interim Leader at this time.
[77] TF1-071/Transcript, 21 January 2005, pp. 123.
[78] TF1-071/Transcript, 21 January 2005, pp. 123.
[79] Judgment, Para. 1250; Transcript/TF1-071, 25 January 2005, pp. 79.

1259	"Civilians mined for them at Kaisambo, Tombodu and Number 11."	Implicit in this finding is the use of force. This is patently ineorreet and unreasonable finding. The Trial Chamber eites TF1-367's 23 June 2006 testimony.[80] Howcver, here, TF1-367 actually makes referenee to miners in Koakoyima having the weekend off from mining. Giving the benefit of the doubt to the Trial Chamber, TF1-367's 22 June 2006 testimony (at the same pages as the 23 June 2006 testimony) eites to other than government mining at Kaisambo and Number 11. TF1-367 does not refer to Tombodu.
2086	"Sesay was also involved in mining activities in Kono Distriet. The RUF mining Commanders reported directly to Sesay. He visited the mines to collect diamonds, signed-off on the mining log-books."	These findings are unreasonable. In contravention to these findings, the Trial Chamber found that "[f]rom early Mareh 1998 to end of April 1998, Sesay was based in Buedu in Kailahun Distriet as BFC and worked closely with Boekarie"[81] without having returned baek to Kono after having gone to Kailahun[82] and did not make any finding that there was a Diamond Produetion Reeord prior to 30 Oetober 1998.[83] The Trial Chamber made no finding that, prior to Deeember 1998, mining commanders reported directly to Sesay.
2086	"The Chamber has held that Sesay, Bockarie and other senior RUF and AFRC members had bodyguards who worked as mining Commanders, supervising mining by enslaved civilians. Sesay's bodyguards were also specifically tasked to bring him intelligence reports from the field."	These findings are patently incorrect. There are no findings to this effect during the period for whieh the Trial Chamber found there was a joint eriminal enterprise.

[80] Judgment, footnote 2423.
[81] Para. 2123. That is, Sesay was not in Kono District and could not have visited the mines there.
[82] Judgment, Paras. 2123-2125.
[83] Para. 1244. That is, Sesay could not have signed any mining log-books from February to April as they were not yet in existence.

2086	"Sesay participated in the forced labour in diamond mines in Kono District between 14 February and May 1998 in order to further the common purpose [of the JCE]."	This finding is patently incorrect. Although the "Crimes Committed from 14 February to 30 April 1998" section of the Judgment,[84] does not list forced mining as a crime committed in Kono District, the Chamber nonetheless made this finding. A review of the judgment reveals that there is no evidence supporting this finding. Indeed, the Chamber found that "the RUF conducted mining operations in parts of Kono District" "*[a]fter* ECOMOG forces had pushed the AFRC/RUF out of Koidu in April 1998 *and* the AFRC departed Kono District."[85] The Defence notes that the JCE ended even prior to the AFRC's departure from Kono District. Thus, as the mining operations in Kono District began after the AFRC departed Kono District, the RUF mining operations began after the JCE ended.
2111	"The Trial Chamber recalls its Factual Findings [presumably referring to Paragraphs 1240-1259] on forced mining in Kono District. Following the recapture of Kono by RUF troops subordinate to Sesay in December 1998, the practice of forced mining became widespread and continued *until after* January 2000."	The phrasing of "until after" is semantically confusing. Nonetheless, it would be unreasonable to conclude, per the remainder of the Trial Chamber's findings, that there was force in 2000 onwards. The Defence also notes that the Trial Chamber's finding connotes that troops subordinate to Sesay only recaptured Kono. The Trial Chamber did not make any affirmative findings that these troops engaged themselves in forced mining after the capture of Kono. The Trial Chamber did find, however, that Sesay was in a position of seniority and had the "ability to effectively control RUF fighters under his command."[86] This is also mistaken.[87]

[84] At para. 2063.
[85] Judgment, para. 1241; emphasis added.
[86] Judgment, Para. 2127.
[87] *See* Existence of a Superior-Subordinate Relationship; Paras. 2126-2130.

2114	The Trial Chamber referred to the Diamond Production Records,[88] for the finding that "that the nature and magnitude of the forced mining in Kono District required extensive planning on an ongoing basis."	This finding is unreasonable. The Trial Chamber predicated this finding on "the detailed administrative and archiving records maintained to compute the size, grade, origin and value of the diamonds found."[89] The Defence notes that the Trial Chamber unreasonably took these Diamond Production Records as dispositive[90] for its finding of forced mining. It was improper for the Trial Chamber to do so. Approaching the Trial Chamber's finding from another perspective, the Trial Chamber found that if a present-day mining company had detailed administrative logs of their operations that this would mean that that company was forcing civilians to mine. This, of course, is absurd. One must ask, is it not possible for mining operations to be conducted on a large scale without the use of force? The answer is yes.
2128	Sesay "was always accompanied by a coterie of bodyguards."	This finding is patently incorrect and irrelevant. The portion of TF1-367's testimony to which the Trial Chamber cites for this finding does not concern mining in Kono District from December 1998 onwards but the role of bodyguards during the junta period.
2128	"Prominent civilians in Kono District knew Sesay as the man in charge of the RUF."	The cited portion of TF1-078's concerns when Sesay returned to Kono District in 2000. That the Trial Chamber suggests this Transcript concerns Kono District prior to Sesay's return is unfair and misleading.[91]

[88] Exhibits 41 and 42. See, Judgment, Para. 1244.
[89] Judgment, Para. 2114.
[90] "We find that [the extensive planning of forced mining on an ongoing basis] is provided by the detailed administrative and archiving records." Judgment, Para. 2114. At best, these Records suggest the dates on which diamonds were found and their quantity. There is no suggestion of force in these Records.
[91] TF-078/Transcript, 25 October 2004, pp. 100 ("Q. Whilst Mr Sesay was the man in control - and also before, but I'm dealing just when Mr Sesay was in control in 2000. A. Yes, My Lord.") and pp. 101 ("Q. I'm particularly interested when Mr Sesay came back in the year 2000 and was the commander in control, okay? A. Yes, My Lord.").

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Annex H1

Radio messages from Exhibit 212 demonstrating Sesay's lack of de facto command and control during the time of the May 2000 attacks on UNAMSIL (Ground 44)

RUF Radio Log, pp. 8742
Smile to Survival, dated 4 November 1999 (Superman refuses to hand over to IS material issued to him at Lunsar);

Sesay evidence relating to radio message
Transcript of 22 May 2007:
pp. 7: IS sought Sankoh's intervention to intervene in Komba Gbundema's harassment of civilians in Makule Chiefdom, IS states that he could not control these men;

Transcript of 23 May 2007:
• pp. 11, L.26-27 & pp. 12, L.4-5: IS made the suggestion that Bai Bureh and Komba report to Foday Sankoh but Sankoh did not agree with this (pp11 L26-27). IS could not control these men (pp12 L4-5);
• pp.15, L.10-17 & pp. 16, L.1 (IS states that he had no authority over Bai Buren and Gbundema until after 8 May 2000);
• pp. 19, L. 3-6 (The MP commander at Segbwema was John Aruna . IS never reeeived a message from him).

RUF Radio Log, pp. 2810 00008887,
17 January 2000, from Gaffa through Smile info all stations (all commanders/operators to send messages dircet to Leader through IS, stop sending "false messages" to SSS (is this IS?) for information of the leadcr);

RUF Radio Log, pp. 2847 0000 8057-59,
Rasta Hero to SSS (not sure this is of consequenee but the message subject is "info and apology", does not say why Rasta Hero was apologising to IS);

RUF Radio Logs, pp. 2561 00008639,
30 April 1999, Sankoh to Superman, Brig. Mani, Black Jah and Gaffa (FS message to commanders after they attaeked IS at Makeni, "let us forget differcnees", "i will settle all problems".)

RUF Radio Log, pp. 2585 00008663,
21 June 1999, Superman to FS (IS states that Superman scnt messages straight to FS and SB without going through IS, he states "i had no control over this");

RUF Radio Log, pp. 2604 00008681, 16 July 1999, to Lion frmo Sparrow (message conceerns Kamajor attack on Futaue Junction, IS comments that at this time Superman and his group, including IM and GM, were not taking orders from IS);

RUF Radio Log, pp. 2608 00008685,
17 July 1999 (in the comments section IS states that Superman and GM were still sending their messages directly to FS and SB in July 1999);

Radio Log, pp. 2615 00008691-92,
21 July 1999, Smile to Brig. Mani info all (IS does not recognise a message sent to all commanders, there is a note questioning whether he got it but there is no answer);

RUF Radio Log, pp. 2619 00008696,
27 July 1999, to Concord from Brig. Mani through SSS info Smile and response from Smile to Brig. Mani (IS states that Brig. Mani never considered IS to be senior to him and questions whether this message actually went through him. FS knew of this dynamic and that is why he responded directly to Brig. Mani and not through IS);

RUF Radio Log, pp. 2625 00008702,
Brig Bazzy info Smile, Concord and all stations (IS did not received this message);

RUF Radio Log, pp. 2628 00008705,
to Smile from Superstar (Isaac) info Concord and SSS (in comments IS discusses his problems with Isaac, Superman and GM, IS states he never received such messages from Isaac);

RUF Radio Log, pp. 2629 00008706-07,
3 August 1999, From Makeni Command HQ to Smile, info Concord and all stations (IS states this message proves that Command in Makeni were not taking orders from him, they were doing their own things and reporting to FS through SB, in next message; 2630 00008707 IS, in comments, states that the Makeni command at this time included Superman, Isaac, Brog. Mani, Gullit, 55 and Brig. Gbopleh STF);

RUF Radio Log, pp. 2632 00008709-11,
4 August 1999, to Smile from SSS (concerns release of POWs and eapture of UNAMSIL, "Brig. Bazzy issues"); RUF Radio Log, pp. 2634 00008711, 4 August 1999, To Brig. Bazzy from Smile info. SSS ("FS has to intervene", orders Brig. Bazzy to release all UN personnel, IS states he had no eontrol over Brig. Bazzy, hence the intervention);

RUF Radio Log, pp. 2635 00008712-13, 5 August 1999 (situation report from Makeni to FS, IS was not sent this report, he says he had no control over these commanders); RUF Radio Log, pp. 2638 0008715, 5 August 1999, Isaac to FS (orders to investigate the capture of UNAMSIL personnel and to release them, not sent to IS);

RUF Radio Log, pp. 2638 0008715-16, 5 August 1999, Smile to Brig. Bazzy (telling Bazzy to release hostages, not sent to IS);

RUF Radio Log, pp. 2638 00007923,
to SS Williams from Alpha (Authorities at Makeni will only count a message "when the proof from the Leader");

RUF Radio Log, pp. 2640 00008717-18, 7 August 1999, from Brig. Bazzy to FS (refusal to release hostages until their leader is released, will not subdue themselves under any command other than JPK);

RUF Radio Log, pp. 2640 00008717-18,
to FS from GM info Concord (GM speaking on behalf of Lunsar, Kambia and Makeni axis, status of release of prisoners, not sent to IS);

RUF Radio Log, pp. 2648 00008725, 6 September 2000, to Smile from Isaac through SB (report from Isaac based in Makeni on soldiers from Guinea based at Port Loko looking for free passage, not sent to IS, in comments "IS had no power over this");

RUF Radio Log, pp. 2648 00008725, to Smile from Isaac through Concord (Isaac indicated his control in Makeni, not sent to IS);

RUF Rado Log, pp. 2765 00008840, 23 September 1999, from Smile to Isaac (do not take orders from any commander other than SB);

RUF Radio Log, pp. 2765 00008729, 23 September 1999, to Smile and JPK from Col. Isaac through Concord (concerning situation in Makeni, not sent to IS);

RUF Radio Log, pp. 2768 00008843, 12 October 1999, Smile to SSS (IS told to wait in Magburaki, Makeni under control of Sman, Isaac and GM. IS states he had not worked together with these commanders since they attacked him in April 1999. IS in comments points out the fact that FS bypassed SB as BFC, the overall commander of the RUF, and was in direct contact with whatever commander he wanted to work with);

RUF Radio Log, pp. 2768 00008843, 12 October 1999, Smile to Isaac (FS instructs Isaac to meet IS at Magburaki and to take IS to Makeni and take orders from IS, in comments IS states that Sman, GM and Isaac did not accept FS instruction to take orders from IS, they went looting);

RUF Radio Log, pp. 2656 00008732, 14 October 1999, to Concord from SSS info Smile (Isaac and Sman amassing troops around Teko Barracks);

RUF Radio Log, pp. 2860
15 October 1999, to Concord from Black Guards (Makeni) (report that Superman not getting along with IS and MK);

RUF Radio Log, pp. 2862
16 October 1999, Concord to SSS (Kallon to return to Magburaki, "make sure Superman and others take others");

RUF Radio Logs, pp. 2774 00008849,
19 October 1999, from Smile to SSS and Superman (work together to pursue enemies at Okra Hills);

RUF Radio Log, pp. 2775 00008850,
19 October 1999, Smile to Survival ("give copy of new testament to operator of Sman to ensure good working relationship");

RUF Radio Logs, pp. 2772 00008848,
Smile to SSS/TB (in comments states that the looting of the property of the bishop and the NGOs was due to FS order to attack AFRC at Makeni, IS states that he never trusted Sman et al after April 1999, during this period he lived at Teko Barracks during the day and went to Magburaki at night to sleep. Insofar as the looted goods are concerned IS failed to retrieve the NGO vehicles from Sman et al. as they did consider him a commander);

RUF Radio Log, pp. 2780 00008856,
28 October 1999, Black Moses to SSS(IS in Makeni, concerns complaints of people in town of Gbanti Kamaranka under control of Komba Gbundema, IS states he had no control over Gbundema, the latter only took orders from FS and Sman);

RUF Radio Log, pp. 2662 0008739,
29 October 1999, IS to FS (Pa Demba spoiling IS's attempts to bring Makeni under control);

Annex H2

Evidence showing that Sankoh's role as Leader of the RUF involved hands on micro-management of day-to-day military affairs (Ground 44)

• Transcript 23 May 2007, Issa Hassan Sesay , pp 13-26 (Sankoh was contacting Gbao and other commander directly, including Momo Rogers in Kailahun, Rashid Sandy in Bo and Kallon, Sesay states that Sankoh was fond of direct communications with senior and junior caommanders);

• Transcript 23 May 2007, Issa Hassan Sesay , pp. 21, L.1-3(Sesay states that Sankoh seemed to lose trust in him around December 1999 and started to encourage his juniors);

• Transcript 23 May 2007, Issa Hassan Sesay, pp. 29-30 (Sesay explains that the way Sankoh operated was to direct everything, he liked commanders reporting everything to him, even junior commanders and he would even send messages to the platoon commanders and they had the right to respond directly to him);

• Transcript of 23 May 2007, Issa Hassan Sesay, pp. 30, L. 16-21 (Sesay states that Sankoh had become more dictatorial and was no longer listening to his commanders);

• Transcript of 23 May 2007, Issa Hassan Sesay pp. 42-48 (Sankoh meets with commanders at Teko Road in late January/early February 2000, those present included Sesay, Gbao, Kallon, Rashid Sandy, Gibril Massaquoi and Jackson Swaray and instructs them to start arresting military observers. This is also the meeting at which Sankoh chastised Sesay in front of the other commanders saying "this type of individual is not supposed to be a comaander" (at pp. 45 L3-5)).

• Transcript of 23 May 2007, Issa Hassan Sesay, pp. 50, L. 11-16 (Sankoh's contribution to military affairs were such that were there was no instructions from him there would be problems with the men on the ground);

• Transcript of 25 May 2007, Issa Hassan Sesay, pp. 16, L. 2-5 (Sankoh had told Sesay and the other commanders that wherever he wanted the UNAMSIL to deploy, he would report to them and wherever he wanted disarmament to go on, he would tell them);

• Transcript of 25 May 2007, Issa Hassan Sesay, pp. 39, L.7-9 (Sesay states that around 23 April 2000 Sankoh was communicating with the paramount chief as well as the junior men, the middle level commanders and the senior commanders););

• RUF Radio Log, pp. 2768 00008843, 12 October 1999, Smile to SSS (Sesay told to wait in Magburaki, Makeni under control of Superman, Isaac and GM. Sesay states he had not worked together with these commanders since they attacked him in April 1999. Sesay in comments points out the fact that Sankoh bypassed Bockarie as BFC, the overall commander of the RUF, and was in direct contact with whatever commander he wanted to work with);

• RUF Radio Log, pp. 2770 00008845-47, 16 October 1999, Superman to Sankoh (Comprehensive field report concerning problems in Lunsar and Makeni regions, looting, firing between ex-SLA and RUF etc.);

• RUF Radio Log, pp. 2782 00008857, 30 October 1999, Black Moses to SSS (Sankoh tells Sesay to arrest Pa Demba);

• RUF Radio Log, 2783 00008858, 1 November 1999, Sankoh to Superman (withdraw from Lunsar);

• RUF Radio Log, pp. 2785 00008860, 2 November 1999, Sankoh to Sesay (dismantle checkpoints between Lunsar and Makeni);

• RUF Radio Log, pp. 2666 00008756, 3 November 1999, to Smile from Major Jaekson Bodyguard (security report);

• RUF Radio Log, 2667 00008742-3, 4 November 1999, Sankoh to Superman (order to hand over weapons);

• RUF Radio Log, pp. 2786 00008861-61, 7 November 1999, Smile to Superman (dismantle eheckpoints);

• RUF Radio Log, pp. 2788 00008863-64, Smile to Survival info Superman (Sankoh ordering that ECOMOG do not deploy in Makeni);

• RUF Radio Log, pp. 2797, 00008872, 24 November 1999, Smile to Gaffar (work with "brothers" tp prepare arms, do not mind what ECOMOG are saying about disarmament at Rogberi Junetion);

• RUF Radio Log, pp. 2679 00008754-55, 30 November 1999, to Smile from Superman (reporting meeting with ECOMOG at Port Loko);

• RUF Radio Log, 2687 00008762, 18 December 1999, to Smile from Overall Security Commander RUFSL (report on armed personnel attack on Mashiaka Masingbi Highway);

• RUF Radio Log, pp. 2691 00008766, 23 December 1999, Smile to Melosky Kallon (regarding looting of Lunsar hospital by RUF/SLA, Kallon states it is a false allegation);

• RUF Radio Log, 2697 00008772-3, 29 December 1999, to Smile from Colonel Akim Turay (situation report, Northern region; , 2 January 2000, Melsoky Kallon to Smile (letter to Smile saying Melosky fell into an ambush between Port Loko and Gberi);

• RUF Radio Log, pp. 2679 00008776-7, 5 January 2000, Col. Sheriff Regional Commander CMC Northern Province to Leader (stopped UNAMSIL at Makaray cheek point and asked them to return to Lunsar);

• RUF Radio Log, pp. 2704 00008779, 10 January 2000, Komba Gbundema to Leader (Guinean ECOMOG intercepted, carrying a lot of ammunition);

• RUF Radio Log, pp. 2808 00008885, From the Leader to Gen. Ibrahim ("wait for my arrival, not happy about John Caldwell's behaviour");

• RUF Radio Log, pp. 2809 00008886, 13 January 2000, From the Leader to Col. Momoh Roger sand Col. Denis Lansana. (Sankoh telling Colonels to fortify border between SL and Liberia and to avoid infiltration by insurgents);

• RUF Radio Log, pp. 2812 00008889 – 90, 22 January 2000, Smile to Maj. Rashid Foday (information concerning orders to Edie Kanneh);

• RUF Radio Log, 2812 00008889 – 90, 25 January 2000, Smile to Seaside and Iron Mike (instructions to allow passage home to refugees returning from Guinea and Liberia);

• RUF Radio Log, pp. 2816 0008893, 17 January 2000, Smile to High Command (evidence that Sankoh controlled the roadblocks, here he orders them dismantled immediately to allow civil servant return to work);

• RUF Radio Log, pp. 8814, 2 February 2000, (Sankoh's hands on approach was such that Sesay had to ask him whether Col. Rogers from Kailahun could get treatment at Kenema);

• RUF Radio Log, pp. 2721 ? (first message after pp. 2721 00008796), 23 February 2000, Sankoh through Rashid Sandy to Col. Rogers (Sankoh telling Rogers to enter and capture Daru Barracks;

• RUF Radio Log, pp. 2741 00008816, 5 April 2000. Komba to Sankoh (report to Sankoh that Rambo is harassing civilians);

• RUF Radio Log, pp. 2818 00008895, 6 April 2000, from Smile to Col. Bai bureh (message from Sankoh telling Colonel Baibureh to release people arrested at Badeseira);

• RUF Radio Log, pp. 2746 00008821, 8 April 2000, Col. Baibureh to Smile (report to Sankoh on the theft of riee!);

• RUF Radio Logs, pp. 2833 00008096, 23 April 2000 (report of situation on ground to Sankoh from Chairman & Secretary of Bo);

• RUF Radio Log, pp. 2752/3 00008828, 14 April 2000, Komba to Sankoh (on 14 April Komba contacted Sankoh directly regarding his suspicions of UNAMSIL's arrival in Kambia, Kamakwei Junction

• RUF Radio Log, pp. 2677 00008774;

• RUF Radio Logs, pp. 2815 00008892, 1 March 2000, Smile to Col. Rogers (tell commanders to exercise restraint);

• RUF Radio Logs, pp. 2724 00008799, 7 March 2000, to Smile from Ben Kenneh (UNAMSIL patrol wants to join Ben Kenneh, permission sought from Sankoh);

• RUF Radio Log, pp. 2732 00008807, 23 March 2000, Col. Denis Lansana to Smile (situation report);

• RUF Radio Log, pp. 2733 00008811, 26 March 2000, MK to Smile (re handover of red cross vehicle);

• RUF Radio Log, pp. 2740 00008815, Rasta Hero to Smile (situation report);

• RUF Radio Log, pp. 2738 00008813, 1 April 2000, Rashid Sandy to Smile (colonel telling Sankoh he has arrived in Kailahun, not sent to Sesay);

• RUF Radio Log, pp. 2738 00008813, 1 April 2000, Rashid Sandy to Smile (colonel telling Sankoh he has arrived in Kailahun, not sent to Sesay);

• RUF Radio Log, pp. 2740 00008815, 3 April 2000, Smile to Kposowa (inquiry about food for soldiers);

• RUF Radio Log, pp. 2740 00008815, 4 April 2000, Rashid Sandy to Smile (situation report, not sent to Sesay);

• RUF Radio Log, pp. 2843 00008050-51, 4 & 6 April 2000, Sandy to Smile (reports, not sent to Sesay);

• RUF Radio Log, 2741 0000 00008816; RUF Radio Log, pp. 8818-8820, 7 April 2000, from 1st to 4th Battalion Commander, info Smile (perceived "security threat due to presence of UNAMSIL, ECOMOG, ULIMO and Guinean troops" and "constant harassment of SL civilians by Liberian security on the borderline);

• RUF Radio Log, pp. 2830 00008092-93, Momoh to Smile (report on disarmament);

• RUF Radio Log, pp. 2838 00008106, 5 May 2000, Col. Rashid to Sankoh (situation report);

ANNEX I The Accused's Relative Culpability Reduction of Sentences for JCE 3 Liability

Relevant findings

1. **The Appellant was found to be a member of the Supreme Council: that body "did not vote on issues as significant decisions were made by Koroma, SAJ Musa and certain other Honourables."[1] Sesay did not regularly attend Supreme Council meetings until August 1997, and that he had fled Freetown by January 2008.[2] Bockarie's proposal to integrate the RUF and AFRC and establish himself and Sesay as second-in-command to Koroma and SO Williams was rejected.[3] This left senior RUF commanders such as Sesay without official appointments in the junta, unlike the AFRC accused.[4] Even Bockarie was disillusioned with the RUF's limited role in the AFRC junta.[5] Mining operations were controlled and directed by the AFRC.[6]**

2. In addition to the statements of the ICTY regarding *Krstic*, it has repeatedly confirmed that indirect participation leads to reduced sentences. In *Krajisnik*, the ICTY confirmed that "[g]radations of fault within the [JCE] doctrine are possible, and may be reflected in the sentences given."[7] The same court then stated that the degree to which one's leadership position affects the relative seriousness of the crimes depends on his *actual authority* within the JCE.[8]

3. In *Brdjanin*, the Appeals Chamber noted that differences in the degree of participation in criminal conduct is to be dealt with at the time of sentencing:

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[1] Trial Judgment, para. 756.
[2] *Ibid.* paras. 772 and 773.
[3] *Ibid.* para. 761.
[4] *Ibid.* para. 762.
[5] *Ibid.* para. 764.
[6] *Ibid.* para. 957 and 760.
[7] *Prosecutor v Krajisnik*, Trial Judgment, 27 September 2006, IT-00-39-T ('*Krajisnik* Trial Judgment'), para. 886.
[8] *Krajisnik* Trial Judgment, para. 1156.

> [The doctrine] offers no formal distinction between JCE members who make overwhelmingly large contributions and JCE members whose contributions, though significant, are not as great. However, the Appeals Chamber recalls that any such disparity is adequately dealt with at the sentencing stage.[9] [emphasis added]

4. The ICTY has repeatedly emphasized that "the indirect nature of a convicted person's participation can be accepted as a mitigating circumstanee."[10]

5. In *Babic*, the Appeals Chamber stated that "[i]t may be said that a finding of secondary or indirect forms of participation in a joint criminal enterprise relative to others may result in the imposition of a lower sentence."[11]

6. This was adopted from the ICTR, where the court regularly noted that in determining gravity, "[s]econdary or indirect forms of participation have generally resulted in a lower sentence."[12]

7. At the SCSL, the Prosecution itself has stated that "[w]here an 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."[13]

8. At the Appeals Chamber, the Prosecutor argued that Krstic's culpability had been improperly assessed, because it was assessed relative to the culpability of others who were involved in the same crimes with which he was charged. The Appeals Chamber responded that rather than being improper, it was *a requirement* that the trial courts

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[9] *Prosecutor v Brdjanin*, Appeals Judgment, 3 April 2007, IT-99-36-A, para. 432.
[10] *Prosecutor v Strugar*, Appeals Judgment, 17 July 2008, IT-01-42-A, para. 381. See also *Krstic* Trial Judgment, para. 714 and discussion in Annex A, above; *Blaskic* Appeal Judgment, para. 696; and, *Prosecutor v Babic*, Appeal Sentencing Judgment, 18 July 2005, IT-03-72-A ('*Babic* Appeal Sentencing Judgment'), para. 43.
[11] *Babic* Appeal Sentencing Judgment, para. 40.
[12] See *Prosecutor v Gacumbitsi*, Trial Judgment, 17 June 2004, ICTR-2001-64-T, para. 354; Identical statement in *Prosecutor v Kajelijeli*, Trial Judgment, 1 December 2003, ICTR-98-44A-T, para. 963.
[13] Confidential Prosecution Sentencing Brief, 10 March 2009, Doc. No. SCSL-04-15-T-1238, para. 20.

assess an individual's responsibility in light of the entire circumstances, *including the culpability of others*:

> The Appeals Chamber agrees 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 coconspirators, not adjudicated in this case, is not a relevant consideration. The Appeals Chamber does not, however, share the Prosecution's interpretation of the Trial Judgement. The Trial Chamber was entitled to consider the conduct of Krstic in the proper context, which includes the conduct of any alleged co-perpetrators. A comprehensive understanding of the facts of a particular case not only permits a consideration of the culpability of other actors; indeed, it requires it in order to accurately comprehend the events in question and to impose the appropriate sentence. While the wording of the Trial Judgment may be misleading, the Trial Chamber did not consider the allegedly higher culpability of others in an inappropriate way.[14] [emphasis added]

9. The Appeals Chamber has made it clear that not only should relative culpability be a factor to help determine the appropriate mode of liability, but that relative culpability is a factor that must be considered during sentencing. Moreover, the Appeals Chamber also made it clear that relative culpability must be assessed *even in relation to persons who are not being tried in the instant case*. Note that the Trial Chamber not only assessed Krstic's culpability in relation to persons who were not tried with him, but it assessed his culpability in relation to General Ratko Mladic, who has never been tried in relation to the any events in the former Yugoslavia.

10. In addition, while the Trial Chamber found the accused guilty of genocide by way of participation in a JCE, the Appeals Chamber found that the accused was properly guilty of aiding and abetting genocide. By stating that it was not only proper but a requirement for the Trial Chamber to assess Krstic's relative culpability, the Appeals Chamber made clear that analyses of relative culpability apply *whether or not liability is found on the basis of joint criminal enterprise*.

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[14] *Ibid.*

11. Moreover, the Appeals Chamber substituted a finding of aiding and abetting genocide for the Trial Chamber's finding of guilt by way of a JCE, *even while it affirmed Krstic's guilt for participating in the JCE to forcibly transfer Bosnian Muslims – an inextricable part of the genocide*.

12. The Appeals Chamber also made clear that it was quite possible for an accused to make a substantial contribution to a coordinated criminal plan, but to receive a lesser sentence than otherwise merited due to the accused's limited involvement in that plan:

> First, while Radislav Krstic made a substantial contribution to the realization of the genocidal plan and to the murder of the Bosnian Muslims of Srebrenica, his actual involvement in facilitating the use of Drina Corps personnel and assets under his command was a limited one.[15] [emphasis added]

13. The fact that General Krstie did not have the intent of genocide, and did not order his troops or personnel to engage in genocide, was an important mitigating factor. His troops were involved in separate crimes, that of persecution, but his role in the common purpose of genocide was minimal and so he was judged to have minimal responsibility for it.

14. Courts may also consider as a mitigating factor the prior conduct of the accused and whether he would have been at all involved with such a criminal plan:

> Krstic's personal integrity as a serious career military officer who would ordinarily not have been associated with such a plan at all, is also a factor in mitigation.[16]

15. The necessary implication is again that individuals may have varying degrees of culpability even within schemes of coordinated plans of attacks upon civilians.

16. The position of the ICTY with regard to relative culpability has been further entrenched in international law by the Rome Statute of the International Criminal Court. No

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[15] *Krstic* Appeal Judgment, para. 273.
[16] *Ibid.*

gradations in the degree of criminal liability are provided for in the ICC Statute,[17] but such differences are to be considered in sentencing. Rule 145(1)(c) of the ICC Rules of Procedure and Evidence states that the court should consider "the degree of participation of the convicted person."[18]

[17] ICC Statute, Art. 78(1), A/CONF.183/9.
[18] ICC Rules of Procedure and Evidence, ICC-ASP/1/3. Note as well that the court in *Tadic* found support for the doctrine of JCE in Article 23(3)(d) of the ICC Statute (*Tadic* Appeal Judgment, para. 222).

A. SCSL CASES

Alex Tamba Brima

1. Brima was one of the individuals who both planned and executed the 1997 coup, and was rewarded with specific functions and positions within the AFRC government.[19] He was a member of the AFRC's Supreme Council and obtained this position for his role in the coup. As a member, he attended coordination meetings between the AFRC and RUF.[20] Brima was further a Public Liaison Officer who supervised two key ministries – Works & Labour, and Customs & Excise – two parastatal groups, and reported to the highest echelon of the AFRC, including Abu Sankoh, SAJ Musa and Johnny Paul Koroma.[21] He was the overseer of mines for the AFRC government.[22]

2. Brima later became the overall commander of troops that invaded Freetown in January 1999, and remained overall commander during the attack and retreat.[23] In his ongoing role as a military commander, Brima employed a brutal disciplinary system against troops and abducted civilians.[24] Troops were punished for rape, but could "sign for" abducted women instead.[25] At times, he ordered attacks against civilians,[26] and failed to prevent or punish other crimes committed by his subordinates.[27]

3. Brima was convicted of, amongst other crimes, committing extermination at Karina and ordering murders of civilians in Bombali and Freetown. He was described by the Trial Chamber in its Sentencing Judgment as "zealous participant"[28] and noted that he "was

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[19] *Prosecutor* v *Brima, Kamara and Kanu*, 20 June 2007, SCSL-04-16-T, ('*AFRC* Trial Judgment') paras. 316-17.
[20] *Ibid.* para. 318.
[21] *Ibid.* paras. 321-22.
[22] *Ibid* para. 328.
[23] *Ibid.* para. 420.
[24] *Ibid.* para. 593.
[25] *Ibid.* para. 595.
[26] *Ibid.* para. 1731.
[27] *Ibid.* para. 1744.
[28] *Prosecutor* v *Brima, Kamara and Kanu*, 19 July 2007, SCSL-04-16-T, ('*AFRC* Sentencing Judgment'), para. 56.

the primary perpetrator of the murder of at least 12 civilians in a mosque during the attack on Karina."[29] The Trial Chamber also noted Brima's tactics of extreme coercion used to force his subordinates to engage in criminal conduct.[30]

4. Brima ordered the killing of civilians and terrorizing and collcetively punishing eivilians; the looting of UN and eivilian property; the murder of nuns; the murder of civilians in a mosque; the enslavement of civilians and taking of ehild soldiers; and, the murder of unarmed ECOMOG soldiers.[31]

Brima Bazzy Kamara

5. Similar to Brima, Kamara was also a member of the AFRC Supreme Council, a position he earned for planning and participating in the 1997 coup.[32] He was also a Publie Liaison Officer supervising a number of ministries, including Agriculture, Forestry, Fisheries, Energy and Power.[33]

6. Kamara was convicted of, amongst other crimes, ordering the murder of civilians in Karina and aiding and abetting the murder and mutilation of civilians in Freetown. The Trial Chamber found Kamara to be "a violent and active participant in the erimes," noting an instanee where Kamara ordered his subordinates to lock eivilians in their houses and set the houses ablaze.[34]

7. Kamara was found to have failed to prevent or punish unlawful killings and physical violenee, aimed at spreading terrorism and collectively punishing eivilians.[35] He ordered the killing of young girls,[36] failed to prevent or punish unlawful killings, the

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[29] *Ibid.* para. 43.
[30] *Ibid.* para. 55.
[31] *AFRC* Trial Judgmeut, paras. 1770–83 and 1835-38.
[32] *Ibid.* paras. 432-34.
[33] *Ibid.* para. 436.
[34] *AFRC* Sentencing Judgment, para. 86.
[35] *AFRC* Trial Judgment, para. 1893.
[36] *Ibid.* para. 1915.

abduction and enslavement of civilians, mutilations of civilians, looting, extermination, and rape.[37]

Santigie Borbor Kanu

8. Kanu was another member of the AFRC Supreme Council, a position he earned for planning and participating in the 1997 coup.[38] He was convicted of failing to prevent or punish unlawful killings and sexual violence, as well as abduction and enslavement of civilians and child soldiers, and looting and terrorizing the civilian population.[39] Furthermore, he "planned, organized and implemented" a system to abduct and enslave civilians as sexual slaves, forced labour, and child soldiers.[40]

9. Kanu was convicted of, amongst other crimes, *committing* the mutilation of civilians in Freetown, ordering the murder of civilians and persons *hors de combat* in Freetown and aiding and abetting the murder of civilians in Freetown. The Trial Chamber found that Kanu was a "direct participant in unlawful killings, mutilations, the recruitment and use of child soldiers, outrages upon personal dignity and enslavement."[41]

10. Kanu not only "directly participated in the commission of a number of crimes," he failed to prevent or punish the crimes committed by his troops in which he did not take part.[42] He demonstrated to his troops "how to best carry out amputations" on several civilians.[43] He ordered the killing of civilians in a mosque,[44] and amputations.[45] Kanu was also responsible for carrying out Brima's order to execute captured, unarmed ECOMOG soldiers. He executed a first soldier, and then ordered his soldiers to execute the rest.[46]

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[37] *Ibid.* paras. 1929, 1950, 1968 and 1976.
[38] *Ibid.* paras. 507-8.
[39] *Ibid.* paras. 2025 and 2044.
[40] *Ibid.* para. 2095.
[41] *AFRC* Sentencing Judgment, para. 99.
[42] *AFRC* Trial Judgment, paras. 2078-79.
[43] *Ibid.* paras. 2050 and 2053.
[44] *Ibid.* para. 2059.
[45] *Ibid.* para. 2060.
[46] *Ibid.* para. 2058.

B. ICTR SENTENCING HIERARCHY

Appellant's sentence – outside the norm at ad hoc Tribunals

11. The ICTR jurisprudence shows a clear hierarchy of culpability. Those accused who have received the harshest sentences were found to have directly participated in the genocide, even where they were also found guilty on the basis of indireet modes of liability. Those accused either committed the crimes they were found guilty of, or directly ordered their subordinates or others to commit them. They gave specific directions as to who to kill and how to kill them, including orders to engage in further cruelty to women, including rape if the women resisted. To a man, they steadfastly refused to punish any subordinates for any crimes.

12. A review of cases of the ICTR shows that those who received the harshest sentences all carried a far greater degree of responsibility for the organization and planning of the genoeide, of crimes against humanity, and of war crimes than Sesay. It also shows that these accused earried far greater culpability through their direct participation in these same crimes.

Jean-Paul Akayesu

13. Jean-Paul Akayesu was the *bourgmestre* of Taba Commune, in the Prefecture of Gitarma. He was not a member of a rebel army, but a government minister. Akayesu was convicted of genocide, direct and publie incitement to genocide, and five other crimes against humanity, for whieh he was sentenced to life in prison. For the crimes against humanity, he reeeived 15 years for each count of murder and rape, and 10 years for each count of torture and other inhumane acts.[47]

14. The ICTR found that one of the mitigating factors in his case was his cooperation with the Prosecutor and Tribunal. In the AFRC case, the Prosecutor for the SCSL described

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[47] *Prosecutor v Jean Akayesu*, Sentencing Judgment, 2 October 1998, ICTR-96-4-T ('*Akayesu* Sentencing Judgment').

this mitigating factor as meaning Akayesu deserved eredit for being available, diseiplined, and never obstrueting or attempting to evade the judieial process.[48]

Jean Bosco Barayagwiza

15. Jean Bosco Baraygwiza was a loeal and national leader of the CDR, and at all times a principal decision-maker of the party, and described as the "lynchpin" of the conspiracy to commit genoeide.[49] The CDR was the Hutu-only politieal party that led the Hutu Power movement and provided the politieal framework for the genocide.[50] t directed large parts of the massacres, ineluding through its own militia. Barayagwiza supplied weapons, gave orders directing that eertain categories of persons should be killed, and encouraged the broader genocide through his leadership of the party.[51]

16. He was also one of the founders and second-in-command of the RTML radio station, and its director of political affairs. The Tribunal found that RTML was a major force in propelling the genocide by not only encouraging the genocide but providing information that the *Interahamwe* and other militias eould use to carry out their goal of extermination, including providing the names of specific targets.[52]

17. Barayagwiza was charged with genocide, conspiracy to commit genocide, direct and public incitement to genocide, as well as the crimes of extermination and persecution. For this he received a life sentence which was commuted to 35 years plus credit for time served. The sentence was commuted on the basis of violations of his rights found by the Appeals Chamber, concerning Barayagwiza's transfer from Cameroon and his initial appearance in eourt. The violations of rights were an eighteen-day delay between

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[48] *AFRC* Prosecution Sentencing Brief, Confidential Annex A, page 22193.
[49] *Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, Trial Judgment and Sentence, 2 December 2003, ICTR-99-52-T, ('*Barayagwiza et al* Trial Judgment') at para. 1050.
[50] Summary, *Prosecutor v Ferdinand Nahimana, Jean-Basco Barayagwiza and Hassan Ngeze*, Case No. ICTR-99-52-T, at para. 66.
[51] Summary, *Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, Case No. ICTR-99-52-T, at para. 20 - 24.
[52] Summary, Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, Case No. ICTR-99-52-T, at para. 63.

being detained and informed of the reasons for his detention, and a twenty-day delay between his transfer and initial appearanee in eourt.[53]

Sylvestre Gacumbitsi

18. Sylvestre Gacumbitsi was a *bourgmestre* in Rwanda who was convicted of genocide, and the crimes against humanity of extermination and rape. He reeeived a sentencc of 30 years at the Trial Chamber, which was changed to life imprisonment by the Appeals Chamber, whieh based its increased sentence on the defendant's central role in organizing the genocide in his local community and instigating and encouraging rape and murder:

> Nonetheless, the Appeals Chamber agrees with the Proseeution that the Trial Chamber failed to apply these prineiples properly in the present case in imposing a sentenee of only thirty years' imprisonment on the Appellant. The Appeals Chamber recalls that the Appellant played a eentral 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. The Trial Chamber also found the Appellant guilty of instigating rape as a crime against humanity, noting that the Appellant had exhibited particular sadism in speeifying that where victims resisted, they should be killed in an atrocious manner. The Appellant was thus convicted of extremely serious offences. Moreover, unlike most of the other cases in the Tribunal in which those convicted for genocide have received less than a life sentence, there were no especially significant mitigating eircumstances.[54]

19. Gacumbitsi was found to have had a central role in the crimes of the commune, crimes which were pre-meditatcd and the result of elaborate planning. He participated in the crimes voluntarily, and never punished perpetrators, nor did he prevent their commission.

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[53] *Barayagwiza* Interlocutory Appeal Judgment, paras 54 and 62.
[54] *Prosecutor v Gacumbitsi*, Appeal Judgment, 7 July 2006. ICTR-2001-64-A, ('*Gacumbitsi*, Appeal Judgment'), para. 204.

20. Amongst his crimes were murdering Tutsi refugees and then directing the assault and mass murder of Tutsi refugees hiding in a local church;[55] ordering the rape of Tutsi women and girls "by specifying that sticks should be inserted in their genitals in the event they resisted;"[56] and that those rape victims who resisted "should be killed in an atrocious manner."[57]

Juvenal Kajelijeli

21. Juvenal Kajelijeli was a military-political leader who was convicted of the most serious crimes in Rwanda. He was a *bourgmestre* who had authority of his commune and could request the intervention of the commune police force.[58] Moreover, he was also one of the leaders of the *Interahamwe*, and had control over the *Interahamwe* in Mukingo Commune and influence over it in Nkuli Commune.[59] He had two life sentences and one 15-year sentence for genocide, extermination and incitement to genocide converted into a determinate sentence of 45 years plus credit for time served. This was because he was not informed of the reasons for his arrest for ten months, and was not promptly presented before a judge.[60] The Appeals Chamber makes it clear, however, that had there been no violation of his rights, Kajelijeli's sentence would have remained undisturbed.[61]

Clement Kayishema & Obed Runzidana

22. Clement Kayishema was the Prefect of Kibuye prefecture, and as such had both *de jure* and *de facto* control of the *bourgmestres*, communal police, gendarmerie and *Interahamwe*.[62] He was convicted of four counts of genocide. On each count, he was found guilty of planning, organizing, and leading the attacks, and inciting others to

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[55] *Prosecutor v Gacumbitsi*, Trial Judgment, 17 June 2004, ICTR-2001-64-T, ('*Gacumbitsi* Trial Judgment'), paras. 167-173.
[56] *Ibid.* para. 224.
[57] *Ibid.* para. 215.
[58] *Kajelijeli* Trial Judgment, paras. 6, 277 and 739.
[59] *Ibid.* para. 404.
[60] *Kajelijeli* Appeal Judgment paras. 320 – 24.
[61] *Ibid.* para. 319.
[62] *Prosecutor v Kayishema and Runzindana*, Trial Judgment and Sentence, 21 May 1999, ICTR-95-1-T, paras. 489, 501 and 503 – 6.

engage in mass killings;[63] the attacks on one church that left thousands of refugees dead; the looting and burning of another church after killing thousands more refugees; leading an attack on a stadium full of refugees that left thousands more refugees dead; and organizing regular attacks on Tutsis in Bisesero region, where he escorted and directed the *Interahamwe*, gendarmerie and communal police forces. The total dead in these attacks was estimated at least 20,000, and likely tens of thousands more.[64] He was found to have failed to prevent or punish all these crimes.[65]

23. Kayishema's co-accused Obed Ruzindana assisted him in transporting and arming killers, organizing some attacks, inciting some attacks and commanding them.[66] He also mutilated a Tutsi woman by cutting off her breasts and then disemboweling her.[67] For all this, he was convicted of genocide.

24. Kayishema was sentenced to life imprisonment, whereas Ruzindana received 25 years, in part because the Trial Chamber was "of the opinion that a twenty-five year sentence represents a term of imprisonment just below that of imprisonment for the remainder of his life."[68]

Gerard Ntakirutimana

25. Gerard Ntakirutimana received a 25-year sentence for committing genocide, committing murder as a crime against humanity, aiding and abetting genocide, aiding and abetting murder, and aiding and abetting extermination.[69] He was a doctor at the hospital in the Seventh Day Adventist compound known as Mugenoro Complex,[70] and

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[63] *Ibid.* para. 503.
[64] *Ibid.* para. 531.
[65] *Ibid.* para. 505.
[66] *Ibid.* para. 468
[67] *Ibid.* paras. 446 and 470.
[68] *Ibid.* Sentencing Order, para. 26.
[69] *Prosecutor v Elizaphan and Gerard Ntakirutimana*, Appeal Judgment, 13 December 2004, ICTR-96-16-A and ICTR-96-17-A, ('*Ntakirutimana* Appeal Judgment'), para. 564.
[70] *Prosecutor v Elizaphan and Gerard Ntakirutimana*, Trial Judgment, 21 February 2003, ICTR-96-16-T and ICTR-96-17-T, paras. 37 – 8.

helped organise and lead a genocidal attack on the complex, as well as attacks on two separate primary schools in Bisesero.[71]

Georges Rutaganda

26. As the second vice-president of the *Interahamwe za MRND*, Georges Rutaganda was one of the most powerful and influential men behind the Rwandan genocide, and was senteneed not only for his influence over the *Interahamwe* milita, but his direct participation in genocidal acts.[72] He was convicted of genocide, extermination, and willful killing as a war crime, and sentenced to life imprisonment.[73]

27. Rutaganda distributed guns and machetes to the *Interahamwe* militias to commit massacres,[74] ordered the murders of other men,[75] and participated in attacks on thousands of refugees seeking UNAMIR protection, as well as a subsequent attack on survivors that resulted in rape and mass murder.[76]

Laurent Semanza

28. Laurent Semanza was convicted of genocide, complicity in genocide, assisting extermination, murder, torture and rape as erimes against humanity, as well as rape as a war crime.[77] He was found to have de facto control over, and organized and directed *Interahamwe* to attack and kill Tutsi refugees in a church;[78] attaeked and killed other refugees;[79] tortured and murdered another man;[80] directed men to rape and then kill a speeific group of Tutsi women;[81] and to have directed *Interahamwe* to kill a specific Tutsi family.[82] For these crimes, he was sentenced to 35 years.[83]

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[71] *Ntakirutimana* Appeal Judgment, paras. 557 – 58.
[72] *Prosecutor v Rutaganda*, Appeal Judgment, 26 May 2003, ICTR-96-3-A, paras. 515 – 6.
[73] *Ibid.* para. 592 and Part XIV.
[74] *Prosecutor v Rutaganda*, Trial Judgment, 6 December 1999, ICTR-96-3-T, ('*Rutaganda* Trial Judgment'), paras. 196-99.
[75] *Ibid.* para. 261.
[76] *Ibid.* paras. 299 and 304.
[77] *Prosecutor v Semanza*, Appeal Judgment, 20 May 2005, ICTR-97-20-A, ('*Semanza* Appeal Judgment') Part IV.
[78] *Semanza* Appeal Judgment, paras. 363 – 4, and *Semanza* Trial Judgment, para. 206.
[79] *Semanza* Trial Judgment, paras. 228 and 244.
[80] *Ibid.* para. 213.
[81] *Ibid.* para. 261.
[82] *Ibid.* para. 271.

Samuel Imanishimwe

29. Samuel Imanishimwe, a commander of a FAR military camp, was found guilty of the crimes against humanity and war crimes of murder, imprisonment, torture, and cruel treatment, including some convictions under Article 6(3). He was sentenced to only 12 years imprisonment.

> Moreover, the Appeals Chamber stresses that to reach the conclusion that "Imanishimwe issued orders authorizing the arrest, detention, mistreatment, and execution of civilians with suspected ties to the RPF," the Trial Chamber also took into account "the pattern and frequency of civilians being arrested and brought to the camp" and Imanishimwe's presence "during the detention and mistreatment of some of these civilians" as well as "the nature of a military command structure and hierarchy, the relatively small size of the camp, Imanishimwe's presence at the camp, Imanishimwe's testimony that he had control over the Karambo camp soldiers, the absence of any evidence suggesting that he lacked control over the soldiers, and the absence of any evidence of Imanishimwe preventing soldiers from mistreating civilians or punishing them for their abuse."[84]

30. Not only does the ICTR make it clear in this case that the circumstances under which it will infer indirect liability for crimes against humanity include the commander's failure to prevent or punish soldiers for their crimes, it also makes clear that these crimes carry much lower sentences than those for genocide. All the evidence regarding Mr Sesay shows that he did everything he could to prevent crimes against humanity, and has only failed to punish one of the multitude of incidents he was charged with.

Aloys Simba

31. Aloys Simba was a famous Rwandan soldier who retired as a lieutenant-colonel in the Army, but maintained prominent political, military and social connections, and was the

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[83] *Semanza* Appeal Judgment, Part IV.

[84] *Prosecutor v Samuel Imanishimwe*, Appeal Judgment, 7 July 2006, ICTR-99-46-A, para. 417, referring to *Prosecutor v Imanishimwe*, Trial Judgment, 25 February 2004, ICTR-99-46-T ('*Imanishimwe* Trial Judgment') paras. 410 and 687.

Civil Defence Advisor for Gikongoro prefecture at the time of the genocide.[85] He was convicted of genocide and extermination, and sentenced to 25 years.[86]

32. This sentence reflected his conviction for genocide under the basic or direct mode of participation in a Joint Criminal Enterprise.[87] This JCE involving Simba provided the weapons for and ordered either further or initial massacres at a technical school and a parish on the same day.[88] These attacks were part of "a highly coordinated operation" "with the organizational and logistical support offered by local authorities and prominent personalities such as Simba who provided encouragement, direction, and ammunition" and involved twelve hours of sustained attacks that left thousands of Tutsis dead.[89] These attacks killed thousands of Tutsis whom the *Interahamwe* had been unable to massacre until further intervention by Simba and his co-perpetrators, whose "coordination, official encouragement, well-armed gendarmes, and [provision of] guns and grenades proved decisive."[90] Despite his retirement, Simba was both a *de jure* and de facto military leader during the time of the conflict, at various times directing the *Interahamwe*, gendarmerie, and CDR militias.[91]

C. ICTY SENTENCING HIERARCHY

33. As at the ICTR, the ICTY has made it clear that those who receive the harshest sentences bear the greatest responsibility for the crimes committed. A brief review of the cases with the severest sentences show that in all cases, the accused either directly participated in a gross number of crimes (as in *Jelisic*) or directed ethnic cleansing at a mass scale, and failed to punish or prevent the commission of crimes against humanity and war crimes. Yet accused who aided and abetted genocide, who engaged in joint

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[85] *Prosecutor v Simba*, Trial Judgment, 13 December 2005, ICTR-01-76-T ('*Simba* Trial Judgment'), at paras. 55 – 60.
[86] *Prosecutor v Simba* Appeal Judgment, 27 November 2007, ICTR-01-76-A, ('*Simba* Appeal Judgment'), at para. 288.
[87] *Ibid.* para. 26
[88] *Simba* Trial Judgment, paras. 398 and 400.
[89] *Ibid.* para. 401.
[90] *Ibid.*
[91] *Ibid.* as described at paras. 92, 95 and 97 and accepted at paras. 117 – 8.

criminal enterprises for ethnic eleansing, who planned and organized eampaigns of murder and terror at the highest levels of Serbian military and politieal leadership, have received signifieantly more lenient sentences than Sesay.

Radislav Krstic

34. General Krstic was the Chief of Staff and then the Commander of the Drina Corps, which controlled the area where the forced transfer of tens of thousands of civilians at Potoeari and the Srebrenica massacre took place. Krstic was the deputy Commander of the Drina Corps until he was promoted by Ratko Mladic, his direct superior and the architect of the Srebrencia genocide. The main crimes for which he was found guilty were aiding and abetting the genocide that took place in Srebrenica; aiding and abetting extermination and persecution as crimes against humanity; aiding and abetting murder as a war crime; and participating in murder and persecution as war crimes.[92] For all these crimes – including for the gravest crime tried before the ICTY – the Appeals Chamber reduced Krstic's sentence from 46 to 35 years.[93]

35. Between 7,000 and 8,000 men were killed in the genocide at Srebrenica, which was a designated UN safe haven, and the remaining women, children and elderly were forcibly removed.[94] Bosnian Serb forces held UN soldiers as human shields and hostages, and threatened to shell a UN compound housing up to 30.000 civilians.[95] Before forcibly removing them from the area, Bosnian Serb soldiers began to rape Muslim women, sometimes kidnapping them and sometimes raping them in full view of other Muslim civilians.[96] Krstic was found to have been aware of the genocidal plan being carried out around him, and having done nothing to stop it.[97] On the contrary, he permitted the use of the Drina Corps personnel and resources to carry out the genoeidal killings.[98] Krstic was found less culpable for the following reasons:

(i) Krstic willingly partieipated in the forcible transfers but would not

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[92] *Krstic* Appeal Judgment, Part VII.
[93] *Ibid.*
[94] *Ibid.* para. 3.
[95] *Krstic* Trial Judgment, para. 34.
[96] *Ibid.* para. 46.
[97] *Krstic* Appeal Judgment, para. 134.
[98] *Ibid.*

have taken upon a genocidal venture on his own;
(ii) He allowed himself to be drawn in to the genocidal scheme;
(iii) His own commander, Ratko Mladic, personally ordered and supervised the genocide;
(iv) His participation in the genocide was limited to allowing the resources of his troops to be used in connection with the crimes; and
(v) He remained "largely passive" even though he knew genocide was taking place.

36. As word of the executions came in, Krstic "kept silent and even expressed sentiments lionizing the Bosnian Serb campaign in Srebrenica."[99] Even so, the Trial Chamber found that "[h]is story is one of a respected professional soldier who could not balk his superiors' insane desire to forever rid the Srebrenica area of Muslim civilians, and who, finally, participated in the unlawful realisation of this hideous design."[100]

Milan Martic

37. Martic was amongst the most high-level offenders convicted at the ICTY. He was found guilty of participating in a joint criminal enterprise with other notorious Serbian leaders, including Slobodan Milosevic, Radovan Karadzic, and Ratko Mladic whilst he was a military and political leader in the Serbian Krajina.[101] He was found guilty of the crimes against humanity of murder, torture, persecution, imprisonment, deportation, forcible transfer and inhumane acts, as well as the war crimes of murder, torture, cruel treatment, wanton destruction of villages, destruction of cultural property and looting.[102] For a number of the counts, including murder, torture, persecution, imprisonment, deportation and inhumane acts, he was found guilty by way of either the basic or the extended joint criminal enterprise.[103] For all these crimes, including his participation in a Joint Criminal Enterprise with the highest level of Serbian accused, and without consideration of any mitigating factors, Martic was sentenced to 35 years in prison.[104]

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[99] *Prosecutor v Radislav Krstic*, Trial Judgment, 2 August 2001, It-98-33-T ('*Krstic* Trial Judgment'), para. 724.
[100] *Ibid.*
[101] *Prosecutor v Martic*, Appeal Judgment, 8 October 2008, IT-95-11-A, para. 3.
[102] *Ibid.*
[103] *Ibid.*
[104] *Ibid.* Part XI.

Milomir Stakic

38. Stakic was a doctor and high-ranking politician in Prijedor, and presided over the region's Municipal Assembly, Crisis Staff, and Council for National Defence.[105] Thousands of non-Serbs were murdered, sexually assaulted, and then forcibly removed from Prijedor during Stakic's tenure. Stakic was part of a joint criminal enterprise between military and civilian authorities to purse the ethnic cleansing, and helped establish the detention camps used by the police, army, and other militias.[106] He was found guilty of the crimes against humanity of extermination, persecution and deportation, and the war crime of murder.[107] He failed to prevent or punish any of these crimes, even though he exercised significant power in the region.[108] On appeal, he received a sentence of 40 years.[109]

Stanislav Galic

39. Stanislav Galic was the *de jure* commander of the Sarajevo Romanija Corps, and was subordinate only to Ratko Mladic and Radovan Karadzic.[110] He commanded ten brigades of 18,000 soldiers, and was found guilty of murder and inhumane acts, as well as the war crime of spreading terror in the civilian population for ordering and directing a campaign of repeated and continual shelling of and sniping at civilians in Sarajevo.[111] On appeal, he was sentenced to life in prison.[112]

40. It is clear that the only reason a life sentence was handed to Galic was that he spent two years commanding forces whose overriding mission was to besiege Sarajevo and terrorise and bombard civilians, with any military objectives of minimal priority. Galic's troops targeted civilians in their homes, at schools, marketplaces, funerals, weddings, and whilst collecting water.[113] He abused his authority as a senior military

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[105] *Prosecutor v Stakic*, Trial Judgment, 31 July 2003, IT-97-24-T, ('*Stakic* Trial Judgment'), paras. 3 – 9.
[106] *Ibid.* paras. 364 *et seq.*
[107] *Stakic* Appeal Judgment, Part XII.
[108] *Stakic* Trial Judgment, para. 498.
[109] *Stakic* Appeal Judgment, Part XII.
[110] *Prosecutor v Galic*, Appeal Judgment, 30 November 2006, IT-98-29-A, para. 2.
[111] *Ibid.*
[112] *Ibid.* para. 456 and Part XVIII.
[113] *Ibid.* para. 456

officer not merely by permitting these crimes, but by ordering them, on a daily basis, for two years.[114]

Goran Jelisic

41. Jelisic was convicted of 30 counts of crimes against humanity and war crimes, including 24 separate counts of murder as crimes against humanity and war crimes.[115] He acted as an executioner at the Brko police station and concentration camp.[116] He was sentenced to 40 years imprisonment.

[114] *Ibid.* para. 447 and *Prosecutor v Galic*, Trial Judgment, 5 December 2003, IT-98-29-T, para. 746.
[115] *Prosecutor v Jelisic*, Trial Judgment, 14 December 1999, IT-95-10-T ('*Jelisic* Trial Judgment'), para. 138 and *Prosecutor v Jelisic*, Appeal Judgment, 5 July 2001, IT-95-10-A, Part IV.
[116] *Jelisic* Trial Judgment, paras. 37 – 8.

ANNEX C: Comparison of 'Considerable' Contribution to the Peace Process

1. In *Plavsic*, the ICTY made it clear what amounts to a "considerable contribution." It also emphasized that post-conflict conduct that makes "a considerable contribution to peace" is to be accorded significant weight as a mitigating factor.[117] In that case, the Trial Chamber emphasized the accused's vital role in bringing peace to the region, even though she encouraged persecution of non-Serbs. This included inviting Serb militias to assist Bosnian Serbs in killing, detaining, and enslaving non-Serbs. Nonetheless, her post-conflict conduct was of great importance:

> The Trial Chamber is satisfied that Mrs. Plavsic was instrumental in ensuring that the Dayton Agreement was accepted and implemented in Republika Srpska. As such, she made a considerable contribution to peace in the region and is entitled to pray it in aid in mitigation of sentence. The Trial Chamber gives it significant weight.[118]

2. According to the unchallenged witness statements of international mediators and dignitaries entered as evidence at trial, Plavsic "was singular, on the Bosnian Serb side" in promoting the Dayton Agreement.[119] She removed obstructive officials who opposed the peace agreement,[120] and supported the agreement even when her co-perpetrators and colleagues objected to the agreement as threatening their interests.[121]

3. Similarly, Sesay's contributions to the peace process made no distinctions. As the unchallenged witness statements of international mediators and dignitaries show, his energies were clearly directed at ending the conflict and ensuring the protection of civilians. He did this even as his concessions and efforts posed risks to the interests of the RUF – such as refusing to alter the Lome Accord,[122] ensuring the disarmament of

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[117] *Prosecutor v Biljana Plavsic*, Sentencing Judgment, 27 February 2003, IT-00-39&40/1-S, (*Plavsic* Sentencing Judgment), para 94.
[118] *Ibid.*
[119] *Plavsic* Sentencing Judgment, para. 92.
[120] *Plavsic* Sentencing Judgment, para. 90.
[121] *Plavsic* Sentencing Judgment, paras. 89 and 93.
[122] Sesay Sentencing Brief, Annex A.

Kono ahead of sehedule,[123] and his refusal to request preeonditions before disarming the RUF.[124]

4. The unchallenged witness statements also showed that Sesay's commitment to the peace process included working closely with UNAMSIL. He warned the UN of an impending coup attempt,[125] and he was said by the UN Secretary General's representative to have been held in high regard by the UNAMSIL Force Commander.[126]

5. As in *Plavsic*, Sesay's actions were also undertaken in the face of considerable opposition to the peace process, including that of RUF leaders Foday Sankoh and Sam Bockarie.[127] Sesay also had to overcome internal opposition to Sesay's appointmcnt as Interim Leader by senior RUF commanders such as Superman and Gibril Massaquoi.[128] This opposition to Sesay included Superman attempting to kill Sesay.[129]

6. Sesay's role remained as "singular" as Plavsic's, and was described by Alpha Konaré as such: "He behaved at all times in a straightforward and honourable way. He appeared to be such a eontrast to the other commanders and indeed Sankoh himself, that he appeared to be an anomaly in the RUF movement."[130]

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[123] Sesay Scntencing Bricf, Annex B.
[124] Sesay Sentencing Brief, Annexes A and B.
[125] Sesay Sentencing Brief, Annex K.
[126] Sesay Sentencing Brief, Annexes B and E.
[127] Sesay Sentencing Brief, Annexes A – F.
[128] Transcript/TF1-078, 25th October 2004, p. 89, lines 13 – 23 and Sesay Sentencing Brief, Annex B.
[129] Transcript/TF1-078, 25th October 2004, p. 89, lines 24 – 28. See also Transcript/TF1-314, 2nd November 2005, p. 46, lines 15 – 25.
[130] Sesay Sentencing Brief, Annex A.

ANNEX D: Evidence of Witness Testimony Regarding Sesay's Care For and Protection of Civilians

1. **TF1-078**, who testified on 25th Oetober 2004, stated that: "Sesay was against the killing and raping of civilians and wanted civilians to live peacefully within RUF controlled zones;" "the eivilians were very pleased with him beeause he was a young man and niee to civilians. He was against most of the bad things that were going on, such as molestations, intimidation, harassment of civilians;"[131] that "he was willing to punish his men for crimes against civilians;"[132] and that "when Sesay became interim leader of RUF, eivilians were happy about this as Sesay always operated in the civilians' interests."[133]

2. **TF1-041**, a RUF G5 testifying for the Prosecution on 10th July 2006, stated that "Sesay believed the RUF should work with civilians not against them and that the G5 and JSU should do their best to allow the civilians to make a living for themselves and that harassment of civilians was not to be tolerated."[134]

3. **TF1-314**, testifying on 2nd November 2005, agreed that Sesay executed rapists in Makeni,[135] saying: "If you are able to identify the individual that raped, you just go and lodge the complaint to the MP [and Sesay] would first of all warn them and if the individual does not desist, then he would kill;"[136] that the rebels in Makeni knew this was the way Sesay would deal with these problems and were frightened of Sesay and would not commit sueh crimes when he was around;[137] that Sesay had told the rebels in Makeni not to harm civilians and the rebels understood that if they broke the law, they would be punished;[138] and that "he ordered no raping, no killing, no looting, no burning and no harassment of any kind."[139] Punishment for rape was "exeeution" and if you

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[131] Transcript/TF1-078, 25th October 2004, p. 86, lines 13 – 16.
[132] Transcript/TF1-078, 25th October 2004, p. 86, lines 20 – 29.
[133] Transcript/TF1-078, 25th October 2004, p. 94, lines 12-23.
[134] Transcript/TF1-041, 10th July 2006, p. 81-84 *check exact cite!*
[135] Transcript/ TF1-314, 2nd November 2005, p. 47, lines 8 – 19.
[136] Transcript/ TF1-314, 4th November 2005, p. 53, lines 3 – 13.
[137] Transcript/ TF1-314, 4th November 2005, p. 53, lines 14 - 20.
[138] Transcript/ TF1-314, 4th November 2005, p. 53, lines 21 - 28.
[139] Transcript/ TF1-314, 4th November 2005, p. 55, lines 3 – 11.

were caught looting, "you would take the things and return them from - - to the civilians from where you took them. You would be flogged and locked in the guard-room. After two or three days, then you would be freed."[140]

[140] Transcript/ TF1-314, 4th November 2005, p. 55, lines 14 – 18.

ANNEX E: Evidence in Witness Statements Regarding Sesay's Care For and Protection of Civilians

1. The statement of Father Victor Bongiovanni, a Xavarian missionary living in Bombali since 1977, in which the Father stated:

> Issa Sesay was a real disciplinarian in Makeni. He was very serious about punishing his men for crimes against civilians. As this became well-known, the situation in Makeni settled as there was a measure of security when Sesay was there. My seniors in the church wanted to withdraw me from Makeni as it was under rebel control but I told them that I wanted to stay and that I felt, that while Sesay was in command, it was safe to stay there.[141]

2. The statement of Bishop George Biguzzi, the Bishop of the Northern Diocese, who had lived and worked in the Northern Provinces since 1974, in which the Bishop described Sesay retrieving items looted by RUF fighters, including missionary vehicles and the Bishop's ring, and punishing the fighters involved.[142]

3. The statements of the Bombali and Tonkolili Paramount Chiefs who stated, *inter alia*, that:

   a. civilians living behind RUF lines "were able to go about their businesses, trading and farming with no problems;"[143]
   b. that Sesay prevented women from being raped;[144] and
   c. that Sesay provided medical, educational, and social services in the absence of a central government.[145]

4. These statements were further supported by the Paramount Chief of Kono district, who stated that Sesay ordered rebels to protect the lives and property of citizens to the extent that his own soldiers feared him.[146]

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[141] Sesay Sentencing Brief, Annex D.
[142] Sesay Sentencing Brief, Annex C.
[143] Sesay Sentencing Brief, Annex E.
[144] Sesay Sentencing Brief, Annex H.
[145] *Ibid.*
[146] Sesay Sentencing Brief, Annex G.

ANNEX F: Comparison of Similar Violations of the Rights of the Accused

1. In *Semanza*, the Accused was detained in custody for eighteen days without being informed of the nature of the charges against him. This conduct led to a six-month mitigation of Semanza's sentence.[147]

2. In *Kajelijeli*, the accused's two life sentences and one 15-year sentence for genocide, extermination and incitement to genocide, were converted into a determinate sentence of 45 years plus credit for time served. This was because he was not informed of the reasons for his arrest for ten months, and was not promptly presented before a judge.[148]

3. Similarly, in *Barayagwiza*, the Appeals Chamber commuted the accused's life sentence for genocide, conspiracy to commit genocide, direct and public incitement to genocide, as well as the crimes of extermination and persecution to 35 years imprisonment. This was after the court found that there was a total of 38 days of improper detention of the accused where he was neither informed of the charges against him nor transferred to the ICTR and brought before a judge.[149]

4. Sesay was questioned by the Prosecution over a 16-day period spread over 6 weeks. The Prosecution conducted the first four days of interviews without allowing Sesay to contact his family; he was held incommunicado.[150] The interviews were conducted without it being made clear to Sesay that he was a suspect and not a witness. He was

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[147] *Prosecutor v Laurent Semanza*, 15 May 2003, ICTR-97-20-T ('*Semanza* Trial Judgment'),para. 580. During a second eighteen-day period of detention, the Prosecution again violated Semanza's rights for not properly informing him of the charges against him. However, the Appeals Chamber found this second violation less serious as he was previously informed of substance of charges during his first period of detention. The six month reduction in sentence was for the violations over the collective 36-day period.

[148] *Prosecutor v Kajelijeli*, 25 May 2003, Appeals Judgment , ICTR-98-44A-A ('*Kajelijeli* Appeal Judgment), paras. 320 – 24.

[149] *Jean-Bosco Barayagwiza v Prosecutor*, Decision on Prosecutor's Request for Review or Reconsideration, 31 March 2000, ICTR-97-19-AR72, ('*Barayagwiza* Interlocutory Appeal Judgment'), paras. 54 and 62.

[150] After his arrest on the 10th of March 2003, the first time that Sesay spoke to any member of his family was when he spoke to his wife on the afternoon of the 14th March. Sesay/ Voir Dire Transcript, 19 June 2007, pp. 55-57. During his 10th March 2003 custodial interview (at pp. 28349), Sesay was crying about being disconnected from his family and said: "You know, I said, what got me so shattered, when you asked me about my children, because presently they don't even know my whereabouts. You know, that caused me to cry." Morrissette/ Voir Dire Transcript, 13 June 2007, pp. 65.

offered the hope that he would seeure his relatively immediately release by eooperating with the Prosecution in the interviews. The then-Chief of Investigations, Gilbert Morissette ,stated in his testimony that his purpose was "to develop a rapport ... to build up confidence, and encourage him in order for him to agree to eollaborate with us."[151] At the completion of the proeess, Sesay was adjudged by a medical expert to be in need of urgent psychiatric care.[152]

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[151] Morrissette/ Voir Dire Transcript, 12th June 2007, p. 70, lines 14-23, p 88 lines 20-29.

[152] *See* Sesay/*Voir Dire Transcript*, 19 June 2007, pp. 95-96 referring to "Pre-placement Medical Examination" dated 21 April 2003 (Exhibit A17): "Issa needs to [be] assess[ed] by a psychiatrist. He's very confused and needs to be looked after by appropriately trained personnel for the benefit of both staff, himself and other inmates. He appears to have a lot of problems, both psychological and physical, and he needs to be looked after." "Spoke to doctor re Issa's condition of extreme and inappropriate thoughts and confusion and as he said needs to be seen by a psychiatrist and a dentist. Doctor said to start him on Chlopromazine."

ANNEX J – EXHIBIT 28 (Grounds 27-32)

1. Exhibit 28 definitively proves there was no attack during this period. Although Exhibit 28 was the only police diary tendered as an exhibit at trial, Prosecution witnesses TF1-122 affirms that the police were operating in Kenema Town in the same manner prior to 13 January.[1] There is no suggestion that the atmosphere in Kenema Town was not the same, if not better, prior to 13 January.

2. The police diary supports the fact that, throughout the junta, people were trading (e.g., rice (upland, swamp, native, imported), ground nuts, maize, sugar, palm oil, pots, clothing, fish, ice cream and ice cream cones, soft drinks, and gari);[2] and that markets[3] and shops[4] were operating. People arranged their domestic affairs[5] in their usual way.

3. Further, the Exhibit supports the fact that the Kenema Town Council[6] and Driver's Union[7] were functioning. NGOs were also present in Kenema Town.[8] In addition, banks were operating;[9] people were traveling into Kenema Town;[10] taxis were registered;[11] homes were

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[1] Transcript/TF1-122, 8 July 2005, pp. 20.

[2] 15 January 1998, entry 29 at 8455 (a civilian was accused of cheating; rice and a damaged cup brought in); 16 January 1998, entry 23 at 8462 (civilian converted for his own use: ten bushels upland rice, twelve bushels swamp rice, eight bushels ground nuts, 36 cups maize); 17 January 1998, entry 38 at 8472 (in January 1998, a civilian stole one bag sugar, one bag native rice, one bag imported rice, and two rubbers palm oil); 19 January 1998, entry 32 at 8486 (in August 1997, an aluminum plate for purpose of making two 30-gallon pots was fraudulently converted for another person's use); 19 January 1998, entry 22 at 8494 (On 14 January, a civilian entrusted a bundle of wearings to another civilian for the purposes of delivery. They were converted to his own use or benefit); 21 January 1998, entry 22 at 8503 (in October 1997, a civilian stole fish, valued Le54,000/00 from another civilian); 30 January 1998, entry 44 at 8569 (on 28 January 1998, a civilian stole from the complainant 570 cups of ice cream and 1580 cones, for the purpose of sales); 2 February 1998, entry 34 at 8600 (in December 1997, a civilian complainant entrusted another civilian with Le240,000, for the purposes of buying soft drinks, but the money was converted by that civilian for her personal benefit); 4 February 1998, entry 19 at 8606 (the civilian in entry 34 of 2 February 1998 reported that she entrusted the Le240,000/00 to yet another civilian for the purpose buying soft drinks); 4 February 1998, entry 53 at 8610A (in January 1998, a civilian converted a bag of gari worth Le32,000/00); 7 February 1998, entry 38 at 8633 (in 1997, Le46,000/00 for the purposes of buying cola was converted).

[3] 20 January 1998, entry 64 at 8499 (a civilian was arrested for stealing Le85,000/00 from another civilians market table).
22 January 1998, entry 31 at 8509 (goods were stolen from a civilian at the market area).

[4] 25 January 1998, entry 18 at 8529 (on 23 January 1998, the complainant's shop was broken into; the complainant suspects that the perpetrators were civilians with whom she resides).

[5] 27 January 1998, entry 11 at 8541 (officer left the police station to arrange domestic affairs).

[6] 26 January 1998, entry 29 at 8537 (officer leaving the police station for the Town Council office); 27 January 1998, entry 16 at 8542 (officer left station for Kenema Town Council); 31 January 1998, entry 49 at 8579.

[7] 15 January 1998, entry 13 at 8453

[8] 3 February 1998, entry 23 at 8599 (officer left for CRS on enquiry).

[9] 26 January 1998, entry 24 at 8536 (National Development Bank); 27 January 1998, entry 29 at 8543 (officials at the National Development Bank alleged that a civilian received an overdraft from the bank); 28 January 1998, entry 16 at 8548; 7 February 1998, entry 30 at 8632 (Commercial Bank).

being rented;[12] people paid for their ears to be repaired;[13] newspapers were being sold;[14] the faithful paid regular religious observance;[15] and funerals were held.[16]

4. On the medical front, the Kenema Government Hospital[17] was in operation; people went to see native doctors;[18] when needed, the police would issue victims of violent crime a police medical report[19] to take to the hospital; a medical office with a coroner[20] was functioning; and drug stores[21] and pharmacies[22] were operating.

5. On the law enforcement front, Exhibit 28 in itself shows that the police were operating.[23] Further the Magistrate's Court[24] and State Prison were in operation.[25] Search warrants were

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[10] 17 January 1998, entry 19 at 8469 (a civilian from Tomkpdon [*sic*; Tokpombu] II New Site, Tongo Field, came in to stand surety for another civilian); 24 January 1998, entry 10 at 8524 (civilian reported that in January 1998, while traveling by vehicle from Tongo to Kenema, his traveling bag containing diamonds and money was stolen); 1 February 1998, entry 17 at 8583 (civilian arrived to Kenema from Nanyahun Buima); 4 February 1998, entry 47 at 8610 (Tongo to Kenema).

[11] 1 February 1998, entry 17 at 8583 (the taxi arriving from Nanyahun Buima in which a civilian stole another civilian's property was registered).

[12] 7 February 1998, entry 16 at 8630 (in July 1997, complainant gave Le150,000/00 to another civilian on the pretext that the civilian had a house in Kenema to let).

[13] 4 February 1998, entry 27 at 8607 (in 1997, a civilian gave his ear to another person to be repaired: the ear was maliciously burnt).

[14] 17 January 1998, entry 23 at 8471 (a civilian stole 927 newspapers valued Le184,000/00, for the purpose of sales).

[15] 18 January 1998, entry 10 at entry 8479 (sergeant left for Sunday church service); 21 January 1998, entry 33 at 8504 (people were fasting in observance of Muslim holidays); 23 January 1998, entry 51 at 8522 (a police officer left his beat to go for Friday prayers; he was reprimanded for not making his movements known); 25 January 1998, entry 8 at 8528 (an officer left the station for Sunday church services); 6 February 1998, entry 24 at 8623 (an officer left the station for Friday prayers).

[16] 31 January 1998, entry 33 at 8577.

[17] 16 January 1998, entry 32 at 8463; 21 January 1998, entry 17 at 8502 (an officer left the police station to receive medical treatment at the hospital); 24 January 1998, entry 12 at 8525; 28 January 1998, entry 9 at 8547; 26 January 1998, entry 45 at 8538 (officer left for the hospital).

[18] 20 January 1998, entry 2 at 8492.

[19] 16 January 1998, entry 32 at 8463; 21 January 1998, entry 21 at 8503 and entry 26 at 8504; 23 January 1998, entry 12 at 8516 (medical report attached to file); 24 January 1998, entry 12 at 8525; 28 January 1998, entry 9 at 8547.

[20] 16 January 1998, entry 10 at 8461; 26 January 1998, entry 21 at 8535 (no foul play detected in a civilian death).

[21] 2 February 1998, entry 18 at 8591 (one carton of "dispersed" drugs released to a Awana drug store).

[22] 5 February 1998, entry 35 at 8617 (officer left for treatment at a pharmacy).

[23] This is supported by TF1-122 and TF1-125.

[24] 15 January 1998, entry 17 at 8454; 15 January 1998, entry 27 at 8455 (exhibits for court); 23 January 1998, entry 15 at 8516; 28 January 1998, entry 23 at 8548; 30 January 1998, entry 37 at 8568 (the police were to hand over exhibits they were holding in their custody as a complainant decided not to pursue his case); 31 January 1998, entry 52 at 8580 (an accused person was released on bail and told be present himself to the Magistrate Court on 2 February 1998 at 9am); 4 February 1998, entries 15 and 17 at 8606 (officers left the office to attend court).

[25] 14 January 1998, entries 18 and 22 at 8444 (escape from lawful custody at State Prison Kenema), and entry 28 at 8445 (suspect handed over to prison officer and both left for State Prison Kenema).
17 January 1998, entry 40 at 8473 (left the officer for Prison Kenema).

executed,[26] and voluntary cautioned statements were taken from suspects of crimes.[27] Civilians would stand surety for each other,[28] accused would be released on bail[29] or would serve open detention.[30] The police also cooperated with the Secretariat[31] including police officers going to the Secretariat to obtain statements from suspects[32] as well as officers from the Secretariat bringing suspects to the police station.[33] If civilians saw a dead body, civilians would make such a report to the police. In this period, only two dead bodies were seen; there were no reports of murder.[34] Civilians would also report rape. In this period there was one such instance.[35]

6. The police would receive complaints of dog bites;[36] stolen property;[37] fraudulent conversion;[38] theft;[39] theft of diamonds from civilians;[40] conversion of mining equipment;[41]

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[26] E.g., 17th January 1998, entry 50 at 8474 (warrant to search the residence of BS Massaquoi).
[27] 1 February 1998, entry 27 at 8585 (voluntary cautioned statement taken from suspect; at entry 29, the suspect was warned to be present at the station on Monday 2 February at 1000).
[28] *E.g.*, 17 January 1998, entry 20 at 8469; 4 February 1998, entry 42 at 8609 (civilians standing surety for one another); 6 February 1998, entry 45 at 8626.
[29] 31 January 1998, entry 52 at 8580 (an accused person was released on bail and told be present himself to the Magistrate Court on 2 February 1998 at 9am).
[30] 13 January 1998, entry 33 at 8441 (a female suspect was allowed on open detention until 14 January 1998 "as I got no one to sign for her")
[31] 17 January 1998, entry 18 at 8470 (Officer left for Col. Sam Bockarie on enquiry).
[32] 28 January 1998, entry 13 at 8548 (police officers went to the Secretariat to obtain statements).
[33] 28 January 1998, entry 31 at 8549 (Lieutenant Kenneh of Secretariat, Kenema, arrested and brought in three persons suspected of having stolen his radio set; at entry 32, the three suspects were handed over to the police for safe custody; at entry 33, Lt. Kenneh left to engage on operational duty but was to return later to give a statement). The Defence notes that, throughout Exhibit 28, civilians are also referred to as arresting suspects and bringing them to the police station.
[34] 16 January 1998, entry 10 at 8461 (referring to a miscarriage; an "after birth"); 20 January 1998, entry 4 at 8492; and 26 January 1998, entry 21 at 8535 (no foul play detected in a civilian death).
[35] 16 January 1998, entry 31 at 8463 (a civilian man had unlawful sexual intercourse with his daughter; the daughter was issued a police medical report and was taken to the hospital for medical treatment, entry 32 at 8463). This is the only instance of rape in Exhibit 28.
[36] 20 January 1998, entry 44 at 8497 (a civilian was bitten by a dog; at entry 45, the complainant left for medical treatment).
[37] *E.g.*, 14 January 1998, entry 32 at 8445 (civilian arrested for stealing a handbag); 14 January 1998, entry 49 at 8448 (civilian theft of money);
[38] 17 January 1998, entry 17 at 8468 (alleged fraudulent conversion of Le40,000/00); 19 January 1998, entry 38 at 8487 (on 1 January 1998, a civilian gave another civilians 1,180,000/00 for safekeeping; the money was converted to his own use.); 2 February 1998, entry 27 at 8599.
[39] 21 January 1998, entry 15 at 8502; 23 January 1998, entry 16 at 8516 (in August 1997, the wife of the civilian complainant stole goods from him; she converted them to her personal use); 25 January 1998, entry 18 at 8529 (items stolen from a shop); 28 January 1998, entry 31 at 8549 (Lt. Kenneh of the Secretariat brought persons suspected of having stolen his radio set; the suspects were handed over to the police for safe custody, entry 32); 30 January 1998, entry 26 at 8566; 1 February 1998, entry 17 at 8583 (a civilian's property was stolen by another civilian while traveling in a taxi); 2 February 1998, entry 16 at 8590 (on 1 February 1998, thieves broke into the complainants house); 3 February 1998, entry 40 at 8601 (a civilian stole a mattress and household properties); 5 February 1998, entry 28 at 8616 (a thief or thieves broke into complainant's bedroom; complainant suspects a civilian living at the same address); 7 February 1998, entry 13 at 8629 (at night, a civilian entered another civilian's bedroom); and 7 February 1998, entry 24 at 8631 (civilian theft of a pair of boots).

larceny;[42] damaged property;[43] and missing children.[44] In addition to receiving current complaints, the police would also receive complaints of wrongdoing from months prior.[45]

7. As would be expected of any locale, and especially a District headquarters, Kenema Town was not immune to civilian disputes. The police diary records a domestic dispute,[46] ten unarmed civilian-to-civilian assaults;[47] two unarmed civilian-to-civilian threats; two armed civilian-to-civilian thefts;[48] one armed civilian-to-civilian threat;[49] and one armed civilian-to-

[40] 17 January 1998, entry 19 at 8470 (civilian reported that on 11th January 1998 he gave this three pieces of diamond stones valued Le300,000/00 to another person for the purpose of sales which the latter converted to his own use or benefit); 19 January 1998, entry 36 at 8487 (sometime in January 1998 at Tongo Field, a civilian stole four diamonds from another civilian (six carat and 75 percent; value Le4,000,000/00)); 22 January 1998, entry 23 at 8505 (in March 1997, at Tongo Fields, a civilian stole diamonds from another civilian); 30 January, entry 34 at 8567 (a civilian reported that sometime between July and October 1997, another civilian stole two pieces of diamonds from him).

[41] 16 January 1998, entry 35 at 8464; 17 January 1998, entry 21 at 8470 (a civilian reported that sometime in November 1997, at Tongo Field, a female civilian lady forcefully seized a Robin three inch water pump machine valued the sum of Le520,000/00 which she fraudulently converted to her own use and benefit.)

[42] 19 January 1998, entry 34 at 8487.

[43] 30 January 1998, entry 28 at 8566 (the damaged goods were brought in as an exhibit).

[44] 15 January 1998, entry 32 at 8456 (a missing child was found; the child was handed over to a civilian and instructed to report to the police station the next day; at 15 January 1998, entry 33 at 8456); 19 January 1998, entry 30 at 8486 (a civilian brought a child found at Tongo Field to the police station; that child was later released into the custody of a civilian, entry 43 at 8488).

[45] *E.g.*, 14 January 1998, entry 41 at 8447 (five suits for sewing given to a tailor converted for personal use in March 1997). 27 January 1998, entry 25 at 8543 (a civilian complained that in January 1997 his Toyota van, for the purpose of sale, was converted by another civilian for that civilian's own use and benefit); 28 January 1998, entry 42 at 8551 (complaint of 1996 conversion); 6 February 1998, entry 25 at 8623 (complaint of April 1996 conversion).

[46] 2 February 1998, entry 20 at 8591 (a male civilian complained that his wife threatened him).

[47] 21 January 1998, entry 18 at 8502 (a woman reported that she was assaulted by a male civilian. She sustained pain in the stomach and both jaws: at entry 21 (8503) she left the police station after being issued a police medical form); 23 January 1998, entries 35-38 at 8519 (two female civilians assaulted a male civilian and stole from him. The complainant was issued with a police medical report); 24 January 1998, entry 8 at 8524 (a civilian bit another civilian in the back; at entry 12 (8525) the police issued the victim with a police medical report. The victim left the station to receive treatment at the Government Hospital); 25 January 1998, entry 14 at 8529 (on 23 January 1998, a civilian male assaulted another civilian male); 28 January 1989, entry 8 at 8547 (a civilian assaulted another civilian; at entry 9 the victim was issued a police medical report and the victim left for government hospital); 29 January 1998, entry 13 at 8559 (a civilian assaulted another civilian on 27 January 1998); 30 January 1998, entry 14 at 8564 (a civilian assaulted another civilian; at entry 18 the victim was issued a police medical report and the victim left for government hospital); 30 January 1998, entry 21 at 8564 (a civilian assaulted another civilian; at entry 22 (8565) police visited the victim of the assault who was admitted at the gov't hospital; the police issued her with a police medical report); 1 February 1998, entry 10 at 8582 (a civilian assaulted another civilian; at entry 11, the victim was issued a police medical report and the victim left for government hospital); 2 February 1998, entry 12 at 8589 (female civilian assaulted a male civilian; at entry 13 (8590) a medical report was issued to the complainant).

[48] 16 January 1998, entry 19 at 8462 (a civilian reported that a gang of armed men surrounded his house, damaged the rooms, stole various articles); 28 January 1998, entry 27 at 8549 (on 27 January 1998, two unidentified armed men robbed a civilian at gunpoint for his Seiko 5 wristwatch. A statement was obtained from the complainant).

[49] 24 January 1998, entry 27 at 8526 (complainant reported that he was threatened to be killed with a gun by one identifiable boy of Lower Soko Street, Kenema; the complainant promised to make a report the next day).

civilian assaults.[50]

8. In contrast, the number of crimes reported against combatants in Kenema Town during this period were fewer compared to those committed by civilians. There are four crimes total:[51] two unarmed combatant-to-civilian thefts;[52] one unarmed combatant-to-civilian assault;[53] and one armed combatant-to-civilian theft.[54] The Defence here, for sake of argument, assumes that each entry in connection with a combatant refers in fact to a combatant. The Defence notes that, as found by the Trial Chamber in connection with Bunnie Wailer, simply because one is wearing military fatigues does not necessarily mean that that person is a combatant.[55]

[50] 5 Feb 1998, entry 3 at 8613 (Civilian reported to police that a group of unidentified armed men entered into the compound, assaulted him, and stabbed him with a bayonet; at entry 11 (8615), the complainant was issued with a police medical report and left for the hospital).
[51] To be sure, there are also four unarmed combatant-to-civilian threats. The Defence notes that there is no indication whether these threats were made for personal reasons; in any event, they were not acted upon. 14 January 1998, entry 38 at 8446 (an SSD officer threatened to burn down a civilian's compound; at entry 39, the complainant made a statement); 22 January 1998, entry 34 at 8510 (a civilian reported that a member of the People's Army threatened to kill him; at entry 39, this report was followed up on); 23 January 1998, entry 30 at 8518, (on 21 January 1998, a civilian led two men, both of People's Army, to complainant's residence to beat or kill complainant; at entry, 32 the complainant was informed to come back the next day with witnesses); 6 February 1998, entry 39 at 8625 (a police officer reported that on 5 February 1998 an ex-army officer threatened to kill him; at entry 40, the complainant made a statement).
[52] 19 January 1998, entry 20 at 8484 (a civilian reported that armed men dressed in combat took vehicle tyres (valued at Le180,000/00); and 31 January 1998, entry 56 at 8580 (Major Marrah forcibly took palm oil).
[53] 3 February 1998, entry 52 at 8602 (a civilian was assaulted by another identified civilian and two unidentified People's Army; at entry 53 (8603), the complainant was issued with a medical form and left for the Government Hospital for treatment; the complainant promised to make a statement after treatment).
[54] 19 January 1998, entry 11 at 8483 (a civilian reported that armed men dressed in military fatigue broke into his house at night and stole various articles).
[55] Judgment, Para. 1061.