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Document:(s **REPLY TO PROSECUTION RESPONSE TO SESAY GROUNDS OF APPEAL**

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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

Actiug Registrar: **Ms. Binta Mansaray**

Date filed: **29 June 2009**

THE PROSECUTOR

V.

ISSA HASSAN SESAY

Case No. SCSL-2004-I5-A

PUBLIC

Reply to Prosecution Response to Sesay Grounds of Appeal

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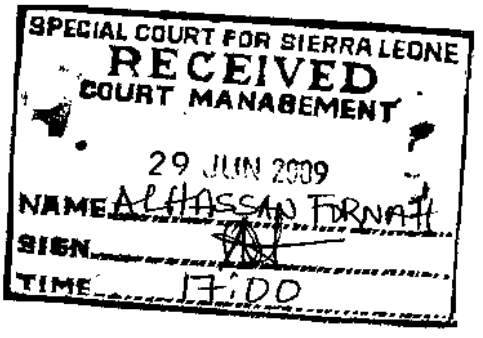

REPLY TO PROSECUTION RESPONSE TO APPEAL AGAINST CONVICTIONS

1. The Defence here requests an additional four pages to reply to the Prosecution submissions.

GROUND ONE: Reversal of the Burden of Proof

2. The Proseeution Response asserts that "there is no basis for the Sesay Defence's contention that there was a reversal of the burden of proof or presumption of guilt by the Trial Chamber based on the Accused's RUF membership"[1] and yet proffer no alternative explanation for the Trial Chamber's assertion that "resorting to arms to ... topple a government ... neeessarily implies the resolve and determination to shed blood and commit the erimes."[2] The fact that the Trial Chamber was compelled to express this obvious presumption of guilt is an eloquent illustration of the degree of hostility to the Accused's case. Equally, the fact that this Prosecution is willing to ignore it reflects an unhealthy determination to uphold the convictions at all costs.[3]
3. It is no answer to the charge of impartiality and reversal of the burden of proof to proffer various incidents in which the Trial Chamber found for the Aceused. That some findings were made in favour of the Accused is probative of little: even those presuming guilt, must at times, stumble across the need to make a finding in favour of the Accused. None of the findings proffered by the Prosecution at footnote 149 demonstrate that the Accused was presumed innocent. Conversely, these findings made no difference to the findings of thc degree of criminal eulpability, entirely consistent with a Trial Chamber presuming guilt. The true measure of the Chamber's presumption is summed up below.
4. First, as argued by the Sesay Defence[4] – and ignored by the Proseeution in the Response – a trier of fact does not presume innocence by inculcating a process that allows the Proseeution to keep bolstering their case with new evidence throughout the case.[5] This provides the Prosecution with the ability to succeed on some charges, irrespective of the strength of the evidence or where the truth might lie. It cannot be sensibly argued that the admission of hundreds of new factual bases for charge and conviction[6] throughout a criminal trial is

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[1] Prosecution Rcsponse, Para. 3.4.
[2] Judgment, Para. 2016.
[3] "The Prosecutor of the ICTR is uot required to be neutral in every case; she is a party. But she is not of course a partisan. ... The implications of that requirement suggest that, while a prosecution must be couducted vigorously, there is room for the injunetion that prosecuting counsel 'ought to bear themselves rather in the character of ministers of justice assisting in the administration of justice.'" *Prosecutor* v. *Barayagwiza*, Case No. ICTR-97-19-AR72, Decision (Prosecution's Request for Review or Reconsideration) (AC), 31 March 2000, Separate Opinion of Judge Shahabuddeen, Para 68.
[4] Sesay Defence Appeal, Para. 3.
[5] *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.
[6] *See* Annex A of the Scsay Defence Appeal for the state of the evidenee diselosed pre-trial as well as the late disclosure of new factual allegations which went on to form the basis for convictions against the Aecused.

consistent with a Tribunal attempting to provide the Accused with a reasonable opportunity to rebut the charges.

5. Second, as argued by the Sesay Defence[7] – and ignored by the Proseeution in the Response – the Trial Chamber allowed the admission of these additional charges under the pretence that they did not "significantly alter the incriminatory quality of the evidence"[8] already adduced. It is difficult to conclude that this pretence, maintained until these charges were relied upon to pass a sentenee of 52 years, was consistent with a tribunal determined to uphold the rights of the Aecused.

6. Third, the Judgment is replete with examples of a process designed to convict the Accused.[9]

GROUND 2: Failure to Assess the Defence Case (Prosecution and Defence Evidence)

7. The Prosecution Response avoids dealing with several important issues raised by the Sesay Appeal, *inter alia* (i) The reasons proffered by the Chamber, in its dismissal of the first Accused's case do not rise above generalities and are not relevant to the witnesses whose evidenee related to regions outside of Kailahun.[10] There was evidence from DIS-080, DIS-089, DIS-124, DIS-129, DIS-149, DIS-164, DIS-177, DIS-179 and DIS-293 whose evidence was disregarded and no reasons proffered. It is instructive that the Prosecution is unable to proffer any further or more specifie reasons to justify or explain this improbable state of affairs;[11] (ii) The consequences of confusing motive and intent and the resulting disregard of all evidence of punishment and prevention of crime without eonsidering it as the basis for determining *mens rea* or diminishing liability;[12] (iii) The departure from the jurisprudence and the consequences of failing to consider (or expressly consider) the obvious and significant inconsistencies in the testimony of the principle Prosecution witnesses;[13] and (iv) the impact of the *de facto* dismissal of all defence evidence that a crime did not occur "merely because an individual says he did not hear of it or of thc event."[14] It is entirely misleading of the Prosecution to claim that the Chamber's approach to attach "no weight whatsoever to this and similar evidence"[15] was the same as a finding that this evidence "was not determinative or even especially probative of the question of whether or not a crime had

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[7] Sesay Defence Appeal, Para. 3.
[8] *See, e.g., Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-396, "Ruling on Application for the Exclusion of Certain Supplemeutal Statements of Witness TF1-361 and Witness TF1-122," 1 June 2005, Paras. 28 (iv) and 29 (vi).
[9] Annex A of this Reply; Examples of the Reversal of the Burden of Proof.
[10] *See* Judgment, Paras. 527-531 and 565-569.
[11] Prosecution Response, Paras. 3.5-3.9.
[12] Sesay Defence Appeal, Para. 13.
[13] Sesay Defenee Appeal, Para. 19 to 22 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.
[14] Judgment, Para. 528 and Sesay Defence Appeal, Para. 6.
[15] Judgment, Para. 528.

in fact been committed."[16] The attempt by the Prosecution to re-characterise the finding is an implicit admission of the error of law and fact.

8. The suggestion by the Prosecution that the Trial Chamber "set out at great length and in great detail its multitudinous considerations in evaluating the very large amount of evidence before it" (at paragraphs 473-647) is fanciful. The issue is not whether the Trial Chamber enumerated the legal prineiples but whether it applied them. Rehearsing generic principles (*see, e.g.*, Paragraphs 473-526 and 537-538) and findings reasons to treat Prosecution witnesses more favourably (*see, e.g.,* Paragraphs 532-536 and 539-564) is not the same as demonstrating that the defence evidence has been properly considered and found wanting.

GROUND 3: Failure to Provide a Reasoned Opinion

9. The fact remains that 59 witnesses over 7 months of evidence was dismissed in 16 paragraphs in a 2313 paragraph Judgment. The Prosecution is invited to produce a single case at any of the ad hoe tribunals or any international human rights decision that would offer such a cursory dismissal of a defence ease and thereafter be upheld on appeal. The suggestion that "the Sesay Defence does not explain how, if all, such an error invalidates the Trial Chamber's decision or resulted in a miscarriage of justice"[17] is devoid of commonsense and warrants no further response.

10. As indicated in Ground 3 of the Defence Appeal this failure is illustrative of the clearest disregard of the jurisprudence from the ICTY and ICTR. Additionally, the failure to provide reasons is a violation of international human rights law, wherein there lies a strict duty, commensurate with the gravity and type of decision making, to provide reasons.[18] The essential issues must be addressed.[19] In particular, if a submission is clearly relevant, and potentially decisive, it should be specifically dealt with in the judgement.[20] Thc reasons for this are clear, as stated in *Hadijanastassiou* v. *Greece*:[21] to enable an unsuccessful litigant to exercise any right of appeal and to maintain public confidence in the administration of justice.

11. The public and the international legal community can have no confidence in the RUF Judgment. Conversely, the Special Court runs the risk of becoming synonymous with depriving a human being of his liberty for the remainder of life and justifying it in 16 paragraphs of inaccurate generalities. This is not reasonable. On the contrary it will shock

[16] Prosecution Response, Para. 3.9.
[17] Proseeution Response, Para. 4.5.
[18] (1994) EHRR 553, ECtHR at Para 29
[19] *Helle* v. *Finland* (1997) 26 EHRR 159, at Para 60
[20] *Ruiz Torija* v *Spain* (1994) EHRR 553, ECtHR, at Para 30.
[21] (1993) 16 EHRR 566. *See also Van der Hurk* v *Netherlands* (1994) 18 EHRR 481; *Hiro Bilani* v *Spain* (1995)

right-thinking and reasonable people who expect and demand that the SCSL and international justice aspires to the highest values of law making.

GROUND 4: Rule 68 Violations and GROUND 5: Disregard of Motive

12. The Prosecution Response states that the Sesay Defence fails to "explain how the alleged errors invalidate the *final* decision."[22] It is submitted that this is to ask for the impossible. The evidence that the Trial Chamber suppressed – particularly the evidence of the Prosecution's assistance offered and given to Prosecution witness John Tarnue to assist with relocation to a new country[23] (and, consequently, the evidence of relocation of any of the Prosecution witnesses) – remains unknown to the Sesay Defence. Further, it is an exercise in sophistry to claim that the Defence have not identified the material sought with sufficient particularity.[24] The request is targeted and straightforward: what relocation assistance did the Prosecution (or the WVS) provide to its witnesses, including Tarnue? The Prosecution is invited to identify how this material could be identified with greater precision.
13. Whilst the Prosecution is technically correct that the Trial Chamber did not "rule that the fact of relocation assistance was not disclosable *per se*,"[25] this was the effect of the ruling. Tarnue had given detailed evidence about the relocation package given to him by the Prosecution.[26] The Trial Chamber ruled that the request for this corroboration and further details of this assistance was speculative.[27] The Prosecution misled the Court claiming that it had no details of the actions of its own Chief of Investigations. It was an abuse of discretion to accept such a patently flawed assertion. Prosecution witnesses were relocated and the Prosecution, for forensic advantage, continues to suppress this information.

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

14. The Prosecution Response fails to deal with the central issue. The claim that the "Defence had not demonstrated the existence of a clear error of reasoning in the Trial Chamber's pre-trial decision,"[28] notwithstanding this unprecedented expansion of the charges, is the clearest example of a Prosecution that has abandoned its duty of fairness. The arguments, raised at

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19 EHRR 566

[22] Prosecution Appeal, Para. 4.61.

[23] *Prosecutor* v. *Sesay et al.*, SCSL-04/15-T-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 Investigations Department of the Office of the Prosecutor," 1 November 2004, Para. 1.

[24] Prosecution Appeal, Para. 4.68.

[25] Prosecution Appeal, Para. 4.71.

[26] Transcript/Tarnue, 5 October 2004, pp. 158-169.

[27] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-363, "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," 3 May 2005, Para. 53.

[28] Prosecution Response, Para. 2.23.

paragraph 30 of the Sesay Defence Appeal, which the Proseeution claims not to understand, are straightforward.[29] The jurisprudence is unequivoeal and has been stated by the Appeal Chamber at the Speeial 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.[30] A Count is nothing more than a means by which the Prosecution organises the charges in an indictment. A charge consists of a potential basis for the imposition of liability that is factually and/or legally distinct from any other alleged in the indictment; a count alleges the commission of a statutory crime on the basis of one or more charges, and may encompass charges related to many different individually named victims, various different geographic locations, and several different forms of responsibility.[31] This is straightforward and comprehensible to other Prosecutors at the international level. The claim that "[t]here is no question in this case of the Accused being convicted of any matter that is factually and/or legally distinct from any already alleged in the indictment"[32] is beside the point.

15. It is trite law that the fundamental question in determining whether an indictment was pleaded with sufficient particularity is whether an accused had enough detail to prepare his defence at the outset of the case.[33] This "forms the essence of a fair trial."[34] As noted in *Rukundo*, at the ICTR, "it is to be assumed that an Accused will prepare his defence on the basis of material facts contained in the Indictment, not on the basis of all the material disclosed to him that may support any number of additional charges, or expand the scope of existing charges."[35] The Appeals Chamber in *Karera* emphasized the clear distinction between vagueness in an indictment and omission in an indictment of certain charges altogether, which can be incorporated into the indictment only by a formal amendment.[36]

16. In the case of *Brdanin and Talic*,[37] the Trial Chamber took the view that the breadth of the Indictment and the "policy of avoiding disclosure of as much of that case as possible until as

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[29] Prosecution Response, Para. 2.24.
[30] *Prosecutor* v. *Norman et al.*, SCSL-04-14-397, "Decision on Amendment of Consolidated Indictment," 16 May 2005, Para. 80.
[31] *Mulitnovie*, TC, Para. 70.
[32] Prosecution Response, Para. 2.24.
[33] *Prosecutor* v. *Laurent Semanza*, ICTR-97-20-T, Judgement and Sentenee, 15 May 2003, Para. 44; *Prosecutor* v. *Delic*, IT-04-83-PT, "Decision on Defence Motion Alleging Defects in the Form of the Indictment and Order on Prosecution Motion to Amend the Indictment," 13 September 2005, Para. 6; and *Prosecutor* v. *Bizimungu*, Case No. ICTR-99-50-T, "Decision on Motion From Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses GKB, GAB, GKC, GKD and GFA," 23 January 2004, Para. 12.
[34] *Ibid.*, Para. 2. *See also* Paragraphs 5, 10 and 12 of the Motion for other examples.
[35] No. ICTR-2001-70-T, Judgement (TC), 27 February 2009, Para. 18.
[36] *Karera*, Judgement (AC), Para. 293; *Muvunyi*, Judgement (AC), Para. 18; *Nahimana et al.*, Judgement (AC), Para. 326; *Ntagerura et al.*, Judgement (AC), Para. 28; and *Kvočka et al.*, Judgement (AC), Para. 33.
[37] *Prosecutor* v. *Brdanin and Talic*, IT-99-36, "Decision on Form of Further Amended Indictment and

late as possible" made it clear that "the prosecution [had] done so to enable it to mould its case in a substantial way during the trial, according to how the evidence" actually turned out.[38] That this must have been the situation in the *RUF* case is obvious.

Errors relating to Locations[39]

17. The Defence did not "obliquely" raise "an issue concerning the fact that the Indictment did not specify every location in which crimes were committed."[40] The issue was raised fully in paragraphs 27-38 and Annex A: "Convictions on charges disclosed after the commencement of the trial in July 2004." As stated above the issue is that all charges ought to be pled in the Indictment. Obviously this includes all charges in locations specified in the Indictment and all charges in locations not specified. Anything less constitutes a defective indictment – as argued *ad infinitum* during the trial and disregarded as frequently by the Trial Chamber.[41]
18. Further, the Defence reiterates its assertion that in the *CDF* case, the Chamber prevented "the Prosecution [from] adduc[ing] factual allegations of crime within villages and towns not particularised in the Indictment"[42] because the Indictment paragraph under which those factual allegations would fall under is "unspecific and vague." However, in the *RUF* case, the Chamber allowed the Prosecution to adduce factual allegations of crime under similarly unspecific and vague Indictment paragraphs.
19. At Paragraphs 2.63-2.70, the Prosecution misleads the Appeals Chamber as to the Trial Chamber's specific findings. The Prosecution discusses the "*Norman* Request for Clarification Decision" in the *CDF* case[43] and attempts to state that the Chamber's approach was not inconsistent with the approach in the *RUF* case because "the expression 'in the southern and eastern Provinces of Sierra Leone'"[44] "is much more vague than a pleading which specifies a particular District and then gives a non-exhaustive list of locations within

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Prosecution Application to Amend," 26 June 2001, Para. 11.

[38] *Ibid.*

[39] Prosecution Response, Paras. 2.61-2.74.

[40] Prosecution Response, Para. 2.63.

[41] *E.g.*, Defence Motion Requesting the Exclusion of Paragraphs 1, 2, 3, 11 and 14 of the Additional Information Provided by Witness TF1-117, Dated 25th, 26th, 27th and 28th October 2005, (17128-17137); Defence Motion Requesting the Exclusion of Evidence (as Indicated in Annex A) arising from the Additional Information Provided by Witness TF1-168 (14th, 21st January and 4th February 2006), TF1-165 (6th/7th February 2006) and TF1-041 (9th, 10th, 13th February 2006, 23rd February 2006) (18142-18157), page 1, Para. 1); and *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-518, "Public Sesay Defence Response to Prosecution Request for Leave to Call Additional Witnesses and for Order for Protective Measures pursuant to Rules 69 and 73 bis(E)", 20th March 2006, Paras. 8-9.

[42] Sesay Defence Appeal, Para. 35.

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

[44] Prosecution Response, Para. 2.69.

that one District."[45]

20. This is a patently incorrect characterization of the Chamber's findings. The issue that the Trial Chamber resolved was whether the *CDF* accused had to answer the Prosecution's case concerning unlawful killings under the banner "Operation Black December" for which *no locations were pleaded*[46] as the Prosecution failed to prove any crime at the specified locations in Paragraph 25(g) of the *CDF* Indictment.

21. The Chamber made clear that the allegations in paragraph 25(g) were a subset of paragraph 24(f) as the "[g]eneral allegations contained in sub-paragraph 24(f) ... are further specified in sub-paragraph 25(g) and they would stand only if the specific allegations contained in sub-paragraph 25(g) were sustained."[47] Sub-paragraph 24(f) refers to unlawful killings and capturing enemy combatants at roadblocks on the "major highways and roads leading to and from major towns in the southern and eastern Provinces." This certainly a more restricted geographieal area than an entire District. If a geographic area smaller than an entire District was found to be "unspecific and vague," certainly an entire District is "unspecific and vague."[48] Trial Chamber I's ruling was inconsistent, preventing prejudice to the pro-government troops and allowing it to prejudice Sesay.

GROUND 7: Acts of Terror Pleading/GROUND 8: Collective Punishment Pleading

22. The Prosecution Response fails to deal with the gravamen of the complaint: namely that the appellant was informed that "the nexus between [him] and Count 1" was his alleged commission of the crimes alleged in Counts 3-14.[49] The Prosecution's categorization of the issue is unrealistic. The same argument was made as regards Count 2. It might well be that the interpretation advanced ("That is to say, if conduct was charged in paragraphs 45 to 82 of the Indictment as constituting the crimes in Counts 3 to 14, it was also charged as conduct on which Counts 1 and 2 were based"[50]) is one of the possible interpretations. However, the common sense interpretation of this charge was clear: conduct that was the subject of Counts 3-14 would thereafter be assessed in light of the specific *mens rea* requirements that distinguish Counts 1-2 to ascertain whether the Accused could, additionally, be held responsible for those crimes.

23. The Prosecution Response also fails to deal with the fact that the notice provided in the *CDF*

[45] Prosecution Response, Para. 2.69.
[46] As they had been struck at the Rule 98 stage. *See* "*Norman* Request for Clarification Decision."
[47] *Norman* Request for Clarification Decision, Para. 9.
[48] Especially one that does not plead any specific locations.
[49] *See* Sesay Defence Appeal, Para. 40.
[50] Prosecution Appeal, Para. 2.77.

case was different and not, as suggested by the Proseeution, "another analogous finding."[51]

24. The Prosecution Response fails to deal with the point raised at Paragraph 45 of the Sesay Defence Appeal and disregarded by the Proseeution in its Response.

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

25. The Defence does not seek to Reply to the Response dealing with Count 6 and 9. This was an error in the Grounds of Appeal and was not intended to be argued as a separate Ground.

26. The error alleged under the "Sexual Violenee" Counts was intended to relate to Count 8: the forced marriage eount. The errors alleged in relation to Count 12 are dealt with as part of Ground 43. The errors alleged in Count 13 are dealt with in Grounds 36, 37, 39, and 40. The errors alleged in relation to Counts 15 and 17 are dealt with in Ground 44. Additionally, the Defence relies upon the obvious defects and the eharges that ought to be have been pleaded, as indicated in Annex A: "Convictions on charges disclosed after the eommeneement of the Trial in July 2004."

GROUND 11: Enslavement Pleading

27. The Proseeution's elaims in its Response that it did not give unequivoeal notiee that aets of enslavement would be limited to "domestic labour and use as diamond miners."[52] Notwithstanding, the Proseeution have not sought to ehallenge the Trial Chamber's finding that this was the notice.[53] Clearly the general Paragraph 69 must be read in eonjunetion with Paragraphs 70-76 and this provides the unequivoeal notice.

28. The Prosecution Response at Paragraph 2.91, that "it was not required for the Indictment to plead in the Indictment all of the different tasks for which foreed labour was used," fails to address the wealth of jurisprudence to the contrary.[54] Further, onee again, the Prosecution's stance is at odds with any reasonable view of the jurisprudence whieh requires that the accused be notified of the charges (*see* Ground 6). The Proseeution's argument, that the word "included," meant that it was permitted to lead any evidence of any type of forced labour is plainly at odds with that jurisprudence. It also contradicts the Trial Chamber own decision – quoted by the Prosecution at paragraph 2.66 of the Response – which noted that "expressions such as 'ineluded but not limited to' were impermissibly broad, except insofar as they relate only to dates and locations."[55]

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[51] Prosecution Response, Para. 2.77; *see also* Para. 40 of the Sesay Defence Appeal.
[52] Prosecution Response, Para. 2.90.
[53] Judgment, Para. 1476.
[54] Prosecution Response, Para. 2.91.
[55] *See* footnotes 97 and 99 of the Prosecution Response.

29. Finally, the claim that "the Defence did not at the pre-trial stage eomplain that the Indietment failed to plead with suffieient specificity the types of forced labour" is difficult to understand. At that time the Proseeution had given unequivoeal notice that it was seeking to prove that the Aeeused was responsible for only two fonns of enslavement. There was no reason to eomplain about *that* notice. The Defenee complained eonstantly during the trial, but, as indicated in paragraph 3 of the Sesay Defenee Grounds, the Trial Chamber invented a "test" that meant that a new eharge was no longer a new charge provided that it was a "building block constituting an integral part of, and conneeted with, the same *res gestae* forming the factual substratum of the eharges in the Indictment."[56] This "test" has no basis in any jurisprudence and the meaning of it remains unclear but it provided the Prosecution with the "right" to adduce any new charges that it wished at any time throughout the ease provided it "was within the wording of the Indictment."[57] In other words, it permitted the Prosecution to repeatedly breach the Accused's Article 17 rights to be informed of the nature and eause of the charges. At no stage did the Proseeution decline the invitation: *see* Annex A of the Sesay Dcfcnce Appeal, which are a fraction of the "building blocks" actually led.

GROUND 12: Joint Criminal Enterprise Pleading

30. The Prosecution Response would appear to be limited to the proposition that provided it can be shown that it did not waver from enumerating Counts 1-14 as the crimes within the JCE and was consistent in suggesting that "these crimes were a reasonably foreseeable consequences of the crimes agreed upon"[58] then it is permitted to provide inconsistent and misleading notice throughout the trial.

31. The suggestion that the inconsistent notice given by the Prosecution at the Rule 98 stage was simply a restatement of its previous position concerning JCE 1 is absurd. [59] Undoubtedly JCE 2 is aceepted in the jurisprudence to be a variant of JCE 1. As the Prosecution must know, as it has different *mens rea* requiremcnts it must be pleaded scparately in order to provide the requisite notice.[60] Announcing that the ease being advaneed is no longer JCE 1 but JCE 2 is an affirmative indication that the Prosecution's case has materially changed.

32. The Prosecution is incorrect when asserting that the "Notice Concerning JCE merely

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[56] *E.g*, *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.

[57] Prosecution Response, Para. 2.90.

[58] Prosecution Response, Para. 2.6.

[59] Prosecution Response, Para. 2.7.

[60] *Krnojelac*, AC, Para. 89, 115, 117, 138, ICTY AC in *Kvocka* (Case No. IT-98-30/1-A, 28 Feb 2005, Para. 28); *Gacumbitsi* Appeals Judgment, Case No. ICTR-2001-64-A, Judgement, 7 July 2006, Para. 162).

provided further specificity as to which crimes, in the alternative scenario, might be found to be foreseeable consequences of the crimes agreed upon."[61] The Trial Chamber rightly characterised the JCE Notice as a "unilateral attempt to alter a material fact in the Indictment more than half-way through a trial"[62] but wrongly concluded that this did not matter. The Prosecution Response fails to deal with this finding and how nonetheless the Accused was expected to know the case he had to meet.

GROUND 13: Command Responsibility Pleading

33. The reply for this ground is further dealt with in connection with Grounds 36 and 44.

GROUND 14: Accomplices and GROUND 15: Corroboration

34. The Prosecution's Response appears to be limited to the undisputed facts that the Trial Chamber rehearsed generic principles concerning the evaluation of evidence[63] and that the Trial Chamber was entitled to rely upon accomplice evidence.[64] In response the Defence asserts that the approach taken by the other tribunals *is* different.[65] It is an unassailable fact that Annex C of the Sesay Defence Appeal demonstrates the serious and significant inconsistencies in the testimony of the key Prosecution accomplices. The Judgment disregards these inconsistencies. The Chamber did not have to "refer expressly to every item of evidence in its judgment, it cannot be required to address every inconsistency between different items of evidence."[66] It was, however, required to address the material issues and the significant inconsistencies and within the context of a deliberation on the charges.
35. The generalised assertions outlined in Paragraphs 541-562 and 580-603 concerning the conclusion that TF1-371, TF1-366, TF1-141, TF1-263, TF1-117, TF1-314, TF1-113, TF1-108, and TF1-093 were unreliable (only in relation to evidence given of the acts and conduct of the accused) was a mere fraction of the analysis required.
36. The Prosecution claim that this testimony was "not used in isolation but was assessed and considered within the framework of the whole of the evidence before the Trial Chamber"[67] must be approached with a hefty degree of caution. Such an assertion is meaningless, especially given that the Defence evidence was roundly dismissed and the remainder of the evidence consisted of exhibits. The Trial Chamber made no reference to the contents of the exhibits and how these provided the explanation of substance required[68] to dispel the doubts

[61] Prosecution Response, Para. 2.6.
[62] Judgment, Para. 2.7.
[63] Prosecution Appeal, Para. 4.11.
[64] Prosecution Appeal, Para. 4.12.
[65] *See* Prosecution Response, Para. 4.12 suggesting otherwise.
[66] Prosecution Response, Para. 4.22.
[67] Prosecution Response, Para. 4.13.
[68] *Kayishema*, TC Judgment, Para. 78.

that must have arisen from the witness testimony.[69]

GROUND 16: Financial Payments to Prosecution Witnesses

37. The Defence had no obligation to raise this issue until the full totality of the evidence of illicit payments was known: that is at the end of the case. Moreover the most compelling evidence of improper payments – actively concealed by the Prosecution – arose in the *Taylor* case and was not available until January to April 2008.[70] The proposition that a Motion in May 2008, was too late to raise such fundamental issues, speaks volumes about the Prosecution's approach to its "non-partisan duty to truth and justice"[71] and the Trial Chamber's approach to the trial. The correct time to raise the issue, pursuant to Rule 85(A)(iv) (Evidence ordered by the Trial Chamber) was at the end of the Trial. The public can have no confidence in guilty verdicts that were the result of witnesses being paid. That the payments can be linked to changes in key witnesses' evidence[72] is the clearest indication of the unreliability of the convictions. No amount of "procedural" sophistry will alter the fact that the Prosecution continue to conceal their dishonest conduct.

GROUND 17: False Testimony: TF1-366

38. The Prosecution Response fails to deal with the thrust and tenor of the witness' testimony. It must follow that a witness who "tended to over implicate the Accused"[73] was providing false testimony. This euphemistic conclusion would have been reached by a reasonable trier of fact within minutes of the witness commencing his testimony. The Trial Chamber and Prosecution's approach to the issues – to demand that all the evidence in the case is heard before the obvious is observed – would appear to preclude the invocation of Rule 91(B) under any circumstance during a trial. It is submitted that Rule 91(B) (and the consequential ability to control the proceedings and avoid miscarriages of justice) ought not to be so unhelpfully circumscribed.

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

39. The Prosecution Response, *inter alia,* that any "alleged error in regard to the use of the

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[69] *Kayishema*, TC Judgment, Para. 443.
[70] *See* Para. 30 of *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.
[71] Commentary on Article 81 of the ICC Statute by Christopher Staker, Para. 8, *citing* the German Code of Criminal Procedure, §296 Para. 2; Model Code of Criminal Procedure for Latin America, article 332 (1989). in Commentary on the Rome Statute of the International Criminal Court. Observers' Notes, Article by Article, Otto Triffterer (ed.), pp. 1451-1485.
[72] Sesay Defence Appeal, Paras. 242-244.
[73] Judgment, Para. 4.33.

evidence of TF1-108 would therefore not unsettle the Trial Chamber's findings"[74] ignores the Trial Chamber's reliance on TF1-108's testimony.

40. 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;[75] that civilians working on these farms could not refuse to farm because armed men were observing and supervising them while they were working;[76] that civilians working on Gbao's farm in Giema were guarded by Gbao's bodyguard, Korpomeh;[77] and that girls as young as 6 yrs old were trained at Bunumbu training base.[78]

41. TF1-108 was also used with TF1-330 to support hugely significant findings amounting to hundreds of crimes. This included evidence of civilians being forced to work on Sesay and Gbao's private farms in Giema between 1996 and 2001;[79] civilians being force to subscription of produce to the RUF through the G5[80] and civilians being forced to mines at various locations in Kailahun district in 1998 and 1999.[81]

42. TF1-108 was also as a source of supporting evidence for allegations of civilians being forced to work on RUF controlled farms in Kailahun District from 1996 onwards;[82] and of civilians not being a salary or anything to eat while they were forced to work on the farms.[83] Further, while the Trial Chamber held that the evidence of TF1-108 needed to be "corroborated by other credible and reliable evidence particularly on issues of forced labour,"[84] the evidence of TF1-108 was the sole basis for the finding that there were two big RUF controlled farms in Giema in 1996 and 1998 where approximately 300 civilians were forced to work.[85]

GROUND 20: Exclusion of Relevant Defence Evidence

43. The Prosecution Response fails to deal with the salient issues:

(i) The Defence assertion that the excluded evidence was highly relevant and probative of Sesay's lack of involvement in arranging for civilian miners to be forcibly

[74] Prosecution Response, Para. 4.32.
[75] Judgment, Para. 1422.
[76] Judgment, Para. 1422.
[77] Judgment, Para. 1426.
[78] Judgment, Para. 1435. Note that the footnoted references indicate this is corroborated by TF1-330; this is incorrect.
[79] Judgment, Para. 1426.
[80] Judgment, Para. 1427.
[81] Judgment, Para. 1433.
[82] Judgment, Para. 1417.
[83] Judgment, Para. 1420.
[84] Judgment, Para. 597.
[85] Judgment, Para. 1422.

transferred from Makeni and Magburaka to mine against their will in Kono District;[86] forcing civilians to train at the base at Yengema;[87] and using/planning the use of children to participate in hostilities in Bombali District from 1999 to September 2000;[88] and

(ii) The Defence assertion that 18 additional (and highly relevant) statements, which had already been considered by the Trial Chamber in a Motion,[89] would not have used *any* Court time or have been repetitive. The additional statements supplemented the evidence already tendered in that they provided additional context concerning, *inter alia*, the economic influence of civilian movement along the Tonkolili-Highway between Makeni and Koidu (e.g., markets opening, and traders and diamond miners travelling in pursuit of economic opportunities).

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

44. The Prosecution Response fails to address the salient issues. First, the Sesay Defence did not suggest that there "was a legal principle or authority to support the proposition that extra caution should be employed when evaluating the testimony of these witnesses."[90] Self-evidently there is "no legal presumption that such witnesses should be disbelieved merely because such witnesses were victims of the crimes for which the accused were being tried."[91] There is, however, as Grounds 21 and 22 allege – and the Prosecution ignore – no legal presumption that victims found to be unreliable generally ought to be considered reliable when testifying about their victim status.

45. The Prosecution claim that there "is no basis for suggesting that the Trial Chamber evaluated the evidence given by particular victim witnesses merely on the basis of their characterisation as witnesses falling within a particular class" is an invitation to close the eyes to the obvious: the Trial Chamber admitted that this was the approach it had taken as regards both alleged victims and prosecution insiders. *See* Defence Appeal at paragraphs 75-79 and Judgment referring to TF1-366,[92] TF1-141,[93] TF1-263,[94] TF1-117,[95] TF1-314,[96] and TF1-093.[97]

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

46. The Defence relies upon its arguments advanced in the Grounds of Appeal at Ground 23, 24, 34, 37, and 39.

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[86] At, Judgment, Para. 1249.
[87] Judgment, Paras. 1260-1264.
[88] Judgment, Para. 1747 and Sesay Defence Appeal, Paras. 72-74.
[89] *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.
[90] Prosecution Response, Para. 4.27.
[91] Prosecution Response, Para. 4.27.
[92] Judgment, Para. 546.
[93] Judgment, Para. 583.
[94] Judgment, Para. 587.
[95] Judgment, Para. 590.
[96] Judgment, Para. 594.
[97] Judgment, Para. 603.

GROUND 24: Joint Criminal Enterprise (JCE)

Overall Erroneous Approach to the JCE

47. The Prosecution Response, purporting to justify the Trial Chamber's interpretation of the JCE[98] is opaque and offers nothing that might provide an explanation concerning how this common purpose would work in practice to allow an assessment of criminal culpability.

48. The claim by the Prosecution that Trial Chamber I's JCE is the same as that in *Martić* or in *Kvočka*[99] is demonstrably incorrect. In these cases there was an overarching criminal purpose – a crime within the Statute. In *Martić* the criminal purpose was the forcible transfer of a non-Serb population and in *Kvočka* the criminal purpose was persecution. The means were distinct and a step towards those purposes.[100] In Trial Chamber I's JCE, there is no overarching or unifying purpose except the non-criminal purpose of taking power and control. The Prosecution's argument "that the common purpose of the JCE is the taking of power and control over Sierra Leone through the crimes charged under Counts 1 to 14"[101] is manifestly flawed. It amounts to an assertion that the common purpose was the taking of power and control through the crimes charged and the means by which this common purpose was to be achieved was through the crimes charged. At best tautological, at worse nonsensical.

49. The Prosecution, *inter alia*, claims that the Trial Chamber did not presume criminal intent from the involvement in the "pursuit of a non-criminal objective rather from participation in criminal acts"[102] and yet proffer no explanation as to the approach that could have been taken with this JCE, limiting its response to a rehearsal of the findings of the Trial Chamber.[103]

50. The Prosecution suggestion that to "the extent that there was a gap between the point at which the forces joined in pursuit of the common objective and the point at which evidence of the criminal means were established, this is not indicative of an error"[104] misses the point and would appear to be an endorsement of the Trial Chamber's presumption of guilt. The Trial Chamber found that the JCE commenced on the 25 May 1997: how could it determine this in the absence of evidence of crime unless it was presumed or the Chamber focused on the taking power and control as the criminal purpose? It is no answer to keep repeating the phrase that the Trial Chamber "made its findings on the basis of the evidence in the case as a

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[98] At Paragraphs 5.1-5.14.
[99] Prosecution Appeal, Paras. 5.9-5.10.
[100] *See* Sesay Defence Appeal, Paras. 81-102.
[101] Prosecution Appeal, Para. 5.9.
[102] Prosecution Appeal, Para. 5.14.
[103] Prosecution Appeal, Para. 5.14.
[104] Prosecution Appeal, Para. 5.16.

whole"[105] when no evidence existed at this time.[106] Evidently, a reasonable trier of fact cannot infer Sesay's criminal intent to commit crimes from 25 May 1997 as part of a JCE without evidence. The Sesay Defence refers the Appeal Chamber to its submissions as expounded in the Defence Appeal at Ground 24.

Non-JCE members

51. The Prosecution claim that the Trial Chamber relied upon the jurisprudence of the ICTY in determining that members of a JCE may become liable for the acts of non-JCE members. This is demonstrably not correct: it was ignored.[107] The Prosecution's suggestion that the abandonment of this jurisprudence – Paragraph 1992 of the Judgment – can be explained away by reference to the remainder of the Judgment is misconceived.[108] The Chamber's error is plain and unequivocal on the face of Paragraph 1992. The Chamber had to conduct an analysis that went further than being satisfied that "the non-members who committed crimes were sufficiently close to one or more members of the joint criminal enterprise."[109] The analysis required was that which focused on the specific crime and the link between its commission and a specific JCE member.[110] Such a link is established by a showing that the JCE member used the non-JCE member to commit a crime pursuant to the common criminal purpose of the JCE.[111] It is not shown simply by generic evidence that suggests that non-JCE members committed other crimes[112] or that the non-JCE members had a chain of command to JCE members.[113] Consistent with the principle of legality and personal culpability, the JCE member has to procure the *specific* crime. To impute crimes on this basis to the JCE members is nothing less than good old fashioned guilt by association.

52. Further, it is not a question of Sesay failing "to demonstrate that no reasonable Tribunal could have reached the conclusion that they were committed within the JCE."[114] The failure to conduct the requisite analysis is an error of law that invalidates the conclusion that the crimes were within any criminal purpose.

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[105] Prosecution Appeal, Para. 5.16: *see also* Para. 5.20.
[106] Sesay Defence Appeal, Paras. 108-120.
[107] Judgment, Para. 1992.
[108] Prosecution Appeal, Para. 5.20.
[109] Judgment, Para. 1992.
[110] *Krajisnik*, AC, Para. 235-283;
[111] *Brdjanin*, AC, Para. 413, 430; *Limaj et al.* AC, Para. 120, *Krajisnik*, AC, Para. 226.
[112] Prosecution Response, Para. 5.23.
[113] Prosecution Response, Para. 5.23.
[114] Prosecution Response, Para. 5.24.

Common Purpose in Kono

General Errors in the Assessment of Evidenee

53. The Prosecution's Response fails to deal with the salient points.[115] The analogy drawn with the Crime Against Humanity of perseeution is miseonceived. The findings referred to in the *Stakic* case eoneerned the eventual assessment of the Accused's intent: not findings concerning the intent of the direct perpetrators of the erimes for whom he was ultimately held responsible.[116] The issue raised in this Ground (paragraphs 196-203, 225-226, 228-229) coneern errors in evaluating evidence: not errors in attribution to Sesay (dealt with in Grounds 24 and 34). The Proseeution fails to deal with these crrors.

Common Purpose: Kailahun District

General Errors in the assessment of evidenee: special intent for Terror and Collective Punishmcnt

54. *See* paragraph above. The issue raised in this Ground (paragraphs 196-203, 225-226, 228-229), concern errors in evaluating evidence: not errors in attribution to Sesay – dealt with in Grounds 24 and 37. The Prosecution fails to deal with these errors.

GROUND 25: Bo District: Article 6(1) Responsibility, pursuant to the JCE

55. *See* below at Paragraph 72.

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

56. The Proseeution Response asserts that no error was committed but fails to provide any arguments or rebuttals to the errors raiscd by Sesay.[117]

GROUND 27: Kenema District: Article 6(1) Responsibility, pursuaut to the JCE

57. *See* below at Paragraphs 73-75.

GROUND 28

58. The Defence relies upon its Grounds of Appeal at Paras. 177-186. These address fully the Prosecution's arguments eoneerning the existence of an attack in Kenema at Para. 7.1 of the Response.

GROUND 29: Acts of Terror (Count 1) – Kenema Town

59. The Defenee relies upon its submissions at Paragraphs 127-151 of its Grounds of Appeal.

GROUND 30: Collective Punishments in Kenema Town

60. The Prosecution Response is an assertion, not disputed by the Defence, that the Chamber

[115] Prosecution Response, Para. 5.35.
[116] *Stakić*, AC, Para. 329-339.
[117] Proseeution Response, Para. 5.33

rehearsed the law.[118] The findings (at Paragraphs 1132, 1133, 1057, 1059, 1065, 1078, 1052 and 1069), read together, are not an answer to the submissions advanced at Paragraphs 152-155 of the Defence Appeal.

61. The submissions advanced in the Response concerning the significance of the "permissive environment" found to have existed in Kenema Town are misconceived and based on a failure to appreciate that the Prosecution must prove that the non-JCE members were acting at the behest or procured by JCE members, as argued above in Ground 24.[119] It is not shown simply by generic evidence that suggests that a member of the JCE contributed to creating a permissive environment and that this allowed crimes to be committed for personal reasons. The Prosecution's interpretation would render nugatory the requirement that it must be shown that the JCE member used the *specific* non-member(s) of the JCE. It would make it impossible for a trier of fact to "distinguish perpetrators of crimes acting as part of a JCE from persons not part of the JCE but who were committing similar crimes."[120] The Prosecution would merely have to prove that a JCE member failed to take action to suppress crime and this would be sufficient to impute all crime, committed for whatever reasons, to the JCE members. It would extend the concept of JCE to guilt by association.

GROUND 31: No Unlawful Killings at Tongo Fields Area and No Common Criminal Purpose[121]

62. The Response fails to deal with the salient issues and ignores the detailed submissions at Paragraphs 156-165 of the Sesay Defence Appeal.

63. The Prosecution submits, however – in Response to paragraphs 163 and 150 of the Sesay Appeal – that the consideration of whether terror was caused is irrelevant.[122] It is submitted that it is not irrelevant: it is just not dispositive. In the context of a single town, whether Tongo Fields or Kenema Town, it could – and should have been – highly probative of the intent of the perpetrator.

64. At Paragraph 7.39, the Prosecution disputes the Defence assertion at Paragraph 164 that "the Trial Chamber did not find that any member of the JCE, or his tool, committed the killing or otherwise has the requisite intent to spread terror." The Prosecution claims that the Trial Chamber did make this finding at Paragraphs 1127-1130. This illustrates the Prosecution's misconception of the test propounded in the jurisprudence concerning crimes committed by non-JCE members (*see* Ground 24). It makes no sense to refer to unspecified AFRC/RUF as

[118] Prosecution Response, Paras. 7.26-7.31.
[119] *Brdjanin*, AC, Para. 413, 430; *Limaj et al.* AC, Para. 120, *Krajisnik*, AC, Para. 226.
[120] *Krajisnik*, AC, Para. 227.
[121] *See also*, related submissions in Ground 28 below.
[122] Prosecution Appeal, Para. 7.19.

"tools" of a JCE unless they are being used as such by a JCE member. Paragraphs 1127-1130 neglects to deal with this critical issue.

65. Further, the Defence submits it was essential that the Trial Chamber found that the perpetrators acted with intent to cause terror or collective punishments. It is submitted that the criminal purpose alleged was the causing of terror and collective punishments in order to take power and control over the country. A link would only be established between the crime and a member of the JCE upon proof that the direct perpetrator acted with the intent. Absent proof of this intent the crime committed by a non-member would be indistinguishable from a crime committed for personal reasons, unconnected to the common purpose.

66. As noted in *Limaj et al.* by the Appeals Chamber at the ICTY (Para. 110): "The Appeals Chamber finds, however, that the Trial Chamber did not confuse the notions of motive and intent when it required for the existence of a systemic joint criminal enterprise in the camp that the common plan encompassed the targeting of Serbian civilians and perceived Kosovo Albanian collaborators. While motive is not an element of the *mens rea* of a joint criminal enterprise, the existence – and scope – of a common plan is part of its *actus reus*. Hence, the targeting of these specific groups was part of the *actus reus* of the joint criminal enterprise charged in the Indictment. Consequently, the Trial Chamber could not, and did not, in the Trial Judgement, widen the scope of the common plan to include the commission of crimes against any detainee in the camp, regardless of whether this detainee was a Serbian civilian or perceived Kosovo Albanian collaborator."

GROUND 32: Enslavement as Act of Terror – part of the common purpose[123]

67. The Defence relies upon its original submissions at paragraphs 166-176. It is submitted that these have not be rebutted by the Prosecution Response.[124]

68. The Defence does however, additionally, submit that the Prosecution's assertion at Paragraph 4.7 ("that the evidence [the triple hearsay] is confirmed or corroborated by TF1-035's evidence that among the 25 civilians killed, 3 of them were TF1-035's neighbours") does not take the matter further. This was not evidence, only assertion: the first time TF1-035 *ever* mentioned the important fact that his neighbours being killed was on the day that he testified.[125] Characteristically, the witness did not provide the names of the victims and the account remained entirely uncorroborated. Moreover, the Defence notes that in his statements to the Prosecution, TF1-035 stated that he was present at the mining site

[123] *See also*, related submissions in Ground 28 below.
[124] Prosecution Response, Para. 7.16.
[125] A review of TF1-035 statements to the Prosecution indicates only that civilians were killed and injured; there is no reference to TF1-035's neighbors.

when the killing occurred.[126]

GROUND 33: Temporal Seope of Any Criminal Plan or Purpose

69. The Prosecution's Response fails to deal with the salient issues.[127] There was no evidence to support the Trial Chamber's finding, thus the issue of giving a margin of deference to the Trial Chamber does not arise.[128]

GROUNDS 25, 27, 34 & 36: Article 6(1), pursuant to the JCE:

Errors in assessing the Appellant's partieipation

70. The Prosecution Response at 5.37-5.44 is instructive. The Prosecution lapses into generalities, claiming that the Trial Chamber had to be "satisfied that Sesay made a substantial contribution *to the JCE*, and not that he made a substantial contribution to each *crime in each location.*"[129] The Prosecution omit to explain what this means: what precisely is the benchmark by which contribution ought to be judged? This exposes the fallacy of Trial Chamber I's JCE. In *Kvočka* the assessment was made by an assessment of eontribution to the crime of persecution.[130] In *Martić* the contribution was that which furthered forcible displacement.[131] The Prosecution thus avoid the issue: namely how is it possible to assess contribution to a criminal purpose with a common purpose to take over the country? Plainly contribution to one type of crime, e.g., Count 3, does not equate to contribution to an overarehing common criminal endeavour. The Defence reiterates its submissions in its Response to the Prosecution Appeal.

71. The Sesay Defence did not suggest that Justiee Boutet's approach was to assess each crime: the submission was that the assessment had to be of "the eontribution to the individual crime, attack or operation."[132] This was the approaeh taken by Justice Boutet in the Gbao dissent but not when assessing Sesay's liability.[133]

GROUND 25: Bo District

72. The Prosecution fail to deny the errors alleged under Ground 25.[134] This would appear to amount to a tacit admission that Sesay did not contribute to crimes in this District.

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[126] "I was present at this time and I was in the pit." Court Folio pp. 10815; 26 November 2004, Para. 14.
[127] Prosecution Response. Para. 5.17-5.18.
[128] Sesay Defence Appeal, Paras. 193-195.
[129] Proseeution Response, Para. 5.39.
[130] Sesay Defenee Appeal, Para. 93.
[131] Sesay Defence Appeal, Para. 97.
[132] Sesay Defence Appeal, Para. 232.
[133] Dissent, Paras. 11-12.
[134] Sesay Defence Appeal, Para. 236.

GROUND 27: Kenema District

73. The Prosecution fails to deal with the salient points. The Defence limits its Reply therefore to the following. The Prosecution's Response to attempt to assert that the Prosecution case was that Bunumbu was opened in 1997 and that the Trial Chamber did not err in so finding is unfortunate. None of the evidence supports the finding that the Bunumbu training camp was opened during the junta period and the Trial Chamber made the clearest of findings to the contrary.[135] TF1-362's testimony was that she was in Liberia in 1997 before moving directly to Freetown shortly before the intervention in February 1998.[136] The Prosecution did not advance a case that Bunumbu had been opened in 1997. This was not the case defended and was not the finding of the Trial Chamber.

74. Further the Prosecution neglect to deal with the complaint at Para. 328 (Count 43); namely that the evidence (of participation in Bunumbu) was fatally flawed. The Trial Chamber based its conclusions coneerning Sesay's participation in the capturing of civilians and the working of the base almost exelusively upon the evidence of TF1-362.[137] The Defence made detailed submission coneerning the reliability of this witness highlighting a number of inherent frailties and obvious motives (including being handed money in an envelope by the Prosecution *at the time she changed her account to implicate Sesay in the reporting at Bunumbu*[138]) that ought to have been taken into consideration and explicitly explained in the Judgment.[139] The evidence from this witness on this point was significantly ineonsistent in material respects and the witness's attempt to falsely incriminate the Appellant was obvious.[140] The witness failed to offer an explanation whieh eould have satisfied a reasonable trier of fact and removed the doubt which existed. There were ample other internal contradietions which raised further doubt.[141] Third, the evidence was contradicted by other witnesses and corroborated by none.[142] To find the evidenee sufficient in the face of myriad inconsistencies and without corroboration was perverse. To do so without explanation was nothing short of judicial dereliction.

75. The Prosecution's Response to the suggestion that the Trial Chamber erred in disregarding the *only piece of evidence* that explained the nature of discussions at the Supreme Counеil

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[135] Judgment, Paras. 1435-1436.
[136] TF1-362, Transcript 20 April 2005, pp. 39-40; and 25 April 2006, pp. 5.
[137] Judgment, Para. 1437.
[138] *See* Para. 30(vii) of *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.
[139] Sesay, Defence Closing Brief, Paras. 372-385.
[140] Sesay Defence Appeal, Annex. C.
[141] Defence Closing, Paras. 764-765.
[142] Defence Closing, Paras. 761-783.

coneerning mining (namely, that of Prosecution witness TF1-371, who testified on direct-examination that the issue of force was not discussed[143]) miseharaeterises the issue raised by the Defence. The Defence submission was that no reasonable trier of faet could disregard the *only* pieee of relevant evidence and make a finding to the eontrary. The Prosecution called this evidence. It was not disputed by the Defence. There was no other evidence upon which the Trial Chamber could be satisfied *to the requisite standard* of the contrary.

GROUND 34: Kono District

76. The Proseeution fails to deal with the salient issues. The Defence limits its Reply to the points raiscd. First, the Prosecution scrupulously avoids the key question: what was the benchmark from whieh Sesay's eontribution to thc whole was to be judged? For example, the Prosecution disregards the Defence submissions at Para. 247.

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

77. No reasonable trier of fact and law could be satisfied that the Appellant gave this endorsement.[144] The Prosecution still fails to offer any explanation to justify the huge sums of money given to the witness at a time when he was testifying against Scsay (5-10 July 2006) including 52 separate payments from the OTP between 4 April 2006 and 6 November 2007. The payments were obviously improper and dishonest given the lack of explanation proffered by thc Prosecution.[145] It is no answer to suggest that the evidence was first given in thc AFRC trial and that therefore any motive the witness had was not operative. The whole of Sierra Leone knew that Sesay was on trial at the SCSL. It is safe to assume that a self-confessed eriminal, giving evidence with a poeketful of ill-gotten cash in the courtroom next

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[143] Sesay Defence Appeal, Para. 238: Transcript/TF1-371, 20 July 2006, pp. 36-37 (not cited by thc 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 eommanders, that were in charge of the AFRC mining. ... I can remember there was an honourable called Stone or Sammy ... but beeause of the frequent harassment in those mining operations where Sammy was ... tbe council decided to ehange Sammy and appointed another honourable called Cohra, alias, to take over the operations....
JUDGE BOUTET: Mr Witness, you mentioned that Sammy was relieved beeause of harassment by honourables; what do yon 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 distriet. That somehow jeopardised these smooth operations. As a resnlt of that, in one *deliberation*, it was deeided that he be ehanged for another senior man called Cobra, who was in eharge 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 eross-examination; not cited by the Trial Chamber). The Council member knew that mining was going on ... but they did not discuss the forced mining."
[144] Judgment. Paras. 799, 1141-1144, 2084, and 2092.
[145] *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).

door, would be able to make the necessary calculation.

78. The Prosecution submission that "Sesay has failed to establish that no reasonable Trial Chamber could have concluded that Sesay received regular radio reports of events in Kono and incorrectly states that the Trial Chamber relied exclusively upon the evidence of TF1-361"[146] misses the point. Knowledge is not participation, and the Prosecution erroneously conflates the two.[147] This is tantamount to seeking to uphold convictions on the basis that Sesay might have been aware of crimes; not that he participated in them.[148]

79. Further, the Prosecution is technically correct that the Trial Chamber did purport to rely upon other evidence to demonstrate that Sesay received regular reports of events in Kono. The Trial Chamber concluded that Sesay was receiving reports from Kono during the period of the JCE as Sesay's bodyguards in Kono would report to him via radio or written messages.[149] This was unsustainable on the evidence. The Trial Chamber relied upon the evidence of TF1-041 only to support this proposition. This was wholly unreasonable. TF1-041 confirmed that it was a *general* practice for bodyguards to report to commanders and that Peleto was Sesay's bodyguard and that Pelato was stationed in Kono during the relevant period.[150] The witness did not confirm any specifics concerning Peleto's actual reporting and the alleged content of any such reports. Conversely, the witness confirmed that he did not know the details of Peleto's actual tasks at that time.[151] The remainder of the evidence footnoted at 1619 was equally limited to generalised assertion of practice.

80. The Trial Chamber also found that Kallon, tasked with monitoring developments at the front line in Kono, reported to Sesay as BFC.[152] The Trial Chamber claimed that this finding was supported by a number of pieces of evidence, namely the evidence of TF1-071, TF1-360, Sesay, TF1-141, and Exhibit 35 (*see* footnote 1565). This is patently incorrect; the evidence does not support in any way this finding. First, TF1-071's testimony was limited to stating that Bockarie sent information to Kono that Sesay was the BFC.[153] Second, TF1-141 did not give any relevant evidence on this subject.[154] Exhibit 35 details that Sesay became BFC but

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[146] Prosecution Appeal, Para. 5.44.
[147] *See, e.g.*, Sesay Defence Appeal, Paras. 241, 245, and 246.
[148] *E.g.*, the Prosecution ignores the submission at paragraph 245 that there was no finding that Sesay participated in the mining in 1998 until his arrival in Kono in December 1998 – see paragraph 5.43 of the Prosecution Response.
[149] Judgment, Para. 827.
[150] Transcript/TF1-041, 10 July 2006, pp. 90-94.
[151] *Ibid.*, pp. 91.
[152] Judgment, Para. 806.
[153] Transcript/TF1-071, 24 January 2005, pp. 129, lines 23-29.
[154] At pp. 80, Transcript, 12 April 2005, the witness discusses muster parades in Beudu; the evidence doesn't concern Kallon or the Kono frontlines.

mentions nothing of Kallon reporting to Sesay.[155] Finally, despite the impression conveyed by the Trial Chamber, Sesay did not give evidenee to the effect purported. His evidence was that he had no eommand responsibilities and no eommunieation with or towards Kono at that time.[156] In summary there was no reliable evidenee of reporting and even less of any participation in the hundreds of crimes eommitted in Kono. It is submitted that the suggestion otherwise was an error of law and fact.[157]

GROUND 37: Kailahun District

81. The Prosecution Response is silent on the issues raised in this Ground. The Defenee reiterates that the errors in Counts 25, 27, 34, and 36 are equally applicable to Counts 37.

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

Defeetive Pleading

82. The Defence asserted that the only location in which enslavement in connection with diamond mining was alleged was Tombodu and that therefore the only location in which Sesay could be found liable for such enslavement is Tombodu (instead of "throughout Kono District").[158] By way of non-response, the Prosecution tacitly accept this assertion.[159]

Mining in Tombodu

83. The Prosecution allegation that the "Sesay Defence is citing partieular parts of evidence taken out of eontext" is categorically denied and demonstrably unproven. It is wrong to make such an allegation and then not support it with concrete examples. As the totality of the evidence demonstrates, it is the Prosecution who have benefitted from an inadequate assessment of this flawed evidenee.

84. The Prosecution attempt to explain the purported "eonfusion" in the witness testimony eoncerning the year in whieh mining began in Tombodu (and thereby attempt to place the evidence of forced mining into the Indictment period) by relating the apparent difficulties that TF1-077 and TF1-304, as farmers, must have had in recalling exact dates.[160] The Prosecution states that the "extracts cited by the Defence are not unequivocal if read in their entirety."[161] This would appear to be a tacit acknowledgment that the evidence was equivocal and in reaehing its findings the Trial Chamber failed to apply the burden and standard of proof.

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[155] Exhibit 35, p. 5.
[156] *E.g.*, Transcript/Sesay, 22 June 2007, pp. 65.
[157] *See also* Defence Response submissions to Ground Two of the Prosecution Appeal.
[158] *E.g.*, Judgment, Para. 2116.
[159] The Prosecution refers to its Response submissions at Paras. 2(C), 2(G), and 4(A) eoncerning defeets in the Indictment. However, none of these submissions refer to the Indictment pleading only the "Tombodu area" for forced diamond mining which thereby limits Sesay's liability to only the Tombodu area.
[160] Proseeution Response, Para. 7.98.
[161] Proseeution Response, Para. 7.98.

Doubt must be exereised in favour of the Accused. 5002

85. The Defenee notes that the Prosecution does address the evidence of TF1-012, TF1-071, TF1-077, and TF1-304 – each of whom stated that mining started in Tombodu in 2000.[162] This was, singularly (except TF1-304) and, espeeially when taken together, unequivocal evidenee and undermined any suggestion that the mining in Tombodu occurred between Deeember 1998 and January 2000. No reasonable trier of faet eould have coneluded otherwise.

86. The Prosecution also relies on TF1-071 for the proposition that because there was mining in Tombodu in March and April 1998 that there was mining in Tombodu between December 1998 and January 2000.[163] The Prosecution fails to demonstratc why mining in March and April 1998 supports forced mining between December 1998 and January 2000. This is the height of the Prosecution Response.

GROUND 36: Enslavement, Forced Military Training (Dec. 1998 to Jan. 2000) and GROUND 44 (in part): lack of specificity

87. The Prosecution Response and the reliance upon the Appeal Chamber's findings in *Blaskic* is instructive. As the Prosecution correctly observes the jurisprudence states that the following should be particularised in the indictment:

> the conduct of the accused by whieh he may be found to (i) have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates, and (ii) the related conduct of those others for whom he is alleged to be responsible. The facts relevant to the acts of those others for whose acts the accused is alleged to be responsible as a superior, although the Prosecution remains obliged to give all the particulars which it is able to give, will usually be stated with less precision, beeause the detail of those aets are often unknown, and because the aets themselves are often not very mueh in issue.[164]

88. The Proseeution failed to plead these details in the RUF indictment. The Prosecution's submissions and reliance on the aforementioned jurisprudence is tantamount to an admission that the indictment was defective.[165]

89. The two Trial Decisions at the ICTY, *Hadzihasanovic* and *Boskoski*, relied upon by the Prosecution, as authority for the proposition that all that is required is the reiteration of the legal formula for Article 6(3) liability, must be approached with caution. The authorities – if taken as eonfirmation that a Prosecution need only plead a formulaic reference to "6(3)," the

[162] Sesay Defenee Appeal, Paras. 256-258.
[163] Prosecution Response, Para. 7.99.
[164] Prosecution Response, Para. 2.52, quoting *Blaskic* AC, Para. 218.
[165] Prosecution Response, Para. 2.52.

Accused's title, and a scant description of the alleged offence[166] – contradict the Appeals Chamber's finding in *Blaskic* and must be outdated or bad law. 5003

90. Further, these trial chamber authorities do not support the Prosecution's proposition. As noted in *Boskoski*:

> In cases where individual responsibility as superior responsibility is alleged, the following material facts should be pleaded:
>
> a. (i) that the Accused is the superior of (ii) subordinates sufficiently identified, (iii) over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and (iv) for whose acts he is alleged to be responsible;
>
> b. the conduct of the Accused by which he may be found to (i) have known or had reason to know that the criminal conduct was about to be committed or was being committed, or had been committed, by his subordinates, and (ii) any related conduct of those subordinates for whom he is alleged to be responsible. The facts relevant to the acts of the subordinates for whose acts the Accused is alleged to be responsible as a superior, will usually be stated with less precision, because the detail of those acts is often unknown, and because the acts themselves are often not critically in issue; nevertheless the Prosecution remains obliged to give the particulars which it is able to give; and
>
> c. the conduct of the Accused by which he may be found to have failed to take necessary and reasonable measures to prevent such acts or to punish the persons who committed them.[167]

91. In light of these requirements the Prosecution's claim that it "is difficult if not impossible to plead in detail an allegation that some thing did not occur" appears rather self-serving.[168] The RUF indictment contains none of the details required by the jurisprudence, not even those enumerated in the two authorities it prays in aid of its Response. The only particularisation of Sesay's alleged 6(3) responsibility for the UNAMSIL charges (Counts 15 and 17) is that in (i) of the *Blaskic* requirements. Even this, it should be noted, could not have been more perfunctory; alleging that Sesay had "effective control" over every single RUF combatant.

92. In relation to Sesay's convictions for the allegations that led to the 6(3) convictions arising from events in Yengema training base (Count 13) there is no mention whatsoever of this charge let alone the requirements outlined above.

Substantive Reply to Ground 36

93. The Reply submissions in connection with Bunumbu training base and Child Soldiers (Ground 43), in particular Paras. 110, 113-114 and 116, equally apply here. *Inter alia*, Sesay was not responsible for planning the conscription of civilians and forcing them to train; and civilians volunteered to train.

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[166] *See, e.g.*, the pleading of Sesay's alleged liability for Article 6(3) responsibility in Counts 15-18.
[167] "Decision on Ljube Boskoski's Motion Challenging the Form of the Indictment", Trial Chamber, 22 August 2005, Paras. 9-11; and *Prosecutor* v. *Blaskic*, "Decision on the Defence Motion to Dismiss the Indictment Based upon Defects on the Form Thereof," 4 April 1997, Para. 32.
[168] Prosecution Response, Para. 2.50.

94. The Proseeution refers to the following RUF insiders to support its ease that there was enslavement at Yengema during the Indictment period: TF1-071, TF1-117, TF1-330, TF1-334, TF1-360, TF1-362, and TF1-366.[169] The Prosecution also eites Edwin Kasoma, a UNAMSIL personnel allegedly held captive at Yengema.[170] Apart from TF1-117 and TF1-362, the Trial Chamber did not eite any of these witnesses. This is beeause the evidence to whieh the Prosecution cites has nothing to do with the Yengema Training Base (with the exception of TF1-366 whose testimony concerns early 2000 (outside the Indictment period) and Kasoma whose testimony eoneerns April and May 2000 (outside the Indictment period)).[171] The Proseeution's Response does not advance its arguments or refute those of the Defenee.

95. Regarding DIS-065, the Prosecution attempts to rely upon the Trial Chamber's concern in Paragraphs 527-531 of the Judgment "with regard to the credibility of certain Defence witnesses who held a eertain position or rank within the RUF"[172] as a means of easting doubt upon this witness' testimony. DIS-065 was an independent civilian witness. The Chamber did not (and could not) find that he was an adherent to the RUF ideology, that he was loyal to the RUF or commanders in the RUF, or that he was in a position of privilege.[173] Conversely, the Chamber cited DIS-065's evidence for the truth of its contents.[174] The Prosecution submissions fails to east any doubt thus on the lone independent civilian witness (Prosecution or Defence) that testified about the Yengema Training base.

96. In answering the Defenee submission that Sesay did not have effective control over the combatants at the base,[175] the Prosecution refers to its Response submissions at 7.J(ii). These submissions coneern Sesay's effective control during the UNAMSIL attacks (April and May 2000) which have no bearing on whether Sesay was in a superior-subordinate relationship prior to January 2000 (when the Indictment period for enslavement ends) with different

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[169] Prosecution Response, Para. 7.117.
[170] Prosecution Response, Para. 7.117.
[171] Transcript/TF1-071, 21 January 2005, pp. 120-123 (refers to mining in Kono District and the change to a two-pile system); Transcript/TF1-330, 14 March 2006, p. 51 (refers to the Bayama and Bunumbu training bases, not Yengema); AFRC Transcript/TF1-334, 20 May 2005, pp. 4-5 (refers to civilians being abducted in Tombodu and Yomadu shortly after the Intervention); Transcript/TF1-360, 22 July 2005, pp. 68-69 (refers to the Guinea Highway, 1998; this is prior to the opening of the training base); Transcript/TF1-366, 10 November 2005, pp. 5 (miners that refused to mine in Kono District were sent to Yengema Training base at Yengema. That TF1-366 testified to this effect indicates that this happened in 2000, after the close of the Indictment period. The Defenee notes that no other witness, including TF1-362, testifies as sueh); and Transcript/Edwin Kasoma, 22 March 2006, pp. 27-28 (refers to his arrest and capture in April and May 2000).
[172] Prosecution Response, Para. 7117.
[173] These are the concerns that the Chamber applied to Defence witnesses whose testimony was rejected by the Chamber. The Chamber made no express finding concerning DIS-065's evidence or any credibility problems therein.
[174] Judgment, Para. 919 (footnote 1784).
[175] Sesay Defence Appeal, Paras. 285-286.

alleged subordinates. As with the Trial Chamber, the Prosecution wrongly surmises that effective control can be assumed from a *de jure* title. This, despite the Prosecution's contention that this is both an error of fact (in assessing evidence) and an error of law (in taking into the wrong legal starting point).[176]

GROUND 38

97. The Defence relies upon its previous arguments advanced at Paras. 286-292 of the Defence Appeal. The Prosecution has failed to deal with salient issues. It is not for the Prosecution to retrospeetively assert that the findings that were made by the Chamber did not preclude the existenee of an attack; rather it was for the Chamber to justify how it arrived at the conclusion in light of those findings and in view of the burden of proof.

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

Ground 39: Specimen Charges

98. The Prosecution Response that the arguments advaneed at Paras. 294-295 of the Sesay Defence Appeal concerning the need for specimen charges should be rejeeted because "it is not supported by authority or principle or any developed argument"[177] is wholly inadequate. It is not sufficient to avoid arguments by such a generalised submission claiming that there is no authority for a principle in an undeveloped area of international law.

99. Moreover, the arguments advanced by the Defence are grounded in the principle – admittedly ignored by Trial Chamber I and the Proseeution – that charges need to be specified in the Indictment.[178] The fact that an offence is continuous does not remove that obligation. In the face of this principle and commonsense, it is significant that the Prosecution's arguments are not supported by any authority or principle.

100. As outlined in Ground 39, there is no reason and none has been proffered by the Prosecution to justify the approach taken by the Trial Chamber. Analogous to the situation in the prosecution of any of the eontinuous offenees (Counts 6-9, 11 and 12) in the *RUF* case, was the situation in *Kupreskic* at the ICTY (as referred to in paragraph 294 of the Sesay Defence Appeal). As noted in that case: "To observe the principle of legality, the Prosecution must charge particular aets (and this seems to have been done in this case). These acts should be charged in suffieient detail for the accused to be able to fully prepare their defence."[179]

101. Further, the Defence arguments are supported by another sensible authority, namely that arising from the continuous offence prosecuted in *Galić* at the ICTY. The Prosecution in

[176] Prosecution Response, Para. 7.121.
[177] Prosecution Appeal, Para. 2.86.
[178] *See* Ground 6 and the authorities enumerated therein.

Galić described "a small representative number of individual incidents for specificity in the pleading."[180] The Trial Chamber interpreted the specific allegations set forth in two schedules to the indictment as exemplifying the sniping and shelling of civilians in Sarajevo. The Trial Chamber examined each incident to determine whether it was symptomatic of a wider campaign. The Trial Chamber also noted unscheduled attacks which added weight to the view that the scheduled attacks were not isolated incidents.[181]

102. The requirement for specimen Counts would have exposed the fallacy of the case against the Accused. The Prosecution had not a single victim who was abducted and forcibly married in Kailahun during the indictment period.[182] Instead, Sesay was convicted for the forcible marriage of an unknown number of unnamed victims, living in unknown locations, raped and forced to conduct conjugal duties for unknown men at unknown times. It is manifestly unfair and patently absurd.

GROUND 40: Enslavement in Kailahun

103. The Prosecution Response mischaracterises the evidence heard by the Trial Chamber.[183] Upon a proper analysis it is crystal clear that the two witnesses whose evidence extended beyond mere generalised assertion was that of TF1-330 and TF1-108. It is ridiculous to suggest that Defence witnesses support the enslavement counts and the Prosecution are invited to demonstrate this alleged support.

104. The Defence relies upon Annex B of the Sesay Defence Appeal which includes samples of Defence evidence that demonstrates the variety of witnesses who supported the defence case throughout Kailahun, encompassing thousands of people. The Defence was estopped from calling more witnesses on this issue on the basis that the evidence was repetitive.[184]

105. The Prosecution is invited to demonstrate how the witnesses who were called by the Defence were undermined in cross-examination so that a reasonable trier of fact could have chosen these two irreparably damaged witnesses over that of a myriad of independent civilians. The

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[179] *Kupreskic*, Para. 627.
[180] *Prosecutor* v. *Stanislav Galić*, IT-98-29-T, Indictment, 26 March 1999, Para.15.
[181] Daniela Kravetz, 'The Protection of Civilians in War: The ICTY's *Galić* case', Leiden Journal of International Law, 17 (2004) 521-536, at 522. See *Galić* AC, Para. 60, 62 & 67; TC, Para. 561.
[182] Sesay Defence Appeal, Para. 293.
[183] Prosecution Response, Para. 7.123.
[184] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1031, "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, "5 March 2005, Para. 46. The Defence was estopped from calling evidence concerning, *inter alia*, "that civilians who were working on Sesay's and in other farms or on RUF projects were well treated and well fed by Sesay;" "that Sesay was generous and kind to the civilians;" and "that civilians who cultivated farms for RUF Commanders did so wilfully, happily, singing and dancing in the process, were very well fed, and were never forced, least still, at gunpoint, to do the work."

notion that these two witnesses could support the *Kunarac*[185] concept of slavery of hundreds, if not thousands, of Kailahun civilians and yet proffer such scant verifiable details is absurd. The fact that the Prosecution was unable to call any witnesses who actually verified those details leaves the matter in no doubt.

GROUND 41: Acts of Terror

106. As pointed out by the Prosecution at Para. 7.2, the Sesay Defence did not advance submissions on Ground 41: Para. 88 of the Notice of Appeal. The Sesay Defence abandoned this aspect of the Ground and apologise for not notifying the Appeal Chamber and the parties. The remainder of the Ground at Para. 89 was included in Grounds 33 and 39.

GROUND 42

107. This ground is incorporated into Ground 39.

GROUND 43: Child soldiers

Liability for Planning Limited to Kailahun and Kono Districts

108. At Paragraph 324 of its Grounds of Appeal, the Sesay Defence asserted that Sesay cannot be liable for this crime outside of Kailahun and Kono Districts[186] as none of the acts for which the Chamber found Sesay liable concerned locations outside of these districts. The Prosecution offered no response to this assertion.

Lack of identification of a design

109. In its Response, the Prosecution suggests that the Trial Chamber "found that the crime of conscription and use of child soldiers was part of the common plan pursued by the joint criminal enterprise in which Sesay was found to be a participant."[187] This would appear, at the very least, to be a concession that Sesay's liability for planning this crime is restricted to a period equating to the existence of the JCE, namely 25 May 1997 to April 1998. In any event, if the Prosecution's assertion is correct, the Defence submits that the conviction must therefore be reversed on the bases advanced in the Defence Grounds of Appeal, Grounds 24, 25, 27, 34, and 36.

110. Further, planning requires contemplation of the crime at both its preparatory and execution stages,[188] a requirement not required pursuant to the JCE doctrine. As argued previously, the Trial Chamber's findings do not support this conclusion. It is submitted that the Prosecution has confused the plan found by the Trial Chamber to constitute the JCE and the scheme that

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[185] The Defence submissions were based on this interpretation of enslavement: *See* Prosecution Response, Paras. 7.129-7.132.
[186] Citing to Judgment, Paras. 1692 and 2224-2228.
[187] Prosecution Response, Para. 7.68

must exist to reach a proper finding for planning the use of Child Soldiers. As submitted in the Sesay Defence Appeal, for Sesay to be liable for planning (i.e., "a plan made by Sesay,"), the planned crime must have been within "Sesay's design;[189] the planning or preparation of the crime must lead to its commission."[190] This is not to argue that it has to be Sesay's sole design; but it must be a design that, at least, he adopted as his own through his contribution to the preparatory and execution stages of it. This is the "*specificity* [that] distinguishes 'planning' from other modes of liability."[191] The design identified by the Trial Chamber pursuant to the JCE is a design to take power and control over the country. This large scheme, with contours as expansive and as nebulous as that implied by the conduct of a civil war, necessarily lacks the specificity that is envisaged for a finding that the accused was responsible for planning the conscription/using of child soldiers. That Sesay intended to and did contribute to the design to take over the country is one thing; that he planned and substantially contributed to a design for the conscription/use of child soldiers and that the crime was committed within the framework of that design is another. The Trial Chamber failed to address its mind to the narrower issue.

111. In its Response, the Prosecution cites to portions of the Judgment to demonstrate that the crime of conscription and use of child soldiers was part of the common plan pursued by the JCE in which Sesay was found to be a participant."[192] The portions of the Judgment that the Prosecution cites merely refers to the global finding that the RUF were intent on abducting civilians to conscript them into the RUF. This is not the same as Sesay planning such abductions or conscriptions. It is these nebulous conclusions that demonstrate that the Trial Chamber erred in law and fact in concluding that Sesay planned this crime. The Trial Chamber was unable to identify the design or the scheme in sufficient detail to properly impute the crime to Sesay.

112. Further, the Chamber's own findings are flawed and/or inadequate to support a conclusion that Sesay contributed to either the preparation or the execution of any design, as further argued below, thus precluding a conviction for planning or for aiding or abetting.

113. The Prosecution's submissions in Ground Two of its Appeal emphasise i) that the RUF had a screening process; ii) Sesay had no role in this screening process and correspondingly no role in the conscription of civilians (including children) into the RUF; and iii) Sesay had no role in

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[188] Judgment, Para. 268.
[189] *Galic*, Trial Chamber Judgment, para. 168.
[190] *Akayesu*, Trial Chamber Judgment, para. 473.
[191] *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".
[192] Prosecution Response, Para. 7.69. The Prosecution refers to Paragraphs 1698, 1982, 1985, and 2070.

the deployment of trained child combatants. The Prosecution submitted that the enslavement scheme in Kailahun District included an organised structure entailing "a screening procedure which captured civilians had to undergo before being allocated to the different functions or positions within the movement. Only civilians physically able were selected for military training."[193] The system of enslavement and conscription "both fell under a unique structure set up for the handling of all captured civilians."[194] In short, the Prosecution contends that the screening and forced recruitment process was done entirely by the G5.[195] The Chamber found that "the entrenched practice of using ... children as participants in active hostilities ... [was] supervised by senior Commanders and in particular the Commanders of the G5, presided over by Gbao as OSC."[196] As concerns the G5, responsible for conscriptions and abductions as found by the Chamber,[197] the Chamber confirmed that "the Overall G5 Commander reported directly to Bockarie."[198]

114. The Chamber did not find that Sesay was involved in the deployment of child soldiers. The Chamber found that "the G5 ... managed the ... deployment of civilians in furtherance of the RUF's goals."[199] The Defence recalls that military training constitutes only the preparatory step (design)[200] of a plan of use of child soldiers. Execution is still required. As the G5, and not Sesay,[201] was responsible for the deployment of these child soldiers, Sesay cannot be responsible for the execution of any such plan.

115. Further, in finding that SBUs were deployed after their training,[202] the Chamber cites to only TF1-141[203] and TF1-362's[204] evidence. As discussed in Sesay's Grounds of Appeal, the testimony of these witnesses is manifestly implausible.[205]

116. The Prosecution has yet to deal with the issue relating to TF1-362 and the envelope of money generously bestowed upon her by an unknown member of the Prosecution during her testimony and the new evidence implicating Sesay that appears to be the basis of the Trial Chamber's findings.[206]

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[193] Prosecution Response, Para. 3.59.
[194] Prosecution Response, Para. 3.57.
[195] *See, e.g.*, Prosecution Response, Paras. 3.59-3.61, 3.63-3.66.
[196] Judgment, Para. 710.
[197] Judgment, Para. 544; cited by the Prosecution in its Response at Para. 3.66.
[198] Judgment, Para. 696.
[199] Judgment, Para. 2045.
[200] Judgment, Para. 1487.
[201] The Chamber did not prove that Sesay exercised control over the G5.
[202] Judgment, Para. 1644: "At the end of training and after 'graduation,' SBUs were deployed throughout the country."
[203] Judgment, Para. 1645.
[204] Judgment, Para. 1647.
[205] Ground 15 and Annex C of the Sesay Defence Grounds of Appeal.
[206] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-T-1161, "Motion to Request the Trial Chamber to Hear Evidence

GROUND 44: UNAMSIL (Counts 15 and 17) Solo

117. The Prosecution asserts that it is not able to answer the allegation that it "was 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" is incorrect. The Prosecution is referred to Annex A of the Sesay Defence Appeal which details the dates of disclosure of the various allegations[207] and also Ground 36 above dealing with the lack of specificity.

GROUND 45: Protective Measures

118. The Prosecution Response is unclear.[208] The authorities referred to by the Sesay Defence demonstrate that it is standard practice for the ICTR and the ICTY to have access to confidential material related once the forensic nexus has been shown.[209] The distinction the Prosecution attempts to make between those cases (where confidential material was sought and access granted from one case to another) and the instant case (where confidential material sought from the *Taylor* case for use in the *Sesay* case) is unclear.

119. The Defence respectfully submits that there was a "clear error of reasoning" in the Decision and that the acceptance that an Accused's fair trial (the denial of the use of exculpatory material) may be qualified by protective measures is an exceptional reason to merit reconsideration of the Appeal Chamber's previous decision. It is submitted that the decision is a substantial departure from settled law[210] and was a breach of the Appellant's Article 17

Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses." 30 May 2008, Para. 30(vii).

[207] Annexes A1 and A2 of the Sesay Defence Grounds of Appeal.

[208] Prosecution Response, Paras. 4.48-4.51.

[209] *See, e.g.*, *Prosecutor* v. *Perisic*, "Decision 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 Session Testimony OX and the Witness' Unredacted Statements and Exhibits."

[210] *E.g.*, *Prosecutor* v. *Bagosora et al.*, "Decision on Disclosure of Confidential Material Requested by Defence for Ntahobali," Case No. ICTR-98-41-T, Trial Chamber I, 24 September 2004.*Prosecutor* v. *Bagosora et al.* "Decision on Nzirorera Request for Access to Protected Material, ICTR-98-41-T, Trial Chamber I, 19 May 2006; *Prosecutor* v. *Bagosora et al*, "Decision on Bizimungu Defence Request for Disclosure of Closed Session Testimony and Exhibits Under Seal," Case No. ICTR-98-41-T, Trial Chamber I, 15 May 2007; *Prosecutor* v. *Bagosora et al*, "Decision on Bizimungu Defence Request for Disclosure of Closed Session Testimony and Exhibits Plaeed Under Seal," Case No. ICTR-98-41-T, Trial Chamber I, 13 November 2008; *Prosecutor* v. *Bizimungu et al.* "Decision on Nyiramasuhuko's Extremely Urgent Motion for Disclosure of Closed Session Transcripts of Witness ANL/CJ, Case No. ICTR-00-56-T, Trial Chamber II, 30 August 2006; *Prosecutor* v. *Bizimungu et al*, "Decision on General Augustin Bizimungu's Motion for Disclosure of Closed Session Material of Defenee Witness WZ4," Case No. ICTR-99-50-T, Trial Chamber II, 22 September 2008; *Prosecutor* v. *Blagojevic and Jokic*, "Decision on Motions for Access to Confidential Materials," Case No. IT-02-60-A. Appeals Chamber, 16 November 2005; *Prosecutor* v. *Delic*, "Decision on Joint Defence (Hadzibasanovic and Kubura) Motion for Access to All Confidential Indictment Supporting Materials in the Delic Case," Case Nos. IT-04-83-PT and IT-01-47-T, Trial Chamber I, 27 April 2005; *Prosecutor* v. *Dordevic*, "Decision on Vlastimir Dordevic's Motion for Aecess to All Materials in Prosecutor v. Limaj et al Case." Case No. IT-05-87/1-PT and IT-03-66, Trial Chamber III, 6 February 2008; *Prosecutor* v. *Hadzihasanovic and Kubura*, "Decision on Motion by Mario Cerkez for Access to Confidential Supporting Material." Case No. IT-01-47-PT, Trial Chamber II, 10

rights.

APPEAL AGAINST SENTENCING

GROUND 46

Sentence for Count 12

120. The Prosecution submits that Sesay "was *not punished for planning* an 'entrenched and institutionalized system'" but was "punished for his individual responsibility for crimes committed by that 'entrenched and institutionalized system.'"[211] The distinction the Prosecution makes is an artificial one, given the lack of specificity in the Chambers findings. It is impossible to distinguish the two and impossible to be able to enumerate in any meaningful way the specific acts and the specific damage that led to this manifestly excessive sentence. The Prosecution's attempt at paragraph 9.17 highlights the lack of specificity and the breach of the principle of personal culpability. This lack of specificity (the paucity of personal acts and consequences directly attributable to Sesay) is a direct result of the errors of law and fact which led to the conviction and the sentence. Sesay was convicted and sentenced for the RUF's use of child soldiers.

121. It should also be noted that the Chamber found that the young boys that Sesay ordered should be trained were over 15 years of age and that Sesay could not be responsible for the personal use of child soldiers as this was a material defect in the Indictment.[212]

October 2001;*Prosecutor* v. *Karadzic*, "Decision on Momcilo Perisic's Motion for Access to Confidential Materials in the Radovan Karadzic Case," Case Nos. IT-95-5/18-PT and IT-04-81-T, Trial Chamber I, 14 October 2008; *Prosecutor* v. *Karadzic*, "Decision on Supplement to Momcilo Perisic's Motion for Access to Confidential Materials in the Radovan Karadzic Case," Case Nos. IT-95-5/18-PT and IT-04-81-T, Trial Chamber I, 13 November 2008; *Prosecutor* v. *Milosevic*, "Order on Applicant's Motion Seeking Access to Confidential Material in the Dragomir Milosevic Case," Case No. IT-98-29/1-PT, Trial Chamber I, 29 March 2006; *Prosecutor* v. *Muvunyi*, "Decision on Extremely Urgent Motion from the Accused Alphonse Nteziryayo to Disclose Closed Session Transcripts for Witness M078,"' Case Number ICTR-00-55, Trial Chamber II, 23 March 2007; *Prosecutor* v. *Nahimana et al.*, "Decision on Joseph Nzirorera's Motion for Access to Appeal Briefs," Case No. ICTR-99-52-A, Appeals Chamber, 9 September 2005; *Prosecutor* v. *Perisic*, "Decision on Franko Simatovic's Motion for Access to Confidential Materials in the Moncilo Perisic Case," Case No. 04-81-T, Trial Chamber I, 1 April 2009; *Prosecutor* v. *Popovic et al.*, "Decision on Applicant's Motion Seeking Access to Confidential Material in the Miletic et al Case," Case No. IT-05-88-PT, Trial Chamber II, 23 March 2006; *Prosecutor* v. *Setako*, "Decision on Augustin Bizimungu Defence Motion for Disclosure of Closed Session Testimony and Exhibits," Case no. ICTR-04-81-I, Trial Chamber I, 9 March 2009; *Prosecutor* v. *Simba*, "Decision on Prosper Mugiraneza's Motion for Access to Transcripts," Trial Chamber I, Case No. ICTR-01-76-A, 6 July 2007; and *Prosecutor* v. *Stanisic*, "Decision on Access to Confidential Material in the Stakic Case," Case No. IT-04-79-PT, Trial Chamber II, 12 September 2007.

[211] Prosecution Response, Para 9.17.

[212] *See* Judgment, Paras. 1638 and 2221 and Sesay Grounds of Appeal, Para. 327.

122. The Defenee further submits that a eomparison of sentenees passed at the ICTY and ICTR is further illustrative of the manifestly exeessive sentence passed in relation to Counts 15 and 17.[213]

Dated 29 June 2009

Wayne Jordash
Sareta Ashraph
Jared Kneitel

[213] *See* Annex B of this Reply.

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Annex A: Examples of the reversal of the burden of proof in the Judgment

1. The following are examples of the Trial Chamber declining to apply the presumption of innocence as seen in its evaluation of the evidence:

(i) Paras. 799 and 1141: Sesay endorsing JPK's order that Koidu be a 'no-go' area for civilians.

2. This finding was reaehed on the basis of TF1-334's testimony. The witness gave 13 statements (across 21 days) to the Prosecution between 5 November 2003 and 20 April 2006. This excludes the 16 days of testimony that TF1-334 gave in the AFRC trial.
3. In his first statement of 5 November 2003, at page 14484, he stated that it was JPK who made the pronouncement that "the people of Kono were not good people and ordered that the houses be burnt down" and that Sesay was present. In his second interview of 11 November 2005, at page 14582, he elarified further stating that he had only mentioned Sesay in his earlier statement because Sesay was the head of the RUF at the time, but that "it was JPK who made the pronouncement."
4. The first time that TF1-334 ever said that Sesay had spoken at this meeting was on 18 May 2005, the third day of his testimony in the AFRC trial, where he said that Sesay had said that civilians were traitors and the houses in Koidu should be burnt so that civilians would not come close to where they were based.[1]
5. This late addition to TF1-334's statements to the Proseeution, eoming 18 months after the start of his interviews with the Prosecution and in direet contradiction to statements made in his earlier statements, was uncorroborated by any other witness.

(ii) Para. 801: Sesay raping JPK's wife in Buedu in February/March 1998

6. The Trial Chamber found that Sesay had raped JPK's wife on the basis of the evidenee of TF1-045. In his evidenee, TF1-045 claimed that he knew that Sesay had raped JPK's wife because he saw a vehiele dropping her off, saw her crying and that she told him that Sesay had raped her.[2] In eross-examination he claimed that JPK's wife had claimed that Sesay had taken her from Kangama and left her in Buedu where TF1-045 was.[3]
7. In cross-examination it was pointed out to the witness that this account contradicted his earlier statement, made on 31 January 2003 where he stated that he was present during the

[1] TF1-334/AFRC Transcript, 18 May 2005, pp. 7. (Exhibit 119D)
[2] TF1-045/Transcript, 21 November 2005, pp. 56.
[3] TF1-045/Transcript, 24 November 2005, pp. 48-49.

altercation between JPK, Bockarie and Sesay over JPK's hiding the diamonds and that he saw Sesay take JPK's wife away and put her in his jeep.[4] The witness denied ever saying that he was present when JPK's wife was taken.[5]

8. This was eontradicted by the witness's own testimony in the AFRC trial on 19 July 2005 where he testified that he had been present at the time when JPK was dispossessed of his diamonds by Bockarie and Sesay.[6] In evidence before the RUF trial, the witness claimed that this happened in Kangama.[7]

9. On the same day in the AFRC trial, TF1-045 had explained his knowledge of Sesay's rape of JPK's wife as follows:

> Q. How do you know Issa Sesay raped Johnny Paul Koroma's wife?
> A. Well the woman was present in that meeting. From there we went there. He ealled her. Look at her own, look at his house [Buedu], and we saw them there. They went into their room. They were there about 10 to 30 minutes. The woman came out crying. Mosquito asked her what happened. She said Issa raped her.

When confronted with this eontradiction in the RUF trial, TF1-045 stated that his evidence before the AFRC trial had been reeorded incorrectly and he denied that this was a lie.[8]

10. TF1-045, in his evidence before the Trial Chamber, admitted that he had lied in his earlier statement to the Proseeution where he had stated that Sesay was present at the killing of the suspected Kamajors and had personally killed one person at the roundabout in Kailahun. He agreed that Sesay was not present and that it was he who had been present and had participated in the killings. He explained this by saying he had shifted the blame to Sesay as TF1-045 was frightened of being arrested and that Sesay was one of the senior commanders in the RUF at the time.[9]

11. The witness further stated that he had been flogged on the orders of Sesay in 2001 as Sesay believed that the witness was trying to derail disarmament in Tongo.[10] The witness claimed that he "hated Sesay in the interests of the movement" because Sesay had caused the arrest of Sankoh.[11]

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[4] TF1-045/Transcript, 24 November 2005, pp.50-52.
[5] TF1-045/Transcript, 24 November 2005, pp. 52.
[6] TF1-045/Transcript, 24 November 2005, pp. 53-57.
[7] TF1-045/Transcript, 24 November 2005, pp. 53-55.
[8] TF1-045/Transcript, 24 November 2005, pp. 55-57.
[9] TF1-045/Transcript, 24 November 2005, pp. 30-37
[10] TF1-045/Transcript, 24 November 2005, pp. 30.
[11] TF1-045/Transcript, 24 November 2005, pp. 35-37.

(iii) Para. 827: Messages coming into Buedu from Kono in 1998 being directed to Sesay.

12. This finding was based on the evidence of TF1-361. The allegation of signalers in Kono sending messages directly to Sesay (and not to Bockarie) was not disclosed in this witness' statements to the Prosecution but was adduced for the first time in oral testimony.

13. The evidence that signalers from Kono reported to Sesay was contradicted by TF1-361 in *every* statement he made to the Proseeution prior to his testimony. In four separate statements taken in 2004 and 2005, the witness stated unequivocally that during the time that Superman was based in Kono post-intervention, Superman reported directly to and received instructions directly from Bockarie. This is set out in detail in Annex A1 to the Sesay Defence Grounds of Appeal.

(iv) Para. 827: Sesay's bodyguards in Kono passing information to Sesay about events on the ground.

14. This specific allegation was born out of the testimony of TF1-041.[12] Between 2003 and 2006, TF1-041 gave six separate statements to the Prosecution. In none of these statements did the witness state that Sesay was reeeiving information through his bodyguards about events on the ground in Kono in 1998 when Sesay was in Kailahun. Such a reporting system was disclosed, with no notice, for the first time in the witness's oral testimony.

(v) Para. 1092: Sesay operating mines in Tongo for personal profit

15. This is allegation was again born out of the testimony of TF1-041[13] who claimed that Sesay was one of the RUF and AFRC eommanders who were operating private mines in Tongo during the junta period. This allegation, also, was not made in any of the witness's six statements to the Prosecution made between January 2003 and July 2006. There is no evidence in the witness' statements of commanders operating mines for personal profit or of Sesay receiving diamonds from any mines in Tongo (or from this witness of Sesay having bodyguards mining in Tongo).

16. Prior to giving evidence TF1-041 had made two inconsistent statements to the Proseeution in respect of his knowledge of events in Tongo during the junta period. In the statements TF1-041 gave to the Prosecution between 16 and 24 May 2005, he stated that he had spent only one night in Tongo and did not know who was in eharge of mining. Further he stated that he believed that some civilians were mining and he was told they could keep some of the

[12] TF1-041/Transcript, 10 July 2006, pp. 29
[13] TF1-041/Transcript, 10 July 2006, pp. 19-21.

proceeds. Finally he stated that he did not observe any of the diamonds from Tongo going to either Bockarie or Sesay but he believed that this was generally what happened.[14]

17. In a statement to the Prosecution in February 2006, TF1-041 stated that he had in fact spent a "short time" in Tongo and during that time he saw for himself civilians being forced to mine under gunpoint in Tongo. He estimated that there were approximately 100 civilians being forced to mine and that the diamonds went to Bockarie and Eddie Kanneh.[15]

(vi) Para. 1217: The capture of civilians in Tombudu in February and March 1998 and the forcing of them to search for food and carry loads, including the carrying of loads to Kailahun

18. The Trial Chamber made this finding the basis of the evidence of TF1-012.[16] Between 2002 and 2005, TF1-012 met and gave statements to the Prosecution about events occurring during the war. In none of these statements did he mention civilians being captured in Tombudu in 1998 and being forced to search for food and to carry loads to Kailahun or elsewhere.
19. In his supplemental statement of 21 January 2005, two weeks before TF1-012 testified, he stated that he had, on many occasions, been asked to carry the solar rechargeable battery to Yegbema in Kono District, about half a day's walk away, to have it recharged.
20. There were clear concerns of the basis of evidence given by the witness as to his mental health. In cross-examination, the witness claimed that after his friend/brother was killed, "it was more than even six months, I was not myself. I didn't know myself."[17] The witness, an SLPP member, agreed that he "hated" those who removed Kabbah from government.[18]
21. Perhaps most worrying, however, were the myriad instances where the witness testified that well-known persons in the conflict were present in Kono during the period of time when it was commonly adduced in evidence (and later accepted in the Judgment) that they were elsewhere. For example, the witness claimed that Gullit was present at the meeting in Tombudu in February/March 1998, also attended by JPK; that Bockarie was in Kono after the intervention and travelled to Kailahun with JPK; that SAJ Musa did not proceed to Kailahun but remained based in Koidu in 1998; that after a week Boekarie returned from Kailahun to Kono with Superman and Gullit and that Bockarie would come to Tombudu every day in 1998 and would drink palm wine with Savage and Staff Al-Haji every evening. This

[14] TF1-041/Statement, 16-24 May 2005, pp. 17837
[15] TF1-041/Statement, 13 February 2003, p. 18132
[16] TF1-012/Transcript, 2 February 2005, pp.12-26, 22-24.
[17] TF1-012/Transcript, 3 February 2005, pp. 97-102.
[18] TF1-012/Transcript, 4 February 2005, pp. 16.

witness's many inconsistencies, with relevant citations, are set out in Annex C of the Sesay Defence Appeal.

(vii) Para. 1159: Bockarie ordering the burning of civilian houses in Tombudu in February 1998

22. While other witness spoke about Koidu being burnt – such as TF1-197 who said he saw it burning in mid-April 1998 – only TF1-012 alleged that Bockarie ordered the burning of Tombudu in February 1998.
23. This allegation of TF1-012 was never made in any of his statements to the Prosecution. In fact, there is no mention of Bockarie in any form in any of the witness's statements to the Prosecution nor of Staff Al-Haji reading out an order from Bockarie that Tombudu be burnt nor that TF1-012 later saw houses burning.
24. The concerns as set out in Paragraphs 21-21 above apply equally to the Trial Chamber's reliance on TF1-012 for this finding and the Appeals Chamber is again directed to the credibility analysis of this witness in Annex C of the Sesay Defence Appeal.

(viii) Para. 1408: Forced marriage of TF1-093 to Superman

25. The sole evidence of such a forced marriage taking place came from TF1-093. The Trial Chamber found the testimony of TF1-093 to be "generally unreliable" but accepted the core of her testimony, particularly as it is related to her own experiences.[19]
26. The extraordinary inconsistencies of TF1-093 were set out, with citations, in Annex C of the Sesay Defence Brief. Nonetheless, it is useful to emphasise a few of those inconsistencies: TF1-093 could not give Superman's real name and said that Dennis Mingo was another person entirely; she claimed that Superman took her and other civilians to Kailahun in 1996 and remained in Kailahun until the AFRC coup; she claimed that while based in Kailahun Superman was a training instructor at a base in Kailahun town called Camp Bagalagao and that 300 civilians were trained there. She could name no street in Kailahun nor any other civilians who lived with her at the Bagalagao base. She claimed the group led by Superman went to the Okra hills prior to going to Freetown after the AFRC coup and they meet AFRC members such as 55 there before fighting their way into Freetown. All of this account flies in the face of both the Prosecution evidence and the findings of the Trial Chamber as to the timeline of the conflict, the events commonly understood to have occurred, and indeed the location of Superman throughout 1996-1998.

[19] Judgment, Para. 602.

27. TF1-093 also admitted to taking hard drugs throughout the conflict and said this had affected her memory.[20] She agreed that she took drugs from 1996 until the end of 2003 and that the drugs affected her to the extent that she was not sure what she was doing.[21]

(ix) Para. 1649: Child soldiers fighting for the RUF in attacks in Kailahun in 1996 and 1997

28. This finding was based solely on the evidence of TF1-093. The Appeals Chamber is again reminded of the credibility analysis of this witness as set out in Annex C of the Sesay Defence Grounds of Appeal and the fact that the witness claimed to be with Superman in Kailahun District at a base no other witness has said existed. The witness cannot describe Kailahun, name any of its streets, or name any other trainee at the base.
29. Additionally no other witness in the trial gave evidence of the RUF fighting Kamajors or any other forces in or around Kailahun town – which was well behind the frontline – in 1996 and 1997. There is also no evidence corroborating the killing, raping and beating of civilians in attacks in and around Kailahun town in 1996 and 1997.

(x) Para. 1638-42: Sesay receiving reports from TF1-362 about the forced training of adults and children at Bunumbu bas, Kailahun, in 1998.

(xi) Para. 1435: Civilians and former members of the SLA were brought to TF1-362 to be trained at Bunumbu by Sesay

(xii) Para. X: Sesay receiving reports directly from TF1-362 about events on Yengema base including the training of children under 15 yrs, in 1999

(xiii) Para. 1264: Sesay giving TF1-362 orders to have 6 recruits executed for trying to escape and his sending his bodyguards to execute 5 of the recruits when TF1-362 failed to carry out the order.

30. The only evidence for all the above findings made by the Trial Chamber against Sesay came from the testimony of TF1-362. This witness was related to one of Sankoh's wives and was Sesay's ex-girlfriend, their relationship having taken place in Camp Naama before the start of the war in Sierra Leone[22]. In cross-examination, TF1-362 stated that she was "very angry" with Sesay as she felt that he had "hijacked" and ruined Sankoh's revolution and that he had left Sankoh in jail.
31. TF1-362 admitted that she had lied in her first statement when she told the Prosecution that she had been abducted into the RUF by Sesay who had captured her at Bo Waterside in 1991.

[20] TF1-093/Transcript, 1 December 2005, pp. 110-111.
[21] TF1-093/Transcript, 2 December 2005, pp. 70.
[22] TF1-362/Transcript, 22 April 2005, pp. 60 and 26 April 2005, pp. 59- 60.

She said that she had made this allegation against Sesay because she was frightened of being arrested and because Sesay was the senior commander of the RUF at the time it had disarmed.[23]

32. She also stated that she had been arrested and flogged on the orders of Sesay for allegedly mistreating a recruit at Bunumbu base in 1998 and that she felt that Sesay had treated her unjustly.[24]
33. The Trial Chamber held that the Sesay Defence's concerns about TF1-362's hostility towards Sesay and that her testimony was patterned to implicate Sesay were "well-founded" but nonetheless, held the witness to be credible.[25]

(xiv) Paras. 1643-1644: Sesay visiting Camp Lion and addressing the recruits, including child soldiers, telling them to face orders on the battlefield or face execution.

(xv) Para. 1645: TF1-141, a child under the age of 15 years, acting as security for Benduma camp.

(xvi) Paras. 1650-3: Sesay and Lamin coming to Benduma and supplying fighters, including child soldiers, with morale boosters before the December 1998 attack on Daru

34. The sole source for all the above findings made by the Trial Chamber against Sesay came from the testimony of TF1-141.
35. TF1-141 first mentioned Sesay visited the recruits at Bunumbu base and telling them that they were to "obey" their commanders when on the battlefield in his statement of 20 October 2004, six months before he testified.[26]
36. TF1-141's evidence relating to acting as security for Benduma base after this graduation from training was not mentioned in any of the witness's nine statements to the Prosecution, taken between 2003 and 2005.
37. The allegation that Sesay went to Benduma to give the fighters "morale boosters" prior to the December 1998 attack on Daru first appeared on 10 January 2005, in the witness's last supplemental statement to the Prosecution prior to his testimony, three months later.
38. The many inconsistencies in TF1-141's testimony are set out, with citations, in Annex C of the Sesay Defence Appeal. The Trial Chamber held that "it shared some of the concerns raised by the Defence." All three defence teams had submitted that the myriad internal

[23] TF1-362/Transcript, 25 April 2005, pp.107-108.
[24] TF1-362/Transcript, 25 April 2005, pp. 121-126.
[25] Judgment, Para. 555.
[26] *See* Annex C of Sesay Defence Appeal.

inconsistencies and contradictions in TF1-141's testimony rendered him unreliable. The Trial Chamber held that it was "uneasy with portions of TF1-141's testimony that appear to be fanciful and thus implausible."[27]

39. The Chamber accepted his testimony espeeially about his own experiences but stated it required corroboration for testimony concerning the acts and conduct of the Accused.[28] There was no other witness which eorroborated the testimony of TF1-141 in respect of the findings listed as (xiv)-(xvi) above.

(xvii)-(xxi) Paras. 1417-1433: Findings in relation to Kailahun District[29]

40. Though it is examined in detail in Count 2, it is relevant with particular reference to the adverse findings in relation to Kailahun district that thc Trial Chamber declined to afford any weight to the defence evidence on the grounds that it

> is of the view that it does not follow that a crime that did not occur merely because an individual says he did not hear of it or of the event. The Chamber attaches no weight whatsoever to this and similar evidenee in making determinations about whether crimes have been committed, or not.

41. The Chamber, in finding that the evidence adduced by the Defence of no ill-treatment of civilians in the RUF Occupied Areas was limited to privileged persons, found that "the overwhelming evidence presented during the trial contradicts rhis reality for most civilians in RUF controlled areas of Sierra Leone during the war."[30] This conclusion was reaehed by the Trial Chamber, not on the basis of testimony adduced from Prosecution witnesses, but from three NGO reports: a 1998 *Medicins Sans Frontieres* report and three Human Rights Watch reports.[31] These reports reaehed eonclusions based on anecdotal accounts collected by the NGO staff. The MSF report was addueed through TF1-272 while the Human Rights watch report on Sexual Violence was adduced through TF1-369. Neither of the witness had an involvement in the collection of data or thc drafting of the reports and could not speak to the methodology or reliability of the aeeounts contained within it. The two other Human Rights

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[27] Judgment, Para. 582.
[2828] Judgment, Para. 583.
[29] Including the following findings: (xvii) Paras. 954, 1221, 1417-24: Civilians forced to work on RUF farms in Kailahun; (xviii) Paras. 1425-6: Civilians forced to work on Sesay's private farm in Giema; (xix) Paras. 1427-9: Forced subscription of produce in Kailahun District; (xx) Paras. 1430-1: Civilians were forced to carry goods to the border to trade; and (xxi) Paras. 1432-3: Civilians forced to mine in Kailahun District.
[30] Judgment, Para. 531
[31] Specifically, Exhibit 30, MSF 1998 Report: Atrocities Against Civilians in Sierra Leone, SCSL Registry pp. 4356-4360, 5 July 2005 [MSF 1998 Report]; Exhibit 146, HRW We'll Kill You if you Cry; Sexual Violence in the Sierra Leone Conflict, 27 June 2006; Exhibit 174, HRW June 1999, SCSL Registry p. 19375, 2 August 2006; Exhibit 175, HRW Report July 1998, SCSL Registry p. 19437, 2 August 2007.

reports were admitted into evidence through Rule 92*bis*. It was, therefore, not possible to challenge the reliability of the accounts or the credibility of those making them.

42. In accepting these NGO reports as the source of "overwhelming evidence" of crimes committed against civilians by the RUF – while simultaneously dismissing the evidence of all defence witnesses whose evidence before the Court contradicted the anecdotal and untested accounts which formed the basis of the reports on the ground that "because someone did not see or hear about a crime, does not mean it did not occur" – is a means of evaluating evidence which indicates a starting point of the guilt on the part of the Accused in the Trial Chamber's mind; this is a reversal of the burden of proof.

43. Additionally it is of great concern the Trial Chamber found the evidence of TF1-108 to be in any way reliable. The Appeals Chamber will recall that TF1-108 gave evidence before the Trial Chamber of his wife being raped by 8 members of the RUF and dying shortly afterwards.[32] He also stated that he had reported the rape and death of his wife to Gbao who told him that it was not important.[33] In cross-examination by the First Accused, he named his deceased wife.[34]

44. Following the Defence's calling of TF1-108's allegedly deceased wife and the testimony that she had never been raped by any member of the RUF, the Trial Chamber, in its Judgment, described TF1-108's evidence concerning the rape and death of his wife as 'fallacious' but stated that TF1-108's evidence in relation to the acts and conduct of the Accused and on issues of forced labour, forced marriage and inhumane treatment of civilians would still be relied upon where corroborated by other sources.[35]

45. The evidence of TF1-108 was used as a source for the findings listed as (xvii) – (xxi). Additionally the evidence of TF1-108 was the *sole* source of the allegation of the existence, in 1998 and 1998, there were two big RUF controlled farms in Giema where approximately 300 civilians were forced to work.[36]

(xxii) Para. 1281-2: Killing of 5 people near the junction of PC Ground

46. TF1-263 testified before the Trial Chamber that, in May 1998, he was walking from Kissi town to PC Ground when he saw Sesay standing at a junction with a pistol with five men around him. TF1-263 stated that after he had passed by he heard gunshots and on his way

[32] TF1-108/Transcript, 8 March 2005, p. 50.
[33] TF1-108/Transcript, 13 March 2005, p. 80.
[34] TF1-108/Transcript, 9 March 2005, p. 68.
[35] Judgment, Para. 597.
[36] Judgment, Para. 1422.

back he saw the corpses of the same five men he had seen alive before. He confirmed that it was Sesay at the junction and that he had been introduced to Sesay shortly before.[37]

47. The Trial Chamber, cognisant of the overwhelming evidence that Sesay was in Kailahun at this time concluded that TF1-263 was mistaken in his identification of Sesay at the junction.[38]

48. This conclusion ignored the tendency of the witness to try to implicate Sesay by placing him at times and in locations where Sesay could not possibly be – on the evidence of both Prosecution and Defence witnesses. For example, TF1-263 claimed that in 1998, Sesay was in charge of PC Ground in Kono and was in fact the overall commander of the camps in Kono[39]. He also claimed he saw Sesay present and giving orders for the arrest of the UN peacekeepers at Waterworks in Makeni in May 2000.[40] The inconsistencies and contradictions of TF1-263's testimony are set out fully, with citations, in Annex C of the Sesay Defence Grounds of Appeal.

49. A reasonable trier of fact could not have concluded that TF1-263's identification of Sesay at the junction when five men were killed was "mistaken." TF1-263 invented evidence to suggest that Sesay had been present every day in Kono during 1998 and was the top man in charge of all the camps at the Guinea Highway. This was a witness that fabricated evidence against Sesay placing him in Kono for over six months. A proper application of the burden of proof would have led any trier of fact to conclude finding that the witness was either manifestly untruthful or at least wholly unreliable.

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[37] TF1-263/Transcript, 8 April 2005, pp.11-16
[38] Judgment, Para. 1282.
[39] TF1-263/Transcript, 6 April 2005, pp. 12-15.
[40] TF1-263/Transcript, 7 April 2005, pp 38-40.

ANNEX B – SENTENCING AT THE ICTY AND ICTR

SENTENCING AT THE ICTY

Accused Name	Crimes Convicted	Liability	Sentence
Hadzihasanovic, Enver	Cruel treatment (violations of laws or customs of war)	7 (3)	3 ½ years
Kubira, Amir	Plunder of public or private property (violations of laws or customs of war)	7 (3)	2 years
Mucic, Zdravko	Wilfully causing great suffering or serious injury, unlawful confinement of civilians, wilful killings, torture, inhuman treatment (grave breaches of the Geneva conventions)	7 (3)	9 years
Strugar, Pavle	Attacks on civilians; destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; devastation not justified by military necessity; unlawful attacks on civilian objects (violation of the laws or customs of war)	7 (3)	7 ½ years
Delic, Rasim	Cruel treatment (violations of the laws or customs of war)	7 (3)	3 years (Trial Chamber)

Accused Name	Crimes Convicted	Liability	Sentence
Blaskic, Tihomir	Inhuman treatment (grave breach of the Geneva convention), Cruel treatment (violation of the laws or customs of war)	7(1) & (3)	9 years
Aleksovski, Zlatko	Outrages upon personal dignity (violations of the laws or customs of war)	7 (1) & (3)	7 years
Cerkez, Mario	Persecutions on political, racial, or religious grounds; imprisonment; unlawful confinement of civilians (crimes against humanity)	7 (1) & (3)	6 years
Brdanin, Radoslav	Persecutions; torture; deportation; inhumane acts (forcible transfer) (crimes	7 (1) & (3)	30 years

	against humanity), Wanton destruction of cities, towns or villages or devastation not justified by military necessity; destruction or wilful damage done to institutions dedicated to religion (violations of the laws or customs of war), Wilful killing; torture (grave breaches of the 1949 Geneva Conventions)		
Sikirica, Dusko	Persecutions on political, racial or religious grounds (crimes against humanity)	7 (1) & (3)	15 years (Trial Chamber)
Dosen, Damir	Persecutions on political, racial or religious grounds (crimes against humanity)	7 (1) & (3)	5 years (Trial Chamber)
Kolundzija, Dragan	Persecutions on political, racial or religious grounds (crimes against humanity)	7 (1) & (3)	3 years (Trial Chamber)
Jokic, Miodrag	Murder; cruel treatment; attacks on civilians; devastation not justified by military necessity; unlawful attacks on civilian objects; destruction or wilful damage done to institutions dedicated to religion, charity, and education, the arts and sciences, historic monuments and works of art and science (violations of the laws or customs of war)	7 (1) & (3)	7 years (guilty plea)
Krajisnik, Momcilo	Persecution on political, racial or religious grounds; deportation; inhumane acts (forced transfer) (crimes against humanity)	7 (1) & (3)	20 years
Krnojelac, Milorad	Torture and murder (crimes against humanity, violations of the laws or customs of law), Persecutions (crimes against humanity), Cruel treatment (violations of the laws or customs of war)	7 (1) & (3)	7 ½ years
Krstic, Radislav	Aiding and abetting genocide, murders (violations of the laws or customs of war), extermination and	7 (1) & (3)	35 years

	persecutions (crimes against humanity), Murder (violation of the laws or customs of war) and persecutions (crimes against humanity)		
Naletilic, Mladen	Torture; wilfully causing great suffering or serious injury to body or health; unlawful transfer of a civilian (grave breaches of the Geneva conventions) Unlawful labour; wanton destruction not justified by military necessity; plunder of public or private property (violations of laws or customs of war) Persecutions on political, racial and religious grounds; torture (crimes against humanity)	7 (1) & (3)	20 years
Martinovic, Vinko	Inhumane treatment; wilfully causing great suffering or serious injury to body or health; wilful killing; unlawful transfer of a civilian (grave breaches of the Geneva conventions), Unlawful labour; plunder of public or private property (violations of the laws or customs of war), Persecutions on political, racial and religious grounds, inhumane acts, murder (crimes against humanity)	7 (1) & (3)	18 years
Obrenovic, Dragan	Persecutions on political, racial and religious grounds (crimes against humanity)	7 (1) & (3)	17 years
Rajic, Ivica	Wilful killing, inhumane treatment (including sexual assault), appropriation of property, extensive destruction not justified by military necessity and carried out unlawfully and wantonly (grave breaches of the Geneva conventions)	7 (1) & (3)	12 years (guilty plea)
Todorovic, Stevan	Persecutions on political, racial and religious grounds (crimes against humanity)	7 (1) & (3)	10 years

Accused Name	Crimes Convicted	Liability	Sentence
Tadic , Dusko	Wilful killing; torture or inhuman treatment; wilfully causing great suffering or serious injury to body or health, Murder (crimes against humanity and violations of the laws or customs of war)	7 (1)	20 years
Babic, Milan	Persecutions on political, racial and religious grounds (crimes against humanity)	7(1)	13 years
Josipovic, Drago	Persecutions on political, racial or religious grounds; murder; inhumane acts (crimes against humanity)	7 (1)	12 years
Santic, Vladimir	Persecutions on political, racial or religious grounds; murder; inhumane acts (crimes against humanity)	7 (1)	18 years
Brahimaj, Lahi	Cruel treatment, torture (violations of the laws or customs of war)	7 (1)	6 years
Banovic, Pedrag	Persecutions on political, racial or religious grounds (crimes against humanity)	7 (1)	8 years (guilty plea)
Blagojevic, Vidoje	Aiding and abetting murder, persecutions on political, racial and religious grounds and inhumane acts (forcible transfer) (crime against humanity)	7 (1)	15 years
Jokic, Dragan	Aiding and abetting extermination and persecutions on political, racial and religious grounds (crime against humanity)	7 (1)	9 years
Tarculovski, Johan	Murder, wanton destruction of cities, towns or villages and cruel treatment (violations of laws or customs of war)	7 (1)	12 years (Trial Chamber)
Bralo, Miroslav	Murder, torture, persecution, inhumane treatment, (violations of the laws or customs of war and crimes against humanity)	7 (1)	20 years
Kordic, Dario	Unlawful attack on civilians; unlawful attack on civilian objects; wanton destruction not justified by	7 (1)	25 years

	military necessity; plunder of public or private property; destruction or wilful damage to institutions dedicated to religion or education (violations of the laws or customs of war), Wilful killing; inhuman treatment; unlawful confinement of civilians (grave breaches of the Geneva conventions), Persecutions on political, racial, or religious grounds; murder; inhumane acts; imprisonment (crimes against humanity)		
Delic, Hasim	Wilful killings, torture, wilfully causing great suffering or serious injury, inhuman treatment (grave breaches of the Geneva conventions)	7 (1)	18 years
Landzo, Esad	Wilful killing, torture, wilfully causing great suffering or serious injury (grave breaches of the Geneva conventions)	7 (1)	15 years
Cesic, Ranko	Murder, humiliating and degrading treatment (violations of the laws or customs of war), Murder, rape which includes other forms of sexual assault (crimes against humanity)	7 (1)	18 years (guilty plea)
Deronjic, Miroslav	Persecutions on political, racial and religious grounds (crimes against humanity)	7 (1)	10 years (guilty plea)
Erdemovic, Drazen	Murder (violations of the laws or customs of war)	7 (1)	5 years (guilty plea)
Furundzija, Anto	Torture, outrages upon personal dignity, including rape (violations of the laws or customs of war)	7 (1)	10 years
Zelenovic, Dragan	Torture and rape (crimes against humanity and violations of the laws or customs of war)	7 (1)	15 years (guilty plea)
Galic, Stanislav	Acts of violence the primary purpose of which is to spread terror among the civilian population, as set	7 (1)	LIFE

	forth in Article 51 of Additional Protocol I to the Geneva conventions of 1949 (violations of the laws or customs of war), Murder and inhumane acts - other than murder (crimes against humanity)		
Jelisic, Goran	Murder; cruel treatment; plunder (violations of the laws or customs of war), Murder; inhumane acts (crimes against humanity)	7 (1)	40 years (guilty plea)
Kvocka, Miroslav	Persecutions on political, racial or religious grounds (crimes against humanity) Murder and torture (violation of the laws or customs of war)	7 (1)	7 years
Prcac, Dragoljub	Persecutions on political, racial or religious grounds (crimes against humanity), Murder and torture (violations of the laws or customs of war)	7 (1)	5 years
Kos, Milojica	Persecutions on political, racial or religious grounds, murder, inhumane acts (crimes against humanity), Murder and torture (violations of the laws or customs of war)	7 (1)	6 years
Radic, Mlado	Persecutions on political, racial or religious grounds, murder, inhumane acts (crimes against humanity), Murder and torture (violations of the laws or customs of war)	7 (1)	20 years
Zigic, Zoran	Persecutions on political, racial or religious grounds (crimes against humanity), Torture and cruel treatment (violations of the laws or customs of war)	7 (1)	25 years
Kunarac, Dragoljub	Torture and rape (crimes against humanity and violations of the laws or customs of war), Enslavement (crimes against humanity)	7 (1)	28 years
Kovac, Radimir	Enslavement (crimes against humanity), Rape (crimes against humanity and violations of the laws or customs of war), Outrages upon personal dignity (violation of the laws or customs of war)	7 (1)	20 years
Vukovic, Zoran	Torture and rape (crimes against humanity and violations of the	7 (1)	12 years

	laws or customs of war)		
Sainovic, Nikola	Deportation, other inhumane acts (forcible transfer), murder, persecutions on political, racial or religious grounds (crimes against humanity) and Murder (violations of the laws or customs of war)	7 (1)	22 years
Ojdanic, Dragoljub	Deportation, other inhumane acts (forcible transfer) (crimes against humanity)	7 (1)	15 years
Pavkovic, Nebojsa	Deportation, other inhumane acts (forcible transfer), murder, persecutions on political, racial or religious grounds (crimes against humanity) and Murder (violations of the laws or customs of war)	7 (1)	22 years
Vladimir, Lazarevic	Deportation, other inhumane acts (forcible transfer) (crimes against humanity)	7 (1)	15 years
Lukic, Sreten	Deportation, other inhumane acts (forcible transfer), murder, persecutions on political, racial or religious grounds (crimes against humanity) and Murder (violations of the laws or customs of war)	7 (1)	22 years
Bala, Haradin	Persecutions on political, racial and religious grounds (harassment, inhumane acts, unlawful detention, inhumane acts, deportation or forcible transfer of civilians, murder, rape) (crimes against humanity), Cruel treatment, murders, rape (violations of the laws or customs of war)	7 (1)	13 years
Martic, Milan	Persecutions on political, racial and religious grounds, murder, imprisonment, torture, inhumane acts, deportation, inhumane acts (forcible transfers) (crimes against humanity), Murder, torture, cruel treatment, wanton destruction of villages or devastation not justified by	7 (1)	35 years

	military necessity, destruction or wilful damage done to institutions dedicated to education or religion, plunder of public or private property, attacks on civilians (violations of the laws or customs of war)		
Simic, Blagoje	Persecutions based upon unlawful arrest and detention of Bosnian Muslim and Bosnian Croat civilians, cruel and inhumane treatment including beatings, torture, forced labour assignments, and confinement under inhumane conditions, and deportation and forcible transfer (crimes against humanity)	7 (1)	15 years
Tadic, Miroslav	Persecutions based upon deportation and forcible transfer (crimes against humanity)	7 (1)	8 years
Zaric, Simo	Persecutions based upon cruel and inhumane treatment including beatings, torture, and confinement under inhumane conditions (crimes against humanity)	7 (1)	6 years
Milosevic, Dragomir	Murder, inhumane acts (crimes against humanity) Terror (violations of the laws or customs of war)	7 (1)	33 years (Trial Chamber)
Mrda, Darko	Murder, inhumane acts (violations of the laws or customs of war, crimes against humanity)	7 (1)	17 years
Mrksic, Mile	Murder; torture; cruel treatment (violations of the laws or customs of war)	7 (1)	20 years
Sljvancanin, Veselin	Murder, Torture(violations of the laws or customs of war)	7 (1)	17 years
Nikolic, Dragan	Persecutions on political, racial and religious grounds, murder, sexual violence, torture (crimes against humanity)	7 (1)	20 years
Nikolic, Momir	Persecutions on political, racial and religious grounds (crimes against humanity)	7 (1)	20 years
Plavsic, Biljana	Persecutions on political, racial and religious grounds (crimes against humanity)	7 (1)	11 years (guilty plea)

Simic, Milan	Torture (crimes against humanity)	7 (1)	5 years (guilty plea)
Stakic, Milomir	Persecutions (crimes against humanity), Extermination (crime against humanity), murder (violation of the laws or customs of war)	7 (1)	40 years
Vasiljevic, Mitar	Aiding and abetting persecutions on political, racial or religious grounds (crimes against humanity) and murder (violations of the laws or customs of war)	7 (1)	15 years

SENTENCING AT THE ICTR

Accused Name	Crimes Convicted	Liability	Sentence
Nahimana, Ferdinand	genocide, conspiracy to commit genocide, incitement, directly and publicly, to commit genocide ,complicity in genocide and crimes against humanity.	6 (3)	30 years
Kajelijeli, Juvenal	Genocide, direct and public incitement to commit genocide, extermination as a crime against humanity	6 (1) & (3)	45 years
Musema, Alfred	Genocide & extermination as a crime against humanity	6 (1) & (3)	LIFE
Kayishema, Clement	Genocide	6 (1) & (3)	LIFE
Akayesu, Jean-Paul	genocide, crime against humanity (extermination), crime against humanity (murder, 3 counts), crime against humanity (torture), crime against humanity (rape), crime against humanity (other inhuman acts).	6 (1)	LIFE
Gacumbitsi, Sylvestre	Genocide, extermination as a crime against humanity and rape as a crime against humanity.	6 (1)	LIFE
Imanishimwe, Samuel	murder as a crime against humanity, imprisonment as a crime against humanity, torture as a crime against humanity, murder and cruel treatment as serious violations of Article 3 Common to the Conventions of Geneva (13th count).	6 (1)	12 years
Kamuhanda, Jean de Dieu	Genocide, extermination, as a crime against humanity	6 (1)	LIFE
Karera, Francois	genocide, and for extermination and murder as crimes against humanity, ordering murder as a crime against humanity based , for aiding and abetting murder as a crime against humanity instigating genocide and extermination as a crime against humanity.	6 (1)	LIFE
Muhimana, Mikeali	Genocide, rape as a crime against humanity and murder as a crime against humanity.	6(1)	LIFE
Ndindabahizi, Emmanuel	Genocide, extermination as a crime against humanity, incitement to and complicity in	6 (1)	LIFE

	genocide, incitation and complicity in a crime against humanity (murder)		
Ngeze, Hasan	aiding and abetting the commission, direct and public incitement to commit genocide, aiding and abetting extermination as a crime against humanity .	6 (1)	35 years
Niyitegeka, Eliezer	Genocide, conspiracy to commit genocide, direct and public incitation to commit genocide, murder as a crime against humanity, extermination as a crime against humanity, other inhumane acts as a crime against humanity	6 (1)	LIFE
Ntakirutimana, Gerard	genocide and crimes against humanity (murder)	6 (1)	25 years
Ntakirutimana, Elizaphan	Genocide	6 (1)	10 years
Rutaganda, Georges Anderson Nderubumwe	genocide), crime against humanity: extermination, wilful killing in violation of the common article 3 of the Geneva Conventions.	6 (1)	LIFE
Ruzindana, Obed	Genocide	6 (1)	25 years
Semanza, Laurent	complicity in genocide, providing help and encouragement to commit extermination as a crime against humanity, rape, torture and murder as crimes against humanity.	6 (1)	35 years
Seromba, Athanase	genocide and extermination as a crime against humanity	6 (1)	LIFE
Simba, Aloys	genocide and extermination as a crime against humanity	6 (1)	25 years