

**SPECIAL COURT FOR SIERRA LEONE  
PRESS AND PUBLIC AFFAIRS OFFICE**



Photo by a Court visitor.

**PRESS CLIPPINGS**

**Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office**

**as at:**

Wednesday, 21 May 2008

Press clips are produced Monday through Friday.  
Any omission, comment or suggestion, please contact  
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### Local News

Blaming Kabbah for Testifying for Issa Sesay / *For di People* Pages 3-4

### International News

(Untitled) / *BBC World Service Trust* Pages 5-6

Moses Blah Ends Testimony at Taylor Trial / *BBC World Service Trust* Page 7

Taylor Witness Says His Daughter Was Beaten... / *Associated Press* Page 8

UNMIL Public Information Office Complete Media Summaries / *UNMIL* Pages 9-10

Prosecutor v. Brima, Kamara, and Kanu: First Judgment... / *ASIL* Pages 11-14

Groundbreaking Report Assesses...Yugoslavia Tribunal / *Justice Initiative* Pages 15-16

For di People  
Wednesday, 21 May 2008

## Blaming Kabbah In Testifying For Issa Sesay

**THE SAYING that we normally praise what's pleasing to us is true and that we distance ourselves from those things which bring us closer to reality is also true and this brings me to Moijueh Kaikai's blasting of erstwhile president Kabbah for testifying on behalf of rebel leader Issa Sesay and not for the late Hinga Norman who died in jail and hailed as a freedom fighter.**

by  
**MO AUGUSTUS**  
Kaikai is chairman of the People's Movement for Democratic Change-UK-Ireland branch who rebuked Kabbah for the above and stating that Norman fought gallantly for peace and democracy, that without Norman, nobody including Kabbah would be talking of peace let alone development and to testify for Issa was least expected of Kabbah.

The first point is that there was bad blood within the SLPP hierarchy and Kabbah and Norman were actually friends of convenience and did not necessarily trust each other and that was why Kabbah mainly depended on Ecomog soldiers, Nigerians especially for his security after his restoration in 1997 after coup d'etaed by the AFRC-Ruf rebel early that same year.

Both belong to the SLPP but Kabbah actually saw a political opportunity under the SLPP and Norman as a full-blooded SLPP who had actually done a coup against the APC for the SLPP in 1967 was already a hero as far as the SLPP stal-

warts were concerned even though it was an illegal act.

Under normal circumstances, those involved in coups are normally sidelined from future governments but for the SLPP, it was right to rope-in Norman just as it was right for them to bring-in coupists like Mondch, Nyuma and others within its ranks simply because they share the SLPP ideology of south-eastern allegiance as far as politics go.

Infact, inside sources would tell you that late Nigerian-born Ecomog commander, Brig-Gen Mitikishe Maxwell Khobe wanted Norman out of the army being a source of divisivism and instability within the army but for the pressure of the south-eastern cabal and Kabbah had to distanced himself from the Kamajor militia totally south, mende-oriented, refusing to become a member while being chairman instead of the Freetown-based hunting society.

It should be noted that there was so much bad blood between Norman and Kabbah that the former was part of a grand alliance that dissociated itself from the SLPP and this brought onboard even the rebel cabal of Issa Sesay and others to declare for the PMDC of Charles

Margai before Norman was taken for medical treatment to Senegal where he later died.

The arrest of Norman while being a Minister of Interior at his office was not only seen as a humiliation for the Kamajor chieftain but as a betrayal by the very Kabbah seen as an ingrate to the cause and aspirations of the SLPP which is to rule the country forever, if possible.

Moreover, attempts were made to even bring Kabbah, as head of state, on trial and this was seen at the Special Court when one of the Judges, Justice Bankole Thompson, was adamant that Kabbah should appear before the court but then on the other hand, this was overruled by the court perhaps because Kabbah as president enjoyed certain immunity and moreover, because they might not want to upset the apple cart after just coming from a bloody and atrocious 11 years rebel war.

Kabbah is presently testifying because the law has forced him to do so and this same Special Court law could have done just the same as it has brought Liberian warlord Charles Taylor to answer for crimes against humanity at The Hague or the late Slobodan Milosovitch or those standing trial in Iraq

for similar crimes. Had the Special Court requested so, then Kabbah would have testified on the Norman trial. Kabbah would never have stood before the Special Court on his own, without pressure or persuasion to do so according to the law.

Without pressure from the SLPP cabal, Norman would've been forced out of that office precisely as a result of the circumstances that led to the AFRC-Ruf coup based on the recommendation of Khobe who fought very hard to re-unify the army.

What Kaikai is saying smirks even of the same regionalism that led to Kabbah accusing the north for the rebel war simply because late rebel leader Foday Sankoh hailed from the north and the very reason why it took just one week for the south-eastern based National Provisional Ruling Council to spread the war across the entire north before the 26 February 1996 elections blaming the northern-based APC for taking the war to the south-eastern part of the country which actually was a puerile, sentimental argument without any foundation whatsoever.

Let us take a look at both Issa Sesay and Hinga Norman and the various roles they played during the civil conflict. Also, to look at Kaikai's argument that Norman fought gallantly for peace and democracy and that without him, nobody including Kabbah would

be talking of peace, let alone development.

First, the SLPP is not development-oriented as 11 years of negative governance and corruption has shown to the extent that donors had to stop all fundings after pouring over USD 6bn to bail our economy and nothing so much to show on the ground. Also, Norman did not fight for democracy and peace but saw an opportunity in the tribally-regionalised SLPP to use his past to gain a prominent position.

Norman's background also showed that he can do coups to maintain the SLPP in power as in 1967 and coming back as a prominent politician in the SLPP that won the 1996 elections simply established Norman as a regionalist and tribalist apart from the fact that he played perhaps the pivotal role in bringing about the 1997 AFRC-Ruf coup.

One would've expected him being in the army before to have helped reconcile the forces but instead, he subjugated the military under the Kamajor militia, deprived the army of vital needs at the time of war which eventually led to the killings of police and army officers in south-eastern strongholds including the eating of human beings from other parts of the country known as 'yamoto,' as well as drinking human blood for worldly power like late Zairean president Mobutu Sese Seko.

democracy did so because of the love for Mother Salone but I must say that invariably, Norman and the Kamajors fought for the hegemony of the SLPP and not for the entire country as that was also evident in their 11 years rule with almost all government departments and parastatals manned by south-easterners with no development taking place in the entire country.

How can people fight for democracy by killing indiscriminately people from other parts of the country, especially northerners and driving them out of their areas and at the same time telling the world that Norman fought for democracy and peace? The coup was due to the fact that the army was allowed to be marginalised by Kabbah on the behest of Norman and we all saw the consequences.

Had Norman been alive and Minister of Internal Affairs, then certainly the past election would've been something different because he could have ridden rough-shod on the opposition to gain an SLPP victory. This could be unsavoury to many sympathisers but believe me, Norman would not have

See Page 4

# BLAMING TEJAN KABBAH

## From Page 3

taken kindly to see an APC victory and could've reacted same as in 1967.

A little bit on Issa Sesay who actually was not an original Ruf member but recruited by Sankoh. He was an illiterate but he was able to consolidate the rebels and eventually negotiated peace that brought the war to an end. Infact, the northern capital of Makeni was not razed to the ground because of Issa as Morris Kallon, Augustine Gbao and Gibrill Massaquoi were bent on it and these southerners never wanted Issa to negotiate peace.

The Ruf itself was torn by strife which saw the assassination of prominent Ruf members. Rambo, one of the hardened fighters was killed by Superman, another tough Ruf fighter but was eventually killed by Maskita who in turn was later killed by Taylor now before The Hague. If Issa had decided to stay put, it would have been difficult for the UN forces to dislodge them just as we have seen in the Ivory Coast.

For example, Operation Thunderbolt by the UN was unsuccessful and it led to their withdrawal from the Masiaka-Rogbere areas in the north and even Operation Barass by the British was later successful because of the co-operation of our soldiers which still has to be commended.

Even Unamsil commander Ishmail Opande while testifying at the Special Court paid glowing tributes to Issa as well as Tejan Kabbah for his role in bringing the war to a close while for Norman, it was to perpetuate the SLPP and not in the interest of Sierra Leone democracy and peace. If as Dr Sama Banya said that Kamajors sniff evil people warranting their deaths, then that is certainly not the road to peace and the people of Freetown were really angst by the level of deaths committed by the Kamajors when they entered Freetown after the 1997 restoration.

It was the SLPP's overthrow that galvanised the Kamajors to action and not a collective national strategy as we saw a complete neglect of the other civil militias like the Gbethis, Tamaboros and Donsos, including the nationally constituted army who were

deprived in favour of the Kamajors by the SLPP. It must be said that it was the collective resolve of the people of Sierra Leone to embark on civil disobedience and who suffered immensely for it backed by the resolute efforts of Ecomog, especially Nigerian soldiers that led to the restoration of the Kabbah regime in 97.

Sierra Leoneans, especially so-called intellectuals must learn to be less emotional and divisive in their thinking and to understand that Kabbah had no other option but to testify after being subpoenaed by the Special Court and that does not mean a betrayal of Norman but rather a summon so that the nation can benefit in knowledge from transpirations unknown to them.

So would Kaikai stop Kabbah from testifying at the Special Court just because he feels testifying means a betrayal of Norman and what was least expected of Kabbah?

I totally disagree.

**READ FDP ALWAYS**

## BBC World Service Trust

Tuesday, 20 April 2008

Prosecution 27th witness, former Liberian President Moses Blah, is facing questions relating to his own role in the Liberian civil war and the death of RUF commander Sam Bockarie, as Charles Taylor's lawyers try to cast doubt over Mr. Blah's honesty, when he testified last week in Taylor's on-going war crimes trial..

As Alphonsus Zeon of the BBCWST/SFCG reports, key among other controversies, Mr. Blah is being linked to the death of Sam Bockarie.

WILLIAMS: The former Liberian President Blah rejected the suggestion from Taylor's lead lawyer, Courtney Griffiths, that the witness had a hand in the RUF commander Sam Bockarie's killing. The autopsy report prepared after an examination of Bockarie's body read in court Tuesday revealed the RUF commander had four bullet wounds in his left chest, two in his back, and one bullet stuck in his pelvis. The Defence said public documents signed by one Jusu Momoh alleged that Mr. Blah had instructed his Chief of Office Staff, Eugene Nagbe, to deposit Bockarie's body at the Samuel Stryker Funeral home in Monrovia. In the witness's words, he said the statement was a 'blinking lie'.

GRIFFITHS: Let me read this document to you slowly. "I the undersigned, Jusu Momoh, being duly sworn, depose and state as follows, to wit, one, that during the early part of the year 2003 I was in charge of the Samuel A. Stryker Funeral Services located on Tubman Blvd., Sinkor, Monrovia, Liberia, because the proprietor, Executive Officer Mr. Samuel A. Stryker II, had travelled out of the country. That during the period referred to above, one Mr. Eugene Nagbe, then Chief of Office Staff for then-Vice President Moses Blah, at about 4:30 p.m., brought three dead bodies in a pickup truck belonging to Vice President Moses Blah, and deposited the same at Samuel A. Stryker Funeral Services." Do you know the Samuel A. Stryker Funeral Services on Tubman Blvd.?

BLAH: Yes, yes, I know Samuel Stryker Funeral Services. This is completely false. I'm not connected, and my Chief of Office Staff could explain better to you that I do not know about giving instructions to carry any body to Stryker Home.

WILLIAMS: Blah also refuted a Monrovia newspaper, called The Analyst newspaper, with an article quoting a witness who appeared before Liberia's Truth and Reconciliation Commission, alleging Mr Blah, a former NPFL Special Force supervised a military mission codenamed 'Operation Grasshopper. The Defence lawyer added dozens of civilians were massacred on Duport Road, Liberia.

Blah said both the Analyst newspaper's article a person only known as Debleh, who gave the testimony to the TRC, had lied. The witness said he had already told the Liberian's TRC, he's prepared to appear and clear his name. Blah also denied questions from Griffiths whether he commanded a unit of Small Boys Unit of the NPFL.

Blah said he had only taken a 13 year old child soldier into his entourage when he was NPFL Inspector General, but he said thereafter, the child never engaged in military battles.

GRIFFITHS: Did you have a Small Boy Unit attached to you?

BLAH: Yes.

GRIFFITHS: For how long

BLAH: Up to now.

GRIFFITHS: What, you still have a Small Boy Unit now?

BLAH: No, let me elaborate. I had a Small Boy Unit. This is a fellow whose brother was killed in Kakata. I found them on the campus of [B.W.R.] with a lady also fighting for NPFL. And this boy was very small. [Phrase indistinct]. But this boy, we saw him and he's crying around. We took him a few weeks ago. He has been on a training. So I said 'no, this is a very small boy. Let him come and be with me. I will care for him, I will take care of him.

WILLIAMS: The cross-examination of the former Liberian president, Moses Blah, has finally ended Tuesday afternoon. And customarily, the Prosecution had a brief re-examination of the witness.

For the BBC World Service Trust / Search for Common Ground, Adolphus Williams, The Hague.

## BBC World Service Trust

Tuesday, 20 April 2008

### **Moses Blah ends testimony at Taylor trial**

*By Alphonsus Zeon*

The former Liberian Vice President, Moses Blah on Tuesday, 20 May, ended his testimony at the trial of his former boss, Charles Taylor, at the UN-backed Special Court sitting in The Hague, The Netherlands.

On the last day of his testimony, the 27<sup>th</sup> prosecution witness faced questions relating to his own role in the Liberian civil war and the death of the former Commander of the RUF rebel movement, Sam Bockarie, as Mr Taylor's lawyers sought to cast doubt over his honesty.

It follows damning allegations by Mr Blah that Mr Taylor instructed his fighters to kill Mr Bockaris.

Under cross examination, Mr Blah rejected suggestions from Taylor's lead lawyer, Courtney Griffiths that Blah had a hand in the death of Sam Bockarie. The autopsy report prepared after an examination of Bockarie's body read out in court on Tuesday, revealed the RUF commander had four bullets lodged in his chest, two in his back and one in his pelvis.

Mr Blah said a public notary document signed by one Jusu Momoh, alleging that Mr. Blah had instructed his Chief of Office Staff, Eugene Nagbe to deposit Bockarie's body at the Samuel Stryker Funeral home in Monrovia was "a blinking lie".

He also refuted a Monrovia newspaper article quoting a witness who appeared before the country's Truth and Reconciliation Commission, alleging that he [Blah] had supervised a military mission codenamed "Operation Grass Hopper", in which several dozen civilians were massacred on Duport Road in Monrovia.

Blah said both the Analyst newspaper, which published the article, and the person only identified as Debleh, had lied.

Blah answered in the negative to questions from Griffiths on whether he commanded a child soldier unit, known as the Small Boys' Unit of the NPFL. He said he had only taken in a 13-year-old child soldier when he was Inspector General of the NPFL, but on humanitarian grounds. He went on to say that the boy, Tamba Allieu, ceased being a fighter thereafter and that he was still under his care.

*Courtesy: BBC World Service Trust and Search for Common Ground*

## Associated Press

Tuesday, 20 May 2008

### **Taylor witness says his daughter was beaten while he testified in The Hague**

THE HAGUE, Netherlands: Liberia's former president said Tuesday his daughter was assaulted on her way home from school while he was testifying for the prosecution at the war crimes trial of his predecessor, Charles Taylor.

Moses Blah, who briefly became the West African nation's president in 2003 after Taylor was forced into exile, told judges Tuesday about the attack on his fifth day of testimony.

"Three or four days ago, my daughter was beaten by two men while coming from school," Blah said. He gave no further details of the attack or of his daughter's condition. The attack was believed to have occurred in Liberia.

Blah is the most senior former Liberian government official to testify against Taylor since the trial began in earnest in January.

He began testifying last Wednesday about Taylor's rise to power in Liberia and links between his regime and the government of Libya. Despite his senior position in Taylor's militia and government, Blah's testimony shed little light on the former president's links to rebels in Sierra Leone.

Taylor has pleaded not guilty to murder, rape, torture and enlisting child soldiers during the 10-year civil war in Sierra Leone, which ended in 2002. He is accused of arming and commanding Sierra Leone rebels from his headquarters in Liberia's capital, Monrovia.

Blah had been granted permission to testify anonymously, but decided to speak in open court despite his family receiving e-mailed death threats. He told the three-judge panel at the Special Court for Sierra Leone about the attack on his daughter after prosecutor Stephen Rapp asked him to outline his need for ongoing security in Liberia.

Several witnesses have already testified using pseudonyms at the trial and prosecutors say some may have to be relocated after testifying because of fears of reprisals.

The Sierra Leone court usually sits in the country's capital, Freetown, but Taylor's trial is being held in a courtroom rented from the International Criminal Court in The Hague because of fears the case could trigger fresh violence.

Blah's testimony was expected to end Wednesday.



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**UNMIL Public Information Office Complete Media Summaries  
20 May 2008**

*[The media summaries and press clips do not necessarily represent the views of UNMIL.]*

**Newspaper Summary**

***Blah Faces Cross-Examination As Defense Team Claims Inconsistency in Testimony***

(New Democrat, Heritage, The Parrot, The Inquirer, Plain Truth, National Chronicle, The Informer, The News)

- Lawyers representing former President Charles Taylor in the war crimes trial in The Hague on Monday began cross-examining witness Moses Blah while downplaying the notion that he was an insider and had knowledge on Taylor-RUF links.
- According to the media during day one of the cross-examination of Blah, the lead Defense Counsel, Courtenay Griffiths claimed that the witness gave conflicting statements regarding Taylor's alleged involvement in the war in Sierra Leone but Mr. Blah rejected the claim saying the media misquoted him relative to his predecessor, Charles Taylor being not guilty of war crimes in Sierra Leone.

***5 Former Transitional Government Officials Case Postponed Till Friday***

(New Democrat, National Chronicle, Daily Observer, Heritage)

- The case involving former Finance Minister, Luseni Kamara, his deputy and three others have been postponed till Friday, 23rd May 2008 after Criminal Court "C" found out that the 15-member jury for this term of court was not legally summoned.
- Former Finance Minister, Luseni Kamara along with his Deputy Tugbeh Doe and three others, Tapple Doe, Albert Quaye and Pyne Wollo, appeared in court yesterday after being charged with embezzling over LD\$11 million and US\$4 million from government coffers during the transitional government of Gyude Bryant.

***Several Schools Principals Penalized By Ministry of Education***

(The Inquirer)

- The Minister of Education, Dr. Joseph Korto has suspended four Public School Principals and two other officials indefinitely for their failure to ensure that their students sit this year's exams being administered by the West African Examinations Council (WAEC).
- Reports said on the first day of WAEC Exams, students from the affected schools who had gone to sit the exams were denied by the supervisors of the test on grounds that they had not registered.

***Public Works Demolishes Over 40 Structures Behind BTC Barracks***

(The Inquirer, National Chronicle, The Informer, Heritage)

- Over forty structures located behind the Barclay Training Centre (BTC) have been demolished by the Government of Liberia through the Ministry of Public Works.
- The exercise is in continuation of the demolition of all illegal structures and the eviction of squatters occupying government's properties.
- Speaking to reporters following the exercise yesterday Public Works authorities said the squatters had been forewarned to vacate the land but had ignored the warnings.

***Narcotic Drugs worth L\$1M Seized in Ganta***

(Daily Observer)

- Police in Ganta have seized 270-kilogram of narcotic drugs with a street value of L\$1 million while on patrol on the Ganta-Saclepea road upon tipoff.

- Police authorities said those arrested are Alfred Zuo and John Nuahn and that during interrogation the men informed the police that the drugs belonged to some unidentified women who had asked them to transport the drugs.
- This is one of the huge consignments of drugs to be seized by the Criminal Investigation Department (CID) in less than a month in Ganta. Last month, police in that area arrested One Elijah Myers for carrying 5 bags of marijuana weighing 148 kilogrammes.

## Radio Summary

### **Star Radio** *(News culled today from website at 8:35 am)*

#### **President Sirleaf Begins Working Session of Cabinet Retreat Today**

- President Ellen Johnson Sirleaf will today Tuesday hold the first session of her cabinet retreat in Robertsport, Grand Cape Mount County.
- President Sirleaf and cabinet are due to deliberate on a national response to the looming global food crisis, discuss a proposed Public Finance Law and receive a report from the cement committee, progress on the Poverty Reduction Strategy (PRS) and discussions on the budget performance for 2007/2008 and 2009 respectively.
- The Ministry of Agriculture will present a strategic paper on the way forward for Liberia in the wake of the global food crisis, while the Water and Sewer Corporation also make presentations on the status of Urban-Rural water resources in Liberia.
- The three-day Cabinet retreat is the second gathering of the cabinet outside the capital, Monrovia this year.
- It can be recalled that in March this year, President Johnson Sirleaf, held her first Cabinet Retreat in Voinjama, Lofa County.

*(Also reported on Truth F.M. and ELBC)*

#### **Security Officers Withdraw from Vahun, Lofa County**

- Reports from Lofa County say Custom and Immigration officers at the Liberia-Sierra Leone border in Vahun have pulled out of the area.
- According to correspondents, the officers' decision to pull out is due to a long standing dispute between the security forces and citizens of the area over the alleged refusal of travellers to present documents for inspection.
- Security officers accuse citizens of stalling their work on claims that the travellers are their relatives and should not be subject to inspection.
- Meanwhile, the office of the county's superintendent has launched an investigation into the matter.

#### **Five Former Transitional Officials to Reappear in Court Friday**

*(Also reported on Truth F.M. and ELBC)*

#### **Police Nabs Five For Possession Of over US\$11,000 Counterfeit Banknotes**

- Police in Monrovia have arrested five men with more than US\$11,000 counterfeit banknotes.
- The suspects include two Liberians, Gideon Johnson, a son of Nimba County Senator Prince Johnson and Cletus Oyarbo and three Nigerians including Kayode Makun, Adesanya Tai Akwola and John Osunde.
- Police said the men were arrested on Friday with the counterfeits which are in hundred bills and have urged business people to watch out for such money.
- Meanwhile, the men are currently in Police custody awaiting prosecution.

*(Also reported on Truth F.M. and ELBC)*

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# The American Society of International Law

Tuesday, 20 May 2008

ASIL Insights: Prosecutor v. Brima, Kamara, and Kanu: First J...

<http://www.asil.org/insights/2008/05/insights080520.html>



## The American Society of International Law

HOME
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PUBLICATIONS
NEWS HUB
RESOURCES
EVENTS

**ASIL Insight** May 20, 2008  
Volume 12, Issue 10

***Prosecutor v. Brima, Kamara, and Kanu: First Judgment from the Appeals Chamber of the Special Court for Sierra Leone***

**By Charles C. Jalloh and Janewa Osei-Tutu**

**I. Introduction**



On February 22, 2008,<sup>[1]</sup> the Appeals Chamber of the Special Court for Sierra Leone (SCSL) issued its final judgment in *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (Appeals Judgment). The Appeals Judgment was the first judgment of the Appeals Chamber since the United Nations (UN) and Sierra Leone established the SCSL in January 2002.<sup>[2]</sup>

In this case, the Appeals Chamber unanimously upheld the Trial Chamber's conviction of the three former leaders of the Armed Forces Revolutionary Council (AFRC) for crimes against humanity, war crimes, and other serious violations of international humanitarian law. The Appeals Chamber also unanimously dismissed the defendants' grounds of appeal and affirmed the Trial Chamber's sentences for Brima, Kamara and Kanu.

The Prosecutor's appeals were more successful. The Appeals Chamber allowed three Prosecution grounds of appeal respecting joint criminal enterprise, forced marriage, and cumulative convictions. Observing that the Trial Chamber had convicted and sentenced the defendants to long prison terms, the Appeals Chamber declined to enter additional convictions because of the successful Prosecution appeals or to alter the Trial Chamber's sentences.

This Insight summarizes the Appeals Judgment and highlights important legal issues the judgment raises.

**II. Background**

*A. The Conflict in Sierra Leone and the Armed Forces Revolutionary Council-Revolutionary United Front Regime*

The Appeals Judgment started with an overview of the conflict in Sierra Leone, tracing the war to a March 1991 attack by the Revolutionary United Front (RUF). The RUF aimed to overthrow the one-party government of Joseph Saidu Momoh, which was, in 1996, replaced by the elected government led by Ahmad Tejan Kabbah. The RUF controlled parts of the country until March 1995, when government forces routed the RUF.<sup>[3]</sup>

On May 25, 1994, soldiers from the Sierra Leone Army (SLA) seized power in a *coup d'etat* and invited Major Johnny Paul Koroma to become Chairman of the AFRC. He agreed to share power with the RUF. The AFRC-RUF alliance established a military government, which tried but failed to recapture territory from the Civil Defence Forces, a government-sponsored militia loyal to the Kabbah Government, in eastern and southern Sierra Leone.<sup>[4]</sup> Loyal SLA forces and ECOMOG, a peacekeeping force of the Economic Community of West African States (ECOWAS), dislodged the AFRC-RUF alliance from power in March 1998 and reinstated the Kabbah-led government. A peace agreement was brokered, and the conflict formally ended in 2002.<sup>[5]</sup>

*B. The Accused and the Charges in the Consolidated Indictment*

The defendants – Brima, Kamara and Kanu – spearheaded the AFRC coup in 1994. In December 1998, Brima took over leadership of the AFRC. Kamara became deputy commander, and Kanu was made chief of staff. The three ran the key government ministries in Sierra Leone.<sup>[6]</sup>

The SCSL Prosecutor individually indicted the defendants from March to May 2003<sup>[7]</sup> and subsequently consolidated and amended the indictments.<sup>[8]</sup> The final consolidated, amended indictment<sup>[9]</sup> charged the defendants with seven counts for crimes against humanity<sup>[10]</sup> and six counts for war crimes.<sup>[11]</sup> The indictment also included one count for other serious violations of international humanitarian law, which included the crime of conscripting or enlisting children under the age of 15 years into armed forces and using them in hostilities. This charge marked the first time an international criminal tribunal has invoked the offence of conscripting child soldiers.

*C. Trial, Verdict, and Sentence*

The trial started in March 2005 and concluded in December 2006. On June 20, 2007, Trial Chamber II delivered its judgment.<sup>[12]</sup> All three defendants were convicted for crimes against humanity (four counts), war crimes (six counts) and other serious violations of international humanitarian law (one count). Trial Chamber II issued its Sentencing Judgment in July 2007.<sup>[13]</sup>

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**DOCUMENTS OF NOTE**

[Prosecutor v. Brima et al](#)

[Statute of the Special Court for Sierra Leone \(SCSL\)](#)

[SCSL Rules of Procedure and Evidence](#)

[Agreement on Establishment of a Special Court for Sierra Leone ASIL EISIL>>](#)

**ORGANIZATIONS OF NOTE**

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1 of 6

21/05/2008 09:08

The Trial Chamber found each defendant personally responsible<sup>[14]</sup> and as commanders.<sup>[15]</sup> However, the Trial Chamber did not enter convictions for Count 7 (sexual slavery or any other form of sexual violence) because it found a violation of the rule against duplicity. The Trial Chamber also dismissed Count 8, in which the Prosecutor alleged forced marriage was a customary international law crime within "Other inhumane acts," because the count did not establish any offence distinct from sexual slavery. Brima and Kamara were acquitted of Count 11, which charged "Other inhumane acts" as a crime against humanity.<sup>[16]</sup> Significantly for other SCSL trials, the Trial Chamber rejected as fatally defective the manner in which the Prosecution pleaded Joint Criminal Enterprise (JCE) between the AFRC and the RUF. Brima and Kanu were each sentenced to 50-years imprisonment, while Kamara received 45 years.<sup>[17]</sup>

### III. The Parties' Appeals and the Appeals Chamber's Rulings: Selected Issues

This section summarizes the Appeals Chamber's rulings on some of the more important issues appealed by the Prosecutor and the defendants.<sup>[18]</sup>

#### A. Joint Criminal Enterprise

On the Prosecutor's appeal regarding JCE, the Appeals Chamber reversed the Trial Chamber. JCE liability has proven to be a magic bullet for prosecutors since the seminal case of *Prosecutor v. Tadic* before the International Criminal Tribunal for the Former Yugoslavia.<sup>[19]</sup>

According to the Appeals Chamber, the *actus reus* of JCE liability requires (1) a plurality of persons, (2) the existence of a common plan, design, or purpose amounting to the commission of a crime prohibited in the SCSL Statute, and (3) participation of the accused in the perpetration of one of the prohibited crimes.<sup>[20]</sup>

The Trial Chamber held that the Prosecutor failed to fulfill the second element of this three-prong test. The Trial Chamber ruled that the objective of taking "any actions necessary to gain and exercise political power and control" over Sierra Leone as the JCE common purpose or design was not a crime under international law.<sup>[21]</sup>

In addressing this issue, the Appeals Chamber engaged in a cursory review of the rich JCE jurisprudence of international tribunals. It found the jurisprudence clear that the criminal purpose underpinning the JCE can derive from not only its objective, but also the means used to achieve that objective. Together, the objective and the means employed constitute the common design, plan, or purpose.<sup>[22]</sup>

The Appeals Chamber then referred to Article 25(3) of the Rome Statute of the International Criminal Court (ICC), which does not require the common purpose *amount to* a crime within the ICC's jurisdiction. Rather, the Rome Statute requires only that the criminal purpose *involve* the commission of a crime within the ICC's jurisdiction.<sup>[23]</sup>

The Appeals Chamber concluded that the Prosecutor properly pleaded JCE in the indictment because the acts contemplated towards the objective of "gaining and exercising political power" in Sierra Leone were crimes within the SCSL Statute.<sup>[24]</sup> Perhaps because of JCE's importance in the ongoing trial of former Liberian President Charles Taylor<sup>[25]</sup> and in the RUF case,<sup>[26]</sup> the Appeals Chamber clarified its position on three additional JCE-related issues.<sup>[27]</sup>

#### B. Forced Marriage

The Prosecutor charged the appellants with the crime of "Other inhumane acts" (forced marriage) under Article 2(i) of the SCSL Statute. The majority of the Trial Chamber (Justice Doherty dissenting),<sup>[28]</sup> found the count redundant and dismissed it. It adopted a restrictive approach to interpreting Article 2(i) by reasoning that the crime had to be distinguishable from the exhaustive list of sexual crimes contained in Article 2(g).

The majority of the Trial Chamber held that the Prosecutor did not demonstrate that forced marriage was a non-sexual crime, and was different from sexual slavery, and that the substantive law contained a gap that justified recognizing a separate crime of forced marriage. The Prosecutor appealed those findings.<sup>[29]</sup>

The Appeals Chamber traced the origin of "Other inhumane acts" to Article 6(c) of the Nuremberg Charter. It noted that "Other inhumane acts" was a residual provision intended to punish acts not specifically recognized as a crime against humanity, but that in their gravity, are comparable in nature. It observed that the offence is now widely recognized and captures a broad range of sexual and non-sexual acts. The Trial Chamber had erred by holding that forced marriage did not possess elements distinguishable from sexual slavery. The Appeals Chamber located two main differences<sup>[30]</sup> and defined forced marriage as follows:

a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim.<sup>[31]</sup>

To avoid violation of the *nullum crimen sine lege* (no crime without law) principle, the Prosecutor argued that customary international law recognized forced marriage as an inhumane act within the meaning of crimes against humanity in Article 2(i) of the SCSL Statute.<sup>[32]</sup> The Appeals Chamber agreed.

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It further agreed with the Prosecution that the elements of forced marriage, as a crime against humanity, had been fulfilled in this case. However, it noted that the Trial Chamber had used the evidence the Prosecution tendered to prove sexual slavery and forced marriage to instead convict the defendants for Count 9 (Outrages upon Personal Dignity).<sup>[33]</sup> The Appeals Chamber explained that, although nothing barred it from using the same facts to enter convictions of the defendants for the crime of forced marriage, it was unnecessary to do so because:

society's disapproval of the forceful abduction and use of women and girls as forced conjugal partners as part of a widespread and systematic attack against the civilian population, is adequately reflected by recognizing that such conduct is criminal and that it constitutes an "Other Inhumane Act" capable of incurring individual criminal responsibility in international law.<sup>[35]</sup>

#### C. Equality of Arms

Brima's first ground of appeal claimed that the Trial Chamber failed to ensure equality of arms between him and the Prosecutor, thereby leading to a miscarriage of justice. The Prosecutor countered that Brima's complaint focused on the broad doctrine of equality of arms but failed to show how the SCSL specifically violated this doctrine in this case.

The Appeals Chamber affirmed the right of each accused to adequate time and facilities under Article 17(4) of the SCSL Statute. It agreed that equality of arms is vital to ensure fair trials but concluded that Brima had failed to substantiate his claim.<sup>[36]</sup>

#### D. The Meaning of "Greatest Responsibility"

The SCSL has the power to prosecute persons bearing "greatest responsibility" for serious violations of international law and Sierra Leonean law after November 30, 1996.<sup>[37]</sup> An appeal by defendant Kanu forced the Appeals Chamber to address whether the phrase "greatest responsibility" limited the jurisdiction of the Prosecutor, or merely guided the exercise of prosecutorial discretion.

Kanu argued that the Trial Chamber should have determined whether he was among those bearing greatest responsibility. Kanu argued that he was not a leader bearing "greatest responsibility." Thus, the Prosecutor had not met the threshold jurisdictional requirement, so his convictions should be dismissed.<sup>[38]</sup>

The Prosecution responded that Kanu's argument was "absurd" because, if accepted, it would require an unwieldy factual analysis during pre-trial deliberations to determine that no other person bore greater responsibility than the accused. In any event, prosecutorial discretion cannot be judicially reviewed, except where bad faith and discrimination exists, which Kanu had not argued.<sup>[39]</sup>

The Appeals Chamber endorsed the Prosecutor's argument. It held that "greatest responsibility" in Article 1(1) is a mere guideline to the exercise of prosecutorial discretion, not a threshold jurisdictional requirement. Consequently, the Appeals Chamber dismissed Kanu's appeal as a "desperate" move to escape responsibility for his crimes.<sup>[40]</sup>

#### E. Mens Rea Requirement for Conscripting or Enlisting Child Soldiers

Kanu claimed that the Appeals Chamber should overturn his conviction for conscripting, enlisting, and using children under 15 years in hostilities because he lacked the requisite mens rea. Alternatively, Kanu argued that child recruitment was not a war crime by November 30, 1996, the start date of the SCSL's temporal jurisdiction.<sup>[41]</sup> The Prosecutor countered that the Appeals Chamber had already ruled, in a decision on a preliminary motion to dismiss a case for lack of jurisdiction, that the crime attracted individual criminal responsibility at customary international law by November 30, 1996.<sup>[42]</sup>

The Appeals Chamber found it "vexatious" that Kanu suggested he did not possess the mens rea for child recruitment.<sup>[43]</sup> It cited its previous decision<sup>[44]</sup> to affirm that using children in hostilities was a violation of Article 4(c) of the SCSL Statute. His conviction would stand.<sup>[45]</sup>

#### IV. Conclusion

The Appeals Judgment may be an important addition to international criminal jurisprudence or a missed opportunity to enrich that jurisprudence. For the women and children victims of the Sierra Leone war, the judgment may be lauded for upholding the conviction of the appellants, for the first time in international law, for the crime of conscripting and using children under 15 years in hostilities. Child soldiers were a particularly unfortunate feature of the Sierra Leonean conflict where, through a combination of drugs and duress, they became not only victims but also perpetrators of atrocities. In this regard, the judgment will also be of interest to the ICC Prosecutor, whose first case, *Lubanga*, hinges solely on charges of child recruitment.<sup>[46]</sup>

Similarly, those seeking to mainstream gender-based concerns into the subject matter jurisdiction of international tribunals may consider the Appeals Judgment a landmark. The Appeals Judgment recognizes, for the first time, a new crime against humanity under customary international law of forced marriage as an "Other inhumane act." Unlike the Trial Chamber, which emphasized the sexual aspects of forced marriage, the Appeals Chamber underscored other aspects of forced marriage, especially its patriarchal and coercive nature, the physical and psychological toll that it

exacted from its victims, and the exclusivity that assumed the "bush wives" were mere property of their rebel "husbands". This ruling acknowledges, albeit only symbolically, the suffering of thousands of women brutalized and traumatized by the Sierra Leonean conflict.

To others, the Appeals Judgment may represent a missed opportunity for the SCSL's highest judicial organ. This perspective perceives that the Appeals Chamber failed to leave a clear imprint on significant legal issues that resonate beyond the SCSL's courtrooms. For example, the Appeals Chamber (1) failed to assess the fair trial implications of its findings on JCE liability and forced marriage vis-à-vis the rights of the appellants to know the case against them; (2) summarily dismissed the argument by Brima regarding the important doctrine of equality of arms; (3) showed instrumentalist reasoning in deciding the "greatest responsibility" question; and (4) failed to flesh out the elements of the crime of conscripting, enlisting, or using children in armed conflict, especially given their importance to the first case before the ICC.

#### About the Authors

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#### Footnotes

[1] The Appeals Judgment was orally rendered on February 22, 2008; however, the judgment followed approximately two weeks later. See *Prosecutor v. Brima et. al*, SCSL-2004-16-A, Appeals Chamber, Judgment, Feb. 22, 2008 [hereinafter Appeals Judgment]. The Appeals Judgment and most other decisions relating to this case are available at <http://www.sc-sl.org/AFRC.html>.

[2] The second judgment of the Appeals Chamber will soon follow in *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14-T, available at <http://www.sc-sl.org/CDF.html>. The Appeals Judgment is expected on May 28, 2008.

[3] Appeals Judgment, paras. 4-5.

[4] *Id.*, paras 6-7, 17.

[5] *Id.*, para. 8.

[6] *Id.*, paras. 17-18.

[7] *Prosecutor v. Brima*, SCSL-2003-06-I, Indictment, Mar. 7, 2003; *Prosecutor v. Brima*, SCSL-2003-06-I, Decision Approving the Indictment and Order for Non-Disclosure, March 7, 2003; *Prosecutor v. Kamara*, SCSL-2003-10-I, Indictment, May 26, 2003; *Prosecutor v. Kamara*, SCSL-2003-10-I, Decision Approving the Indictment, the Warrant of Arrest, and Order for Non-Disclosure, May 28, 2003; *Prosecutor v. Kanu*, SCSL-2003-13-I, Indictment, Sept. 15, 2003; and *Prosecutor v. Kanu*, SCSL-2003-13-I, Decision Approving the Indictment, the Warrant of Arrest and Order for the Transfer and Detention and Order for Non-Public Disclosure, Sept. 16, 2003.

[8] Appeals Judgment, para. 13.

[9] *Prosecutor v. Brima et. al*, SCSL-2004-16-PT, Further Amended Consolidated Indictment, Feb. 18, 2005, available at <http://www.sc-sl.org/AFRC.html>.

[10] Namely, extermination, murder, rape, sexual slavery and any other form of sexual violence, "Other Inhumane Acts" and enslavement.

[11] Acts of terrorism, collective punishments, violence to life, health and physical or mental well-being of persons (in particular murder and mutilation of civilians), outrages upon personal dignity and pillage.

[12] *Prosecutor v. Brima et. al*, SCSL-04-16-T, Trial Chamber, Judgment, June 20, 2007, available at <http://www.sc-sl.org/AFRC.html>.

[13] *Prosecutor v. Brima et. al*, SCSL-04-16-T, Sentencing Judgment, July 19, 2007, available at <http://www.sc-sl.org/AFRC.html>.

[14] <http://www.sc-sl.org/AFRC.html>. Article 6(1) of the SCSL Statute provides:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or executive of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.

[15] Article 6(3) of the SCSL Statute establishes command responsibility, in the following terms:

## Justice Initiative

Tuesday, 20 May 2008

Press Release

### **GROUNDBREAKING REPORT ASSESSES IMPACT OF YUGOSLAVIA TRIBUNAL**

For Immediate Release

Contact: David Berry: +1-212-548-0385; [dberry@justiceinitiative.org](mailto:dberry@justiceinitiative.org)

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(New York)

NEW YORK, May 20, 2008—A groundbreaking new report published today by the Open Society Justice Initiative examines the impact in Serbia of the International Criminal Tribunal for the former Yugoslavia (ICTY).

Shrinking the Space for Denial: The Impact of the ICTY in Serbia is the most comprehensive analysis to date of the court's impact in a country directly affected by its work. The report, by Diane Orentlicher, professor of international law at American University's Washington College of Law and special counsel to the Justice Initiative, is being published in conjunction with the fifteenth anniversary of the ICTY's founding.

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<[http://www.justiceinitiative.org/db/resource2?res\\_id=104091](http://www.justiceinitiative.org/db/resource2?res_id=104091)> to download the full report as a PDF or Word document.

The 134-page report provides a detailed look at the ICTY's role and challenges in:

- Dispelling the impunity of Serbians accused of playing a key role in atrocities committed in the Balkan wars of the 1990s;

- Contributing to Serbian society's progress in acknowledging and condemning Serbian leaders' and institutions' role in those atrocities; and

- Strengthening the rule of law in Serbia.

Shrinking the Space for Denial also assesses how the ICTY's own performance has affected its impact in Serbia, with a special focus on the trial of Slobodan Milošević.

"Perhaps the most surprising conclusion," Professor Orentlicher noted, "is that the ICTY has helped stimulate a serious, if still imperfect, process of war crimes prosecutions in Serbia—something that would not have happened without the Tribunal."

While focusing on the ICTY's impact in Serbia, Shrinking the Space for Denial notes that Serbia's failure to arrest Ratko Mladić or to ensure the arrest of Radovan Karadžić—more than a dozen years after their indictment on genocide charges—risks overwhelming the Tribunal's positive impact on victims in Bosnia and Herzegovina. In the words of a Bosnian woman interviewed by Professor Orentlicher, the ICTY has done "so many good things but they're in the shadow of Karadžić and Mladić."

The report is based on interviews with scores of key figures from the ICTY and knowledgeable sources in Serbia, as well as an extensive review of the court's history and jurisprudence.

"The ICTY is one of the most important international tribunals since Nuremburg," said Robert O. Varenik, acting executive director of the Open Society Justice Initiative. "This report is essential reading for anyone interested in getting beyond the theory of international justice and looking at real-world impacts."