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SCSL-04-15-A
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SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

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

Registrar: **Mr. Herman Von Hebel**

Date filed: **28th April 2009**

THE PROSECUTOR

V.

ISSA HASSAN SESAY

Case No. SCSL-2004-15-A

PUBLIC

Notice of Appeal

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

Defence Counsel for Issa Sesay
Mr. Wayne Jordash
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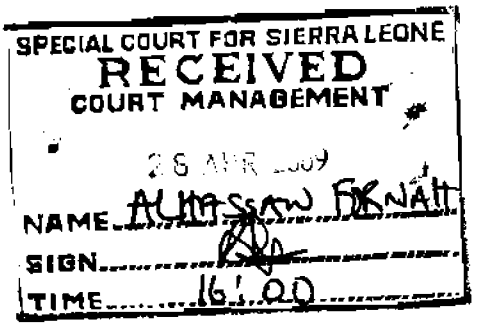
Defence Counsel for Morris Kallon
Mr. Charles Taku
Mr. Orgetto Kennedy

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



1. **THE SESAY DEFENCE** files this Notice of Appeal, pursuant to Article 20 of the Statute of the Special Court and Rule 108 of the Rules of Procedure and Evidence, setting forth its grounds of appeal against the "Trial Chamber Judgment" dated 2 March 2009 in Case No. SCSL-04-15-T, *Prosecutor* v. *Sesay, Kallon and Gbao* (*"the RUF trial"*)[1] (the "Judgment") and the "Sentencing Judgment" of the Trial Chamber dated 8 April 2009.[2]

2. **IN THE GROUNDS OF APPEAL** set out below, a reference to an error on a question of law means a question of law invalidating the decision, within the scope of Article 20(1)(b) of the Statute, unless otherwise specified; and a reference to an error of fact means an error of fact, which has occasioned a miscarriage of justice, within the scope of Article 20(1)(c), unless otherwise specified.

3. Further, unless otherwise specified, the relief sought in relation to an error of law or an error of fact is the reversal of the finding of the Trial Chamber and, where appropriate, the acquittal of the Appellant on the particular charge.

4. The notice is intended to contain the totality of the grounds that will be advanced on appeal. In the event that further arguable grounds become apparent between the filing of the notice and the oral hearing the Defence reserves the right to seek a variation of the notice and/or grounds. It is submitted that in the absence of demonstrable undue prejudice to the Prosecution the interests of justice clearly militate in favour of any proposed addition or amendment.[3]

INTRODUCTION

5. The first three grounds of appeal allege fundamental errors of law and fact and/or procedure and are of general application: singularly and/or cumulatively the errors have given rise to unfairness which materially impacts upon one or more of the remaining grounds. The unfairness has fundamentally violated Article 17 of the Statute and the associated fair trial rights to a degree which made a fair trial impossible *and* which fundamentally impacts upon the nature of the proposed appeal. As concerns this latter issue, the Defence is cognisant that an appeal is not a *de novo* hearing; however, the errors resulting from the first three grounds, taint the Trial Chamber's overall approach to the facts and make it impossible to advance the appeal without seeking recourse to a substantial part of the trial record. In summary, the first

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[1] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1234, "Judgment," 2 March 2009.
[2] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1251, "Sentencing Judgment," 8 April 2009.
[3] *Prosecutor* v. *Krajisnik*, Judgment, AC, 17 March 2009, Para. 748.

three grounds are errors of law and fact whieh eneompass the Trial Chamber's approach to the whole trial and which underpin the unreasonable assessment of evidence in regards to eaeh and every conviction.

GROUND 1: Reversal of the Burden of Proof

6. The Trial Chamber erred in law and fact in failing to require that the Prosecution prove its case against the Appellant. In summary, the Trial Chamber's approach was to presume guilt on the basis of the Appellant being a member of the RUF. As notcd by the Trial Chamber:

> *It indeed goes without saying and the Chamber so concludes that resorting to arms to secure a total redemption and using them to topple a government which the RUF characterised as corrupt necessarily implies the resolve and determination to shed blood and commit the crimes for which the Accused are indicted.*[4]

7. This reversal of the burden of proof, manifested throughout the trial, condemned the Appellant from the outset. The RUF indictment is the least specified in the history of the ICTY, ICTR and the SCSL. The Trial Chamber concluded, without hearing evidence, that this was justified because the RUF trial concerned "mass criminality" and the "sheer scale of the offences"[5] made it impossible to provide any specificity – although this type of detail is mandatory in the trials which concern the Rwandan genocide, involving up to 500,000 deaths, and those arising from the conflicts in the former Yugoslavia, including the mass killing of up to 8,000 civilians in Srebrenica. Nonetheless, these details in the RUF case *were* led through the wholesale introduction of the majority of the charges through evidence. The Trial Chamber's presumption – that the continued existence of the RUF necessarily implied the involvement of the Appellant in ongoing and inevitable criminal conduct – underpinned the Trial Chamber's approach to procedural guarantees and the eventual assessment of evidence.

8. The Trial Chamber sanctioned a disclosure process that deprived the Appellant of notice of the vast majority of the eharges. The Prosecution was permitted to adduce the charges through the evidence: the vast majority were disclosed to the defence during the Prosecution case. Moreover, as crimes were – in the minds of the Tribunal - inevitable, these allegations of eriminal conduct were always considered more likely than not to be true. As a corollary, the Trial Chamber's approach to an assessment of the evidence was restricted to a consideration of whether the Prosecution had adduced evidence of crimes and whether they

[4] Judgment, Para. 2016.
[5] Paras. 329-331.

could be linked to the RUF. The nexus to the Appellant was presumed: their participation in the RUF was sufficient to prove their resolve and determination to commit the crimes. Unsurprisingly, the resulting Judgment constitutes a list of crimes with no real exploration or establishment of *mens rea* – except that viewed as inevitable through membership of the RUF. The Trial Chamber erred in law and fact in depriving Mr. Sesay of his right to be presumed innocent as prescribed by Article 17 of the Statute of the Special Court.

9. The Defence requests that the Appeals Chamber dismiss all of the charges found proven. Alternatively, the Defence requests that the Appeals Chamber order a new trial, or provide Mr. Sesay with the presumption of innocence and substitute its own findings in relation to each charge.

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

10. The Trial Chamber erred in law, fact and/or procedure in rejecting the totality of the defence evidence, including Sesay's testimony.[6] The Trial Chamber was entitled to assess and reject the multiple defences advanced by each Appellant but was not entitled to disregard them without consideration; or to disregard every piece of evidence which offered any alternative explanation inconsistent with the theory that every member of the RUF was resolved and determined to commit the crimes alleged. No reasonable Tribunal, properly directing itself, could have arrived at the conclusion that every piece of evidenced proffered in support of the multiple defences, *including Prosecution evidence*, could be disregarded in an assessment of the Appellant's criminal responsibility. This was not simply the manifestation of a reversal of the burden of proof but a presumption of guilt that could not be displaced.

11. There is no indication in the Judgment that the arguments that were advanced by the Appellant were considered, weighed and rejected. The Judgment is transparently a list of criminal conduct, untroubled by defence arguments, context or evidence, which might have shed some light on how the events might have occurred – other than through the resolve and determination of every member of the RUF. The Trial Chamber, in the main, resolutely refused to draw inferences in favour of the Appellant; on the rare occasion the Chamber did, it was when the *Prosecution* testimony was overwhelmingly supportive of the Defence case[7]

[6] Judgment, Paras. 527-528, 530-531, 566, 568, 570, 605-608, and 658. *See also*, Sesay Defence Closing Brief;
[7] For example, the finding that the RUF were not involved in the January 6th 1999 attack on Freetown. This finding was based upon the evidence of TF1-036, -045, -184, -334, -360, -361, -366, -371, and Junior Johnson (*see* Paras. 874-893), that is, every significant Prosecution witness who testified on the subject. *See also* Sesay

or when the issue concerned the acceptance of criminal conduct but a reclassification of its legal character: that is, when it did not weaken or undermine the presumption that Sesay intended the crimes committed by other members of the RUF.[8]

12. The Defence requests that the Appeals Chamber dismiss all of the charges found proven. Alternatively, the Defence requests that the Appeals Chamber order a new trial, or provide Mr. Sesay with the presumption of innocence, consider the Defence case and substitute its own findings in relation to each charge.

GROUND 3: Failure to Provide a Reasoned Opinion

13. The Trial Chamber erred in fact and law in failing to provide, pursuant to Article 18 of the Statute, a public judgment, accompanied by a written *reasoned* opinion. It was not within the reasonable exercise of discretion to make findings of fact and law without providing a level of detail that would illustrate the central issues raised and the way in which the Chamber resolved them.

14. The Trial Chamber was not obliged to comment on every piece of evidence and it enjoys the presumption that it "evaluated all the evidence presented to it."[9] However, the Trial Chamber was obliged to demonstrate that it had not "disregarded any particular piece of evidence."[10] The presumption, enjoyed by the Trial Chamber, is rebuttable, upon proof of this dereliction. The Trial Chamber's prerogative was prescribed in law: it had to explain its decisions – and how it reached them – especially those which led to findings of guilt of serious violations of humanitarian law and the deprivation of liberty.

15. The Trial Chamber dismissed the Sesay defence case – involving 59 witnesses who testified over 7 months, and 150 exhibits – in 16 paragraphs.[11] Accordingly, there is nothing in the Judgment that indicates that the Trial Chamber had regard to the vast majority of the Defence evidence. Further, the evidence emerging during the examination of Prosecution witnesses

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Defence Closing Brief.

[8] E.g., TF1-078 was relied upon as apparent proof that civilian camps remained in existence until disarmament in 2001 in Kono District and, although there was improvement in the conditions, the situation only went "from worse to bad" for civilians (*see* Judgment, Para. 1223) but when testifying about Sesay, and observing that Sesay was against the killing and raping of civilians and wanted civilians to live peacefully within RUF controlled zones and was "every day protecting the rights of the civilians" (Transcript of 25 October 2004, pp. 82-89) the Chamber simply disregarded this evidence *without explanation*. Consider also, e.g., the findings at Paras. 1028 and 1117.

[9] Judgment, Para. 478, quoting *Kvocka et al.* Appeal Judgement, para. 23 [original footnotes omitted].

[10] Judgment, Paras. 478-479.

[11] Judgment, Paras. 527-531, 565-570, 605-608, and 1329.

that supported the Defence cases was rejected and no explanation was provided. The Judgment fails to explain the apparent anomaly: that witnesses found reliable when incriminating an Appellant were not found reliable when proffering evidence which might weaken *any* inference of guilt.

16. The Trial Chamber recognised that it was supposed to assess whether evidence was "objectively reliable,"[12] using accepted indicators: such as whether the evidence was direct, detailed, consistent, corroborated, as well as the motive and trustworthiness of the witness[13] and yet, rarely, is this purported analysis reflected in the Judgment. On most of the material findings there is little to suggest that this analysis was part of the deliberations, neither in the discernable logic or the scant reasoning proffered in explanation.

17. It is instructive to peruse *every* other judgment at the ICTY, ICTR and the SCSL. It is impossible to find a judgment which offers this paucity of explanation concerning the issues raised, how they were resolved or why each of the Appellant's cases was so comprehensively dismissed. The Defence submits that scant explanation was proffered for this dismissal because scant reasons exist.

18. The Defence requests that the Appeals Chamber consider the totality of the evidence and substitute its own *reasoned* findings in relation to each charge. This will provide the Appellant and the public with an explanation which justifies any resulting conviction.

GROUND 4: Rule 68 Violations

19. The Trial Chamber erred in law, fact and/or procedure in dismissing the Defence Application for disclosure of Rule 68 material,[14] namely (i) the assistance offered and given to Prosecution witness John Tarnue by the Prosecution to assist with relocation to a new country;[15] and (ii) the information in the possession of, or known to the Office of the Prosecutor ("OTP"), which discloses an unlawful and *ultra vires* attempt by the investigating arm of the OTP to arrest Benjamin Yeaten in Togo between 2000 and 2004. The Trial Chamber, endorsing the position taken by the Prosecution, concluded that this material was not disclosable pursuant to Rule 68.

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[12] Judgment, Para. 487.
[13] Judgment, Paras. 486-500.
[14] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-276, "Motion Seeking Disclosure of the Relationship Between the United States of America's Government and/or Administration and/or Intelligence and/or Security Services and the Investigation Department of the Office of the Prosecutor," 8 November 2004.
[15]

20. The relief sought from the Appeals Chamber is a reversal of the reasoning employed by the Trial Chamber and a declaration to the effect that the above constitutes Rule 68 material and should have been disclosed. Additionally, the Defence seeks an immediate, independent review of the Prosecution's undisclosed evidence in order to ensure that all Rule 68 material is disclosed in time to form part of the grounds of appeal.

21. The Defence will address the Appeals Chamber concerning further remedies when this material – including, but not limited to: all evidence which might impact upon the credibility of witnesses, (including, but not limited to, all assistance provided to witnesses, all witness statements and/or interviews) and information that is relevant to investigative probity – is disclosed.

GROUND 5: Disregard of Motive

22. The Trial Chamber erred in law and fact in finding that, "the fact that a witness has been relocated by the WVS [Witness and Victim's Section] in order to protect his safety or the safety of his family does not affect the Chamber's view of the evidence provided by the witness."[16] Having ruled that this "assistance" was not discloseable pursuant to Rule 68[17] this material was not before the Chamber and it was not in a position to assess the impact of this potential incentive/inducement on witness testimony. The Defence requests that the Appeal Chamber dismiss the Trial Chamber's assessment of evidence and substitute its own findings in relation to the relevant charges.

GROUND 6: Defects in the Indictment and Lack of Notice Pursuant to Articles 6(1) and 6(3)

23. The Trial Chamber erred in law, fact and/or procedure when concluding that the Appellant's right to be informed of the nature and cause of the charges and the presumption of innocence, pursuant to Article 17(3) and (4)(a) of the Statute, had not been breached in relation to the charges, as indicated in Annexes A and B. The Trial Chamber erred in concluding that the charges and their alleged commission pursuant to Article 6(1) and 6(3) had been properly pled and/or could be cured by subsequent information. The Trial Chamber's approach to the issue of defects, notice, and the curing of an indictment was fundamentally flawed in law and fact. The volume of defects cumulatively undermined the trial and the Appellant's Article 17 guarantees. The resulting prejudice was incurable and the Defence seeks the dismissal of the

[16] Judgment, Para. 525.
[17] See Ground Four.

whole indictment.

24. In the alternative the Defence seeks the dismissal of the charges in Annexes A and B.

GROUND 7: Acts of Terror Pleading

25. The Trial Chamber erred in law and fact in concluding that the Indictment provided Sesay with adequate notice that acts of Terrorism, as pleaded in Count 1, included "acts or threats of violence independent of whether such acts or threats of violence satisfy the elements of any other criminal offence."[18] The Defence seeks the reversal of this finding and requests that affected counts/charges be dismissed.

GROUND 8: Collective Punishment Pleading

26. The Trial Chamber erred in law and fact in concluding that the Indictment provided Sesay with adequate notice that acts of Collective Punishment, as pleaded in Count 2, included "conduct [that] does not satisfy the elements of any other crimes charged in the Indictment."[19] The Defence seeks the reversal of this finding and requests that the affected counts/charges be dismissed.

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

27. The Trial Chamber erred in law and fact in concluding that the pleading of these counts and/or the charges provided sufficient notice and did not prejudice the Defence or prevent a fair trial on the counts or the charges.[20] The Defence seeks the reversal of this finding and requests that the affected counts or charges be dismissed.

28. The Trial Chamber erred in law and fact in concluding that the "evidence of individual victims is illustrative of the offenees, but the gravamen of the charges does not hinge on the victimisation of any individual person at any particular time."[21] The Defence seeks the reversal of this finding and requests that the affected counts or charges be dismissed.

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[18] Judgment, Para. 115, and Sesay Closing Brief, Paras. 102-104.
[19] Judgment, Para. 128.
[20] Judgment, Paras. 426-428.
[21] Judgment, Para. 427.

GROUND 10: Forced Marriage Pleading

29. The Trial Chamber erred in law and fact in concluding that the pleading of this count and/or the charges provided sufficient notice and did not prejudice the Defence or prevent a fair trial on the count or the charges.[22] The Defence seeks the reversal of this finding and requests that the affected counts or charges be dismissed.

GROUND 11: Enslavement Pleading

30. The Trial Chamber erred in law and fact in concluding that the Appellant had been provided with sufficient notice that acts of alleged enslavement other than "domestic labour and use as diamond miners" could support Count 13.[23] The Trial Chamber erred by assessing that the Appellant had been provided with sufficient notice. The Defence seeks the reversal of this finding and requests that the affected counts or charges be dismissed.

GROUND 12: Joint Criminal Enterprise Pleading

31. The Trial Chamber erred in law and fact in finding that the pleading of the joint criminal enterprise liability provided sufficient notice and did not prejudice the Appellant or prevent a fair trial.[24] The Defence seeks the reversal of this finding and the dismissal of the joint criminal enterprise liability, as alleged pursuant to Article 6(1) of the Statute.

GROUND 13: Command Responsibility Pleading

32. The Trial Chamber erred in law and fact in finding that the pleading of the command responsibility liability provided sufficient notice and did not prejudice the Appellant or prevent a fair trial. [25] The Defence seeks the reversal of this finding and the dismissal of the command responsibility liability, as alleged pursuant to Article 6(3) of the Statute.

GROUND 14: Accomplices

33. The Trial Chamber erred in law and fact by failing to approach the Prosecution accomplices with due caution and with due regard for motive. The Defence requests that the Appeal Chamber dismiss the Trial Chamber's assessment of evidence and substitute its own findings of the affected charges.

GROUND 15: Corroboration

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[22] Judgment, Para. 467.
[23] Judgment, Para. 1476.
[24] Judgment, Para. 394.
[25] Judgment, Para. 393.

34. The Trial Chamber erred in fact and law in failing to require corroboration for the testimony of the following witnesses: TF1-012, TF1-035, TF1-044, TF1-045, TF1-114, TF1-139, TF1-304, TF1-360, TF1-361, and TF1-362. No reasonable Tribunal could have concluded that these witnesses were sufficiently reliable to allow findings adverse to the Appellant without corroboration by reliable evidence.

GROUND 16: Financial Payments by the Prosecution

35. The Trial Chamber erred in law, fact and/or procedure in dismissing the Defence "Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses."[26] The Trial Chamber erred in refusing to have regard to evidence which raised a *prima facie* case demonstrating that the Prosecution had provided unauthorised and/or improper inducements to witnesses. The Trial Chamber's refusal to hear evidence to explain or rebut the inference of impropriety and/or improper inducements was an exercise of discretion so unfair to constitute an abuse. No reasonable Tribunal, properly directing itself, would have refused to enquire.

36. The relief sought by the Defence is a reversal of the reasoning employed by the Trial Chamber, the calling of oral testimony of the relevant witnesses and the relevant Prosecution personnel from the Witness Management Unit ("WMU"), the disclosure of the full records of the WMU, the re-assessment of all the evidence in light of the prosecution payments to witnesses, and the substitution of the Appeal Chamber's findings in relation to the relevant charges.

37. Additionally, the Defence seeks the dismissal of the totality of the evidence of witness TF1-015, TF1-035, TF1-334, TF1-360, TF1-362, and TF1-366 as indelibly tainted by improper payments.

GROUND 17: False Testimony: TF1-366

38. The Trial Chamber erred in law, fact and/or procedure in dismissing the Defence Application to "Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366."[27] The error resulted from the Trial Chamber's approach to the testimony which failed to give due weight to the incredulous nature of the testimony, including the demeanour of the witness, the manifest implausibility, the volume and nature of the inconsistencies, and

[26] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1161, "Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses," 30th May 2008.
[27] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-610, "Decision on Sesay Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366", 25 July 2006.

other indices indicating false testimony.

39. The relief sought from the Appeals Chamber is a reversal of the reasoning employed by the Trial Chamber and the grant of the Motion. Additionally the Defence seeks the dismissal of TF1-366 evidence in totality and the substitution of the Appeal Chamber's findings in relation to the relevant charges.

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

40. The Trial Chamber erred in law, faet and/or procedure in dismissing the Defence Application seeking "Various Relief"[28] in relation to the Prosecution's concealment of Rule 68 material and an attempt by TF1-108 to pervert the course of justice. The error resulted from the Trial Chamber's refusal to take into account relevant evidence and was so unreasonable as to constitute an abuse. The Defence requests the following relief from the Appeals Chamber:

i) the reversal of the reasoning employed by the Trial Chamber;

ii) an independent review of the Prosecution's undisclosed evidence;

iii) an order to the Prosecution to investigate TF1-108 for false testimony and attempting to pervert the course of justice;

iv) the dismissal of the evidence of TF1-108 in its totality and;

v) the substitution of the Appeal Chamber's findings in relation to the relevant charges.

GROUND 19: Adjudicated Facts

41. The Trial Chamber erred in law, fact and/or procedure in dismissing the "Defence Application for Judicial Notice to be taken of Adjudicated Facts under Rule 94(B)."[29] The deeision and reasons proffered by the Trial Chamber for the exercise of its discretion were so unreasonable as to amount to an abuse. The Trial Chamber failed to exercise its discretion judiciously and deprived the Appellant of a well-founded presumption in favour of these facts. The Defence requests the following relief from the Appeals Chamber: a reversal of the reasoning employed by the Trial Chamber; the re-assessment of the evidence in light of the presumptions and the substitution of the Appeal Chamber's findings in relation to the relevant charges.

GROUND 20: Exclusion of Relevant Defence Evidence

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[28] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1147, "Decision on Sesay Defence Motion for Various Relief Dated 6 February 2008," 26 May 2008.

[29] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1144, "Sesay Defence Application for Notice to be Taken of Adjudicated Facts Pursuant to Rule 94(B)", 23 May 2008.

42. The Trial Chamber erred in law, faet and/or procedure in dismissing – in part – the Defence Application "motion and three Sesay Defence applications to admit 23 witness statements under Rule 92 *bis*"[30] This evidence was relevant to *mens rea* and the specific charges. The relief sought by the Defence is a reversal of the reasoning employed by the Trial Chamber, the re-assessment of the evidence and the substitution of relevant findings, particularly – but not exclusively – in relation to the Sesay's convictions: Article 6(1) of the Statute for planning the enslavement of hundreds of civilians to work in mines at Tombodu and throughout Kono District between December 1998 and January 2000, as charged in Count 13 of the Indictment;[31] Article 6(3) of the Statute for the enslavement of an unknown number of civilians at Yengema training base between December 1998 and about 30 January 2000;[32] and under Article 6(1) of the Statute for planning the use of persons under the age of 15 to participate actively in hostilities in Kailahun, Kono, Kenema and Bombali Districts between 1997 and September 2000.[33]

GROUND 21: "Acts and Conduct"

43. The Trial Chamber erred in law and fact by defining and approaching Prosecution evidence which went to the "acts and conduct of the accused" as uniformly distinct from evidence which was more "general"[34] or related to the witnesses "own experiences."[35] The Defence requests that the Appeals Chamber dismiss the Trial Chamber's assessment of this evidence and substitute its own findings in relation to the relevant charges.

GROUND 22: Victim Witnesses

44. The Trial Chamber erred in law and fact by identifying an inviolable category of Prosecution "Victim Witnesses" (whose evidence was, "generally accepted ... for the purpose of establishing that crimes took place" "as being credible and reliable"[36]) and "former child combatants" (whose evidence was "generally accepted ... especially as it relates to their own experiences"[37]). This error led the Trial Chamber to fail to assess the Prosecution evidence with due regard to the burden and standard of proof. The Defence requests that the Appeals

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[30] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1125, "Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92*bis*", 15 May 2008.
[31] Judgment, Paras. 1329-1330, 2065, and 2116.
[32] **Judgment, Para. 2065. [WJ: JK suggests this paragraph instead]**
[33] Judgment, Para. 2230, and Corrigendum, Para. 9.
[34] *E.g.*, Judgment, Para. 543.
[35] *E.g.*, Judgment, Para. 546.
[36] Judgment, Paras. 532-536.
[37] Judgment, Para. 579.

Chamber dismiss the Trial Chamber's assessment of evidence and substitute its own findings in relation to the relevant charges.

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

45. The Trial Chamber erred in law in concluding that the Prosecution had established that the forced marriages found to have been committed by the AFRC/RUF within the territory of Sierra Leone could be classified as acts of terror.[38] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

46. Alternatively, the Trial Chamber erred in law and fact by classifying all forced marriages found to have been committed by the AFRC/RUF within the territory of Sierra Leone as acts of terror.[39] No reasonable Tribunal, properly directing itself, could have concluded that each perpetrator had the primary intention to spread terror.

GROUND 24: Joint Criminal Enterprise

47. The Trial Chamber erred in its application of the legal elements of a joint criminal enterprise, thereby misdirecting itself concerning the Appellant responsibility pursuant to the joint criminal enterprise liability doctrine. In particular:
    i) The Trial Chamber erred by regarding, explicitly and implicitly, the goal of taking power and control as the criminal purpose;[40] and
    ii) The Trial Chamber erred by failing to require that the Prosecution prove the Appellant agreement, participation, contribution to a criminal purpose and/or crimes and criminal intent.[41]

48. In the alternative the Defence seeks the dismissal of the following charges:

GROUND 25: Bo District: Article 6(1) Responsibility, Pursuant to the Joint Criminal Enterprise

49. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay actively participated in the furtherance of a criminal purpose and that by this participation he significantly contributed to the commission of acts of terrorism (Count 1), unlawful killings (Counts 3 to 5) and pillage (Count 14), as were found to have been committed in Bo District

[38] Judgment, Paras. 1352 and 1356.
[39] Judgment, Paras. 1352 and 1356.
[40] Judgment, Para. 1979.
[41] Judgment, Para. 2016.

between 1 June 1997 and 30 June 1997.[42] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

50. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay shared with other participants in a joint criminal enterprise the requisite intent to commit these crimes.[43] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

GROUND 26: Acts of Terror in Bo District

Acts of Terror (Count 1) – Tikonko

Burning

51. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that the burning of more than 500 houses during a second attack on Tikonko on 15 June 1997 were acts of terror, as charged in Count 1.[44] No reasonable Tribunal, properly directing itself, could have concluded that the perpetrators' primary intention was to spread terror.

Unlawful Killings

52. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that the killings in Tikonko were acts of terror, as charged in Count 1.[45] No reasonable Tribunal, properly directing itself, could have concluded that the perpetrators' primary intention was to spread terror.

Acts of Terror (Count 1) – Sembehun

Burning

53. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that the burning of over 30 houses in Sembehun were acts of terror, as charged in Count 1.[46] No reasonable Tribunal, properly directing itself, could have concluded that the perpetrators' primary intention was to spread terror.

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[42] Judgment, Para. 2002.
[43] Judgment, Para. 2002.
[44] Judgment, Paras. 1975 and 1032. The Chamber's findings concerning an earlier attack on Tikonko are unclear and it is not known whether Sesay was found responsible for acts of terror in relation to the burning of numerous houses in a first attack on Tikonko. In the event that the Appeal Chamber considers the Trial Chamber did so conclude, the Appellant hereby gives notice that this finding will be challenged on appeal on the same basis.
[45] Judgment, Para. 1033.
[46] Judgment, Paras. 1035 and 1975.

Acts of Terror (Count 1) – **Gerihun**

Unlawful Killings

54. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that the killings in Gerihun were acts of terror, as charged in Count 1.[47] No reasonable Tribunal, properly directing itself, could have concluded that the perpetrators' primary intention was to spread terror.

GROUND 27: Kenema District: Article 6(1) Responsibility, Pursuant to the Joint Criminal Enterprise

55. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay actively participated in the furtherance of a criminal purpose and that by this participation he significantly contributed to the commission of acts of terrorism (Count 1), collective punishments (Count 2), unlawful killings (Counts 3 to 5), physical violence (Count 11), and enslavement (Count 13) as were found to have been committed in Kenema District between 25 May 1997 and 19 February 1998.[48]

56. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay shared with other participants in a joint criminal enterprise the requisite intent to commit these crimes. No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced,[49] *inter alia*[50]:

i) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay, as a member of the Supreme Council, was involved in the planning and organisation of the forced mining in Kenema District.[51] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

GROUND 28: Attack Directed Against Civilian Population

57. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that there was a widespread or systematic attack against the civilian population in Kenema District between May 1997 and February 1998 and/or that the criminal acts formed part of the

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[47] Judgment, Para. 1036.
[48] Judgment, Para. 2056, and Corrigendum, Para. 4.
[49] Judgment, Para. 2056, and Corrigendum, Para. 4.
[50] For the avoidance of doubt, the Defence allege that the Trial Chamber erred in law and fact when concluding that the *totality* of the evidence demonstrated beyond a reasonable doubt Sesay's participation and intent.
[51] Judgment, Para. 1997.

attack.[52] No reasonable Tribunal, properly directing itself, could have concluded on the basis of the evidence adduced that the Prosecution had proven that the crimes satisfied the requirements of Article 2 of the Statute of the Special Court.

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

58. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that the crimes found to have been "committed in Kenema Town against victims suspected of being Kamajors or collaborating with the Kamajors" were committed with the specific intent to terrorise the civilian population and therefore constituted acts of terror, as charged in Count 1.[53] No reasonable Tribunal, properly directing itself, could have concluded that the perpetrators' primary intention was to spread terror.[54]

59. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that AFRC/RUF rebels, including Sesay, repeatedly inflicted physical violence on TF1-129 during his initial arrest in Kenema Town, as charged in Counts 1 to 2 and 11.[55] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

60. Alternatively, no reasonable Tribunal, properly directing itself, could have concluded that the gravity of these actions cumulatively amounted to an inhumane act, as charged in Count 11.[56]

61. Additionally, no reasonable Tribunal, properly directing itself, could have concluded that Sesay's primary intention was to spread terror.

GROUND 30: Collective Punishments (Count 2) – Kenema Town

62. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that the crimes found "committed in Kenema Town against victims suspected of collaborating with the Kamajors" were "targeted in order to punish them for allegedly providing assistance to enemies of the RUF, an action for which some or none of them may or may not have been responsible" and that these crimes therefore constituted collective punishment, as charged in Count 2.[57] No reasonable Tribunal, properly directing itself, could have reached this

[52] Judgment, Para. 1097.
[53] Judgment, Paras. 1123-1125.
[54] Judgment, Para. 1125.
[55] Judgment, Para. 2050.
[56] Judgment, Paras. 1111-1112.
[57] Judgment, Paras. 1132-1133.

conclusion on the basis of the evidence adduced.

GROUND 31: Finding of unlawful killings (Count 1, 4 and 5) – Tongo Field

63. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that that the following crimes were committed at Cyborg pit:
    i) AFRC/RUF fighters killed over 20 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5);
    ii) AFRC/RUF fighters killed 25 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5);
    iii) AFRC/RUF fighters killed 15 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5);
    iv) AFRC/RUF fighters killed 3 civilians at Cyborg Pit in Tongo Field (Counts 1, 4 and 5) and;
    v) AFRC/RUF fighters committed extermination by killing over 63 civilians at Cyborg Pit in Tongo Field (Count 1 and 3).[58]

64. No reasonable Tribunal, properly directing itself, could have been satisfied that these criminal events had occurred on the basis of the evidence adduced. Alternatively, no reasonable Tribunal, properly directing itself, could have concluded that the primary intention of the perpetrators was to spread terror and that these crimes therefore constituted acts of terror, as charged in Count 1.

65. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that the killing at Lamin Street was an act of terror as charged in Count 1.[59] No reasonable tribunal properly directing itself could have concluded that the perpetrators' primary intention was to spread terror and that this crime therefore constituted acts of terror, as charged in Count 1.[60]

GROUND 32: Enslavement as Act of Terror (Counts 1 and 13)

66. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt 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, as charged in Count 13 on the Indictment.[61] No reasonable Tribunal, properly directing itself, could have been satisfied that these criminal events had occurred on the basis of the evidence adduced.

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[58] Judgment, Para. 2050.
[59] Judgment, Para. 1127.
[60] Judgment, Para. 1125.
[61] Judgment, Para. 2051.

67. Alternatively, no reasonable Tribunal, properly directing itself, could have concluded that the primary intention of the perpetrators was to spread terror and that these crimes therefore constituted acts of terror, as charged in Count 1.[62]

GROUND 33: Temporal Scope of Any Criminal Plan or Purpose

68. The Trial Chamber erred in law and fact in assessing the temporal scope of the joint criminal enterprise. The Trial Chamber erred by concluding beyond a reasonable doubt that the joint criminal enterprise continued until the end of April 1998.[63] No reasonable Tribunal, properly directing itself, could have reached the conclusion that those RUF and AFRC found to be members of the joint criminal enterprise worked in concert, and had any agreement, to commit crimes after March 1998.

GROUND 34: *Kono District*: Article 6(1) Responsibility, Pursuant to the Joint Criminal Enterprise

69. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay actively participated in the furtherance of a criminal purpose and that by this participation he "significantly contributed to the commission of crimes of acts of terrorism (Count 1), collective punishment (Count 2), unlawful killings (Counts 3 to 5), sexual violence (Counts 6 to 9), physical violence (Count 10 and 11), enslavement (Count 13) and pillage (Count 14)" in Kono District between 14 February 1998 and April/May 1998".[64] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.[65]

70. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay shared with other participants in the joint criminal enterprise the requisite intent to commit these crimes.[66] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced, *inter alia*:[67]

i) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that

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[62] Judgment, Paras. 1129-1130 and 2051.
[63] Judgment, Para. 2063.
[64] Judgment, Para. 2091, and Corrigendum, Para. 5.
[65] For the avoidance of doubt the Defence allege that the Trial Chamber erred in law and fact when concluding that the *totality* of the evidence demonstrated beyond a reasonable doubt Sesay's participation and intent.
[66] Judgment, Para. 2092.
[67] For the avoidance of doubt the Defence allege that the Trial Chamber erred in fact and law when concluding that the *totality* of the evidence demonstrated beyond a reasonable doubt Sesay's participation and intent.

during a meeting prior to his departure Koroma gave an order to make Koidu a "no go area" for civilians, which was supported and endorsed by Sesay,[68] and that this thereby indicated Sesay's shared intent to commit the crimes in Kono during the JCE.[69] No reasonable Tribunal, properly directing itself, could have been satisfied beyond a reasonable doubt that JPK had given this order or that Sesay had supported and endorsed it;

ii) The Trial Chamber erred in fact and law in concluding beyond a reasonable doubt that Sesay participated in the forced labour in diamond mines in Kono District between 14 February and May 1998 in order to further the common purpose.[70] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence addueed; and

iii) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Bockaric and Sesay ordered the training base to be established at Yengema; that Sesay was personally involved in the planning and the creation of the base and that the training Commander, reported to Bockarie through Sesay,[71] or that it demonstrated that Sesay "shared the same intent as Bockarie to force civilians to engage in military training, in pursuance of the common purpose of the joint criminal enterprise".[72] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.[73]

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

71. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that hundreds of civilians were enslaved and forced to work in mines at Tombodu and throughout Kono District between December 1998 and January 2000, as charged in Count 13 of the Indictment.[74] No reasonable Tribunal, properly directing itself, could have reached this

[68] Judgment. Para. 799, 1141-1144, 2084.
[69] Judgment, Para. 2092.
[70] Judgment, Para. 2086.The Trial Chamber also erred in fact and law in concluding beyond reasonable doubt that civilians were forced to mine in Kono District during the junta period. (Judgment, Para. 1240).]
[71] Judgment, Para. 2088. Transcript of 22 April 2005, TF1-362, p. 16 (CS).
[72] Judgment, Para. 2092.
[73] The Trial Chamber may have intended to find that the training base relevant to a consideration of Sesay's contribution to the joint criminal enterprise was the Bunumbu base, which was found to have existed throughout 1998, unlike Yengema, which came into existence in December 1998. This ground of appeal will address the Trial Chamber's error of law and fact in the global conclusion Sesay's contribution to the Kono crimes was significant and, necessarily, will address his participation in the Bunumbu training camp.
[74] Judgment, Paras. 1329-1330, 2065, and 2116.

conclusion on the basis of the evidence adduced.[75]

72. The Trial Chamber erred in law when concluding that Sesay was liable pursuant to Article 6(1) of the Statute for planning the enslavement of hundreds of civilians to work in mines at Tombodu and throughout Kono District between December 1998 and January 2000, as charged in Count 13 of the Indictment[76] on the basis that his conduct was a significant contributory factor to the perpetration of enslavement.[77] The Trial Chamber erred in law by concluding that a "significant" - and not a substantial - contribution was sufficient to found a conviction for planning.

73. Alternatively, the Trial Chamber erred in law and in fact when concluding beyond a reasonable doubt that Sesay's conduct was a significant contributory factor to the perpetration of enslavement and that he intended the commission of these crimes.[78] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced, *inter alia*[79]:

i) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that from "1999 to 2000, civilians were captured and sent to Kono to mine diamonds for the RUF".[80] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

ii) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay participated in a scheme to imprison approximately 400 civilians from Makeni, who were subsequently taken to Kono to be enslaved at the mining pits.[81] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

iii) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay was engaged throughout 1999 and 2000 in enslaving civilians for private mining

[75] For the avoidance of doubt the Defence allege that the Trial Chamber erred in law and fact when concluding that the *totality* of the evidence demonstrated beyond a reasonable doubt Sesay's participation and intent.
[76] Judgment, Paras. 1329-1330, 2065, and 2116.
[77] Judgment, Para. 2115.
[78] Judgment, Para. 2115.
[79] For the avoidance of doubt the Defence allege that the Trial Chamber erred in law and fact when concluding that the *totality* of the evidence demonstrated beyond a reasonable doubt Sesay's participation and intent.
[80] Judgment, Para. 1249.
[81] Judgment, Para. 1249.

purposes.[82] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced; and

iv) The Trial Chamber erred in law and fact when concluding beyond a reasonable doubt that between December 1998 and January 2000, "for hundreds of civilians, genuine consent was not possible in the environment of violence and degradation existing in the Tombodu mining fields."[83] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

GROUND 36: Enslavement, Forced Military Training (December 1998 to January 2000)

74. The Trial Chamber erred in law and fact in concluding that the pleading of the command responsibility liability provided sufficient notice and did not prejudice the Appellant or prevent a fair trial. In particular the Trial Chamber erred by finding that the Appellant had notice of the measures that he failed to take to prevent or punish the perpetrators of the enslavement of civilians at the military training base at Yengema.

75. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay was liable pursuant to Article 6(3) of the Statute for the enslavement of an unknown number of civilians at Yengema training base between December 1998 and about 30 January 2000,[84] inter alia:[85]

i) The Trial Chamber erred in law and in fact in concluding beyond a reasonable doubt that RUF rebels enslaved an unknown number of civilians at the military training base at Yengema between December 1998 and January 2000, as charged in Count 13.[86] No reasonable Tribunal could have reached this conclusion on the basis of the evidence adduced;

ii) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay exercised effective control over the RUF rebels who enslaved an unknown number of civilians at Yengema training base throughout this period.[87] No reasonable Tribunal,

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[82] Judgment, Para. 1259.
[83] Judgment, Para. 1329.
[84] Judgment, Para. 2133.
[85] For the avoidance of doubt the Defence allege that the Trial Chamber erred in law and fact when concluding that the *totality* of the evidence demonstrated beyond a reasonable doubt Sesay's participation and intent.
[86] Judgment, Para. 2065.
[87] Judgment, Para. 2130.

properly directing itself, would have reached this conclusion on the basis of the evidence adduced; and

iii) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt the deaths of five recruits who had attempted to escape.[88] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

Ground 37: Kailahun District: Article 6(1) Responsibility, Pursuant to the Joint Criminal Enterprise

76. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay actively participated in the furtherance of a criminal purpose and that by this participation he "significantly contributed to the commission of acts of terror (Count 1), collective punishment (Count 2), unlawful killings (Counts 3 to 5), sexual violence (Counts 7 to 9) and enslavement (Count 13) in Kailahun District between 25 May 1997 and April 1998. No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.[89]

77. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that Sesay shared with the other participants in the joint criminal enterprise the requisite intent to commit these crimes.[90] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

GROUND 38: Attack Directed Against Civilian Population

78. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that there was a widespread or systematic attack against the civilian population in Kailahun District during the indictment period and/or that the criminal acts formed part of the attack.[91] No reasonable Tribunal, properly directing itself, could have concluded on the basis of the evidence adduced, that the Prosecution had proven that the crimes satisfied the requirements of Article 2 of the Statute of the Special Court.

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

79. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that an unknown number of women were forcibly married to RUF fighters between November 1996

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[88] Judgment, Para. 1264, quoting Transcript of 22 April 2005, TF1-362, pp. 21-23 (CS).
[89] For the avoidance of doubt the Defence allege that the Trial Chamber erred in law and fact when concluding that the *totality* of the evidence demonstrated beyond a reasonable doubt Sesay's participation and intent.
[90] Judgment, Para. 2163 and Corrigendum, Para. 7.
[91] Judgment, Para. 1445.

and about 15 September 2000 (Counts 1 and 7 to 9).[92] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

80. As regards Counts 1 and 7 to 9, the Trial Chamber erred in law and fact and reversed the burden of proof creating a strict offence in which all relationships between the RUF fighters and women in Kailahun were presumed to be forced and criminal.

81. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that TF1-314 was forcibly married to an RUF fighter between 1996 and 1998 (Counts 1 and 7 to 9) and that TF1-093 was forcibly married to an RUF fighter between 1996 and 1998 (Counts 1 and 7 to 9).[93] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

82. The Trial Chamber erred in law and fact in placing reliance, or undue reliance, upon the evidence given by the purported expert witness TF1-369, who authored Exhibit 138, the *Expert Report on Forced Marriages*.[94] The Trial Chamber erred in law and fact and/or procedure in assessing this witness as an expert in 'forced marriage' or any relevant discipline.

GROUND 40: Enslavement (Count 13)

83. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that an unknown number of civilians were forced to work on RUF "government" farms and farms owned by commanders from 30 November 1996 to about 15 September 2000[95] and this constituted enslavement, as charged in Count 13. No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

84. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that an unknown number of civilians were forced to work and carry loads to and from different areas of Kailahun District from 30 November 1996 to about 15 September 2000 and this constituted enslavement, as charged in Count 13.[96] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

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[92] Judgment, Para. 2156.
[93] Judgment, Para. 1475 and 2156.
[94] *E.g.*, Judgment Para. 1409.
[95] Judgment, Paras. 1482 and 2156.
[96] Judgment, Para. 2156.

85. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that an unknown number of civilians were forced to mine for diamonds in different areas of Kailahun District from 30 November 1996 to about 15 September 2000 and this constituted enslavement, as charged in Count 13. No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence addueed.

86. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that an unknown number of civilians were forcibly trained for military purposes from 30 November 1996 to 1998 in Kailahun District and this constituted enslavement, as charged in Count 13.[97] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

87. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that "military training constitutes foreed labour as it was a preparatory step to forcing these civilians to the front lines of the RUF's military efforts or to becoming the bodyguards of the RUF Commanders."[98] The Trial Chamber erred by taking into aceount this irrelevant eonsideration. Additionally, no reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

GROUND 41: Acts of Terror (Count 1)

Killings of 63 civilians accused of being Kamajors

88. The Trial Chamber erred in law and faet in concluding beyond a reasonable doubt that the killing of the 63 civilians near the roundabout in Kailahun Town by members of the RUF on the orders of Boekarie and in the presenee of other senior RUF members including Gbao, was an act of terror, as eharged in Count 1.[99] No reasonable Tribunal, properly directing itself, eould have concluded that the perpetrators' primary intention was to spread terror.

89. The Trial Chamber erred in law and faet in convicting Sesay, pursuant to Artiele 6(1) of the Statute for Acts of Terrorism in Kailahun Town (the killing of eivilians)[100] and for Acts of Terror (Sexual Violence)[101] in Kailahun Distriet. The Trial Chamber erred by reaching the converse conclusion that the Prosecution "failed to adduec evidence of terrorism in the parts

[97] Judgment, Para. 2156.
[98] Judgment, Para. 1487.
[99] Judgment, Para. 1491.
[100] Judgment, Para. 2156
[101] Judgment, Para. 2156.

of Kailahun District that were controlled by the RUF and where Gbao was located".[102]

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

90. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that the "consistent pattern" of sexual slavery and "forced marriage" was committed with the requisite specific intent to terrorise the civilian population in Kailahun District and, accordingly, that these acts constitute acts of terrorism as charged in Count 1.[103] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

GROUND 43: Count 12: Use of Child Soldiers

91. The Trial Chamber erred in law and fact in concluding that beyond a reasonable doubt that Sesay was liable under Article 6(1) of the Statute for planning the use of persons under the age of 15 to participate actively in hostilities in Kailahun, Kono, Kenema and Bombali Districts between 1997 and September 2000, as charged in Count 12.[104] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced.

92. The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that between November 1996 and September 2000, the RUF routinely used persons under the age of 15 to actively participate in hostilities in Kailahun, Kenema and the Bombali Districts, as charged in Count 12 of the Indictment.[105] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced, *inter alia*:[106]

i) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that "thousands of children of varying ages were forcibly separated from their families" and a "substantial percentage of AFRC/RUF fighters were young recruits."[107] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

ii) The Trial Chamber erred in law and fact in concluding that beyond a reasonable doubt that Sesay had an active involvement in the training camps where large numbers of

[102] Judgment, Para. 2047.
[103] Judgment, Para. 1493.
[104] Judgment, Para. 2230, and Corrigendum, Para. 9.
[105] Judgment, Para. 1748, and Corrigendum, Para. 3.
[106] For the avoidance of doubt the Defence allege that the Trial Chamber erred in law and fact when concluding that the *totality* of the evidence demonstrated beyond a reasonable doubt Sesay's participation and intent.
[107] Judgment, Para. 1617.

persons under the age of 15 were trained between 1997 and 2000.[108] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

iii) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that children were abducted and then forcibly trained at the RUF camps such as Bayama, Bunumbu and Yengema and were therefore compelled to join the RUF and that such conduct constitutes conscription. No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

iv) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that "[t]hose children that were identified as capable of fighting were sent for military training. Many children perished during the training or were killed for attempting to escape or for refusing to carry out orders."[109] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

v) The Trial Chamber erred in law and fact in concluding that beyond a reasonable doubt there was an institutional practice of assigning children "8 to 15 years" old into organisational units known as Small Boy's Units.[110] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

vi) The Trial Chamber erred in law and fact in concluding that beyond a reasonable doubt that "[a]bducted female children, including girls of less than 15 years of age were forced into sexual partnerships with fighters. Those who resisted were liable to physical or sexual abuse or execution.[111] Small Girls Units ("SGUs"), similar to the SBUs, also existed and their members underwent training."[112] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

vii) The Trial Chamber erred in law and fact in concluding that beyond a reasonable doubt the "RUF habitually gave alcohol or drugs such as marijuana, amphetamines, and cocaine to child fighters before and during combat operations."[113] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

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[108] Judgment Paras. 1638, 1639, 1647, and 2229. Transcript of 22 April 2005, TF1-362, pp. 12 and 16 (CS).
[109] Judgment, Para. 1619.
[110] Judgment, Para. 1621.
[111] Exhibit 176, Sierra Leone 1998–a year of atrocities against civilians, 1 November 1998, pp. 25-26. p. 19504.
[112] Judgment, Para. 1622.
[113] Judgment, Para. 1623; Exhibit 177, Sierra Leone: Childhood–a casualty of conflict, 31 August 2000, p. 7; Exhibit 176, Sierra Leone 1998 –a year of atrocities against civilians, 1 November 1998, p. 27; Transcript of 29 November 2005, TF1-093, p. 95 (CS).

viii) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that TF1-141 was trained in Bunumbu in 1988.[114] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

ix) The Trial Chamber erred in law and fact in concluding beyond a reasonable doubt that TF1-263 was trained at Bunumbu in February 1998.[115] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

x) The Trial Chamber erred in law and fact in concluding that beyond a reasonable doubt that during "the attack on Koidu Town in December 1998, Sesay was accompanied by his security guards, which included children between the ages of 12 and 15 years. Sesay's security guards accompanied him to ensure his safety."[116] No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced;

xi) The Trial Chamber erred in law and fact in concluding that the pleading of this alleged commission provided sufficient notice and did not prejudice the Defence or prevent a fair trial on the count or the charges.[117] The Defence seeks the reversal of this finding and requests that the relevant counts/charges be dismissed.

Ground 44: Counts 15 and 17: UNAMSIL

93. The Trial Chamber erred in law and fact in concluding that Sesay was liable under Article 6(3) of the Statute for failing to prevent or punish his subordinates for directing 14 attacks against UNAMSIL personnel and killing four UNAMSIL personnel in May 2000, as charged in Counts 15 and 17.[118] In particular:

i) No reasonable Tribunal, properly directing itself, could have reached this conclusion on the basis of the evidence adduced; and

ii) The Trial Chamber erred by not requiring this alleged commission, namely the reasonable and practical measures which ought to have taken, to have been pled. The failure to plead incurably prejudiced the Appellant in the preparation of his defence.

GROUND 45: Protective Measures

94. The Defence will request a reconsideration of the Appeal Chamber's dismissal of the Defence "Deeision on Proseeution Appeal of Decision on the Sesay Defence Motion

[114] Judgment, Paras. 1639-1645.
[115] Judgment, Para. 1637; Transcript of 6 April 2005, TF1-263, p. 34-38.
[116] Judgment, Paras. 1671 and 1735; Transcript of 22 June 2006, TF1-367, pp. 34-35.
[117] Judgment, Para. 1733-1735.
[118] Judgment, Para. 2284.

Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses."[119] The Defenee will submit that the Appeal Chamber erred in law and fact in by misdirecting itself as to the legal principle in determining that the Appellant's right to a fair trial, pursuant to Article 17(2), could be qualified by measures ordered by the Trial Chamber for the protection of victims and witnesses. The relief sought from the Appeals Chamber is a reversal of the reasoning and a grant of the remedy sought.

GROUND 46: Sentencing

95. The grounds of appeal in relation to thc Sentencing Judgment, set out below. are independent of whether the relief sought in any or cach of abovc grounds is granted.

96. In the Sentencing Judgment, the Trial Chamber erred in law and in fact, and committed a procedural error (in that there has been a discernible error in the exercise of the Trial Chamber's sentencing discretion) in sentencing Sesay to a total and concurrent term of imprisonment of fifty-two (52) years, broken down as follows:

(i) Fifty-two (52) years for Count 1 (Acts of Terrorism, a War Crime);

(ii) Forty-five (45) years for Count 2 (Collective Punishments, a War Crime);

(iii) Thirty-three (33) years for Count 3 (Extermination, a Crime against Humanity);

(iv) Forty (40) years for Count 4 (Murder, a Crime Against Humanity);

(v) Forty (40) years for Count 5 (Murder as the War Crime of Violence to Life, Health, Physical and Mental Well-Being of Persons);

(vi) Forty-five (45) years for Count 6 (Rape, a Crime against Humanity);

(vii) Forty-five (45) years for Count 7 (Scxual Slavery, a Crime against Humanity);

(viii) Forty (40) years for Count 8 (Other Inhumane Acts, a Crime Against Humanity);

(ix) Thirty-five (35) years for Count 9 (Outrages Upon Personal Dignity, a War Crime);

(x) Fifty (50) years for Count 10 (Mutilation as the War Crime of Violence to Life, Health, Physical and Mental Well-Being of Persons);

(xi) Forty (40) years for Count 11 (Other Inhumane Acts, a Crime Against Humanity);

[119] *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1146, "Decision on Prosecution Appeal of Decision on the Sesay Defencc Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 23 May 2008.

(xii) Fifty (50) years for 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, an Other Serious Violation of International Humanitarian Law);

(xiii) Fifty (50) years for Count 13 (Enslavement, a Crime against Humanity);

(xiv) Twenty (20) years for Count 14 (Pillage, a War Crime);

(xv) Fifty-one (51) years for 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 Law); and

(xvi) Forty-five (45) years for Count 17 (Murder as the War Crime of Violence to Life, Health, Physical and Mental Well-Being of Persons).

97. In sentencing the Appellant Sesay, aged 38 years, to a term of a concurrent sentence of fifty-two (52) years for the Counts on which he was found guilty, credit being given for the period spent in custody on remand, the Trial Chamber erred in law and/or in fact in imposing manifestly excessive sentences taking into account the gravity of the offences and the aggravating and mitigating features. The following errors were made.

98. The Trial Chamber erred in law and fact and/or procedure in its assessment of the gravity of the offences in Counts 1-15 and 17. The Trial Chamber erred in its conclusion that the Appellant had the "highest level" of culpability.[120] In particular:

i) The Trial Chamber failed to properly assess the inherent gravity of the criminal acts; and

ii) The Trial Chamber failed to give due weight to the nature and form of Sesay's participation and/or contribution to the crimes.

99. The Trial Chamber erred in law and fact in imposing sentences upon Sesay that were disproportionate to those received by the second Accused, Morris Kallon and the accused in the *Prosecutor* v. *Brima et al.*. The sentences imposed on Sesay were manifestly and disproportionately higher than those imposed on Kallon and too proximate to those imposed on the AFRC accused. It is submitted that a Trial Chamber properly directing itself as to the nature and form of the participation, the aggravating factors, and the available mitigation would not have concluded that Sesay should receive a greater sentence of imprisonment than

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

Kallon. Additionally, such a Tribunal would have imposed a considerably lower sentence than those imposed upon the AFRC accused.

100. The majority, Justice Itoe dissenting, erred in law in concluding that, "where a particular act amounting to criminal conduct within the jurisdiction of the Court, such as murder or rape as a crime against humanity has also, because of the additional element of intent necessary for a conviction for acts of terrorism or collective punishments as a war crime, amounted to a crime as alleged in Counts 1 and 2 of the Indictment, for purposes of sentencing we will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence."[121] The Trial Chamber erred by the "double counting" of the mens rea requirements of Counts 1 and 2, which was permitted to increase the sentences on those counts and the underlying Counts 3 to 11 and 13.

101. The Trial Chamber erred in law and fact and/or procedure in failing to give any weight to the mitigating factors found: the role Sesay played in disarming the RUF and bringing the movement through the peace process.[122] Additionally, the Trial Chamber erred by wrongly regarding the conviction on Counts 15 and 17 as relevant to this mitigating factor.[123]

102. The Trial Chamber erred in law and fact and/or procedure in failing to give any weight to the Sesay's reputation as a moderate within the RUF.[124]

103. The Trial Chamber erred in law and fact and/or procedure in failing to give any weight to the Prosecution and Defence evidence adduced during trial, which demonstrated Sesay's good character and contributions made towards civilians during the conflict.[125] No reasonable Tribunal, properly directing itself, would have disregarded this evidence.

104. The Trial Chamber erred in law and fact and/or procedure in failing to give any or weight to the positive evidence given in statements of mitigation concerning Sesay's protection of civilians during the conflict. No reasonable Tribunal, properly directing itself, would have disregarded this evidence.

105. Additionally, the Trial Chamber erred in law and fact and/or procedure in failing, in part, to take into account the evidence that had sought to be adduced in Defence applications under

[121] Sentencing Judgment, Para. 106.
[122] Sentencing Judgment, Para. 228.
[123] Sentencing Judgment, Para. 228.
[124] Sesay Sentencing Brief, Paras 91-93 and Annexes A and B.
[125] Sentencing Judgment, Para. 224.

Rule 92*bis*.[126] This was wrongly, and without reason, ignored.[127] No reasonable Tribunal, properly directing itself, would have disregarded this evidence.

106. The Trial Chamber erred in law, fact and/or procedure in failing to give any weight to the coercive treatment of Sesay by the Prosecution. At the completion of the process, Sesay was adjudged by a medical expert to be in need of urgent psychiatric care.[128] No reasonable Tribunal, properly directing itself, would have disregarded this evidence or have concluded that an appropriate remedy was the exclusion and inadmissibility of the resulting custodial interviews.[129]

107. The Trial Chamber erred in law and fact and/or procedure in failing to give any weight to the fact that Sesay is likely to serve his sentence abroad.[130] No reasonable Tribunal, properly directing itself, would have found, *on a balance of probabilities,* that the Appellant will serve his sentence abroad, and then declined to take this into account.

108. The Trial Chamber erred in law and fact and/or procedure in failing to give any weight to Sesay's statement of remorse.[131] No reasonable Tribunal, properly directing itself, would have reached this conclusion.

ADDITIONAL EVIDENCE

109. Pursuant to Rule 115 the Sesay Defence will file motions requesting the additional evidence to the Appeals Chamber. The motions, in compliance with Rule 115, will set forth the specific findings of fact made by the Trial Chamber to which the additional evidence is directed and will also set forth the specific reasons and supporting evidence to establish that the additional evidence was not available at trial. The requests will concern the following.

Taylor Case Witnesses

110. The Sesay Defence intends to file a motion to present additional evidence from *Prosecutor* v.

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[126] The applications are referred to in *Prosecutor* v. *Sesay et al.*, SCSL-04-15-1125, "Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness statements Under Rule 92 *bis*," 23 May 2008.

[127] Sentencing Judgment, Para. 224.

[128] *See* Sesay/Voir Dire Transcript, 19 June 2007, pp. 95-96 referring to "Pre-placement Medical Examination" dated 21 April 2003 (Exhibit A17): "Issa needs to [be] assess[ed] by a psychiatrist. He's very confused and needs to be looked after by appropriately trained personnel for the benefit of both staff, himself and other inmates. He appears to have a lot of problems, both psychological and physical, and he needs to be looked after." "Spoke to doctor re Issa's condition of extreme and inappropriate thoughts and confusion and as he said needs to be seen by a psychiatrist and a dentist. Doctor said to start him on Chlopromazine."

[129] Sentencing Judgment, Para. 222.

[130] Sentencing Judgment, Para. 205.

[131] Sentencing Judgment, Para. 231.

Taylor, SCSL-03-01-T. The additional evidence, *inter alia*, will include transcripts from the testimony of witnesses common to both the *RUF* and *Taylor* Trials (*inter alia*, TF1-015, -045, -060, -077, -122, -125, -168, -174, -263, -304, -314, -330, -334, -355, -360, -362, -367, -371) and witnesses that testified in only the *Taylor* trial (*inter alia*, TF1-274, -568, and -571).

111. Following a request by the Sesay Defence, the Prosecution, pursuant to its Rule 68 obligations, is presently conducting a review of the evidence in its possession. Accordingly, the additional evidence presented to the Appeals Chamber will include documentary evidence not previously disclosed to the Defence, including exhibits and recordings of witness interviews for witnesses that the Prosecution anticipated would testify in the *Taylor* Trial (including witnesses common and non-common to the *RUF* and *Taylor* Trials).

Records re: Child Soldiers

112. The Sesay Defence also intends to file a motion to present additional evidence on the use of child soldiers. This additional evidence will include a record of the use of children in a variety of functions during the conflict and will be relevant to the totality of the Trial Chamber's legal and factual findings on Count 12.

28 April 2009

Wayne Jordash
Sareta Ashraph

Annex A

Allegations for which the Defence had *no* notice, and which were the basis of positive findings against the Appellant in the Judgment.

Bo District

(i) the killing of Tommy Bockarie in Sembehun;[1] and

(ii) the stealing of L800,000 from Ibrahim Kamara in Sembehun.[2]

Kenema District

(iii) Bockarie's killing of a suspected Kamajor in front of the NIC Building in Kenema town;[3]

(iv) the killing of Mr. Dowi in Kenema town;[4]

(v) Bockarie's killing of the alleged thieves stealing drugs from MSF in Kenema town;[5]

(vi) the killing of an alleged Kamajor boss by AFRC/RUF fighters on a street in Kenema town;[6]

(vii) the beating of TF1-122 at the AFRC Secretariat in Kenema town, following his attempt to prevent AFRC/RUF taking a woman's property;[7]

(viii) Colonel Lion, Sesay's subordinate, smashing a bottle on TF1-129 during his arrest in Kenema town;[8]

(ix) the killing of a civilian by AFRC/RUF fighters at Lamin Street in Tongo;[9]

(x) the killing of a Limba man for his palm wine in Tongo;[10]

(xi) the presence of any of Sesay's bodyguards in the mining areas of Tongo;[11]

(xii) AFRC/RUF commanders, including Sesay, operating mining sites in Tongo for personal profit;[12] and

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[1] Judgment, Paras. 1006-8, 1023 and 1035.
[2] Judgment, Paras. 1006-8 and 1029.
[3] Judgment, Paras. 1058-9, 1102, 1125 and 1132-3 of the Judgment.
[4] Judgment, Paras. 1060 and 1110 of the Judgment.
[5] Judgment, Paras. 1064 and 1104 of the Judgment.
[6] Judgment, Paras. 1065, 1102, 1125 and 1132-3 of the Judgment.
[7] Judgment, Paras. 1047 and 1110 of the Judgment.
[8] Judgment, Paras. 1050, 1111, 1125 and 1132-3 of the Judgment.
[9] Judgment, Paras. 1080, 1105 and 1127 of the Judgment.
[10] Judgment, Paras. 1081 and 1105 of the Judgment.
[11] Judgment, Paras. 1008-92 and 1130.

(xiii) that civilians who attempted to escape from the mining sites in Tongo were detained, stripped naked.[13]

Kono District

(xiv) the killing of a boy who had his arms and legs amputated before being thrown in a latrine;[14]

(xv) corpses of civilians on the ground at Opera roundabout during the February/March 1998 Koidu attack as seen by TF1-141 or any other witness;[15]

(xvi) the killing of Chief Sogbeh;[16]

(xvii) the killing of a Nigerian woman in Wendedu (or at any other location);[17]

(xviii) the killing of Sata Sesay's family;[18]

(xix) sexual violence at Wendedu camp;[19]

(xx) the killing of more than 8 civilian men behind Penduma Primary School;[20]

(xxi) the killing, by RUF Rambo and his subordinates, of 15 civilians in May 1998 at Koidu Buma;[21]

(xxii) the beating and looting of civilian traders in Tombudu (including beating them with sticks and gun butts and holding them down in nests of black ants);[22]

(xxiii) the beating of TF1-015;[23]

(xxiv) Bockarie ordering the burning of civilian houses in Tombudu in February 1998;[24]

(xxv) the abduction of TF1-263 from a village near Koidu in the mango season of 1998 and his being forced to carry looted property to Kissi town;[25]

(xxvi) the use of civilians as forced labour on food-finding missions as instructed by Kallon at muster parades at the Guinea highway in March 1998;[26]

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[12] Judgment, Paras. 1092, and 1130.
[13] Judgment, Paras. 1094, and 1130.
[14] Judgment, Paras. 1147-51, 1273, 1341-3, and 1367.
[15] Judgment, Paras. 1146, 1269, and 1341-3.
[16] Judgment, Paras. 1170, 1276, and 1341-3.
[17] Judgment, Paras. 1174-5, and 1277.
[18] Judgment, Paras. 1176, 1277, and 1341-3.
[19] Judgment, Paras. 1179, 1297, and 1352.
[20] Judgment, Paras. 1196, 1278, and 1341-3.
[21] Judgment, Para. 1204.
[22] Judgment, Paras. 1156-8, 1312, and 1314.
[23] Judgment, Paras. 1177 and 1314.
[24] Judgment, Paras. 1159 and 1361.
[25] Judgment, Paras. 1216 and 1322-3.

(xxvii) the capture of civilians in Tombudu in February and March 1998 and the forcing of them to search for food and carry loads, including the carrying of loads to Kailahun;[27]

(xxviii) the use of forced labour to carry produce such as coffee and cocoa to Buedu and to bring goods such as salt and cigarettes back;[28]

(xxix) the use of 150 civilians from Kunduma to go to Kailahun to return with ammunition to Superman Ground prior to Sesay's December 1998 attack on Koidu, as arranged by Sesay;[29]

(xxx) Sesay ordering Kallon to gather civilians in Makeni and to send them to Kono to be used in forced mining and Kallon sending approximately 400 civilians daily from Makeni to Kono;[30]

(xxxi) in 1999 and 2000, Sesay sending his own fighters to supervise forced civilian labour for his own private mining at Kaisambo, Tombudu, and Number 11;[31]

(xxxii) the looting of the Tankoro bank;[32]

(xxxiii) Sesay endorsing JPK's orders at a meeting in Kimberlite in February 1998 that Koidu was to be a "no go" area for civilians and/or Sesay saying that civilians were traitors who should not be tolerated;[33]

(xxxiv) Sesay's bodyguards in Kono reporting to him via radio or in written messages about events on the ground;[34]

(xxxv) signallers in Kono sending messages to Sesay who would pass them on to Bockarie;[35]

(xxxvi) TF1-362 reporting to Sesay from Yengema between 1998-2000;[36] and

(xxxvii) Sesay ordering that 6 civilians who attempted to escape from Yengema be killed and the subsequent execution of 5 of them.[37]

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[26] Judgment, Paras 1216 and 1322-3.
[27] Judgment, Paras. 1217 and 1322-3.
[28] Judgment, Paras. 1238 and 1324-7.
[29] Judgment, Paras. 1238 and 1324-7.
[30] Judgment, Para. 1249.
[31] Judgment, Paras. 1259 and 1328-30.
[32] Judgment, Paras. 1145 and 1338.
[33] Judgment, Paras. 799 and 1141.
[34] Judgment, Para. 827.
[35] Judgment, Para. 827.
[36] Judgment, Para. 1261.

Kailahun District

(xxxviii) the forced "marriage" of TF1-314;[38]

(xxxix) the forced "marriage" of TF1-093;[39]

(xl) the existence of Gbao's farm in Giema and the treatment of civilians working on this farm;[40]

(xli) the forced subscription of produce in Luawa chiefdom and of cocoa in Talia from 1997-1999 and of palm oil in Talia from 1997-1999 and in 2001;[41]

(xlii) the forcing of women in Talia to fish for the RUF (and to hand over the fish to Gbao);[42]

(xliii) the forcing of civilians in Sandaru to give coffee to the RUF from 1997-2000 (and to hand over the coffee to Gbao);[43]

(xliv) the forcing of civilians to carry farm products to the Guinea border, and trade them there, from 1996-2000;[44]

(xlv) forced military training of civilians, including children under 15 years of age, at Bayama from 1997-1998;[45] and

(xlvi) civilians and former members of the SLA were brought to TF1-362 to be trained at Bunumbu by Sesay.[46]

Child Soldiers

(xlvii) in March 1998, following the RUF/AFRC's taking of Koidu, civilians, including children between 8 and 12 years old, were forced to carry food for the fighters or who were forced to train to join the movement;[47]

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[37] Judgment, Para. 1264.
[38] Judgment, Paras. 1406-7, 1460-1, 1475 and 1493.
[39] Judgment, Paras. 1408, 1463, 1475 and 1493.
[40] Judgment, Paras. 1425-6 and 1480.
[41] Judgment, Paras. 1427-1428 and 1480.
[42] Judgment, Paras. 1427-8 and 1480.
[43] Judgment, Paras. 1429 and 1480.
[44] Judgment, Paras. 1430-1 and 1483-4.
[45] Judgment, Paras. 1435, 1487-8, 1633.
[46] Judgment, Paras. 1437 and 1487-8.
[47] Judgment, Paras. 1631 and 1708.

(xlviii) A boy under the age of 14 yrs ordered by RUF rebels in Sawao to sever the hands of captured civilians;[48]

(xlix) Children aged 12 yrs and above used to behead the corpses of civilians killed by Rocky and his men in Hill Station, Koidu in February/March 1998;[49]

(l) Children younger than 15 years used to intimidate and kill civilians working at the mines in Tombudu in February/ March 1998;[50]

(li) A boy named Samuel, aged approximately 12 years, shot Chief Sogbeh for refusing to work at the mines in Tombudu in February/ March 1998[51]

(lii) children abducted from Kono District in 1998, including those between 10-15 years, were organised into SBU and SGU units and trained as spies;[52]

(liii) abducted boys and girls were trained at Bayama training base from 1997 to 1998;[53]

(liv) abducted boys and girls were trained at Bunumbu training base from February 1998 to December 1998;[54]

(lv) TF1-141 was trained at Bunumbu base/ Camp Lion from February 1998 or at any other time;[55]

(lvi) TF1-263 was trained by Monica Pearson at Camp Lion for two months from February 1998 (or at any other time);[56]

(lvii) Kallon brought children under 15 years old to be trained at Bunumbu;[57]

(lviii) in June 1998, Sesay issued orders that "young boys" should be trained to be soldiers and handle weapons at Bunumbu;[58]

(lix) reports from Bunumbu base were given to Sesay who gave them to Bockarie;[59]

(lx) CO Vandi, CO Denis and Sesay would visit Camp Lion and address the recruits;[60]

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[48] Paras. 1672 and 1719 of the Judgment.
[49] Paras. 1673 and 1719 of the Judgment.
[50] Paras. 1674 and 1719 of the Judgment.
[51] Paras. 1674 and 1719 of the Judgment.
[52] Judgment, Paras. 1632 and 1729.
[53] Judgment, Paras. 1633 and 1708.
[54] Judgment, Paras. 1634-44 and 1708.
[55] Judgment, Paras. 1636 and 1708.
[56] Judgment, Paras. 1637 and 1708.
[57] Judgment, Paras. 1638 and 1708.
[58] Judgment, Paras. 1638 and 1708.
[59] Judgment, Paras. 1639 and 1708.
[60] Judgment, Paras. 1643 and 1708.

(lxi) Sesay informed the recruits that his security "boys" were capturing civilians and send them to the camp and that if the recruits were sent to the battlefield that they were to do what they were told and that he would execute those he failed to do so;[61]

(lxii) TF-141, after graduating (or at all), was sent to Baima and then to serve as the security guard at the camp at Benduma;[62]

(lxiii) children under the age of 15 years were trained at Yengema base in Kono District;[63]

(lxiv) the training commander reported directly to Sesay who reported to Bockarie until Bockarie's departure, at which point reports went to Sesay alone;[64]

(lxv) TF1-093 started fighting for the RUF at age 15 yrs and took part in approximately 20 battles from 1996 to 1997 in Kailahun and that during that time children between 8-17 years also participated in these attacks, killing, beating and raping and that children who were permitted to live were forced to join the movement;[65]

(lxvi) TF1-141 participated on the December 1998 attack on Daru;[66]

(lxvii) prior to going on this attack, Sesay and Mike Lamin went to Benduma camp with "morale boosters" for the fighters which included TF1-141;[67]

(lxviii) TF1-141 participated on the December 1998 attack on Segbwema;[68]

(lxix) children aged between 10-12 years guarded the Yengema training base;[69]

(lxx) Sesay was accompanied by security guards who were 12-15 years old during the December 1998 attack on Koidu;[70] and

(lxxi) Sesay was accompanied by armed boys aged 10-12 years when he visited the Zambian detainees at Yengema in May 2000.[71]

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[61] Judgment, Paras 1643 and 1708.
[62] Judgment, Paras. 1645, 1708, and 1726.
[63] Judgment, Paras. 1646-7 and 1708.
[64] Judgment, Paras. 1648 and 1708.
[65] Judgment, Paras. 1649 and 1711.
[66] Judgment, Paras. 1650-1 and 1712.
[67] Judgment, Para. 1650.
[68] Judgment, Paras. 1652-3 and 1712.
[69] Judgment, Para. 1726.
[70] Judgment, Para. 1735.
[71] Judgment, Para. 1736.

UN Attacks

(lxxii) the 2 May 2000 attack on the Makump DDR camp;[72]

(lxxiii) the killing by shooting of a KENBATT peacekeeper Private Yusif during the 2 May 2000 attack on Makump DDR camp;[73]

(lxxiv) the shooting of a KENBATT peacekeeper Wanyama, who later died from his injury during the 2 May 2000 attack on Makump DDR camp;[74]

(lxxv) the 2 May attack on the Magburaka Islamic Centre where the KENBATT B company was based and the eapture of some of the peacekeepers there;[75]

(lxxvi) the death of two peacekcepers when their vehicle fell off a bridge after being hit by a RPG as they fled from the 2 May 2000 attack on the Magburaka Islamic Centre;[76]

(lxxvii) on 3 May 2000, the peacekeepers held in Teko Barracks were moved to Small Sefadu, Kono District where they were kept;[77]

(lxxviii) the 4 May attack on ZAMBATT at Lunsar;[78]

(lxxix) two ZAMBATT peaeckeepers went missing in the 4 May attack on ZAMBATT at Lunsar and have since been declared dead;[79]

(lxxx) on 1 May 2000, prior from moving from Kono to Makeni on Sankoh's orders, Sesay ordered the Brigade Commander in Bombali and the Commander in Tongo to send reinforeements to Makeni;[80]

(lxxxi) 7 May 2000 attack on UNAMSIL helicopters dispatched to evacuate injured peaeekeepers;[81] and

(lxxxii) 9 May 2000 attaek on Indian QRC and KENBATT B Company between Magburaka and Mile 91.[82]

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[72] Judgment, Paras. 1823-5, 1890-1, and 1944.
[73] Judgment, Paras. 1825 and 1957-60.
[74] Judgment, Paras. 1826 and 1957-60.
[75] Judgment, Paras. 1828-9.
[76] Judgment, Paras. 1829 and 1957-60.
[77] Judgment, Paras. 1815, 1822, 1890-1, and 1944.
[78] Judgment, Paras. 1843, 1896, and 1944.
[79] Judgment, Paras. 1843, 1890-1, and 1944.
[80] Judgment, Para. 1844.
[81] Judgment, Paras. 1859, 1899 and 1944.
[82] Judgment, Paras. 1860-2, 1900 and 1944.

Annex B:

Allegations for which the Defence had *inadequate notice* (in that the notice lacked sufficient specificity, including time, location, persons involved, victims, and other material details) and which were the basis of positive findings against the Appellant in the Judgment:

Bo District

(i) the burial of over 200 bodies following the attack on Tikonko;[1] and

(ii) the burning of up to 500 houses during the attack on Tikonko.[2]

Kenema District

(iii) SBUs killing more than 20 civilian miners in Cyborg following Bockarie ordering Colonel Manawa to fire an RPG;[3]

(iv) SBUs shooting and killing more than 25 civilians following a dispute with Mustapha, a junior commander who had made civilians mine for him;[4] and

(v) fighters guarding Cyborg killed 3 civilians who were taken there to mine outside of scheduled hours by AFRC fighters.[5]

Kono District

(vi) the abduction of civilians in Koidu, Tombudu and Yardu and their use in carrying loads for the fighters;[6]

(vii) the capture of civilians in Tombudu in February and March 1998 and the forcing of them to search for food and carry loads, including the carrying of loads to Kailahun;[7]

(viii) use of forced civilian labour at Superman Ground to cook for the fighters;[8]

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[1] Judgment, Paras 1004 and 1022.
[2] Judgment, Paras. 1005 and 1033.
[3] Judgment, Paras. 1082, 1106-7 and 1129.
[4] Judgment, Paras. 1084, 1106-7 and 1129.
[5] Judgment, Paras. 1087, 1106-7 and 1129.
[6] Judgment, Paras. 1215 and 1322-3.
[7] Judgment, Paras. 1217 and 1322-3.
[8] Judgment, Paras. 1224 and 1324-7.

(ix) the detaining of civilians at Kaidu and their being forced by the RUF to harvest palm fruits, process palm oil, catch fish and other work;[9]

(x) the use of forced labour at Wendedu, as was the case at Kaidu, including the use of civilians for food-finding missions;[10]

(xi) the use of forced labour at Kunduma, as was the case at Kaidu and Wendedu, including the use of civilians for food-finding missions;[11]

(xii) the use of forced labour to carry produce such as coffee and cocoa to Buedu and to bring goods such as salt and cigarettes back;[12]

(xiii) the use of 150 civilians from Kunduma to go to Kailahun to return with ammunition to Superman Ground prior to Sesay's December 1998 attack on Koidu, as arranged by Sesay;[13]

(xiv) forced mining at Sukudu and Peyima in Kamara Chiefdom; Number 11, Yaradu Gbense, Boroma-38, Konokortah and Gbukuma in Gbense Chiefdom; Kwakoyima, Sokogbeh, Kongo Creek, Benz Garage area and the Opera Cinema area in Tankoro Chiefdom; Simbakoro, Yengema Guiyor and Bumpe in Nimikoro Chiefdom; Sewafe, Gold Town, Ndorgboi and Sandiya in Nimiyama Chiefdom; Yomadu, Yorkodu, Baffin River, and Bagbema in Sandor Chiefdom. Mining also in Mortema, Bandafaye, Gbeko, Gieya, Kaisambo, Kimberlite, 27 and Yellow Mosque;[14]

(xv) forced mining in Tombudu in mid December 1998 and the treatment of the miners during that time including complaints made to Sesay and Sesay telling the civilians to accept it and be patient.[15]

Kailahun District

(xvi) the existence of 2 big RUF 'government farms' in Giema in 1996 and 1998 and the treatment of civilians on those farms;[16]

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[9] Judgment, Paras. 1229-31 and 1324-7.
[10] Judgment, Paras. 1233 and 1324-7.
[11] Judgment, Paras. 1233 and 1324-7.
[12] Judgment, Paras. 1238 and 1324-7.
[13] Judgment, Paras. 1238 and 1324-7.
[14] Judgment, Para. 1246.
[15] Judgment, Paras. 1252-6 and 1328-30.
[16] Judgment, Paras. 1422 and 1479.

(xvii) the existence of an RUF "government farm" located between Benduma and Buedu which was in operation after February 1998, and the treatment of civilians working on this farm;[17]

(xviii) the existence of an RUF "government farm" located in Pendembu from December 1999 to 2001, and the treatment of civilians working on this farm;[18]

(xix) the existence of "Issa Sesay's farm" in Giema from 1996 to 2001 and the treatment of civilians working on this farm;[19] and

(xx) the forcing civilians to mine in Giema Yandawahun, Mafindo, Nyandehun and in Jojoima in 1998 and 1999.[20]

UN Attacks

(xxi) the capture and abduction of the ZAMBATT peacekeepers coming from Lunsar to Makeni on 3 May 2000;[21] and

(xxii) the abduction and detention of the peacekeepers at Yengema and Tombudu and their treatment while there.[22]

I. F. Macaura
Lead Counsel

[17] Judgment, Paras. 1423 and 1479.
[18] Judgment, Paras. 1424 and 1479.
[19] Judgment, Paras. 1425-6 and 1480.
[20] Judgment, Paras. 1432-3 and 1485-6.
[21] Judgment, Paras. 1832-40, 1895, and 1944.
[22] Judgment, Paras. 1859, 1897, and 1944.