1254) SCSL-04-15-A (041 – 115) 041

SPECIAL COURT FOR SIERRA LEONE

APPEALS CHAMBER

Before: Hon. Justice Renate Winter, Presiding Judge
Hon. Justice Jon Kamanda
Hon. Justice Emmanuel Ayoola
Hon. Justice George Gelaga King

Registrar: Herman von Hebel

Date: 28TH April 2009

PROSECUTOR **Against** **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-A)

Public Document

KALLON'S NOTICE AND GROUNDS OF APPEAL

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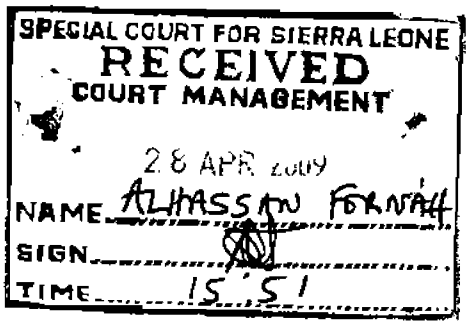

KALLON NOTICE AND GROUNDS OF APPEAL

I. INTRODUCTION

1.1. On 25 February, 2009 the Trial Chamber rendered its oral judgment in this case. On the 2 March 2009, the Chamber filed its written judgment in which the accused Morris Kallon was found guilty of : **Count 1**: Acts of Terrorism, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II[1],**GUILTY**, of committing Acts of Terrorism by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, for crimes set forth in Counts 3-11 and Counts 13[2],**Count 2:** Collective Punishments, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II[3], of committing Collective Punishments by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute, for crimes set forth in Counts 3 to 5 and Counts 10 to 11[4], **Count 3**: Extermination, a Crime Against Humanity[5], of committing Extermination by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute[6], **Count 4** : Murder, a Crime Against Humanity[7], of committing Murder by participating in a joint criminal enterprise, pursuant to Article 6(1)[8], **Count 5**: Violence to life, health and physical or mental well-being of persons, in particular murder, a Violation of Article 3 Common to the Geneva Conventions and of

[1] Punishable under Article 3(d) of the Statute:
[2] This is in relation to events in Tikonko, Sembehun and Gerihun in BO District; Kenema Town and Tongo Field in Kenema District; Koidu Town, Tombodu, Yardu, Penduma, Bempeh, Bomboafuidu, Sawao, Wendedu and Kayima in Kono District; and in Kailahun Town in Kailahun District; and pursuant to Article 6(3) of the Statute for a crime under Count 7 in Kissi Town in Kono district;
[3] Punishable under Article 3(b) of the Statute
[4] This is in relation to events in Kenema Town in Kenema District, Tombodu, Penduma and Yardu in Kono District, and Kailahun Town in Kailahun District;
[5] Punishable under Article 2(b) of the Statute
[6] This is in relation to events in Tikonko in BO District; in Tongo Field in Kenema District; in Tombodu and Koidu Town in Kono District; and in Kailahun District;
[7] Punishable under Article 2(a) of the Statute
[8] This is relation to events in Tikonko, Sembehun and Gerihun in BO District; Kenema Town and Tongo Field in Kenema District; in Koidu Town, Tombodu, Penduma and Yardu in Kono District; and in Kailahun Town in Kailahun District; and of instigating Murder pursuant to Article 6(1) in relation to an event in Wendedu in Kono District;

Additional Protocol II, of committing Murder by participating in a joint criminal enterprise pursuant to Article 6 (1) of the Statute[9],

Count 6: Rape, a Crime Against Humanity[10], of committing Rape by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute[11],

Count 7: Sexual Slavery, a Crime Against Humanity[12], of committing Sexual Slavery by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute[13],

Count 8: Other Inhumane Acts, a Crime Against Humanity[14], of committing other inhumane acts (forced marriage) by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute[15];

Count 9: Outrages upon personal dignity, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II[16], of committing outrages against personal dignity pursuant to Article 6(1) of the Statute by participating in a joint criminal enterprise[17], **Count 10**:Violence to life, health and physical or mental well-being of persons, in particular mutilation, a Violation of Article 3 Common to the Geneva Conventions and in Additional Protocol II[18], of committing mutilations by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute[19],

Count 11: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute: of other inhumane acts (physical violence) by participating

[9] This is relation to events in Tikonko, Sembehun and Gerihun in BO District; Kenema Town and Tongo Field in Kenema District; in Koidu Town, Tombodu, Penduma and Yardu in Kono District; and in Kailahun Town in Kailahun District; and of instigating Murder pursuant to Article 6(1) in relation to an event in Wendedu in Kono District;

[10] Punishable under Article 2(g) of the Statute

[11] In relation to events in Koidu Town, Bumpeh, Tombodu, Penduma, Bomboafuidu, Sawao and Wendedu in Kono District

[12] Punishable under Article 2(g) of the Statute

[13] In relation to events in Koidu Town and Wendedu in Kono District and locations in Kailahun District; pursuant to Article 6(3) of the Statute in relation to an event in Kissi Town in Kono District

[14] Punishable under Article 2(i) of the Statute

[15] In relation to events in Koidu Town and Wendedu in Kono District and locations in Kailahun District; pursuant to Article 6(3) of the Statute in relation to an event in Kissi Town in Kono District

[16] Punishable under Article 3(e) of the Statute

[17] In relation to events in Koidu Town, Bumpeh, Tombodu, Penduma, Bomboafuidu, Sawao and Wendedu in Kono District and in locations in Kailahun District; pursuant to Article 6(3) of the Statute in relation to an event in Kissi Town in Kono District

[18] Punishable under Article 3(a) of the Statute

[19] In relation to events in Tombodu, Wendedu, Penduma, Yardu, Kayima and Sawao in Kono District

in a joint criminal enterprise, pursuant to Article 6(1) of the Statute[20], **Count 12**: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, and other serious Violation of International Humanitarian Law[21], of planning the use of children under the age of 15 years to actively participate in hostilities pursuant to Article 6(1) of the statute[22];

Count 13: Enslavement, a Crime against Humanity, punishable under Article2(c) of the statute: of the committing Enslavement by participating in a joint criminal enterprise, pursuant to Article 6 (1) of the statute and also under 6(3) of the Statute[23], **Count 14**: Pillage, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute: of Pillage, by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute[24], **Count 15**: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, an Other Serious Violation of International Humanitarian Law, punishable under Article 4(b) of the Statute: of committing and ordering attacks on peacekeepers pursuant to Article 6(1) in Bombali District; and pursuant to Article 6(3) of the Statute[25], **Count 17**: Violence to life, health and physical or mental well-being of persons, in particular murder, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute: **GUILTY**, of Murder pursuant to Article 6(3) of the Statute[26].

1.2. The accused Kallon was acquitted of Counts 16: Murder, a Crime against Humanity, punishable under Article 2(a) of the Statute and **18**: Taking of hostages, a

[20] In relation to events in Kenema Town in Kenema District; in Tombodu, Wendedu, Penduma, Yardu, Kayima and Sawao in Kono District
[21] Punishable under Article 4(c) of the Statute
[22] In relation to events in Kenema, Kailahun, Kono and Bombali Districts
[23] In relation to events in Tongo Field in Kenema District; in Kono District; and in Kailahun District under 6(1); and pursuant to Article 6(3) in relation to events throughout Kono District
[24] In relation to events in Sembehun in BO District; and Koidu Town and Tombodu in Kono District
[25] In relation to events committed in Bombali, Port Loko, Kono and Tonkolili Districts
[26] In relation to events in Bombali and Tonkolili Districts

violation of Article 3 Common to the Geneva Conventions and Additional Protocol II, punishable under Article 3(c) of the Statute.

On 8 of April 2009, the Chamber delivered its Sentencing judgement in which it sentenced the accused Kallon to a period ranging from 28-40 years. The Chamber ruled that the sentences would run concurrently.

1.3. The Accused Morris Kallon respectfully submits his Notice of Appeal from the judgment of the Trial Chamber, pursuant to Article 18 of the statute of the Special Court of Sierra Leone (The Statute) and Rule 88 (c) of the Rules of Procedure and Evidence as well as from the Sentencing judgement. The Appeals Chamber and all parties are hereby notified that the Trial Chamber's judgment is sufficiently erroneous in law to invalidate the conviction, and sufficiently erroneous in fact to occasion a miscarriage of justice; and should be set aside. The Trial judgment erred in its assessment of evidence, appreciation of the elements of criminal liability and made a wrong and incoherent legal and factual finding.

II. GROUND 1: VIOLATION OF FAIR TRIAL RIGHTS

2.1 The Chamber erred in law and fact by failing to accord the accused Kallon a fair trial. In particular:

2.2 The Chamber erred in law and fact by failing to accord the accused Kallon the opportunity to plead to the amended indictments and maintaining that erroneous position in the judgment (paras 434-435 p 150).

2.3 The Chamber erred in law in expunging the accused Kallon's motion to exclude evidence outside the scope of the indictment.(see Order Relating to Kallon Motion Challenging Defects in the Form of the Indictment and Annexes A,B and C (TC) 31 January 2008 p3) The Chamber further erred in law by deciding to expunge the

said motion on the strength of a motion by the Prosecution without according the accused the opportunity to be heard, and thus violating the accused's statutory rights and in particular his rights under Article 17(2) and 4(b) of the statute.

2.4 The Chamber erred in law and fact by failing to find that the accused had been irreparably prejudiced as a result of a fundamentally defective indictment and that the cumulative effect of the defects in the indictment had irredeemably prejudiced the accused's right to a fair trial (Para 472 p 161).

2.5 The Trial Chamber erred in law and in fact by using adverse evidence of a co-accused and in respect of which he had no notice to convict him thus violating his Statutory and rule 82, rights (par 609 pp202-203 paras 2268-2299 pp 662-669).

2.6 The Chamber erred in law and applied the wrong legal standard/test in dismissing the accused's motion of acquittal and failing to consider the crucial issues raised in the context of the Defence of the accused (dates), and further erred in law by applying the wrong legal standard/test to dismiss the accused's motion to exclude evidence outside the scope of the indictment to the prejudice of the accused.

2.7 The Chamber further erred in law and in its factual analysis by failing to make a distinction between a motion to exclude evidence outside the scope of the indictment and one for defects in the indictment, to the prejudice of the accused.(para 335 pp111-112)

2.8 Despite its findings that the Prosecution had not established the presence of the accused Kallon in many of the alleged crime bases the Chamber nevertheless proceeded to consider at length and dismiss in a prejudicial fashion the accused Kallon's alibi in respect of those crime locations. The Chamber's evaluation of the accused Kallon's alibi amounted to shifting the burden of proof to him.[27]

[27] In relation to Kenema, the Chamber accepted that the evidence concerning the presence of Kallon in Kenema at the relevant time was inconclusive (paragraph 636) at paragraph 618, the Chamber indeed cites

2.9 The Chamber also erred in law and in its factual findings by misconstruing the purpose of a criminal trial and thus shifting the burden of proof to the accused by constantly applying the wrong evidentiary standard of the search for the truth as opposed to a determination of proof beyond reasonable doubt (at paragraph 531 pp180-181) the Chamber blames the Sesay and Kallon witnesses for failing to assist the Chamber in its search for the truth)

2.10 The Chamber erred in law and fact by relying, proprio motu, on consistent pattern of conduct to convict the accused Kallon in disregard of the Rules and its own articulation of the standard applicable to consistent pattern of conduct(see par 482 p 165.The Chamber misapplies this at paras 1293-1294 p390 dealing with Forced Marriages, para 1493 p 445. see also para 1707 p508 where the Chamber relieves the Prosecution of his burden of proof in relation to knowledge on training of children for combat,1745 p 518 where the Chamber relies on persistent pattern of conduct to establish the ages of the alleged child soldiers thus relieving the prosecution of his burden of proof).

2.11 The Trial Chamber erred in law and exhibited bias by relieving the Prosecutor of the Burden of proof of sexual offenses counts 6-9 by Proprio muto raising the presumption of lack of consent in Paragraphs 1471, pg 439 and applying it collectively to all allegations in those counts to convict the appellant.

2.12 The Chamber erred in law and fact by taking the drastic and draconian step of whole sale repudiation of the accused Kallon's defence based on the Chamber's

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witness 071,125 and 367 who corroborated Kallon's absence in Kenema at the time of the intervention. In respect of Masiaka the Chamber noted that "the evidence presented by the prosecution and accepted by the Chamber leads us to conclude that the evidence presented by the Kallon defense does not establish the presence of Kallon in Masiaka at the time .we therefore decline to address the evidence of the witnesses in support of the alibi(paragraph 637)
Further, The Chamber acknowledged that not all of Kallon's claims in support of the alibi constituted an alibi (paragraph 631) yet it proceeded to evaluate the various testimonies as alibi testimony (paragraph 611-630,631-645)

misrepresentation of the accused's evidence thus violating his Statutory rights (Par 609 p201-202).

2.13 To compound the prejudice caused, the Trial chamber used the very testimony it had purported to repudiate to prejudicially support a pre-determined finding of guilt while repudiating and rejecting the same when the said testimony tended to the exculpate the accused Kallon (Para 39 p13 footnote 106; Para 651 p215 footnote 1188; Para 656 p217 footnote 1202; Para 666 p220 footnote 1226; Para 667 p221 footnote 1232; Para 672 p222 footnote 1240; Para 741 p243 footnote 1419).

2.14 Furthermore, the Trial Chamber deliberately misinterpreted the largely corroborated testimony of the accused Kallon in relation to that of witness TFI-122 on the events in Kenema thus leading to a repudiation of the accused Kallon's testimony (Para 609 pp201-202).

2.15 The Chamber erred in law and fact by misrepresenting various testimonies with the sole intention of arriving at a guilty verdict (Par 2098 p621 where the Chamber mischaracterizes the evidence of TF1-078 in respect of the unpleaded location of KAIDU at paras 1225-1233 pp372 and 374 and paras 2136 and 2137 p 630 and Par 2148 p633 and also the overall testimony of TF1-078 and overwhelming prosecution and Defence testimonies on the objective and authority to issues passes in RUF occupied territories-in order to arrive at the erroneous conclusion that Kallon had authority over fighters in Kono.

2.16 Again, the Chamber deliberately misinterpreted the evidence in order to arrive at the conclusion that it was "highly unlikely" that Kallon as "Battle-Ground" commander would have been afraid of arresting Kailondo in relation to the UNAMSIL events of May 2000 (Para 609 p202; Paras 640 p212). The Chamber erred by misrepresenting the evidence and or ignoring its own pertinent conclusions and erroneously employing circumstantial evidence to arrive at a wrong and

prejudicial conclusion as one of the bases for repudiating the accused Kallon Defence.[28]

2.17 Furthermore, the Chamber, in relation to the same UNAMSIL events, erred in law and fact in purporting to repudiate the accused Kallon's testimony on the basis of the accused G-bao's witness DAG-11 (Para 609 p201). The Chamber had earlier rejected the entirety of the testimony of the witness but for the accused Kallon, decided to selectively use the witness to sustain its repudiation of Kallon's testimony (Para 578 p193). The Chamber further erred by disregarding its stated position and consistent practice during trial on the inadmissibility of a co-accused's adverse testimony.

2.18 The finding of the Trial Chamber at paragraph 633 of the *Trial Judgment* that "the Kallon Defence (...) moulded its alibi to fit the case for the Prosecution as it was presented" is subjective and erroneously prejudicial. In the case of Kenema District, a minimum of three Prosecution witnesses, including TF1-071, TF1-125 and TF1-367 – whose testimony the Court especially accepted [29], testified that Mr.

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[28]The Chamber noted at Para 609 p202 that the accused had testified that in May 2000 he had been afraid to arrest Kailondo who was acting on Sankoh's orders. The Chamber found this" highly unlikely" as Kallon was Battle Ground (sic) Commander at the time. This reasoning by the Chamber contradicts several other findings in the Judgment that would support Kallon's testimony:
Sankoh was at times authoritarian if not dictatorial –he had paramount responsibility over all activities within the RUF and determined its political and military goals (para 658)Vanguards were powerful, (para 667) and the vanguards included Mike Lamin, Sesay, Kallon, Gbao Bockarie, Kailondo, Co Rocky etc (paragraph 668) and that a Vanguard could not obstruct the orders or activities of a fellow (para 667), Ranks in the RUF did not have necessarily the same meaning as ranks in a conventional army (para 670),While ranks were used and respected by the RUF, they were not strictly followed .An individual's assignment superseded rank and was the more important factor in seniority (paragraph 672) .The Chamber illustrates this point by noting that Foday Sankoh the RUF leader remained a corporal throughout the conflict (footnote 1239) (para 649), that the RUF command structure was determined by other factors than simply rank. "The RUF command structure was thus polycentric, in that a commander's importance and his power and authority over troops were derived from a combination of multiple recognized sources (para 649),Between 1996 and 2000 the composition of the RUF organization and the roles of its commanders varied depending on where and how military operations were conducted and also to a significant extent, on changing allegiances amongst its leadership (para 650) Foday Sankoh was the driving force behind the RUF and shaped its political and military ideology. See also Para 672 at page 222where the Chamber concludes that while ranks were used and respected by the RUF, they were not always strictly followed.
[29] Paras. 550-552 of the Trial Judgment in relation to witness TF1-367 who the Chamber described as credible and trustworthy.

Kallon was not in Kenema District at the material time of the Indictment.[30] The Kallon Defence thus avers that it is highly prejudicial and subjective to conclude that any Defence witness, including but not limited to Kallon and DMK-047[31] who corroborated the Kenema account, for example, were either self-serving or incredible.

2.19 The Trial Chamber Further mischaracterized and subjectively treated the evidence of TF1-041, a Prosecution witness who testified about events at the DDR Camp in Bombali District in early May 2000 and was corroborated by Mr. Kallon . The repudiaion of Mr. Kallon's testimony on the basis of this misrepresentation and the wrong conclusion drawn therefrom have occasioned a miscarriage of justice. In particular, the Trial Chamber's conclusion that the said account of TF1-041 and Mr. Kallon did not occur on 1st May 2000 as suggested by Mr. Kallon but on 28 April 2008 "in the light of other [unknown and unsubstantiated] evidence"[32] is factually erroneous.

2.20 Furthermore, the conclusion of the Trial Chamber in its evaluation of Mr. Kallon's alibi defence regarding Bo District at paragraph 635 pp 210-211 of the *Trial Judgment* is also prejudicial. The Trial Chamber failed to show the evidence, including Transcripts for example, it relied upon to arrive at its finding that "there is no evidence to support an alibi for the Accused in Bo". The Trial Chamber had repeatedly stated in its *Trial Judgment* that Mr. Kallon only went to Bo in early August 1997,[33] after the crimes found to have been committed in Bo District had occurred. At paragraph 768 of the *Trial Judgment*, the Trial Chamber found that "it was not until August 1997 when Bockarie assigned Kallon to Bo as the senior RUF Commander that an RUF contingent was based there. Kallon remained in Bo until February 1998".

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[30] Para. 618, pp 204-205.
[31] Para 618 pp 204-205
[32] Para. 633 p210.
[33] See paras. 741 p 243 and 768 p 251 of the Trial Judgment. See also para. 614 pp 203-204 of the said Judgment, ref. to Kallon's Notification of Alibi and his testimony on alibi to the Court, Transcript of 11 April, 2008, pp. 100-102.

2.21 The Trial Chamber's finding on Mr. Kallon's alibi for Masiaka is, prejudicial and inconsistent with the Trial Chamber's holding that 'Mr. Kallon's claim of alibi relevant to Masiaka is "false"'. Furthermore the Trial Chamber found that "the evidence presented by the Prosecution and accepted by the Chamber, leads us to conclude that the evidence presented by the Kallon Defence does not establish the presence of Kallon in Masiaka at this particular time".[34]

2.22 The Trial Chamber erred in law and fact by failing to support its finding on Five-Five Spot and Tombodu.[35]

2.23 Further, the finding of the Trial Chamber at paragraph 639 p 211 of the *Trial Judgment* on Gold Town, is irrelevant, prejudicial and erroneous to the extent the Chamber concluded that Mr. Kallon was present at Gold Town in Kono District at the time of his alibi claim on the basis that Mr. Sesay had ordered him to attack the town in mid-December 1998, which period is outside the timeframe for joint criminal enterprise in Kono District as found by the Court.

2.24 The Chamber further erred in law and fact by failing to rely on the statement of agreed facts between the Accused and the Prosecutor and which in a fundamental manner impacted on the accused's criminal responsibility, identity and alibi and without ascribing any reasons therefore (this is despite holding that it would rely on those fact agreed upon ,if there is no prejudice to the other Accused, paragraph 521 p 177), and by holding that there was no provision in the Rules pertaining to agreed facts (paragraph 521 p177)

2.25 While the Chamber in a blanket generalised fashion accepted the credibility of certain categories of prosecution witnesses such as victims(Para 536 p 182 and Unamsil witnesses (Para 644 p213), it nevertheless exhibited bias by failing to

[34] Para. 637 p 211 of the Trial Judgment.
[35] Para. 638 p 211 of the Trial Judgment.

consider the same categories of Defence witnesses in similar light and thus occasioning a miscarriage of justice

2.26 The Chamber erred in law and violated the accused's right to a reasoned opinion by relying on the separate opinion of the Hon Justice Bankole Thompson which in relation to the JCE mode of liability was for all intents and purposes a dissenting opinion thus invalidating the Chamber's verdict in relation to the accused Kallon's JCE liability(Separate Concurring Opinion of Justice Bankole Thompson Paras 18-23 pp 702-704) Further, the Chamber erred in law and fact and exhibited bias by failing to apply the principles and strong reservations expressed by the Hon Justice Bankole in relation to JCE liability (paras 18-23 pp 702-704.)

2.27 Further the Chamber erred in law and fact by applying the JCE principles of liability in a discriminatory manner and by failing to apply in respect of the accused Kallon the principles and standard applied by the Hon Justice Boutet in his dissenting opinion(Dissenting Opinion of Justice Pierre G. Boutet at Paras 6- 18 pp 689-694) The opinions of the Hon Justice Bankole and Hon Justice Boutet in his dissenting opinion would- if applied to the accused Kallon- invalidate the guilt verdict against him on JCE liability.

2.28 The accused Kallon was denied the opportunity of a trial by impartial judges. Although the Appeals Chamber had dismissed the accused's request for the recusal of the Hon Justice Bankole, the learned judge persisted in his bias as exhibited in his separate opinion in which he criminalizes the RUF and hence the accused by concluding they were involved in an unjust war (Paras 79-82 pp721-722), the Appellant urges the appeals Chamber to review and or reconsider its Decision on the recusal of the Hon Justice Bankole who further exhibited bias by expressing strong reservations about the application of JCE and rather than apply those reservations to acquit the accused, proceeded to convict him.

III. GROUND 2: GENERAL ERRORS RELATING TO THE APPLICATION OF JCE

3.1 The Chamber erred in law and in its factual analysis by holding that there was a common plan between senior RUF and senior AFRC leaders. (Paras 1977,p581 1986 p985,Paras 2003-2008 pp 590-591) and in which the accused Kallon was a participant, and that this agreement (shared intent) entailed the use of criminal means.

3.2 The Chamber erred in law and fact by its misapplication of the theory of JCE to the prejudice of the accused Kallon and in a manner that violates the principle of *nulla poena sine culpa*. Further:

3.3 The Chamber erred in law and fact by holding that the accused Kallon participated and significantly contributed in a JCE (Para 2003-2008 pp590-591; Para 2055-2056 pp605-606; Para 2093-2103 pp619-622).

3.4 The Chamber erred in law and in its factual analysis by criminalizing the RUF ideology which it described as assisting and maintaining the cohesion of the RUF and was thus a driving force in the pursuance of the objectives and goals of the revolution to eventually take control of the people and territory of Sierra Leone.[36] (Para 656 pp 216-217).The Chamber further erred by holding that the accused, in maintaining their fidelity to their ideology, either knew or had reason to know that[such] crimes would be committed against innocent civilians who were designated as collaborators of the regime and as enemies to the AFRC Junta regime, by the RUF rebels in support of their broad based struggle that the RUF ideology purported (Para 2171 P 638)

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[36] The Chamber blames the RUF which 'claimed to be fighting to overthrow a corrupt military government in order to realize the right of Sierra Leone to true democracy and fair governance –but that when democratic elections were held in 1996,the RUF boycotted the ballot box and continue active hostilities (paragraph 652)

3.5 The Chamber having ruled at para 368 p 125 (see also para2076 p615) that despite the divisibility of JCE, it would not consider whether the evidence demonstrates a second JCE involving only members of RUF(which argument should apply to evidence on crimes committed solely by members of the AFRC), it erred in law and fact by convicting the accused Kallon for crimes which were not committed by Kallon himself or the product of a joint action by RUF/AFRC –see also footnote 704 p125 of the judgment (Paras1974-1975 pp580-581 2063-2064 pp608-610 Paras 2050-2051 pp 603-604 ,Par 2156 pp634-635).

3.6 In the alternative and in respect of the above paragraphs the Chamber erroneously convicted the accused on the basis of acts for which he did not share the intent to commit those crimes with the perpetrators in question.

3.7 The Chamber erred in law and fact by convicting the accused on JCE liability based on a defective indictment and further failing to consider the objections raised by the Appellant including during the motion of acquittal; to the prejudice of the accused (Paras1974-1975 pp580-581 2063-2064 pp608-610 Paras 2050-2051 pp 603-604 ,Par 2156 pp634-635)

3.8 The Chamber erred in law and in its factual analysis by holding that the accused's role in the JCE had been pleaded and or particularized (Par 393 –pp134-135).The Chamber failed to appreciate that what was pleaded and particularized in the indictment was the accused's alleged positions in the RUF and not his role and responsibility for the specific crimes alleged to have been committed by him pursuant to a theory of JCE. The Chamber thus erred in law by failing to find that the indictment did not provide material particulars of the accused's JCE role in the crimes charged.

3.9 In the alternative, while the Chamber held that the accused's JCE liability was based on his role and leadership positions within the RUF (Par 393 –pp134-135), the Chamber erred in law and in its factual analysis by failing to find that the roles

and leadership positions of the accused as pleaded in the indictment were never proved beyond reasonable doubt in respect of the crimes for which the accused was convicted. (Paras1974-1975 pp580-581 Paras 2063-2064 pp608-610 Paras 2050-2051 pp 603-604 ,Par 2156 pp634-635).

3.10 The Chamber erred in law by failing to find that the indictment did not specify the category of JCE under which the accused Kallon was charged (Paras 377-385, pgs 128-132).

3.11 The Chamber erred in Law and in its factual analysis by convicting the accused under a broad and unprecedented expansive JCE liability that rendered the conviction one of guilt by association (Paras1974-1975 pp580-581 Paras 2063-2064 pp608-610 Paras 2050-2051 pp 603-604, Par 2156 pp634-635).

3.12 The Chamber committed an error of law by failing to clarify whether it based its convictions on a type 1 JCE type 2 JCE or type 3 JCE. Although the Chamber ruled it would not consider type 2 JCE, it nevertheless proceeded to base many of its conclusions on the same ((Para 1351 pgs 404-405; Para 1480 pg 441, 442; Para 1992 pg 387; Para 1997; Para 2004 pg 390; Para 2080 pg 616; Para 2006 pg 591; Para 2070 pg 613). Further, the Trial Chamber erred in law and in fact in its application of the various categories of JCE.

3.13 The Chamber erred in law and fact by holding that non members of the JCE were used by members to commit crimes that were either intended by members to further the common design or which were reasonably foreseeable consequence of the common purpose (Para 2080 p616).

3.14 The Chamber erred in law and fact by holding that, "...a joint criminal enterprise is divisible as to participants, time and location. It is also divisible as to the crimes charged as being within or the foreseeable consequence of the purpose of the joint criminal enterprise", and applying this formulation, unsupported by jurisprudence

to the prejudice of the accused (Para 354 pg120-121; Para 2067 pg 612; Paras 2080-2081 pg 616).

IV. GROUND 3: ERRORS RELATING TO THE CHAMBER'S INTERPRETATION OF SHIFTING NATURE OF THE PROSECUTION THEORIES ON THE VARIOUS ASPECTS OF THE JCE

4.1 The Trial Chamber erred in law and fact by failing to find that the Prosecution theory of of the JCE had constantly shifted during the Trial and consequently irreparably prejudiced the accused's ability to prepare his Defense. In particular;

4.2 The Chamber erred in law and in fact by making findings and convicting the accused on the unpleaded participation in the systemic form of participation in JCE(Para 1351 pp404-405,para 1490 pp441-442)

4.3 The Chamber correctly concluded that the Prosecutor had changed his theory of the nature and purpose of the JCE in the middle of the Trial but erred in law when it proceeded to find that the said change had caused no prejudice to the accused (Paras 370-376 pp 126-128).

4.4 The Chamber erred in law and in fact by failing to find that the shifting nature of the prosecution's theory of the JCE in relation to the time frame caused prejudice to the accused's preparation for his Defense (Paras 360-361 pp 122-123).

4.5 The Chamber erred in law and in its factual analysis by failing to find that the shifting nature of the Prosecution theory on participants of the JCE caused prejudice to the accused's preparation for his defence (Paras 362-369 pp 123-126)

4.6 The Chamber erred in law and in fact by failing to find that the shifting nature of the prosecution's theory of the form and category of JCE in which it alleged the

accused participated, prejudiced the accused's preparations for his defence. (Paras 377-385 pp 128-132)

4.7 The Chamber erred in law and in fact by holding that the Prosecution's shifting theory of the counts alleged to have been either within or the foreseeable consequence of the joint criminal enterprise did not occasion any prejudice to the accused (Paras 386-392 pp 132-134)

4.8 The Chamber correctly found that where the second category of JCE is alleged, the Prosecution must clearly identify the Counts which it considers to have been committed in furtherance of the common purpose shared by all participants in the system. The Chamber erred in law and fact by finding that the Prosecution was not obliged to specify the category of JCE on which the prosecution relied in relation to each alleged offence (Para 390 pp 133-134)

4.9 Although the Chamber found that the second category of JCE had not been properly pleaded and that the attempts to include it belatedly had prejudiced the accused, the Chamber nevertheless erred in law by failing to find that this shift in the Prosecution theory of the case further contributed to the cumulative prejudice caused to defense resulting from the imprecise and continually shifting nature of the Prosecution theory on JCE during the Trial. This prejudice was compounded by the Chamber's own reliance on the second category although not expressly stating so.

4.10 The Chamber erred in law by failing to find that the cumulative effect of defects in the indictment and shifting theories on JCE caused irreparable prejudice (Para 394 p135).

V. GROUND 4: ERRORS OF LAW RELATING TO GENERAL INDICTMENT ERRORS

5.1 The Chamber erred in law and fact and misapplied the law on the primacy of the indictment as charging instrument, to the prejudice of the accused. In particular:

5.2 Trial Chamber erred in convicting the accused for alleged crimes committed in locations that were never pled or which had been withdrawn in the motion on acquittal and the decision that followed.(Para 213 p67; Para 183 p59; Para 46 p15; Para 1209 p367; Para 1216 p369; Para 1225 p372; Para 1237 p375; Para 1242 p376; Para 1299 p392; Para 1307 p393; Para 1316 p395; Paras 1318, 1319, 1320 p396; Para 1331 p399; Para 1339 p400; Para 1372 p411; Para 1373 p411; Para 1735 p520; Para 1833 p542; Para 1865 p552; Para 1867 p553; Para1945 pp572-573)

5.3 While the Chamber correctly found that the criminal acts which form the basis of the conviction are material facts which must be pleaded in the indictment and that therefore the indictment was defective where it failed to specify the criminal acts which the prosecution alleged amounted to the crimes charged in the relevant Counts of the indictment, the Chamber erred in law and in its factual analysis by holding that the crimes not specifically charged in the indictment could be added by way of post-indictment pleadings and disclosures(Paras 411-419 pp141-144).

5.4 In the alternative and without prejudice to the above ground the Chamber erred in law and in its factual analysis by convicting the accused on criminal acts not pleaded in the indictment despite its assurance earlier in the judgment that it would enter a conviction, only in relation to criminal acts which were pleaded in the indictment (Para 419 pp144).

5.5 The Chamber erred in law and fact by considering for conviction evidence in respect of crimes it found were committed at locations not expressly pleaded in the indictment (Para 146 p49) and by misinterpreting the AFRC Appeals Judgment on un-pleaded locations to mean that it gave the Trial Chamber unfettered discretion to

admit evidence that falls outside locations not specifically mentioned in the indictment (Para 422 p146)[37].

5.6 The Chamber erred in law and in its factual analysis by holding that it could consider conduct not amounting to a crime under counts 3-14 in support of counts 1-2 of the indictment (Paras 450-455 pp154-155 of the judgment) .The Chamber further erred in law by finding that the CDF indictment and the RUF indictments were similar in relation to the material facts supporting criminal responsibility for the counts of terrorism and collective punishment (Para 455 p155)

5.7 While the Chamber found that the Prosecution had not exercised the diligence expected of it with respect to the pleading of material facts in the indictment it erred in law and in its factual analysis by concluding that it did not consider that the volume of defects in the indictment taken cumulatively, had deprived any of the accused of their right to a fair trial. (Para 472 p161)

5.8 The Chamber erred in law by failing to address the merits of each defect in the form of the indictment and instead adopting a generalized approach and without a proper basis concluding that the volume of defects in the indictments taken cumulatively, had not deprived the accused of their right to a fair trial (Para 472 p161)

5.9 The Chamber erred in law and in fact by holding that the Accused Kallon, had not made contemporaneous objections to evidence outside the scope of the indictment, when the Chamber's own position (acknowledged in the judgment at paragraph 480) was that it would determine the probative value of each piece of evidence at the end of the case, in light of the evidence as a whole.

[37] For counts 12 and 13 for instance in respect of Kailahun para 427, the Chamber said there was no prejudice caused although some locations were not pleaded.

5.10 The Chamber erred in law and fact by holding that, "where the Defence has raised no objections during the course of the trial, however, and raises the matter only in its closing brief, the burden shifts to the Defence to demonstrate that the Accused's ability to defend himself has been materially impaired, unless it can give a reasonable explanation for its failure to raise the objection at trial." (Para 336 p113)

VI. GROUND 5: PERSONAL COMMISSION OF CRIMES

6.1 The Chamber erred in law and fact by its misapprehension of the law and principles of pleading of material facts relating to personal commission of crimes and its miasapplication of the principles to the prejudice of the accused Kallon. In particular:

6.2 While the Chamber acknowledged that the Kallon Defence had objected to the defective pleading in respect of Kallon's alleged personal commission of crimes(par 396) and whereas the Chamber correctly noted that the prosecutor's duty to provide particulars in the indictment was at its highest when alleging personal commission of crimes(par 397) and while the Chamber acknowledged the defects in the Kallon indictment in this regard and further the prosecution's failure to proffer any explanation (para 399),it nevertheless erred in law and in its factual analysis, by basing the conviction crimes of personal commission not pleaded in the indictment (Para 2118 p625; Para 2232 p653; Para 2247-2248 p657; Para 2249-2258 pp658-660; Para 2099 p621; Para 1084 p334; Para 1249 p379; Para 1259 p382; Para 1150 p353; Para 1216 p369; Para 1224-1231 pp372-373; Para 1232-1235 pp373-374; Para 2095-2099 pp620-621; Para 1085 p334-335; Para 2005-2006 pp590-591).

6.3 Although the Chamber indicated that it would consider if the defects in the indictment in relation to personal commission had been cured by subsequent communications, (par 400) no such consideration was undertaken in respect of many of the crimes which were the basis of the conviction (Para 2118 p625; Para

2232 p653; Para 2247-2248 p657; Para 2249-2258 pp658-660; Para 2099 p621; Para 1084 p334; Para 1249 p379; Para 1259 p382; Para 1150 p353; Para 1216 p369; Para 1224-1231 pp372-373; Para 1232-1235 pp373-374; Para 2095-2099 pp620-621).

6.4 The Chamber erred in law by holding that an indictment that did not specify material elements of the accused's personal commission of a crime was curable other than by amendment.

6.5 The Chamber erred in law and fact by failing to find that the Indictment is also defective for failing to plead the *mens rea* as to committing and/or failing to plead the material facts from which it could have been inferred.

6.6 In the alternative, the Chamber erred in law and fact by holding/implying that the defects in the Kallon indictment in relation to personal commission had been cured by post-indictment pleadings and disclosures, without in many instances specifying these post-indictment pleadings and disclosures. Further in some instances the Chamber erred in law and fact by holding that the mere service of witness statements could cure a defective indictment notwithstanding its disregard for witness statements and preference for the so called "Principle of Orality" (Para 491 p168; Para 2244-2246 pp656-657 paras 1733-1735 p 515) which the Chamber employs selectively to arrive at the conviction of the accused.

6.7 The Chamber erred in law and in its factual analysis by failing to find that the Prosecution's failure to plead separately the material facts underlying each specific mode of 6(1) responsibility had caused material prejudice to the accused.(Paras 403- 405 pp 138-139).

6.8 The Chamber further erred in Law and in its factual analysis by importing irrelevant considerations such as "scale of the specific crimes charged, circumstances under which the crimes were allegedly committed, the duration of

time over which the said acts or events constituting the crimes occurred, the nature of evidence provided by witnesses and the difficulty in conducting investigations in an immediate post-conflict environment"(para 405 pp 138-139 footnote 778) and the nature and scale of the conflict (Para 329 p109) as the basis and justification for sanctioning a defective pleading.

6.9 The Chamber further erred in law by failing to apply the above "considerations"to the specific charges and defects in the Kallon indictment and by raising the said considerations proprio motu and when the Prosecution had not argued specifically that these considerations had any impact on its ability to draft a proper indictment.

6.10 The Chamber further erred in law and in its factual analysis by failing to find that the considerations above did not apply to the specific defects in the indictment raised by the accused Kallon.

VII. GROUND 6: ERRORS RELATING TO 6 (3) LIABILITY

7.1 The Trial Chamber erred in law and fact by misinterpreting the law and principles on superior responsibility- 6(3) liability to the prejudice of the accused. In particular:

7.2 The Chamber erred in law and in fact by holding that all the elements of 6 (3) liability had been met by the prosecution in respect of the crimes for which the accused was convicted under this mode of liability (Paras 2151 pg 633; 2292 p669).

7.3 The Chamber further erred in law and in its factual analysis by failing to find that material particulars with regard to the crimes for which it convicted the accused Kallon in respect of 6 (3) liability were not pleaded and that this occasioned prejudice to the accused (Paras 2151 pg 633; 2292 p669).

7.4 The Chamber erred in law by considering the scale and duration of the conflict as a factor that would impact on the prosecution's obligation to provide the specificity required in the indictment regarding an accused's 6(3) liability and further importing other irrelevant and nebulous considerations such as the " nature of evidence presented to the court and complexities of the RUF command structure" as the basis and justification for sanctioning an otherwise defective pleading of the accused Kallon's 6(3) liability.(Para 410 p141).

7.5 The Chamber further erred in law by failing to apply the above "considerations" to the specific charges and defects in the Kallon indictment and by raising the said considerations proprio motu and when the Prosecution had not argued specifically how these considerations had any impact on its ability to draft a proper indictment.

7.6 The Chamber further erred in law and in its factual analysis by failing to find that the considerations above did not apply to the specific defects in the indictment raised by the accused Kallon.

VIII. GROUND 7: ERRORS RELATING TO THE REASONED OPINION AND EVALUATION OF EVIDENCE

8.1 The Chamber erred in law and fact by failing to give a reasoned opinion, exhibiting bias in the assessment of evidence and misapplying the applicable principles on evaluation of evidence. In particular:

8.2 The Chamber exhibited a bias in favour of the Prosecution in its assessment of the testimony presented .It accepted in a general fashion the testimonies of all Prosecution witnesses and went to great lengths to justify why in a majority of instances it would accept their testimonies despite serious and fundamental concerns about their integrity and credibility (Para 522-564 pp177-189).When it came to Defense witnesses however ,the Chamber adopted a general dismissive and

simplistic attitude by stating that 'these witnesses testified out of loyalty to the RUF and their superior commanders and evidently were trying to assist Sesay and Kallon in this trial and not necessarily the to assist the Chamber in its "search for the truth"(Para 531 pp180-181).

8.3 The Chamber erred in law and fact by relying on the uncorroborated testimony of a single accomplice witness; or a witness for whom it had stated it would require corroboration; or the uncorroborated testimonies of a number of witnesses in respect of whom the Chamber had ruled it would require corroboration[38](Para 1216 p369; Para 1423-1424 p426; Para 1440 p432; Para 1618 p484; Para 1630 p488; Para 1636-1638 p490; Para 1640-1645 pp491-492; Para 1650-1653 pp494-495; Para 1658 p496; Para 1669 p499; Para 1393 p416; Para 1398 p418; Para 1400 pp418-419; Para 1401 p418-419; Para 1403-1405 pp418-420; Para 1410-1413 pp421-423; Para 1417 p424; Para 1442-1443 p432; Para 1612 p482; Para 1615 p483; Paras 1617-1619 pp483-484; Para 1621-1622 p485; Para 1261-1265 pp383-384; Para 1237 p375; Para 1240-1250 pp375-380; Para 1259-1265 pp382-384; Para 1726 p515).

8.4 The Chamber erred in law and in its factual analysis in the assessment of the evidence of several prosecution witnesses who were involved in or were key perpetrators of the crimes for which the accused was charged(accomplices) and

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[38] -TFI-371 (para 541-543 p184)Regarding this witness, the Chamber noted that it had serious concerns about the veracity of the witness' testimony about the RUF and AFRC command structure as well as the role of the accused in the RUF movement and also regarding the acts and conduct of the accused and that the Chamber would require corroboration before accepting his testimony on those issues (para 543 p184) See also witness TFI 366 who the Chamber said it shared the concerns about the credibility of the witnesses with the Defense and noted that the witness tended to over implicate the accused particularly Sesay and Kallon (paragraph 546 p185),and that the Chamber would not accept the testimony of the witness unless it was corroborated in a material aspect by a reliable witness.(paragraph 546) See also witnesses,TFI-045 (para 561 p189), TFI-141 parts of whose testimony the Chamber found to be fanciful and thus implausible. (para 582 -583 p194), TFI 263 (para 586 p195), TFI-117(para 589-590 p196), TFI -314 (para 594 p197) ,TFI-108 , (para 597 p198) ,TFI-113(para 600 p199) and TFI -093(para 603 p199) in respect of whom the Chamber ruled it would require corroboration.

whose testimony was wrought with irredeemable inconsistencies and contradictions and which the Chamber ignored and or disregarded .The Chamber further erred in law and its assessment of the evidence of these witnesses when it took it upon itself to sanitize the testimonies of these witnesses which were clearly incredible unreliable and implausible.[39](See analysis of the testimony of accomplice witnesses at Paras 497-498 and also the Chamber's conclusion on the testimonies of insider witnesses) [40](Para 1216 p369; Para 1423-1424 p426; Para 1440 p432; Para 1618 p484; Para 1630 p488; Para 1636-1638 p490; Para 1640-1645 pp491-492; Para 1650-1653 pp494-495; Para 1658 p496; Para 1669 p499; Para 1393 p416; Para 1398 p418; Para 1400 pp418-419; Para 1401 p418-419; Para 1403-1405 pp418-420; Para 1410-1413 pp421-423; Para 1417 p424; Para 1442-1443 p432; Para 1612 p482; Para 1615 p483; Paras 1617-1619 pp483-484; Para 1621-1622 p485; Para 1261-1265 pp383-384; Para 1237 p375; Para 1240-1250 pp375-380; Para 1259-1265 pp382-384; Para 1726 p515).

8.5 The Chamber further erred in law and in its factual analysis when it abused its discretion by generalizing the credibility of victim witnesses who it held were credible because "these witnesses usually had no ulterior motive in testifying and their evidence consisted primarily describing criminal activity" and that the

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[39] Regarding inconsistencies, although the Chamber concluded that "where there are material inconsistencies in the evidence of the witness, the Chamber has taken great care to address those issues and to assess, in light of all the evidence, whether or not to rely on competing accounts of pertinent events ",(paragraph 489) there is no evidence in the judgment that the Hon Trial Judges addressed material inconsistencies with regard to many of the witnesses that they relied on to convict the accused person.

[40] -TFI-371 (para 541-543 p184)Regarding this witness, the Chamber noted that it had serious concerns about the veracity of the witness' testimony about the RUF and AFRC command structure as well as the role of the accused in the RUF movement and also regarding the acts and conduct of the accused and that the Chamber would require corroboration before accepting his testimony on those issues (para 543 p184)
See also witness TFI 366 who the Chamber said it shared the concerns about the credibility of the witnesses with the Defense and noted that the witness tended to over implicate the accused particularly Sesay and Kallon (paragraph 546 p185),and that the Chamber would not accept the testimony of the witness unless it was corroborated in a material aspect by a reliable witness.(paragraph 546) See also witnesses,TFI-045 (para 561 p189), TFI-141 parts of whose testimony the Chamber found to be fanciful and thus implausible. (para 582 -583 p194), TFI 263 (para 586 p195), TFI-117(para 589-590 p196), TFI -314 (para 594 p197) ,TFI-108 , (para 597 p198) ,TFI-113(para 600 p199) and TFI -093(para 603 p199) in respect of whom the Chamber ruled it would require corroboration.

Chamber did not for the "most part" consider any inconsistencies in their testimonies to be material and that the Chamber "has largely" accepted their testimony (Para 536 p182).

8.6 The Chamber erred in law and in its factual analysis by adopting a selective and prejudicial assessment of the evidence of both Prosecution and Defence witnesses with the intention of arriving at the conviction of the accused Kallon.[41] (Par 478 ,pp163-64 ; Para 609 pp201-202; Para 1831-1858 pp541-550; Para 1863, 1864, 1882 pp551-556; Para 1789-1882 pp531-534; Para 1789-1806 pp531-535 ; Para 1847-1858 pp547-550 ; Para 1767 p524 ; Para 1768 p525 ; Para 991-1030 p310-320 ; Para 609 p201 ; Para 815-816 p263 ; Para 812 p262 ; Para 1225-1233 pp372-374 ; Para 2097-2098 p621 ; Para 2118 p625; Para 1091 p336; Para 1092 p337)

Identification

8.7 The Chamber erred in many instances by relying on the testimony of witnesses who had not sufficiently identified the accused and when identification was an issue the accused had raised throughout during trial.[42] (It is also significant to note the Chamber's finding at par 1512 p451 that there was a general misconception that all rebel attacks were perpetrated by the RUF) –See instances of erroneous conclusions at paras 1278 p371para 1217p369,1140-1143,1147,1148,1149,1150 1152,1162,1163,,1164,1166,1172,1173,1177,1178,1180,1181,1182,1184,1185,118

[41] Although the Chamber acknowledged and adopted the *Kvocke ICTY Appeals Chamber decision* to the effect that the Chamber was 'only 'required to make findings of those facts which are essential to the determination of guilt on a particular count and that *there should be no indication that the Trial Chamber disregarded any particular piece of evidence* (paragraph 478 of the judgment),it did not consider this principle in its assessment of the evidence.
For instance the Chamber mischaracterized its approach when it inaccurately stated that it had considered all of the evidence which tends to prove/disprove JCE (paragraph 482).
The Chamber however ignore and or failed attach any or any proper weight to the Prosecution /Defense evidence that the Supreme council of the AFRC junta was not inherently criminal and that in fact the Council's mandate included the maintenance of law and order

[42] This is despite the fact that at paragraph 492,the Chamber observes that among other considerations, the familiarity of a witness with the accused was an important consideration)

6,1187,1188,189,1190,1191,1192,1194,1204,1205,1206,1209,1210,1211,1212,121
3,1214,1216-1218,1220,1225-1227

Hearsay

8.8 The Chamber erred in law and fact by relying on the uncorroborated hearsay evidence of certain witnesses to enter a conviction – (see the Chamber's analysis of hearsay evidence at Para 495-496 pp169-170); Para 1228 p372-373; Para 1781 p329; Para 1785 p550; Para 1790 p531; Para 1800 p533; Para 1803-1806 p534-535; Para 1084 p334).

Circumstantial Evidence

8.9 The Chamber erred in law and fact by relying on circumstantial evidence which was not established beyond reasonable doubt while there was other evidence available on the record that negated the conclusions drawn by the Chamber from the circumstantial [43] (Para 2004 p590; Para 1851-1858 pp548-550; Para 609 pp201-202).

Single Witness Accounts

8.10 The Chamber erred in law and fact by relying on single witness accounts without taking into account all the evidence on the record (as PER Appeals' Chamber AFRC paragraph 147). (para 1630-1632, p 488, Para 1645 p492, Para1636 p488, Para 1642-1645 p491-492, Para 1650-1653 pp494-495, Para 1713 p510, Para1638 p490, Para 2095 p 620, Para 1836-1858 p543- pp550, para 2231-2233p 653)

[43] Although the Chamber at Para 499 stated that in assessing circumstantial evidence in proof of a fact in issue, it had been careful to consider whether any conclusion other than the guilt of the accused could reasonably be reached, it however did not apply this test to the circumstantial evidence on which it relied to convict the accused person. The Chamber also ignored its own analysis of the CDF Appeals Judgment paragraph 200, on the application of circumstantial evidence.

8.11 The Chamber erred by relying on documentary evidence with little or no probative value to support the conviction of the accused Kallon (Para 13-16 p5; Para 17-21 pp6-7; Para23-27 pp8-9; Para 28 p10; Para 31-32 p11; Para 43-44 p14; Para 156 p51; Para 157 p52; Para 161-162 p53; Para 216 pp68-69; Para 217 p69-70; Para 218 p70; Para 219-223 pp70-76; Para 531 p180; Para 953 p300; Para 958 p301; Para 959-960 pp302-303; Para 1014 p316; Para 1042 p323; Para 1078 p333; Para 1767 p524; Para 1806 p534; Para 1848 p547; Para 1851 p548; Para 1852 p548).

8.12 The Chamber erred in law and fact by holding that it could not draw adverse inferences from the fact that Prosecution witnesses had received monetary payments and other incentives and that such payments and incentives did not affect credibility (paragraph 525-526) The Chamber accordingly erred by failing to find that in respect of some key witnesses on whom it relied to enter convictions ,huge sums of money and other incentives had been given to the witnesses in circumstances that would logically point to the conclusion that such payments and incentives were a key motivation for the witnesses' testimony against the Accused .

8.13 Although the Chamber generically ruled the UNAMSIL peacekeepers truthful and genuine in their efforts to assist the court to ascertain the truth, it nonetheless disregarded the testimonies of UNAMSIL peacekeepers who testified for the Kallon defence.

IX. GROUND 8: ERRORS RELATING TO KALLON'S MEMBERSHIP OF THE SUPREME COUNCIL / AFRC COUNCIL AND PERCEIVED SENIORITY OF KALLON

1 The Chamber erred in law and in its factual findings by equating the AFRC Supreme Council with the AFRC Council and finding that the accused Kallon was a member of the Former. (Para 754-755 p247)

9.1 The Chamber erred in law and in its assessment of the evidence by finding that the mere fact of membership of the accused Kallon in the Supreme Council meant a participation in a joint criminal enterprise and further failing to find that the Prosecution had not proven beyond reasonable doubt or at all that the accused Kallon intended to commit crimes by his membership of the Council. As a consequence, the Chamber erred in law and in its factual analysis by finding the accused Kallon guilty merely by being associated with the Council.

9.2 The Chamber further erred in Law and in its assessment of the evidence by failing to find that the accused Kallon's membership in the Council was inconsequential as he did not participate in any decision making process and certainly did not participate in decisions regarding any criminal activity.[44] The Chamber's conclusion at par 2004 that it "considers that there is sufficient evidence to conclude that Kallon by his membership in the Supreme Council was involved in decisions or policy making by the Supreme Council" is based on no evidence on the record and the Chamber refers to none. This Conclusion just like the next one in the same paragraph to the effect that Kallon cooperated with AFRC at Teko Barracks is erroneous, speculative and prejudicial.

9.3 The Chamber Further erred in law in its factual analysis by failing to find that the Supreme Council was not inherently criminal and that in one of its objectives was the maintenance of law and order.[45]

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[44] The Chamber found that the Council did not vote on issues as significant decisions were made by Koroma, SAJ Musa and certain other Honourables (para 756),and that there was an Advisory Council of Secretaries to the AFRC Supreme Council established to execute policies and directives (paragraph 757)-see exhibit 120 d –also TFI -334 20 June 2005(paragraph 4).Kallon was not a member of this Advisory Council.. Also the Chamber found that SAJ Musa was in charge of mining (para 760) and that Senior RUF officers we left without official appointments within the junta military structure and the RUF retained its own command structure (para 762). And that a proposal by Bockarie to integrate the AFRC/RUF armies was rejected (para 761) and further that there was were conflicts and misunderstandings between the AFRC and RUF with many RUF fighters feeling that the AFRC did not respect them (para 763)

[45] Indeed the Chamber found that major issues discussed by the council were the security of the Junta, revenue generation, resolution of conflicts between AFRC / RUF looting and harassment of civilians (para 756)

9.4 The Chamber further erred in its factual analysis by exaggerating the seniority, status and perceived importance and or influence of the accused Kallon during and after the junta period thus arriving at erroneous and prejudicial conclusions.(para 2003-2008 pp 590-591,2055-2056 pp605-606,paras 2093-2103 pp 619-622 paras 2117-2120 p625,2134-2151 pp629-633) Although the Chamber attributes seniority and influence to Kallon, the Trial Chamber itself found that between 1991-1996 Kallon (unlike the Co-accused), held no specific position of responsibility (paragraph 733) In the promotions of March 1997 from prison in Nigeria, Sankoh did give Kallon any assignment (paragraph 737-739) Kallon was promoted to the rank of Major (a fairly lowly rank) only in March, 1997 (paragraph 741).Indeed before and during the junta period ,there is no evidence on the record suggesting that Kallon was a prominent member of the RUF involved in any major decision making processes. The Chamber makes reference to none.

9.5 The Chamber erred in law and fact by failing to find that shifting nature of the prosecution theories on the accused Kallon's alleged positions of responsibilty occasioned prejudice to the accused Kallon's defence.

9.6 The Trial Chamber erred in law and fact by finding at paragraphs 2004 to 2006 of the Trial Judgement and its conclusion at paragraph 2007 that Mr. Kallon 'significantly contributed to criminal conducts that furthered the common purpose of the joint criminal enterprise by securing revenues, territory and manpower for the Junta Government, and by aiming to reduce or eliminate civilian opposition to Junta's rule; whereas Kallon was never found to have been involved in any of the national programs and processes put in place to mine diamonds and raise revenue for the Junta government. Rather, what was found against him concerned various personal conducts involving him, his bodyguards and SBUs involved in diamond mining at Tongo Field.[46]

[46] Paras. 2005-2006 of the Trial Judgement

X. GROUND 9: BO CRIME LOCATION-ERRORS OF LAW AND FACT-JCE

10.1 **The Chamber erred in law and in fact by convicting the accused Kallon for the commission of various crimes in BO District under the JCE mode of liability (Paras 1974-2008 pp580-590) ; In particular:**

10.2 The Chamber erred in law and in its factual analysis by holding that Kallon allegedly "substantially contributed" to crimes in BO and further erred by using this as a template to support a conviction for crimes elsewhere

10.3 The Chamber erred in law and in fact in concluding there was a common plan involving Kallon in a JCE in respect of the crimes in BO.

10.4 The Chamber erred in law and in fact by concluding that the crimes in BO must have been initiated by the supreme council (par 2004 p 590), and that the supreme council "must have initiated" the "conduct that followed" (par 2004 pp590).

10.5 The Chamber erred in law and in fact by concluding that the non-members who committed crimes were sufficiently closely connected to one or more members of the joint criminal enterprise acting in furtherance of the common purpose and that those crimes could be imputed to the accused (par 1992 p587).

10.6 The Chamber erred in law and fact by finding Kallon guilty of crimes in Bo at a time when the junta was not in Bo, when Kallon himself was not in Bo and when Kallon had not even become a member of the Governing Council.[47]

[47] The Chamber itself clearly states that unlike Kailahun, the junta regime did not enjoy consolidated territorial control over Bo districts from the outset by June 1997, only some parts of the district were controlled jointly by the AFRC and the RUF forces (paragraph 767). See also paragraph 768 members of the RUF including Bockarie passed through Bo district in the early months of the junta regime, but it was not until August 1997 when Bockarie assigned Kallon to Bo as the senior RUF commander that an RUF contingent was based there. Kallon remained in Bo until February 1998-paragraph 768 see also paragraph

10.7 The Chamber erred in fact by making a contradictory conclusion that it was often difficult for Kallon to travel to Freetown due to Kamajor attacks –yet it found that from August onwards Kallon also attended Supreme Council meetings on a reasonably regular basis (paragraph 774 p253).

10.8 The Chamber further erred in law and in its factual analysis by failing to find that the prosecution had not proven beyond a reasonable doubt or at all that the accused Kallon had the requisite mens rea for his alleged commission of the crimes in BO.

10.9 The Chamber erred in law and in its factual analysis by applying a prejudicial standard and or threshold not applied to the other accused in similar factual circumstances in finding him guilty of the crimes committed in BO. The Chamber's conclusion that the accused Kallon shared with the other participants the requisite intent to commit the crimes in BO (para 2008 p 591) is erroneous in law and without any evidential basis.

10.10 The Chamber further erred in law and in its factual analysis by applying double standards in the assessment of evidence in relation to the crimes committed in BO to the prejudice of the accused.

10.11 Specifically; In relation to Unlawful Killings (Counts 1 and 3 to 5):

10.12 The Chamber erred in law and in its factual analysis by finding the accused Kallon guilty of the Unlawful killings in Bo in which: AFRC/RUF fighters killed an unknown number of civilians at Tikonko Junction; 14 civilians at a house in Tikonko; three civilians on the street in Tikonko; and approximately 200 other civilians during the attack on Tikonko on 15 June 1997 (Counts 1, 4 and 5);

774- Kallon arrived at Teko Barracks or June 3 where he was based until August 1997 to February 1998 he was the senior RUF commander in Bo district .Although Kallon was a member of the AFRC Supreme Council, it was often difficult for him to travel to Freetown due to Kamajor attacks –nonetheless the Chamber finds that from August 1997 onwards ,Kallon also attended Supreme council meetings on a reasonably regular basis)

AFRC/RUF fighters committed extermination in Tikonko on 15 June 1997 (Count AFRC/RUF fighters killed Tommy Bockarie during the attack on Sembehun in June 1997 (Counts 1, 4 and 5); and AFRC fighters killed Paramount Chief Demby, Pa Sumaili, five civilians near the market and an unknown number of other civilians during the attack on Gerihun on 26 June 1997 (Counts 1, 4 and 5) (para 1974 pp580-581).

10.13 In particular, the Chamber erred in law and fact by failing to find that:

10.14 These crimes were not specifically pleaded in the indictment against Kallon and Kallon had no sufficient or proper notice or at all regarding his alleged role in the commission of these crimes. Without prejudice to this ground the Appellant further contends that he was not provided any timely clear and consistent information regarding his alleged responsibility for the crimes in BO.

10.15 There is no evidence that Kallon had the mens rea to commit these crimes or shared the intention with the perpetrators to commit these crimes. Further the requisite elements in respect of these crimes have not been established in respect of the accused Kallon.

10.16 There is no evidence that the accused Kallon significantly contributed to the commission of these crimes.

10.17 The evidence used by the Chamber to support a conviction for the commission of these crimes was discredited and wholly unreliable.

10.18 The Chamber failed to demonstrate for each specific crime, how the accused Kallon was liable and further erred by disregarding defence witnesses on the events in BO without any or any proper basis.

10.19 The Chamber failed to identify the specific category of JCE under which the accused was found guilty.

10.20 **Pillage (Count 14) (para 1974 p 581)**

10.21 The Chamber erred in law and in its factual analysis by finding the accused Kallon guilty of pillage in BO in which Bockarie looted Le 800, 000 from Ibrahim Kamara in June 1997 in Sembehun

10.22 This crime was not specifically pleaded in the indictment against Kallon and Kallon had no sufficient or proper notice or at all regarding his alleged role in the commission of this crime.

10.23 There is no evidence that Kallon had the mens rea to commit this crime or shared the intent with the Bockarie to commit the crime. There is no evidence that the accused Kallon significantly contributed to this crime which was committed by Bockarie. Further the indictment contemplates the crime of looting and burning and pillage alone is not a crime pleaded in the indictment.

10.24 By failing to demonstrate for this specific crime how the accused Kallon was liable, and in respect of which category of JCE.

10.25 The evidence used by the Chamber to support a conviction for the commission of this crime was discredited and wholly unreliable. Further, the Chamber disregarded defence testimonies without any or any proper basis.

10.26 Further Acts of Terrorism (Count 1) (para 1974 p581)

10.27 The Chamber erred in law and in its factual analysis by finding the accused Kallon guilty of other acts of terrorism committed in Bo District Namely that:

10.28 AFRC/RUF fighters terrorised the civilian population by burning more than 500 houses during the second attack on Tikonko on 15 June 1997 (Count 1); and AFRC/RUF fighters terrorised the civilian population by burning over 30 houses in Sembehun (Count 1).

10.29 These crimes were not specifically pleaded in the indictment against Kallon and Kallon had no sufficient or proper notice or at all regarding his alleged role in the commission of these crimes.

10.30 There is no evidence that Kallon had the mens rea to commit these crimes or shared the intention with the perpetrators to commit the crimes. There is no evidence that the accused Kallon significantly contributed to the commission of these crimes.

10.31 Further, the Chamber failed to identify the specific category of JCE under which Kallon was guilty.

10.32 Further, burning is not a crime pleaded in the indictment

10.33 The evidence used by the Chamber to support a conviction for the commission of these crimes was discredited and wholly unreliable. The Chamber disregarded defence testimonies without any or any proper basis.

10.34 Further the crime with which the Chamber convicted the accused is not defined in international law.

XI. GROUND 10: KENEMA CRIME LOCATION: ERRORS OF LAW AND FACT-JCE

11.1 The Chamber erred in law and in fact in concluding that the accused Kallon was involved in the commission of various crimes in Kenema District under the JCE mode of liability. In particular;(paras 2050-2056 pp 603-606)

11.2 The Chamber erred in law and in its factual analysis by relying on the "acts committed by the accused with respect to BO amounting to a significant contribution to the furtherance of the common plan" in support of its findings as to the accused's JCE liability for the crimes in Kenema (par 2055 p 605-606).

11.3 The Chamber erred in law and fact as there was no evidence beyond a reasonable doubt that the accused had the mens rea to commit these crimes or that the accused Kallon shared with the perpetrators the intent to commit the crimes.

11.4 The Chamber further erred in law and in its factual analysis by finding that the accused Kallon significantly contributed to the crimes in Kenema when there was no evidential basis for the finding.

11.5 The Trial Chamber erred in law and in its application of the evidence by adopting a double-standards approach regarding the alleged responsibility by the accused Kallon for the crimes committed in Kenema.

11.6 The Trial Chamber erred in law and in its application of the evidence by adopting a discriminatory approach regarding the alleged responsibility by the accused Kallon for the crimes committed in Kenema.

11.7 Specifically the Chamber erred in law and in its factual analysis by holding that the accused Kallon was guilty of:

11.8 The killing of B.S. Massaquoi, Andrew Quee and four other civilians on the orders of Bockarie in Kenema Town on or about 8 February 1998. Mr Dowi in Kenema Town (Counts 4 and 5); Three civilians at a house on Mambu Street, Kenema Town (Counts 1 to 2 and 4 to 5); A civilian farmer killed by Bockarie at the NIC building in Kenema Town (Counts 1 to 2 and 4 to 5); A civilian accused of being a Kamajor boss in Kenema Town (Counts 1 to 2 and 4 to 5); Bonnie Wailer and two

others on the orders of Bockarie in Kenema Town (Counts 4 and 5); Two alleged thieves killed by Bockerie of AFRC/RUF in Kenema Town (Counts 4 and 5); A Limba man in Tongo Field (Counts 4 and 5); And a civilian at Lamin Street in Kenema Town (Counts 1, 4 and 5);(Paras 2050-2056 pp603-606)

11.9 The Trial Chamber erred in law and in its factual findings by convicting the accused for the above Killings in Kenema which were not specifically pleaded in the indictment and in respect of which he had no notice or no proper notice. Without prejudice to this ground the Appellant further contends that he was not provided any timely clear and consistent information regarding his alleged responsibility for the crimes in Kenema.

11.10 The Trial Chamber further erred in finding that Kallon substantially contributed to the commission of these crimes.

11.11 The Trial Chamer erred in law and fact by disregarding material exculpatory evidence in relation to Kanema and also unchallenged defence evidence.

11.12 The Trial Chamber further erred in law and fact by failing to identify the specific category of JCE under which the accused Kallon was liable for the crimes in Kenema.

11.13 Further and specifically,the Chamber erred in law and in its factual analysis by holding that the accused Kallon was guilty of the killing by AFRC/RUF fighters of over 20 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5); 25 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5), 15 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5);,AFRC/RUF fighters killed 3 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5); and over 63 civilians at Cyborg Pit in Tongo Field (Count 3).(para 2050 p 604)

11.14 By failing to find that the alleged conduct of Kallon in Tongo did not amount to a common purpose within a joint criminal enterprise

11.15 By convicting the accused for the Killings in Cyborg pit which were not specifically pleaded in the indictment and in respect of which he had no notice.

11.16 By erroneously concluding that the accused Kallon contributed significantly to the crimes in Tongo

11.17 By erroneously finding that the accused had the requisite mens rea to commit these crimes in Tongo and erroneously finding that the accused shared the intent to commit the crimes with the perpetrators.

11.18 By failing to identify the specific category of JCE under which the accused Kallon was fund guilty for the crimes in Tongo.

11.19 By relying on the discredited and unreliable testimony of a single witness who placed the accused in Tongo but did not identify the accused and failing to address the issue of identification raised by the Defence

11.20 By failing to give due regard or at all to exculpatory prosecution and Defence witnesses on the events in Tongo at the material period

11.21 Further and specifically the Chamber erred in law and in its factual analysis by holding the accused Kallon liable for Physical Violence (Counts 1 to 2 and 11), in respect of:

11.22 The beating by AFRC/RUF fighters of TF1-122 in custody in Kenema Town (Count 11); The repeated infliction of physical violence on TF1-129 by AFRC/RUF rebels including Sesay during TF1-129's initial arrest in Kenema Town (Counts 1 to 2 and 11);The beating of B.S. Massaquoi, Andrew Quee, Brima

Kpaka, TF1-129, Paramount Chief Moinama Karmoh and four others by RUF under the command of Bockerie in January 1998 in Kenema Town (Counts 1 to 2 and 11); And the beating of B.S. Massaquoi and five other civilian detainees on 6 February 1998 by AFRC/RUF including Bockerie in Kenema Town (Counts 1 to 2 and 11)

(para 2050 p 604)

11.23 The Trial Chamber erred in law and in its factual findings by convicting the accused for these crimes which were not specifically pleaded in the indictment and in respect of which he had no notice or no proper notice. Without prejudice to this ground the Appellant further contends that he was not provided any timely clear and consistent information regarding his alleged responsibility for these crimes.

11.24 The Chamber further erred in law and in its factual analysis by finding that the accused Kallon significantly contributed to these crimes when there was no evidential or proper basis for the finding, and failing to demonstrate for each specific crime, how the accused Kallon was liable

11.25 The Trial Chamber erred in law and in its application of the evidence by adopting a double-standards approach regarding the alleged responsibility by the accused Kallon for the crimes committed in Kenema.

11.26 The Trial Chamber erred in law and in its assessment and application of the evidence to the law by adopting a discriminatory approach regarding the alleged responsibility by the accused Kallon for the crimes committed in Kenema.

11.27 By failing to give due regard to exculpatory prosecution and Defence witnesses on the events in Kenema at the material period.

11.28 Further and specifically the Chamber erred in law and in its factual analysis by holding the accused liable for Enslavement (Counts 1 and 13) in respect of the finding that AFRC/RUF rebels forced an unknown number of civilians to mine for

diamonds at Cyborg Pit in Tongo Field between about 1 August 1997 and about 31 January 1998, constituting enslavement and an act of terrorism as charged in Counts 1 and 13 of the Indictment.

11.29 By erroneously concluding that the accused Kallon contributed significantly to these crimes in Tongo.

11.30 By erroneously failing to find that the accused did not have the requisite Mens rea to commit these crimes in Tongo and erroneously finding that he did not share the intention to commit the crimes with the perpetrators.

11.31 By failing to identify the category of JCE under which the accused was found guilty.

11.32 By relying on the discredited and unreliable testimony of a single witness who placed the accused in Tongo but did not identify the accused and failing to address the issue of identification raised by the Defence.

11.33 By failing to give due regard to exculpatory Prosecution evidence and Defence testimonies on the events in Tongo at the material period.

XII. GROUND 11: KONO CRIME LOCATION-ERRORS OF LAW AND FACT-JCE

12.1 While the Chamber concluded that the accused Kallon did not personally commit any of the crimes in Kono,(para 2066) the Chamber erred in law and in its factual analysis by holding him liable under the JCE mode of liability;(paras 2062- 2064 pp607-610 paras 2093-2103 pp619-622) in particular:

12.2 The Trial Chamber also erred in law and fact to have found Mr. Kallon guilty under a joint criminal enterprise of committing the offences it found in Kono District on the grounds that the Chamber had initially found at Paragraph 790 of the Trial Judgement that Mr. Kallon was not involved in the plan drawn in Kabala between the AFRC (represented by SAJ Musa and JP Koroma) and the RUF (represented by Superman and Sam Bockarie) to attack and gain control of Kono District. Strangely, however, and in another show of double standards by the Trial Chamber, it wholly removed SAJ Musa (whom the Court found formulated the plan to attack Kono)[48] from participating in the said joint criminal enterprise with the RUF and replaced him with Mr. Kallon, in the clear absence of evidence beyond reasonable doubt to support such finding.

12.3 The Trial Chamber found that "the common plan, purpose or design (joint criminal enterprise)" relied upon by the Prosecution in the Indictment[49] as well as the status of the AFRC/RUF alliance had "drastically changed" following the 14th February 1998 ECOMOG intervention.[50] Furthermore, the Trial Chamber noted that "the Junta was no longer in power and was unable to depend on the government or administrative apparatus"[51] for its survival; accordingly, a "new plan" was contemplated by high ranking AFRC and RUF leaders to attack Kono District and Koidu Town in order to gain control of its diamond mines[52] and, primarily, 'to secure a passage to Kailahun as Bo and Kenema were under control of ECOMOG and the Kamjors forces then'.[53] In view of the fact that this sudden change in the joint criminal enterprise of, inter alia, "regaining power" never formed part of the Indictment and the Posecution's case as well as that Mr. Kallon was never notified of it, the conclusion by the Trial Chamber at paragraph 2069 of its Trial Judgement that the said "new formulation" and "drastic strategic change" in the joint criminal

[48] See Paras. 790, 793 and 2079 of the Trial Judgement
[49] See Para. 36 of the Indictment
[50] Para. 2067 of the Trial Judgement
[51] Id. Emphasis added
[52] Id
[53] Paras 790 and 2067 of the Trial Judgement

enterprise between the AFRC and RUF did not affect the common purpose or design to commit the crimes outlined in the Indictment, is erroneous.

12.4 In its finding at Paragraph 2077 p 615, the Trial Chamber did not list Kallon amongst the participants responsible for the events in Kono following the retreat from Freetown in mid February 1998 to April 1998. The Trial Chamber found that during this period, the accused was unsuccessfully attempting to recapture BO.(Paras 781-783 pp 254-255, 786 pp 255-256) The Trial Chamber therefore erred in convicting Mr. Kallon in a JCE for crimes committed at the material moments in which he was neither found to be present nor substantially contributed in their perpetration.

12.5 Whereas it found that after the 14th February 1998 Ecomog intervention "the status of the AFRC/RUF alliance dramatically changed", the chamber erred in law and in fact by failing to find that a new JCE not pled in the indictment started. The chamber thus erred in law and in fact by convicting the accused under a JCE not pled in the indictment and in respect of which he had no notice.

12.6 The Chamber erred in law and in fact by finding that although Rocky (RUF) Rambo (RUF), Savage AFRC and Alhaji (AFRC) were not members of the JCE the accused could however be liable for their crimes which were "either intended by the members to further the common design **or** which were a reasonably foreseeable consequence of the common purpose (par 2080)-This is legally incongruent and untenable as at para 2103 p 622 the Chamber ruled that Kallon shared the intent to commit the crimes in Kono with the perpetrators. The Chamber therefore erred in its findings at paras 2063-2064 pp 608-610

12.7 The Chamber erred in law and in its factual analysis by concluding that Kallon made a significant contribution to the furtherance of the common purpose in Kono (pars 2093-2103-pp 619-622) and that he had the necessary mens rea to participate in a JCE in Kono (par 2103).

12.8 The Chamber erred in law and its factual analysis by failing to attach due weight to its finding that in Kono, the AFRC troops took orders from their own commanders rather than the RUF (para 797 p 258) which finding negatives Kallon's alleged participation in any concerted criminal purpose with the AFRC.

12.9 The Chamber erred in law and its factual analysis by implying and or finding that the mere presence of the accused in Kono constituted a participation in the JCE. In the alternative, the Chamber erred in law and in its factual analysis by failing to find that the accused Kallon did not significantly and or substantially contribute to any JCE in Kono

12.10 The Chamber erred in law and in its factual analysis of the evidence by failing to hold that after the alleged arrest of JPK in Buedu by Bockarie, Sesay, Mike Lamin and Rambo and the rape of his wife by Sesay at ' nearby location" (paragraph 801-804 pp 259-260) and the arrest of Gullit by Sesay on the orders of Bockarie (paras 803-804 p 260) any JCE between the AFRC and the RUF terminated .

12.11 The Chamber erred in law and in its factual analysis of the evidence by holding that after the arrest of JPK and Gullit Bockarie could have re-organized the AFRC/RUF command structure in Kono (paragraph 805) as there could not have been any common purpose at this time between the AFRC/RUF.

12.12 The Chamber erred in law and in its factual analysis by failing to consider the fact that the accused Kallon did not occupy any position of responsibility in the integrated command structure of the AFRC /RUF in Kono at the material time and hence could not and did not in any way contribute to the common purpose. (See analysis of the integrated command structure at paragraph 807-812 –pp261-262)

12.13 The Chamber erred in its factual analysis by holding that the accused Kallon possessed a radio set in Koidu (paragraph 812 and also 815 pp 262-263)[54] The Chamber further erred in its factual analysis and misrepresented the evidence by holding that witnesses TFI-361 stated that the overall signal commander in Koidu reported to Superman and Kallon (paragraph 837)

12.14 The Chamber erred in law and fact by making confusing, speculative and baseless conclusions about the accused Kallon's command position in KONO-at Para 834 p268 the Chamber ruled that Kallon was one of the several senior RUF commanders not directly within the control hierarchy of Superman and did not have discrete combat units or forces assigned to their command. At para 2149 p633 the chamber emphasized the finding that although a senior RUF commander, he did not occupy a formal position within the operational command structure in Kono-At para 2093 p 620 however the Chamber, in a strange turn-around states that Kallon was appointed deputy to Superman.

12.15 The Chamber erred in its factual analysis by holding that after ECOMOG pushed the AFRC / RUF forces from Koidu in early April (paragraph 813) the AFRC/RUF still maintained control of Kono district (paragraph 814), Whereas the weight of evidence suggests that at that point in time the AFRC/RUF marriage did not exist anymore.

12.16 The Chamber erred in its factual analysis by failing to find that Kallon was against the commission of crimes and that this was the cause of his differences with

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[54] The Chamber erroneously relies on the testimony of Sesay Defence for this conclusion T 16 May 2007 p 18, DIS 214 15 January 2008 p 98.
The testimony of these witnesses cannot be used to the prejudice of the accused. Also witness TFI-361 whom the Chamber relied on elsewhere to conclude that Kallon had a radio set, stated in cross-examination that Kallon is not one of those who had a radio and that in fact he (the witness) did not know Kallon well .Further, the Chamber acknowledges that the AFRC /RUF control of Koidu was short lived and as early April they were pushed out by the ECOMOG (paragraph 813)

Superman. The Chamber erred by mischaracterizing Kallon's testimony and criminalizing his criticism of Superman (para 816 p 263).

12.17 The Chamber erred in law and fact by failing to attach proper weight to its finding that Kallon executed two AFRC fighters and prevented the AFRC from holding muster parades, asserting that the AFRC had no right to assemble as the RUF was the only true fighting force in Kono (paragraph 817 pp263-264) the Chamber erred by failing to find that this act by Kallon negatives any *mens rea* to commit crimes in Kono or elsewhere in the context of JCE[55].[56]

12.18 The Chamber further erred i and fact by failing to find that rather than make a significant contribution to the JCE, to the contrary Kallon made a significant and substantial contribution in creating conditions that made it difficult for the RUF /AFRC to operate together for a common purpose. The Chamber further erred in its assessment of the evidence by failing to attach due weight to its own conclusion that during the JCE period, Kallon's relationship with Superman, the senior -.most link between the RUF and AFRC in Kono, was very bad [57]

12.19 The Chamber erred in its factual evaluation of the evidence by concluding that the split between the AFRC/RUF occurred when the "AFRC departed Kono district

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[55] Indeed the Chamber, in the context of analyzing how Kallon executed to the AFRC troops starts by asserting that the relationship between the AFRC and RUF in Kono was fractious. From the Chamber's own findings it clearly emerges that Kallon's attitude towards the AFRC troops was a major source of the rift between AFRC and RUF and this combined with the fact that Kallon did not feature prominently in any senior position within the AFRC /RUF command structure is clear testimony to the fact that Kallon did not possess the *mens rea* to commit any crimes pursuant to a JCE.

[57] .As the Chamber itself notes, at about the time the AFRC/RUF were pushed out of Koidu town, the relationship between Superman and Kallon "further" deteriorated (paragraph 816). It is further noteworthy that when Gullit returned to Koidu the Chamber has found that Superman, Isaac Mongor together with AFRC troops Gullit, Bazzy, Iddrissa Kamara and Hassan Bangura conducted a mission to destroy Sewafe bridge. (paragraph 818) Kallon is not one of those in this attack Further evidence of Kallon's poor relationship with Superman is provided by the Chamber which notes that when the RUF attempted to retake control of Koidu from ECOMOG in the Fita-Fata *mission ,the* attack was hampered partly by enmity between the two commanders(paragraph 823-see also exhibits 35 and 36 –salute report referred to by the Chamber at footnote 1606. At paragraph 869 the Chamber also notes that around December 1998,Superman was fearful that Kallon would attempt to take his life

prior to the end of April 1998" (para 820).The Chamber ignored material evidence that the AFRC/RUF split took place much earlier.

12.20 The Chamber erred in law and in its factual analysis by holding that although Kallon did not have any unit or units of troops under him in Kono, he nevertheless was an operational commander who gave orders which were complied with by troops .(paragraph 835).This conclusion was made without sufficient evidential basis. Further the Chamber erred in law and in its factual analysis by failing to find that there was no evidence that the perceived troops under the accused Kallon committed any crimes.

12.21 The Chamber erred in law and in its factual analysis by holding that Kallon gave orders in March 1998 to fighters at daily muster parades in Guinea Highway area (paragraph 836).Kallon could not have given orders as at the time he and the other RUF troops were based in Koidu town .Indeed according to the Chamber's own finding, the RUF troops retreated from Koidu town in April 1998 (paragraph 836)

12.22 The Chamber erred in law by relying on the uncorroborated evidence of witness TFI- 141 to find that in March 1998 Kallon could have given orders to troops at muster parades (paragraph 836 footnote 1638)

12.23 The Chamber erred in law by holding that the mere fact of being a Vanguard afforded Kallon 'power and engendered respect'. There is no factual basis for this conclusion and there is certainly no factual basis that for the specific case of Kallon, his status as a vanguard 'afforded him power and engendered respect'(para 2093-2095 pp 619-620)

12.24 The Chamber erred in law and in its factual analysis by convicting the accused Kallon for crimes committed in Kono and which were not specifically pleaded in the indictment.

12.25 Trial Chamber erred in law in extending the application of a consistent pattern of conduct to alleged conduct out of the temporal jurisdiction of the Court and to evidence not sufficiently shown to have occurred within the time frame pleaded in the indictment. Para 1293 pg 390; Para 1356 pg 406.

12.26 The Chamber erred in law and in its factual analysis by implying that any defects in the indictment in relation to the crimes in Kono had been cured.

12.27 The Chamber further erred in law and in its factual analysis by failing to find that the crimes for which the accused was convicted were not proved beyond a reasonable doubt

12.28 KONO: ERRORS RELATED TO SPECIFIC CRIMES

12.29 Specifically the Chamber erred in law and in its factual analysis by holding that the accused Kallon was guilty of: Unlawful Killings (Counts 1 to 5) (2063,2093-2103)

12.30 AFRC/RUF fighters killing an unknown number of civilians during the February/March 1998 attack on Koidu Town (Counts 1, 4 and 5);RUF fighters acting on the orders of Officer Med killing Chief Sogbeh at Tombodu at sometime in February/March 1998 (Counts 1, 4 and 5); AFRC/RUF fighters under the command of Savage killing about 200 civilians in Tombodu between February and March 1998 (Counts 1, 2, 4 and 5);AFRC/RUF fighters under the command of Savage killing about 47 civilians in Tombodu between February and March 1998 (Counts 1, 4 and 5);AFRC/RUF fighters under the command of Savage killing three civilians in Tombodu sometime in March 1998 (Counts 1, 4 and 5);AFRC/RUF fighters under the command of Savage killing an unknown number of civilians by burning them alive in a house in Tombodu about March 1998 (Counts 1, 4 and 5); AFRC/RUF fighters under the command of Savage committing extermination in Tombodu between February and March 1998 (Count

3); RUF Commander Rocky killing 30 to 40 civilians in April 1998 in Koidu Town (Counts 1, 2, 4 and 5); RUF Commander Rocky committing extermination in April 1998 in Koidu Town (Count 3) Fighters under the command of Rocky killing by a fifteen year old boy by amputating his arms and feet in April 1998 in Koidu Town (Counts 1, 4 and 5); AFRC/RUF rebels killing six captured civilians in Yardu in April 1998 (Counts 1, 4 and 5); and AFRC/RUF fighters killing at least 29 civilians in Penduma on orders of Staff Alhaji in April 1998 (Counts 1, 4 and 5).

12.31 Specifically the Chamber erred in Law and in its factual analysis:

12.32 By holding the accused liable for the above crimes he was not specifically charged with in the indictment and in respect of which he had no notice.

12.33 By relying on an overly expansive theory of JCE to find a conviction against Kallon.

12.34 By relying on the discredited and unreliable testimony of Prosecution witnesses to hold the accused guilty.

12.35 By disregarding all defence testimonies on the events in KONO without ascribing any reasons thereof.

12.36 Sexual Violence (Counts 1 and 6 to 9) .While the Chamber concluded that the accused Kallon did not personally commit any of the crimes in Kono,(2066) the Chamber erred in Law and in its factual analysis by holding him liable under the JCE mode of liability for the following acts of sexual violence:(paraa2063,2093-2103 *pp 608-622*)

12.37 AFRC/RUF rebels raped an unknown number of women during the February/March 1998 attack on Koidu (Counts 1, 6 and 9); AFRC/RUF fighters forcibly took an unknown number of women as "wives" during the February/March 1998 attack on Koidu Town (Counts 1 and 7 to 9); AFRC/RUF rebels raped TF1-218 twice in Bumpeh on or about March 1998 (Counts 1, 6 and 9); AFRC/RUF rebels forced a couple to have sexual intercourse in front of other captured civilians and their daughter was then forced to wash her father's penis in Bumpeh on or about March 1998 (Counts 1 and 9); Staff Alhaji raped a woman in Tombodu in

April 1998 (Counts 1, 6 and 9); AFRC/RUF rebels raped TF1-217's wife right times and also raped an unknown number of other women in Penduma in April 1998 (Counts 1, 6 and 9); Rebels raped an unidentified female civilian in Bomboafuidu by inserting a pistol into her vagina on or about April 1998 (Counts 1, 6 and 9); AFRC/RUF rebels forced approximately 20 captured civilians to have sexual intercourse with each other in Bomboafuidu on or about April 1998 (Counts 1 and 9); AFRC/RUF rebels used knives to slit the genitalia of several captured male and female civilians in Bomboafuidu on or about April 1998 (Counts 1 and 9); AFRC/RUF rebels raped TF1-195 five times and raped five other women in Sawao between February and April 1998 (Counts 1, 6 and 9); and RUF fighters forcibly married an unknown number of women in the civilian camp at Wendedu on or about April 1998 (Counts 1 and 7 to 9).

12.38 By holding the accused liable for crimes he was not specifically charged with in the indictment and in respect of which he had no notice.

12.39 By holding that the accused shared with the perpetrators the intent to commit the crimes.

12.40 By relying on an overly expansive theory of JCE to find a conviction against Kallon and failing to find that the prosecution had not proven beyond a reasonable doubt, the accused's liability for the crimes..

12.41 By relying on the discredited and unreliable testimony of Prosecution witnesses to hold the accused guilty.

12.42 By disregarding all defence testimonies on the events in KONO without ascribing any reasons thereof.

12.43 Physical Violence (Counts 1 to 2 and 10 to 11). While the Chamber concluded that the accused Kallon did not personally commit any of the crimes in Kono,(2066) the Chamber erred in Law and in its factual analysis by holding him liable under the JCE mode of liability for the following acts of physical violence:(2063,2093-2103)

12.44 AFRC/RUF rebels severely beat TF1-197 near Tombodu in February or March 1998 (Counts 10 and 11); AFRC/RUF rebels knocked out several of TF1-015's

teeth in Wendedu in March 1998 (Counts 10 and 11); Rebels led by Staff Alhaji amputated the hands of three civilians in Tombodu in April 1998 (Counts 1 to 2 and 10 to 11); Rebels amputated the hands of at least three men in Penduma in April 1998 (Counts 1 to 2 and 10 to 11); Rebels amputated TF1-197's arm in Yardu in April 1998 (Counts 1 to 2 and 10 to 11); TF1-197 and his brother were flogged by rebels under the command of Staff Alhaji in Tombodu in April 1998 (Count 11); AFRC/RUF rebels carved "AFRC" and/or "RUF" on the bodies of 18 civilians in Kayima between February and April 1998 (Counts 1 and 10 to 11); AFRC/RUF rebels amputated the hands of five civilian men in Sawao between February and April 1998 (Counts 1 to 2 and 10 to 11); and AFRC/RUF rebels beat an unknown number of civilians with sticks and the butts of guns in Sawao between February and April 1998 (Counts 1 and 11).

12.45 By holding the accused liable for crimes he was not specifically charged with in the indictment and in respect of which he had no notice.

12.46 By relying on an overly expansive theory of JCE to find a conviction against Kallon and failing to find that the prosecution had had not proven beyond a reasonable doubt, the accused's liability for the crimes.

12.47 By holding that the accused shared with the perpetrators the intent to commit the crimes

12.48 By failing to demonstrate for each specific crime, how the accused Kallon was liable

12.49 By relying on the discredited and unreliable testimony of Prosecution witnesses to hold the accused guilty.

12.50 By disregarding all defence testimonies on the events in KONO without ascribing any reasons thereof

12.51 Enslavement (Count 13) While the Chamber concluded that the accused Kallon did not personally commit any of the crimes in Kono it erred in law and fact by holding him liable for the conduct of AFRC/RUF rebels who used an unknown number of civilians for forced labour between February and April 1998.

12.52 By holding the accused liable for an alleged responsibility that was not specifically charged in the indictment and in respect of which he had no notice.

12.53 By holding that the accused shared with the perpetrators the intent to commit the crimes.

12.54 By relying on an overly expansive theory of JCE to find a conviction against Kallon and failing to find that the prosecution had not proven beyond a reasonable doubt, the accused's liability for the crime.

12.55 By relying on the discredited and unreliable testimony of Prosecution witnesses to hold the accused guilty.

12.56 BY failing to demonstrate for each specific crime how the accused Kallon was liable

12.57 By disregarding all defence testimonies on the events in KONO without ascribing any reasons thereof.

12.58 Pillage (Count 14):While the Chamber concluded that the accused Kallon did not personally commit any of the crimes in Kono,it erred in law and fact by holding him liable under the JCE mode of liability for the following acts of pillage:

12.59 Rebels pillaged the property of TF1-197 near Tombodu on or about February/March 1998: AFRC/RUF rebels committed an unknown number of acts of pillage during the February/March 1998 attack on Koidu Town; and AFRC and RUF rebels looted funds from Tankoro bank in Koidu Town on or about March 1998 (Count 14).

12.60 By holding the accused liable for crimes and responsibility that was not specifically charged in the indictment and in respect of which he had no notice. Further the indictment contemplates the crime of looting and burning and pillage alone is not a crime pleaded in the indictment. Further the requisite elements of Pillage were not established in respect of the accused Kallon.

12.61 By holding that the accused shared with the perpetrators the intent to commit the crimes.

12.62 By relying on an overly expansive theory of JCE to find a conviction against Kallon and failing to find that the prosecution had not proven beyond a reasonable doubt, the accused's liability for the crime.

12.63 By relying on the discredited and unreliable testimony of Prosecution witnesses to hold the accused guilty.

12.64 By disregarding all defence testimonies on the events in KONO without ascribing any reasons thereof.

12.65 Acts of Terrorism and Collective Punishments (Counts 1 to 2). While the Chamber concluded that the accused Kallon did not personally commit any of the crimes in Kono,it erred in law and fact by holding him liable under the JCE mode of liability for the following acts of terrorism: AFRC/RUF forces burned civilian homes during the attack on Koidu Town in February/March 1998; and AFRC/RUF forces burned civilian homes in Tombodu between February and April 1998

12.66 By holding the accused liable for an alleged responsibility that was not specifically charged in the indictment and in respect of which he had no notice.

12.67 By holding that the accused shared with the perpetrators the intent to commit the crimes.

12.68 By relying on an overly expansive theory of JCE to find a conviction against Kallon and failing to find that the prosecution had not proven beyond a reasonable doubt, the accused's liability for the crime..

12.69 By relying on the discredited and unreliable testimony of Prosecution witnesses to hold the accused guilty.

12.70 By failing to demonstrate for each specific crime, how the accused Kallon was liable

12.71 By failing to demonstrate for each specific crime how the accused Kallon was liable

12.72 By disregarding all defence testimonies on the events in KONO without ascribing any reasons thereof.

XIII. GROUND 12: KONO -INSTIGATION

2 6(1) INSTIGATION: The Trial Chamber erred in law and fact by convicting the accused Kallon for the killing by an RUF fighter, of Waiyoh, a female Nigerian civilian, on the orders of Rocky in Wendedu in May or June 1998 (Counts 4 to 5) Specifically;

13.1 The Chamber erred in Law and fact by convicting the accused for a crime that was not specifically pleaded in the indictment. The material facts of instigating this crime were neither pled nor cured.

13.2 The Chamber erred in law and in fact by making the inconclusive conclusion about the accused Kallon's responsibility for the Killing of Waiyoh,the Nigerian woman. Whereas the Chamber employed the 6(3) mens rea it erred in law by convicting under a 6 (1) liability (par 2120 p 625). Further the Chamber erred in its factual analysis by making a contradictory finding regarding Kallon's relationship with Rocky (par 2137 p630 and 2118 p625).

13.3 The Chamber further erred in law and fact by failing to find that Kallon's responsibility for the Killing of Waiyoh had not been proved beyond a reasonable doubt.

13.4 The Chamber further erred in law and fact by failing to find that the elements of instigation were not proved beyond reasonable doubt.

XIV. GROUND 13 :KONO: KALLON'S SUPERIOR RESPONSIBILITY :THE FORCED MARRIAGES OF TF1-016 AND HER DAUGHTER IN KISSI TOWN BETWEEN MAY AND JUNE 1998 :(PARA 2151 P 633)

14.1 The Chamber erred in law and fact by convicting the accused under 6 (3) liability in Kono when it had ruled and concluded that that "Kallon, although a senior RUF Commander, did not occupy a formal position within the operational command structure of the RUF and it is therefore unclear to what extent he received reports on the actions of troops throughout Kono District" Par 2149 p633

14.2 The Chamber further erred in law and in its factual analysis by relying on an event in respect of which material particulars were not specifically pleaded in the indictment and of which the accused had no notice

14.3 The Chamber further erred in law and in fact by relying on evidence that was unreliable and which did not establish the accused's guilt beyond a reasonable doubt and also;

14.4 Failing to accord any weight to credible and unchallenged defence testimony on the events in Kono at the time and also credible exculpatory prosecution testimony.

14.5 Making contradictory findings on the command position of the accused Kallon in Kono at the time.

14.6 Failing to find that the elements of superior responsibility for Kallon had not been established beyond a reasonable doubt in respect of this crime.

XV. GROUND 14: KONO: KALLON'S SUPERIOR RESPONSIBILITY THE ENSLAVEMENT OF HUNDREDS OF CIVILIANS IN CAMPS THROUGHOUT KONO DISTRICT BETWEEN FEBRUARY AND DECEMBER 1998 (PARA 2151 P633)

15.1 The Chamber erred in law and fact by relying an events in respect of which material particulars were not specifically pleaded in the indictment and of which the accused had no proper notice

15.2 Relying on evidence that was unreliable and which did not establish the accused's guilt beyond a reasonable doubt.

15.3 Failing to accord any weight to credible and unchallenged defence testimony on the events in Kono at the time and also credible exculpatory prosecution testimony.

15.4 By convicting the accused on a 6 (3) theory for the time-period August - December 1998 (par 2151 p633) whereas it found that the Prosecution had failed

to establish Kallon's command position in KONO after August 1998 (Par 2141 p 631).

15.5 Making contradictory findings on the command position of the accused Kallon in Kono at the time.

XVI. GROUND 15: KAILAHUN CRIME LOCATION-ERRORS OF LAW AND FACT-JCE

16.1 The Chamber erred in law and fact by finding the accused Kallon guilty of crimes committed in Kailahun under the JCE mode of liability. In particular;

16.2 The Chamber erred by adopting a biased and discriminatory approach in assessing the accused Kallon's responsibility under JCE for the crimes committed in Kailahun

16.3 The Chamber erred in law and fact by convicting the accused Kallon under the JCE mode of liability for Unlawful Killings (Counts 1 to 5) wherein Bockarie killed three civilians and ordered the killing of another 63 civilians in Kailahun Town on 19 February 1998 (Counts 1 to 5); and One *hors de combat* SLA soldier was killed on Bockarie's orders in Kailahun on 19 February 1998 (Count 4) .Specifically;

16.4 The Chamber erred in law and fact by convicting the accused for crimes which were not specifically pleaded in the indictment and for which he had no or no proper notice.

16.5 The Chamber erred in law and in fact by finding that the accused Kallon significantly contributed to the killings and that these Killings were committed in the context of the furtherance of the common purpose of securing revenues, territory and manpower for the junta government and the reduction of elimination of civilian opposition to the Junta rule when there was no Junta in place at the time of the Killings (para 2161, 2162).

16.6 The Chamber erred in law and fact by holding that there was a common purpose between the RUF and AFRC involving the accused Kallon at the time of commission of the crimes.

16.7 The Chamber erred in law and in fact by simply concluding that the accused Kallon shared with the "other participants" in the joint criminal enterprise the requisite intent to commit the crimes.(para 2163) who these participants were and what their role was in these specific crimes.

16.8 The Chamber further erred in law and fact by failing to show and demonstrate any shared intent by the accused Kallon and Bockarie to commit the specific killings above.

16.9 The Chamber erred in law and fact by holding and implying that circumstances of commission of crimes in other parts of sierra leone including Kallon's mens rea could be applied mutatis mutandis to the crimes in Kailahun(par 2161).

16.10 The Chamber further erred in law and fact by failing to explain if it had found the accused guilty under JCE-1 or JCE-3 for the killings in Kailahun by Bockarie.(see par 2163 p637 and 2170 and 2171 p638)

16.11 The Chamber further erred in law and in fact by conflating JCE liability with Command responsibility in respect of the crimes committed in Kailahun and thus applying the wrong test in its JCE findings (paras 2170, 2171)

16.12 The Chamber further erred in law and fact by holding that Bockarie would be a commander under the accused Kallon(par 2170)

16.13 The Chamber erred in law and fact by finding the accused Kallon liable for Sexual Violence (Counts 1 and 7 to 9) TF1-314 was forcibly married to an RUF fighter between 1994 and 1998 (Counts 1 and 7 to 9); TF1-093 was forcibly married to an RUF fighter between 1996 and 1998 (Counts 1 and 7 to 9); and an unknown number of other women were forcibly married to RUF fighters between November 1996 and about 15 September 2000 (Counts 1 and 7 to 9) in Kailahun (para 2156 p635)

16.14 The Chamber erred in Law and by convicting the accused for crimes not specifically pleaded in the indictment and in respect of which he had no or no proper notice

16.15 The Chamber erred in law and fact by failing to establish how the accused shared the intent with the perpetrators to commit these specific crimes.

16.16 The Chamber erred in law and fact by convicting the accused for crimes that were outside the JCE time frame

16.17 The chamber erred in law and fact by holding that the accused Kallon significantly contributed to the commission of these crimes. (para 2163 p 637)

16.18 The Chamber erred in law and fact by failing to establish how the accused Kallon " actively" participated in the furtherance of the common purpose (para 2163 p 637) and why the furtherance of a common purpose that was not criminal would significantly contribute to specific crimes committed by persons other than the accused.

16.19 The Chamber erred in law and fact by relying on unreliable and discredited evidence while it gave no weight to credible defence and exculpatory prosecution testimonies.

16.20 The Chamber erred in law and fact by holding the accused Kallon liable for enslavement (Count 13) of an unknown number of civilians who were forced to work on RUF "government" farms and farms owned by Commanders from 30 November 1996 to about 15 September 2000; an unknown number of civilians who were forced to work and carry loads to and from different areas of Kailahun District from 30 November 1996 to about 15 September 2000; an unknown number of civilians who were forced to mine for diamonds in different areas of Kailahun District from 30 November 1996 to about 15 September 2000; and an unknown number of civilians who were forcibly trained for military purposes from 30 November 1996 to 1998 in Kailahun District(Para 2156 p 635)

16.1.The Chamber erred in Law and by convicting the accused for crimes not specifically pleaded in the indictment and in respect of which he had no or no proper notice

16.2.The Chamber erred in law and fact by failing to establish how the accused shared the intent with the perpetrators to commit these specific crimes.

16.3.The Chamber erred in law and fact by convicting the accused for crimes that were outside the JCE time frame

16.4.The chamber erred in law and fact by holding that the accused Kallon significantly contributed to the commission of these crimes. (para 2163 p637)

16.5.The Chamber erred in law and fact by failing to establish how the accused Kallon "actively" participated in the furtherance of the common purpose (para 2163 p637) and why the furtherance of a common purpose that was not criminal would significantly contribute to specific crimes committed by persons other than the accused.

16.6.The Chamber erred in law and fact by relying o unreliable and discredited evidence while it gave no weight to credible defence and exculpatory prosecution testimonies.

ERRORS IN RELATION TO SPECIFIC COUNTS

XVII. GROUND 16: ERRORS RELATING TO COUNT 1- TERRORIZING THE CIVILIAN POPULATION.

17.1 The Chamber erred in Law and fact by relying on a crime not defined in international law to convict the accused Kallon. In the alternative the Chamber erred in law and fact by convicting the accused for spreading terror or terror which are not crimes within the Statute of the Special Court. (Para 1036 p322, 1129 pp 346-347, 1357 p 406, paras 1490-1491 pp444-445)

17.2 The Chamber further erred in law and fact by failing to find that the crime of terrorizing the civilian population had not been proven beyond a reasonable doubt

17.3 The Trial Chamber erred in law to have convicted Mr. Kallon of the offences under Counts 1 (acts f terrorism) and 2 (collective punishments) under a joint criminal enterprise[58] whereas the "the burning of civilian homes in Tombodu and Koidu Town" was not pleaded as a crime in the Indictment and therefore cannot be imported into Counts 1 and 2 pursuant to paragraph 44 of the Indictment.

17.4 The Chamber erred in law and fact by convicting the accused for acts in respect of which he was not charged in relation to counts 1-2.

17.5 The Chamber erred in law and in its factual analysis by convicting the accused based on crimes not proven beyond a reasonable doubt against the accused Kallon

[58] Para. 1975 of the Trial Judgement

XVIII. GROUND 17: ERRORS RELATING TO COUNTS 3-5

18.1 The Chamber erred in law and fact by convicting the accused for acts in respect of which he was not charged in relation to counts 3-5.

18.2 The Chamber erred in law and in its factual analysis by convicting the accused based on crimes not proven beyond a reasonable doubt against the accused Kallon

XIX. GROUND 18: ERRORS RELATING TO COUNTS 6-9

19.1The Chamber erred in law and in its factual analysis by holding that the prosecution's shifting nature of the characterization of the forced marriage count had not caused any prejudice to the accused (paragraph 466-467).

19.2The Chamber abused its discretion by electing to proceed under 'sexual slavery' as opposed to 'any other form of sexual violence'. The Chamber applied the wrong test –'a consideration of all the circumstances of this trial and the evidence that has been led' as opposed to a consideration of 'which of he two offences the defense had fully defended' (see paragraph 458 of the judgment-see the correct test in the AFRC appeal judgment paragraph 108)

19.3The Chamber erred in law and in its factual analysis by failing to find that ,Count 9 of the indictment (outrages of personal dignity)was defective by virtue of its reliance on the overly broad and imprecise offence of 'any other form of sexual violence'(paras 468-470 pp159-160)[59]

[59] See also AFRC Appeals Chamber judgment para 106

19.4The Chamber further erred in law and in its factual analysis by failing to assess if the defect- in Count 9 of the indictment (which it acknowledged at para 470 p 160) had been cured

19.5In the alternative, the Chamber erred in law by failing to find that the defect in count 9 of the indictment had not been cured.

19.6The Chamber erred in law and fact by convicting the accused for acts in respect of which he was not charged.

19.7The Chamber erred in law and in its factual analysis by convicting the accused based on crimes not proven beyond a reasonable doubt against the accused Kallon

XX. GROUND 19: ERRORS RELATING TO COUNTS 10-11: PHYSICAL VIOLENCE

20.1The Chamber erred in law and fact by convicting the accused for acts in respect of which he was not charged.

20.2The Chamber erred in law and in its factual analysis by convicting the accused based on crimes not proven beyond a reasonable doubt against the accused Kallon

XXI. GROUND 20: ERRORS RELATING TO CONSCRPTION, ENLISTMENT AND USE OF CHILD SOLDIERS (COUNT 12)

21.1The Chamber erred in law and in fact by holding the accused guilty in respect of particulars which were not specifically pleaded in the indictment and for which he had no or no proper notice. The Trial Chamber erred in law and fact by failing to find

that the material facts of planning this crime were neither pled nor sufficiently cured (Para 2096 p621)

21.2The Trial Chamber erred in law and fact by holding that despite the omission in the indictment of the allegation that the accused personally used children in hostilities nevertheless, prejudicially convicted the accused on the wrong premise that the indictment had been cured (Para 1732-1734 p515; Para 1742 p517; Para 399 p136-137).

21.3The Chamber erred in law and fact by convicting the accused for acts in respect of which he was not charged.

21.4Further the Chamber erred in law and fact by relying on the uncorroborated testimony of TF1 141 (Para 2096 p629).

21.5The Trial Chamber erred in law and fact by relying on evidence of a consistent pattern of conduct outside the indictment period to arrive at a guilty finding for Mr. Kallon (Para 1615 p483; Para 2231-2232 p653).

21.6The Chamber erred in law and fact by concluding that the accused Kallon participated in the design and maintenance of the system of forced recruitment and use of child soldiers and that his contribution in this regard was substantial (Par 2231). This conclusion was without any or any proper evidential basis.

21.7The Chamber erred in law and fact by relying on evidence that Kallon brought a group of children to Bunumbu for training in 1998 (par2232 p653) which evidence the Chamber had earlier ruled it could not rely on (para 2221 p 651).

21.8The Chamber erred in law and fact by relying on Kallon's alleged presence at Moria near Makeni and by concluding that the accused was involved in the planning of conscription and use of child soldiers(para 2232 p653)

21.9The Chamber erred in law and fact by failing to find that there was no evidence of proper assessment of the ages of the alleged child soldiers (Para 1627-1628 p487)

21.10 The chamber erred in law in its factual analysis by concluding on the basis of inconclusive circumstantial evidence that the perpetrators of the crime of conscripting and enlistment and/or use of soldiers knew or had reason to know that the persons involved "may have" been under the age of 15 years (par 1704 p 508).

21.11 The chamber further erred in law by shifting the burden of proof to the accused by concluding that "where doubt may have existed as to whether a person abducted or trained was under the age of 15, it was incumbent on the perpetrators to ascertain the person's age (par 1704 p 508)

21.12 The chamber further erred in law by holding that the accused were estopped from pleading lack of knowledge (par 1704 p 508)

21.13 The Chamber erred in law and fact by concluding that there was a persistent pattern of conduct in relation to the crime of Child soldiers.Further the Chamber erred by relieving the Prosecutor the burden of proof beyond a reasonable doubt. (Para 1615 p483; Para 2231-2232 p653)

XXII. GROUND 21: ERRORS RELATING TO ABDUCTIONS AND FORCED LABOUR COUNT 13

22.1The Trial Chamber erred in law and fact in construing and finding paragraph 1488 page 444 forced military training as forced labour and further erred in finding that forced military training constituted the crime of enslavement under the statute.

22.2The Chamber erred in law and fact by convicting the accused for acts in respect of which he was not charged.

22.3The Chamber erred in law and in its factual analysis by convicting the accused based on crimes not proven beyond a reasonable doubt against the accused Kallon

XXIII. GROUND 22: ERRORS RELATING TO PILLAGE COUNT 14

23.1That the Trial Chamber erred in law to have confined the elements of the crime of Pillage in paragraph 207 p66 of its *Trial Judgment* to 'unlawful appropriation of property without the consent of the owner' contrary to the conjunctive definitional requirements of Pillage as articulated in paragraph 77 of the Indictment, to wit, that 'the AFRC/RUF engaged in widespread unlawful taking *and destruction by burning of civilian property' in the identified locations in Count 14.*

23.2The Trial Chamber similarly erred in law to have confined the *mens rea* requirement of the crime of Pillage to 'the intention by the Accused to appropriate property by depriving the owner of it', which is also contrary to the requirements of Pillage as provided in Count 14 of the Indictment.

23.3That the Trial Chamber misconstrued the definition of the crime of Pillage as stated by the Appeals Chamber in especially paragraphs 408 to 409 of the *CDF Appeals Judgment* in the sense that although the Appeals Chamber noted that "a necessary element of the crime of pillage is the unlawful appropriation of property", the Appeals Chamber did not, to that extent, redefine the crime of Pillage as provided in Count 14 of the Indictment but merely stipulated the definitional requirement of that crime under international criminal law.

23.4That the Trial Chamber additionally erred in law to have concluded at paragraph 212 p 67 of the *Trial Judgment* that it will implicitly seek to categorize the offence of Pillage into the respective categories of "unlawful appropriation of property" and "acts of destruction by burning" and that it may consider evidence on the latter category (i.e. acts of destruction by burning) in its determination of Counts 1 and 2 of the Indictment.

23.5Furthermore, the Trial Chamber erred in law and fact to have introduced the 'systematic form' of joint criminal enterprise in convicting for the offence o pillage under Counter 14 of the Indictment for the offenses it had found in Kono and Bo Districts respectively by holding at paragraphs 784(p255) and 2071(p613) of the RUF Trial Judgement that 'since the announcement of "operations Pay Yourself" by the AFRC/RUF, looting became a systemic feature of both the AFRC and RUF until the end of the Indictment period'.

XXIV. COUNT 23: DIRECTING ATTACKS AGAINST UNAMSIL

23.6The Chamber erred in law and in its factual analysis by finding that the accused Kallon was liable for attacks against Unamsil personnel, under Article 6(1) of the Statute and which attacks were not specifically pleaded in the indictment (paras 2242-2258) and failing to find that the accused was prejudiced by the non- pleading of the attacks. The Trial Chamber erred in law and fact by failing to find that the material facts of these attacks were neither pled nor sufficiently cured.

23.7Considering the Trial Chamber's findings at Paragraphs 325 (pg 107), 331 (1107, 397 (pg 136) 398 (pg 136), 399 (pg 137), on the material omission from the indictment of the personal participation of the Appellant amongst material pleading defects, the Trial Chamber erred in law by finding proprio muto to the Appellants

prejudice, Paragraphs 400 (page 1377, 2244 (pg 656); 2245 and 2246 (page 657) that the mere disclosure of witness statements lacking in material detail, rather than an amendment under rule 50, effectively put the appellant on notice of the crimes for which he was convicted.

23.8That the Trial Chamber erred in law and fact to have found Mr. Kallon guilty of committing the above offence *under Count 15* of the Indictment in Kono District pursuant to Article 6(3) of the Statute of the Special Court in view of the fact that the said Trial Chamber had ruled in its RUF Oral Rule 98 Decision that "No evidence was adduced by the Prosecution against the accused persons in respect of the offences of intentionally directing attacks against personnel involved in peacekeeping mission, charged in count 15 as an other serious violation of international humanitarian law, punishable under Article 4(b) of the Statute (...) for the whole of the Republic of Sierra Leone, except for the following districts: (...) *iv. Kono District, only with regard to Counts 17 and 18*, for which there is evidence that, if believed, is capable of supporting a conviction"[60].

23.9That in view of the Trial Chamber's opinion and ruling in paragraphs 1971 and 1972 of the *Trial Judgment*, it is erroneous and improper for the Trial Chamber to have convicted Mr. Kallon of "committing and ordering" attacks on peacekeepers pursuant to Article 6(1) of the Statute for events in Bombali District as well as to have similarly convicted him under Article 6(3) of the Statute for events in the said Bombali District. In particular, this conviction undercuts the Trial Chamber's opinion in paragraph 1972 of the *Trial Judgment* that "it would be inappropriate to hold a superior criminally responsible for ordering, planning, instigating or aiding and abetting the commission of crimes and at the same time reproach the superior for failing to prevent or punish the perpetrators".

23.10 That, the Trial Chamber also erred in law to have included Tonkolili District in its findings and convictions on Count 15 of the Indictment considering that the said

[60] Transcript of 25 October 2006, pp. 44-45.

Count specifically failed to mention Tonkolili Distirict as a crime base in the Indictment. Similarly, the Trial Chamber erred in law in considering the Districts of Port Loko and Kono in its findings and convictions under Count 15 in view of the fact that the Prosecution failed to put Mr. Kallon on notice in both its Pre-Trial and Supplemental Trial Briefs of the existence of such crime bases under Count 15. This failure prejudiced Mr. Kallon in preparing and adequately responding to the offences found against him in the Districts of Tonkolili, Port Loko and Kono.

23.11 The Chamber erred in law in convicting the accused with war crimes in relation to the UNAMSIL events when there was no evidence on the record that at the time of the events there was an armed conflict in Sierra Leone. The Chamber further erred in law by holding that by taking judicial notice merely of "a conflict in Sierra Leone from March 1991 until January 2002" the Prosecution was exempt from proving the existence of an "armed conflict" in Sierra Leone during that period.(paras 969-970) [61].

23.12 The chamber erred in law and in its factual analysis by finding that the accused was liable under Article 6(1) of the Statute for alleged attacks against Unamsil personnel. (Paras 2242-2258) and failing to find that the prosecution had not proven the accused's liability beyond a reasonable doubt.

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[61] Indeed there from the Judgment itself it is evident that any argument that there was an armed conflict in Sierra Leone after the Lome Peace Accord is untenable and unsubstantiated. For instance the Chamber notes that on 20 July 1999.Bockarie transmitted a written order for ceasefire-in line with Lome (para 909),in November 1999, the RUF transformed itself into a political party –RUFP(para 912), Bockarie, who was opposed to disarmament resigned and fled to Liberia on the 19 December 1999 (para 913).The only evidence of an attack cited by the Chamber around the time Lome was signed is when Sesay is supposed to have 'chartered a group of 200 Liberian ULIMO fighters to attack Lunsar and Makeni (paragraph 921).At para 932,the Chamber notes that some RUF ranks or assignments were "dormant" as "there was no fighting in Makeni at the time". Indeed the Chamber itself concludes that attacks were directed against the civilian population of Sierra Leone from 30 November until at least the end of January 2000(para 951) see also para 962Kallon remained in Magburaka until 2000 when he moved to Makeni as 5th Brigade commander ,Kailondo ,was Kallon's Deputy and also the Brigade commander for Makeni and the BFI although this later assignment was 'dormant' as there was no fighting in Makeni at the time (paragraph 932)The Chamber itself concludes that attacks were directed against the civilian population of Sierra Leone from 30 November until at least the end of January 2000(paragraph 951) see also par 962 to the effect that the attacks lasted from November 1996 to January 2000 and also paragraph 1946 to the same effect.

23.13 The chamber erred in law and in its factual analysis by relying on the adverse evidence of a co-accused to support Kallon's conviction under count 15 (par 2286-2289).

23.14 The Chamber Further erred in law and fact by failing to resolve the issue of identification of the accused in relation to the UNAMSIL attacks.

23.15 The Chamber further erred in law and fact by relying on unreliable and discredited prosecution testimony while disregarding credible defence and exculpatory prosecution testimonies.

23.16 The Chamber erred by relying on the adverse testimony of a co-accused in relation to the attacks.

23.17 The chamber erred in law and in its factual analysis by finding that the accused Kallon was liable for attacks against Unamsil personnel, under Article 6(1) of the Statute and which attacks were not specifically pleaded in the indictment (paras 2242-2258) and failing to find that the accused was prejudiced by the non- pleading of the attacks.

23.18 The Chamber erred in law and in its factual analysis by convicting the accused Kallon under 6 (3) of the Statute on alleged attacks against Unamsil personnel and in respect of which material facts were not pleaded in the indictment (Para 2292) to the prejudice of the accused.

23.19 The Trial Chamber erred in law and fact by failing to find that the elements of 6 (3) liability had not been proven beyond reasonable doubt.

XXV. GROUND 24: COUNT 17

24.1.The chamber erred in law and in its factual analysis by finding that the accused Kallon was liable under 6(3) for the alleged killing of 4 Unamsil personnel not specifically pleaded in the indictment (par 2292)

24.2The chamber further erred in law and in its factual analysis by failing to find the non-pleading of the killing of the Unamsil personnel caused prejudice to the defence of the accused.

24.3The chamber further erred in law and in its factual analysis of the evidence by holding that the accused was in a superior- subordinate relationship with the perpetrators of the killing of the 4 Unamsil personnel (par 2292)

24.4In the alternative, the chamber erred in law and in its factual analysis by holding that the accused had actual or imputed knowledge of the alleged killing of 4 Unamsil personnel (par 2290)

24.5The chamber erred in law and in its factual analysis by relying on the adverse evidence of a co-accused to support Kallon's conviction (paras 2285-2289)

24.6The chamber erred in law by concluding that a state of armed conflict existed in Sierra Leone from March 1991 until 2002 when there was no evidence to that effect and relying on judicial notice of the existence of "a conflict" to conclude that there existed an "armed conflict" (para 969)

XXVI. GROUND 25: ERROR RELATING TO SPECIFIC INTENT 6(1), 6(3)

25.1The Chamber erred in law by failing to make any finding as to the specific intent of the accused kallon in the conviction under 6(1) and 6(3) although the chamber had found that the these were specific intent crimes(paras 232 p75; para 2248 p657; para

2250 p658; para 2253 p658; para 2255 p659; para 2258 p660; para 2260 p660; para 2293 p669)

XXVII. GROUND 26: ERROR RELATING TO IDENTIFICATION UNAMSIL CRIMES

26.1Trial Chamber erred in relying on unreliable, uncorroborated hearsay and insufficient circumstantial identification evidence to connect and convict the accused on the unamsil counts, namely in the unpleaded locations of makump, makot, moria and locations in tonkolili, port loko and kono.(para 573 p192,1790 p531)

XXVIII. GROUND 27: ERROR RELATING TO CIVILIAN STATUS OF UNAMSIL

27.1Trial Chamber erred in law by construing the unamsil soldiers assumed the status of civilians not taking part in the conflict, despite the plain and unambiguous intendment of the convention to the contrary. para 1750, 1751, 1752, 1720, pgs 511, 520.para 213-243 pp67-78

XXIX. GROUND 28: ERROR RELATING TO UNPLEADED LOCATIONS

28.1Trial Chamber erred in convicting the appellant in respect of attacks outside the locations pleaded in the indictment and without a sufficient showing of his personal and or substantial contribution to the crimes through any of the forms of liability pleaded.

XXX. GROUND 29: ERROR RELATING TO AFRC/RUF RESPONSIBILITY IN UNAMSIL CRIMES

29.1The indictment alleged that the crimes in counts 15-18 were perpetrated through the joint action of AFRC/RUF and by alleged AFRC/RUF subordinates or co-perpetrators. The trial chamber erred in law; amending the indictment de facto and in convicting the accused for crimes alleged to have been committed through AFRC/RUF joint action without a showing that the joint alliance was under his command.

XXXI. GROUND 30: CUMULATIVE CONVICTIONS

25.1The Chamber erred in law and fact by making an impermissibly cumulative conviction for murder and extermination and collective punishments and terrorism.

25.2The Chamber erred in law and fact by convicting the accused both under 6 (1) and 6 (3) in relation to UNAMSIL for the crimes committed in Bombali based on the same conduct.

XXXII. GROUND 31: SENTENCING ERRORS

26.1The Trial Chamber erred in Law and in fact by failing to sufficiently consider the limited degree of participation of the accused Kallon in the crimes for which he was convicted. The trial chamber included in its consideration of gravity some extremely heinous crimes to which there was minimal linkage to the accused Kallon (*see sentencing judgment par 108, separate opinion paras 50-55 and trial chamber judgment at par 2080, sentencing judgment paras 112,113,114, see trial judgment at par 2080, sentencing judgment paras 117-122, 130, paras 137-140,141,146,147-149,151,159,172,181,180,183.*

26.2The Trial Chamber erred in law and in fact by holding that acts of terrorism or collective punishment "were factors which increased the gravity of other offenses (sentencing judgment par 106)

26.3The Trial Chamber erred in law and in fact by considering as aggravating Rocky's capture of a large group of civilians some of whom were taken away and some executed and beheaded (sentencing judge par 247).

26.4The Chamber erred in law and in fact by holding that the act of voting for one to be killed was an aggravating factor (sentence judgment par 247).

26.5The Trial Chamber erred in law and in its factual analysis by failing to accord sufficient weight to mitigating factors or to accord them any weight at all and attaching undue weight to the aggravating factors.

26.6The Chamber failed to consider the accused Kallon's good character prior to conviction.

26.7The Chamber failed to consider Kallon's behaviour and conduct subsequent to the conflict particularly with respect to promoting peace and reconciliation, and further his good conduct in detention.

26.8The Chamber erred in law by giving undue weight to cumulative factors already considered in the conviction and unjustifiably disregarded or attached little weight to mitigating factors.

26.9The Sentencie suffers from an erroneous analysis of the individual circumstances of the appellant and a failure to consider mitigating circumstances appropriately.

26.10 The Sentence imposed in respect of each count was arbitrary, draconian and inordinately harsh and suffers from a lack of proportionality to the gravity of the offence and is manifestly excessive.

26.11 By virtue of the numerous errors of law and the prejudice the accused suffered resulting from the violation of his fundamental rights, the sentence imposed was manifestly harsh and unjust.

XXXIII. CONCLUSION

27.1The cumulative effect of the legal and/or factual errors as set out herein before invalidates the decision to convict the appellant on the basis of the evidence. It is intended to pray the Appeals Chamber to:

- Set aside the conviction of the accused on all counts or in the alternative reduce the sentence substantially as may be appropriate

- To enter a judgement of acquittal

- To seek any other remedy as may be warranted in the interests of the accused person

Dated this 28th day of April 2009

Signature:

CHARLES TAKU

Lead Counsel

KENNEDY OGETTO

Lead Counsel II

[redacted]