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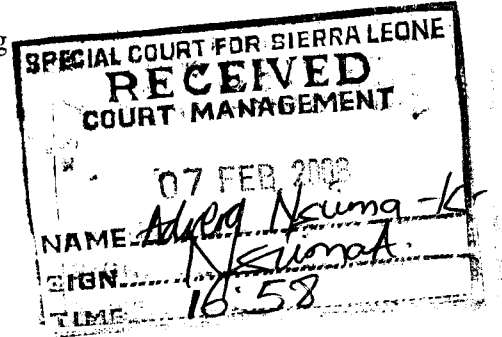
23968

SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER I

Before: Hon. Justice, Benjamin Mutanga Itoe, Presiding
Hon. Justice Bankole Thompson
Hon. Justice Pierre Boutet

Registrar: Mr. Herman Von Hebel

Date filed: 7 February 2008



THE PROSECUTOR

against

**ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO**

Case No. SCSL -2004-15-T

PUBLIC

**KALLON MOTION ON CHALLENGES TO THE FORM OF THE INDICTMENT
AND FOR RECONSIDERATION OF ORDER REJECTING FILING AND
IMPOSING SANCTIONS**

Office of the Prosecutor:

Peter Harrison
Reginald Fynn

Counsel for Issa Sesay:

Wayne Jordash
Sareta Ashraph

Counsel for Morris Kallon:

Charles Taku
Kennedy Ogetto
Lansana Dumbuya

**Court-Appointed Counsel for
Augustine Gbao:**

John Cammegh
Scott Martin

INTRODUCTION

1. On 4 December 2007, the Second Accused, Morris Kallon, applied to the Chamber for leave to file objections to the form of the indictment¹ by way of a motion in excess of the page limit laid down in Article 6(C) of the Practice Direction.² Annexed to the Application was a draft motion which was the subject of the Application. On 14 December 2007, the Chamber issued an order³ denying the Application and stating, *inter alia*, that the Chamber was satisfied that “the Defence can address the issues raised in the [m]otion within the [ten] page limit...prescribed by the Practice Direction.” As was noted by the Chamber, the annex contained 42 pages of submissions and legal arguments.
2. In light of that decision, on 28 January 2008, the Kallon Defence filed a motion challenging the form of the Indictment which comprised of a motion, 10 pages in length, and Annexes A, B and C, totalling 28 pages in length.⁴ On 29 January 2008, the Prosecution filed a motion requesting relief in relation to the aforementioned motion.⁵ On 31 January 2008, two days later, *without hearing the submissions of the Accused* on the matter, the Chamber endorsed the arguments made by the Prosecution and issued the following directives: (i) “that the Court Management Service remove the Motion from the official court record of [the RUF] case”; and (ii) “that the Defence be not paid the fees or costs associated with the Motion by the Defence Office.”⁶

REQUEST FOR RECONSIDERATION OF THE ORDER

3. The Accused takes the position that the effect of the proceedings described, *supra*, is

¹ *P v. Sesay et al.*, SCSL-04-15-PT, Corrected Amended Consolidated Indictment, (“the Indictment”).

² *P v. Sesay et al.*, SCSL-04-15-T, 960, Kallon Application for Leave to Make a Motion in Excess of the Page Limit, 4 Dec. 07, (the “Application”); referring to The Practice Direction on Filing Documents Before the Special Court for Sierra Leone, (the “Practice Direction”).

³ *P v. Sesay et al.*, SCSL-04-15-T, 928, Decision on Kallon Application for Leave to Make a Motion in Excess of the Page Limit, 14 Dec. 07.

⁴ *P v. Sesay et al.*, SCSL-04-15-T,960, Kallon Motion Challenging Defects in the Form of the Indictment with Annexes A, B and C, 28 Jan. 08, (this document was subsequently struck from the court records, pursuant to a order of the court), (“the Motion”).

⁵ *P v. Sesay et al.*, SCSL-04-15-T,961, Motion for Relief in Respect of the Kallon Motion Challenging Defects in the Form of the Indictment, 29 Jan. 08.

⁶ *P v. Sesay et al.*, SCSL-04-15-T,965, Order Relating to Kallon Motion Challenging Defects in the Form of the Indictment and Annexes A, B and C, 31 Jan. 08, (“the Order”). The Defence notes that the Chamber made the Order within two days of the related Prosecution motion, whereas Rule 6(C) states, *inter alia*, that a response is validly filed within 10 days of the motion to which it is responsive.

that he has not been adequately afforded the right to make submissions in his defence, such that the interests of a fair trial dictate.⁷ Therefore, the Defence respectfully urges the Chamber to reconsider the Order to the extent that it rejected the filing of the Motion. The Defence considers the challenges to the Indictment made hereunder to be a mere summary which do not adequately reflect the objections actually held but that it has been forced to present them in an abbreviated manner owing to the Order, which it urges the Chamber to reconsider, and that, should it be successful in this regard, it asks the Chamber to disregard the challenges to the Indictment contained herein, and reinstate the Motion.

4. The Defence team also respectfully urges the Chamber to reconsider its sanction imposed on Defence counsel on the grounds that it is an *ultra vires* use of Rule 46(C). First, the Defence submits that, in the interests of fairness, such sanctions should not be imposed without a prior hearing in which Defence counsel are afforded the right to present their case. Second, the Defence submits that the Chamber's characterisation of the Motion as an "abuse of process" is erroneous inasmuch as no malicious intent was found by the Chamber.⁸ Third, the Defence notes that the vast majority of the work "associated with the Motion" had already been undertaken in preparing the Application, as evidenced by the draft version of the Motion which was annexed to the Application. Defence counsel took the position at that time that appending a draft version of the Motion was necessary in order to demonstrate the "exceptional circumstances" which justified an extension of the page limit. As such, it is submitted that sanctioning the Defence team by withholding "fees or costs associated with Motion" is an unfair and *ultra vires* use of Rule 46(C) and the Defence team urges the

⁷ See Article 17(2) of the Statute which guarantees, *inter alia*, that "[t]he accused shall be entitled to a fair and public hearing."

⁸ The *ad hoc* tribunals have only imposed sanctions such as this where the conduct of the sanctioned party, as found by the Chamber, has risen to a much greater level of impropriety. See *P v Brdanin*, IT-99-36-T, Decision on Request for Certification to Appeal Against Decision to Separate Trials" and on "Motion to Extend Time-Limit for Filing Brief and Support of Request for Certification to Appeal," 3 Oct. 02, (where the motion in question was found to be "not only without merit, but also manifestly ill-founded and frivolous"); *P v. Seselj*, IT-03-67-PT, Decision on Motion for Disqualification, 10 June 03, at para 5, (where abusive and insulting language was used in the Motion in question); *P v. Nikolic*, IT-94-2-S, Sentencing Judgment, 18 Dec. 03, at para 27, ("in order to prompt a Chamber to use this doctrine [of abuse of process], it needs to be clear that the rights of the Accused have been egregiously violated", (emphasis added)). Note also the United States tort of abuse of process which requires that the "gravamen of that tort [of abuse of process] is not wrongfulness of the prosecution, but some extortionate perversion of a lawfully initiated process for illegitimate ends," see *Heck v. Humphries*, 512 U.S. 477, 486 (U.S. 1994).

Chamber to reconsider its decision on that basis.

CHALLENGES TO THE FORM OF THE INDICTMENT

Preliminary Matter: This Motion is Timely Made

5. The Defence submits that this motion is timely made on the following grounds: (i) the Accused was not afforded the opportunity to make a preliminary challenge to the form of the Indictment in contemplation of the materials mandated for disclosure by Rule 66(A)(i), as was his statutory right;⁹ (ii) much of the jurisprudence cited in support of this motion represents a development in the law which derives from decisions rendered since the commencement of the RUF trial;¹⁰ and (iii) mindful of the fact that objections to defective pleadings are timely raised by the Defence in the Defence closing brief or on appeal¹¹ it is in the interests of judicial economy that the objections contained herein are considered at this stage of the proceedings.

(a) Vagueness and Over Breadth of Factual Allegations

6. Article 17(4)(a) of the Statute of the Special Court for Sierra Leone, (the “Statute”) guarantees, inter alia, the right of the accused “[t]o be informed promptly and in detail...of the nature and cause of the charge against him.”

7. Thus, a “specific, precise, clear and unambiguous indictment [is] an essential prerequisite for a fair and expeditious trial.”¹² The indictment, as the primary accusatory instrument, bears the burden of putting an accused on notice of the legal and factual allegations made against him.¹³ Indeed, the Chamber has emphasised the importance of pleading the case against the Accused *in the Indictment* and the limited use that disclosure through a pre-trial brief has in putting the accused on notice of the

⁹ Rule 72 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone states that “[o]bjections based on defects in the form of the indictment” are “preliminary motions” and should be brought “within 21 days following the disclosure by the Prosecutor to the Defence of all the materials envisaged by Rule 66(A)(i),” and therefore with the benefit of having considered such materials. The said materials include “copies of all the statements of witnesses whom the Prosecutor intends to call to testify and all the evidence to be presented pursuant to Rule 92bis at trial.” However, no such disclosure was made by the Prosecution in respect of the Corrected Amended Consolidated Indictment, filed on 13 May 2004.

¹⁰ Notably, *P v. Brima et al.*, SCSL-04-16-T, Judgement, 20 June 07, (the “AFRC Judgment”).

¹¹ See *Muhimana v. Prosecutor*, ICTR-95-1B-A, Judgment, 21 May 07, at para 80; *Niyitegeka v. Prosecutor*, No. ICTR-96-14-A, Judgment, 9 July 04) at para 200; *P v. Gacumbitsi*, ICTR-2201-64-A, Judgment, 7 July 06, at para 51 (quoting *Niyitegeka*); and *P v. Simic*, IT-95-9-A, Judgment, 28 Nov. 06, at para 25.

¹² *P v. Zigiranyirazo*, ICTR-2001-73-1, Decision on the Defence Preliminary Motion Objecting to the Form of the Amended Indictment, 15 July 04.

¹³ See *P v. Zigiranyirazo*, ICTR-2001-73-1, Decision on the Defence Preliminary Motion Objecting to the Form of the Amended Indictment, 15 July 04.

crimes with which he is charged:

“This court will not look at the [pre-trial briefs], it will look at the charge and the evidence which has been adduced not necessarily what has been stated in the trial briefs. The trial briefs are just statements which come from the parties, and, if they are not proven, I’m afraid the court will not go by them.”¹⁴

8. The indictment must “particularise the *material facts* of the alleged criminal conduct of the accused that . . . goes to the accused’s role in the alleged crime” so that the accused may have sufficient notice of the case against him to prepare an adequate defence.¹⁵ An indictment is not sufficient if it pleads only in general terms, and should include particulars.¹⁶
9. If the Prosecution is in a position to name victims, they should do so, as such information is essential to the preparation of the defence case.¹⁷ In this case, the Indictment does not identify a single victim individually. Instead it identifies the victim, or categories of victims as, *inter alia*: “the civilian population”¹⁸; “an unknown number of civilians”¹⁹; “several hundred civilians.”²⁰ The specificity with respect to victims does not go beyond that.
10. In the AFRC Judgment, Trial Chamber II recognised that “findings of guilt” may not be made “in respect of . . . locations not mentioned in the indictment.”²¹ In this case, alleged locations of crimes pleaded in the Indictment include, *inter alia*: “throughout the Republic of Sierra Leone”²² and “various locations in the [d]istrict.”²³ Notably, paragraph 44 of the Indictment omits to allege any location at all.
11. Alleged timeframes must be pleaded with precision.²⁴ However, the Indictment is also vague in this respect. In many cases, windows of several months or even longer are pleaded for crimes that may have lasted only a matter of moments. Notably,

¹⁴ T. 29/01/08, pg 24, line 1-10, *per* Justice Itoe,

¹⁵ *P v. Zigiranyirazo*, ICTR-2001-73-I, Decision on the Defence Preliminary Motion Objecting to the Form of the Amended Indictment, 15 July 04; see also *P v. Kupreskic*, IT-95-16-A, Judgment, 23 Oct. 01, at para 98.

¹⁶ *Id.*

¹⁷ See *P v. Kupreskic*, IT-95-16-A, Judgment, 23 Oct. 01, at para 89-90; see also *P v. Brima et al*, SCSL-04-16-T, Judgment, 20 June 07, at para 36.

¹⁸ See, eg, the Indictment, at para 44.

¹⁹ See, eg, the Amended Indictment, at para 46.

²⁰ See, eg, the Indictment, at para 48.

²¹ AFRC Judgment, at para 37; see also para 38 (the Trial Chamber “will not make any findings on crimes perpetrated in locations not specifically pleaded in the Indictment.”).

²² See, eg, the Indictment, at para 68.

²³ See, eg, the Indictment, at para 58, referring to Kailahun District.

²⁴ *Gacumbitsi v. Prosecutor*, ICTR-2001-64-A, Judgment, 7 July 06, at para 14.

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paragraph 68 alleges the conscription of child soldiers “[a]t all times relevant to this Indictment.”²⁵

12. A properly pled indictment must also specify the identity of the perpetrators of charged crimes.²⁶ Similarly, “the proximity of the accused to the relevant events” must be pled.²⁷ However, the Indictment pleads with generic application, in respect of every allegation, “members of the AFRC/RUF”²⁸ as the physical perpetrators of the crimes alleged therein. Mr Kallon’s name is entirely absent from allegations of specific crimes in the Indictment, in relation to either crimes physically committed by him or, in the case of command responsibility, his physical proximity with the crimes alleged and his relationship to the perpetrators of those crimes.
13. On these bases it is submitted that the following paragraphs of the Indictment, to the extent that they pertain to the identities of victims or physical perpetrators, timeframes or locations, are defective and should be stricken: 44, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83.

(b) Theories of Responsibility Which Must be Dismissed in Their Entirety

(i) Joint Criminal Enterprise (“JCE”) is Defectively Pleaded

14. A properly constituted indictment must plead the *mens rea* element of JCE and also that it was common to each alleged member of the JCE.²⁹ Moreover, it must allege as participants of the JCE, physical perpetrators of crimes pleaded elsewhere in the indictment.³⁰ In this case, however, the Indictment does not allege that any of the members of the JCE pleaded in paragraph 36 physically committed any of the crimes specified thereafter. Indeed, the identities of physical perpetrators are entirely absent from the Indictment. Moreover, the Indictment fails to plead the *mens rea* required to establish a JCE, much less that such *mens rea* was shared by the alleged co-

²⁵ The Indictment, at para 68.

²⁶ *P v Gatete*, ICTR-00-61-I, Decision on Defence Preliminary Motion, 29 March 04, at paras. 12-13; see also para 16, *infra*, in relation to the defective pleading of command responsibility under Art. 6(3) of the Statute.

²⁷ See *Prosecutor v. Brima et al*, SCSL-04-16-PT, Decision and order on defence preliminary motion on defects in the form of the indictment, 1 April 04, at para 29-33; and *P v. Nchamihigo*, ICTR-2001-63-R50, Decision on Defence Motion on Defects in the Form of the Indictment, 27 Sept. 06, at para 6.

²⁸ See, eg, the Indictment, at para 44.

²⁹ *P v Simba*, ICTR-2001-76-I, Decision on Preliminary Defence Motion Regarding Defects in the form of the Indictment, 6 May 2004, at para. 12.

³⁰ *P v. Simba*, ICTR-01-76-A, Judgment, 27 Nov. 07, at para 72.

participants in the JCE.

15. In the recently rendered AFRC Judgment, Trial Chamber II found the indictment³¹ there to be defective in its pleading of JCE, dismissing it as a mode of liability in its entirety.³² Trial Chamber II based its conclusion on the following findings: (i) that the two “forms” of JCE, the “basic” and the “extended”, pleaded disjunctively, logically exclude one another;³³ (ii) that “the time at which or the period over which the enterprise is said to have existed” is a “material fact and must be pleaded in the indictment” and that it was not so pleaded;³⁴ and (iii) that the alleged purpose of the JCE was not criminal.³⁵ The paragraphs of the AFRC Indictment purporting to plead JCE are substantially the same, in all relevant part, as the Indictment. It is submitted that the Chamber should make the same determination as Trial Chamber II and dismiss JCE as a mode of liability in respect of all counts in the Indictment.

(ii) *All Other Forms of Individual Responsibility are Defectively Pleaded*

16. The jurisprudence of the *ad hoc* tribunals has found indictments, purporting to plead criminal responsibility under Article 6(1) of the Statute, to be defective under the following circumstances: (i) where the particular form of participation, ie planning, instigating, ordering, committing or aiding and/or abetting, is not pleaded “with respect to each incident under each count;”³⁶ (ii) where the indictment merely quotes the provisions of Article 6(1);³⁷ (iii) where the material facts in relation to each of the modes have not been pleaded;³⁸ (iv) where the indictment fails to distinguish between

³¹ *P v. Brima et al.*, SCSL-03-06-I, Further Amended Consolidated Indictment, 18 Feb. 05, (“the AFRC Indictment”).

³² AFRC Judgment, para 85.

³³ AFRC Judgment, para 71.

³⁴ AFRC Judgment, para 64 and 65; quoting *P. v. Hadzihasanovic et al.* IT-01-47-PT, Decision on Form of Indictment, 7 Dec. 01, at para 10; see also *P v. Simic*, IT-95-5-A, Judgment, 28 Nov. 06, at para 22; and *Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, Judgment, 7 July 06, at para 24.

³⁵ AFRC Judgment, para 67; see also para 68 and 85.

³⁶ *P v. Blaskic*, IT-95-14-A, Judgment, 29 July 04, at para 226; see also *Prosecutor v. Simic*, IT-95-9-A, Judgment, 28 Nov. 06, at para 21; *P v. Kordic*, IT-95-14/2-A, Judgment, 17 Dec. 04, at para 129; *Gacumbitsi v. Prosecutor*, ICTR-2001-64-A, Judgment, 7 July 06, at para 161.

³⁷ *P v. Krnojelac*, IT-97-25-A, Judgment, 17 Sept. 03, at para 138; see also *P v. Kvočka, et al.*, IT-98-30/1-A, Judgment, 28 Feb. 05, at para 29; *P v. Kordic*, IT-95-14/2-A, Judgment, 17 Dec. 04, at para 129; *P v. Krnojelac*, IT-97-25-A, Judgment, 17 Sept. 03, at para 134.

³⁸ *P v. Kvočka, et al.*, IT-98-30/1-A, Judgment, 28 Feb. 05, at para 29; see also *P v. Simic*, IT-95-9-A, Judgment, 28 Nov. 06, at para 21.

material facts giving rise to Article 6(1) and Article 6(3) responsibility;³⁹ or (v) where the requisite *mens rea* is not pleaded.⁴⁰

17. Cursorily tracking the statutory language, paragraph 38 of the Indictment asserts all forms of individual responsibility possible under Article 6(1) regarding all crimes, with no details as to any. Thereafter follows the phrase, generically reproduced in respect of each and every count: “pursuant to Article 6.1, and, or alternatively, Article 6.3 of the Statute, [the Accused] are individually criminally responsible for the crimes alleged below.”⁴¹
18. That is the extent of the pleading of Article 6(1) responsibility. Therefore, the Indictment is fatally defective by reference to each and every one of the tests described, *supra*.⁴² It is submitted that no conviction can result under this head of responsibility and it should be dismissed as a mode of liability in its entirety.

(iii) *Command Responsibility is Defectively Pleaded*

19. The Appeals Chamber in *Blaskic* set forth a three-limbed test according to which it should be determined whether command responsibility has been effectively pleaded.⁴³
20. Statements of sweeping generality are applied throughout the Indictment. Specifically, it is submitted that the Indictment is defective on the following grounds, *inter alia*: (i) the alleged perpetrators of crimes are never pleaded as anything more

³⁹ *Prosecutor v. Bagosora, et al.*, ICTR-98-41-AR73, Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 Sept. 06, at para 27; see also *Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, Judgment, 7 July 06, at para 25; *Prosecutor v. Blaskic*, IT-95-14-A, Judgment, 29 July 04, at para 213; *Prosecutor v. Kupreskic et al.*, IT-95-16-A, Judgment, 23 Oct. 01, at para 95.

⁴⁰ *Prosecutor v. Blaskic*, IT-95-14-A, Judgment, 29 July 04, at para 219.

⁴¹ See Indictment, at para 44, 53, 60, 67, 68, 76, 82, 83.

⁴² See para 13.

⁴³ “In accordance with the jurisprudence of the International Tribunal, the Appeals Chamber considers that in a case where superior criminal responsibility . . . is alleged, the material facts which must be pleaded in the indictment are: (a) (i) that the accused is the superior of (ii) subordinates sufficiently identified, (iii) over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and (iv) for whose acts he is alleged to be responsible; (b) the conduct of the accused by which he may be found to (i) have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates, and (ii) the related conduct of those others for whom he is alleged to be responsible. The facts relevant to the acts of those others for whose acts the accused is alleged to be responsible as a superior, although the Prosecution remains obliged to give all the particulars which it is able to give, will usually be stated with less precision, because the detail of those acts are often unknown, and because the acts themselves are often not very much in issue; and (c) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them” *P. v. Blaskic*, IT-95-14-A, Judgment, 29 July 04, at para 218 (footnotes omitted); see also *Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, Judgment, 7 July 06, at para 152.

specific than “members of the AFRC/RUF;”⁴⁴ (ii) the Indictment makes mention only of crimes allegedly committed by members of the AFRC/RUF but lacks a discussion of where the Accused was during these crimes; (iii) the all-encompassing statement “[e]ach Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and each Accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof”⁴⁵ does not adequately put the accused on notice of the conduct by which he may be found to have failed to take measures to prevent the actions of his subordinates.

21. On these bases it is submitted that Chamber should dismiss command responsibility as a mode of participation in respect of all counts in the Indictment.

(c) Counts or Parts of Counts Which Must be Dismissed

22. It is submitted that there is in fact no comprehensive agreement on a definition of “acts of terrorism,” as charged in Count 1 of the Indictment, and, as such, it offends the principle *nullum crimen sine lege*. According to *Vasiljevic*, an offence will violate the principle of *nullum crimen sine lege* if it is “insufficiently precise.”⁴⁶ The limits and constitutive elements of the offence of “acts of terrorism” are unknown, let alone defined with any degree of precision. Therefore, it submitted that Count 1 be dismissed.

23. It is submitted that the following counts should also be dismissed in light of findings in the AFRC Judgment, and on the basis that the relevant paragraphs of the AFRC Indictment do not differ in any material aspect from the Indictment with which Mr Kallon is charged: (i) Count 7, as Trial Chamber II held that the practice of charging both crimes of “sexual slavery” and “any other form of sexual violence” under the same count was “bad for duplicity;”⁴⁷ (ii) Count 8, “other inhumane acts” as a crime

⁴⁴ Therefore, the first limb of the *Blaskic* test is not satisfied. See *Prosecutor v. Blaskic*, IT-95-14-A, Judgment, 29 July 04, at para 218(a).

⁴⁵ The Indictment, at para 39.

⁴⁶ *Prosecutor v. Vasiljevic*, IT-98-32-T, Judgment, 29 Nov. 02, at para 193; see also *Prosecutor v. Galic*, IT-98-29-T, Judgment, 5 Dec. 03, at para 93; *id.*, Separate and Partially Dissenting Opinion of Judge Nieto-Navia, at para 108-109; International Covenant on Civil and Political Rights, Article 15, (“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed”).

⁴⁷ AFRC Judgment, at para 94-95.

against humanity, as redundant of Counts 9 and 11;⁴⁸ and (iii) Count 9 to the extent that it was charged additionally or in the alternative to “any other form of sexual violence,” which failed for lack of particularity.⁴⁹

PRAYER

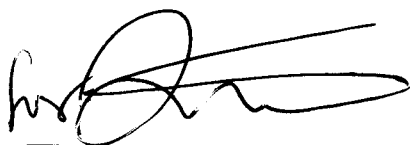
24. In light of the foregoing the Defence respectfully prays that the Chamber:

GRANT the motion and:

- (i) **INSTRUCT** Court Management Services to refile the Motion as requested in paragraph 3, *supra*; and
- (ii) **STRIKE** the related sanction imposed on Defence counsel; or, in the alternative
- (iii) **DISMISS** the aforementioned impugned paragraphs of the Indictment; additionally, or in the alternative
- (iv) **DISMISS** as modes of liability in respect of all counts:
 - i. joint criminal enterprise under Article 6(1);
 - ii. all other forms of individual criminal responsibility under Article 6(1);
 - iii. command responsibility under Article 6(3); additionally. or in the alternative
- (v) **DISMISS** Counts 1, 7 and 8 in their entirety; and Count 9 in part.

DONE in Freetown on this 7th day of Feb, 2008

For Defendant **Kallon**,



Chief Charles A. Taku



Kennedy Ogetto



Lansana Dumbuya

⁴⁸ AFRC Judgment, at para 714.

⁴⁹ AFRC Judgment, at para 721. See also the Indictment, at para 56, (alleging “other forms of sexual violence” in Koinadugu District); at para 57 (alleging “other forms of sexual violence” in Bombali District); at para 58 (alleging “sexual violence” in Kailahun District); at para 59 (alleging “other forms of sexual violence” in Freetown and the Western Area); and at para 60 (alleging “other forms of sexual violence” in Port Loko District).

LIST OF AUTHORITIES

(a) Statute, Rules and Practice Direction

1. International Covenant on Civil and Political Rights.
(Available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)
2. Statute of the Special Court for Sierra Leone.
3. Rules of Procedure and Evidence of the Special Court for Sierra Leone.
4. The Practice Direction on Filing Documents Before the Special Court for Sierra Leone.

(b) Decisions and Judgments

(i) *Special Court for Sierra Leone*

1. *P v. Sesay et al.*, SCSL-04-15-T, Order Relating to Kallon Motion Challenging Defects in the Form of the Indictment and Annexes A, B and C, 31 Jan. 08.
2. *P v. Sesay et al.*, SCSL-04-15-T, Decision on Kallon Application for Leave to Make a Motion in Excess of the Page Limit, 14 Dec. 07.
3. *P v. Sesay et al.*, SCSL-04-15-T, Kallon Application for Leave to Make a Motion in Excess of the Page Limit, 4 Dec. 07.
4. *P v. Brima et al.*, SCSL-04-16-T, Judgement, 20 June 07.
5. *P v. Brima et al.*, SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment, 1 April 04.

(ii) *International Criminal Tribunal for Rwanda*

1. *P v. Simba*, ICTR-01-76-A, Judgment, 27 Nov. 07, (available at <http://69.94.11.53/default.htm>).
2. *Muhimana v. Prosecutor*, ICTR-95-1B-A, Judgment, 21 May 07, (available at <http://69.94.11.53/default.htm>).
3. *P v. Nchamihigo*, ICTR-2001-63-R50, Decision on Defence Motion on Defects in the Form of the Indictment, 27 Sept. 06, (available at <http://69.94.11.53/default.htm>).
4. *Prosecutor v. Bagosora, et al.*, ICTR-98-41-AR73, Decision on Aloys

Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 Sept. 06, (available at <http://69.94.11.53/default.htm>).

5. *Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, Judgment, 7 July 06, (available at <http://69.94.11.53/default.htm>).
6. *Gacumbitsi v. Prosecutor*, ICTR-2001-64-A, Judgment, 7 July 06, (available at <http://69.94.11.53/default.htm>).
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10. *P v Simba*, ICTR-2001-76-I, Decision on Preliminary Defence Motion Regarding Defects in the form of the Indictment, 6 May 04, (available at <http://69.94.11.53/default.htm>).
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(iii) *International Criminal Tribunal for the Former Yugoslavia*

1. *P v. Simic*, IT-95-5-A, Judgment, 28 Nov. 06, (available at <http://www.un.org/icty/simic/appeal/judgement-e/sim-acjud061128e.pdf>).
2. *P v. Stanisic*, IT-04-79-PT, Decision on Defence Preliminary Motion on the Form of the Indictment, 19 July 05, (available at <http://www.un.org/icty/stanasic/trialc/decision-e/050719.htm>).
3. *Prosecutor v. Kvocka, et al.*, IT-98-30/1-A, Judgment, 28 Feb. 05, (available at <http://www.un.org/icty/kvocka/appeal/judgement/kvo-aj050228e.pdf>).
4. *P v. Kordic*, IT-95-14/2-A, Judgment, 17 Dec. 04, (available at <http://www.un.org/icty/kordic/appeal/judgement/cer-aj041217e.pdf>).
5. *P v. Blaskic*, IT-95-14-A, Judgment, 29 July 04, (available at <http://www.un.org/icty/blaskic/appeal/judgement/bla-aj040729e.pdf>).

6. *Prosecutor v. Galic*, IT-98-29-T, Judgment, 5 Dec. 03, (available at <http://www.un.org/icty/galic/trialc/judgement/gal-tj031205e.pdf>).
7. *P v. Nikolic*, IT-94-2-S, Sentencing Judgment, 18 Dec. 03, (available at <http://www.un.org/icty/nikolic/trialc/judgement/nik-sj031218e.pdf>).
8. *P v Brdanin*, IT-99-36-T, Decision on “Request for Certification to Appeal Against Decision to Separate Trials” and on “Motion to Extend Time-Limit for Filing Brief and Support of Request for Certification to Appeal,” 3 Oct. 02, (available at <http://www.un.org/icty/brdjanin/trialc/decision-e/08122034.htm>).
9. *P v. Krnojelac*, IT-97-25-A, Judgment, 17 Sept. 03, (available at <http://www.un.org/icty/krnojelac/appeal/judgement/krn-aj030917e.pdf>).
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14. *P v. Kupreskic*, IT-95-16-T, Judgment, 14 Jan. 00, (available at <http://www.un.org/icty/kupreskic/appeal/judgement/kup-aj011023e.pdf>)
<http://www.un.org/icty/kupreskic/trialc2/judgement/kup-tj000114e.pdf>).

(c) Motions and Other Filings

1. *P v. Sesay et al.*, SCSL-04-15-T, Motion for Relief in Respect of the Kallon Motion Challenging Defects in the Form of the Indictment, 29 Jan. 08.
2. *P v. Sesay et al.*, SCSL-04-15-T, Kallon Motion Challenging Defects in the Form of the Indictment with Annexes A, B and C, 28 Jan. 08.

(d) Pre-Trial Documents

1. *P v. Brima et al.*, SCSL-03-06-I, Further Amended Consolidated Indictment.
2. *P v. Sesay et al.*, SCSL-04-15-PT, Corrected Amended Consolidated Indictment.

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(e) **Transcripts**

1. *P v. Sesay et al.*, SCSL-04-15-PT, Trial Transcript, 29/01/08.

(f) **Judgment From Domestic Jurisdiction**

1. *Heck v. Humphries*, 512 U.S. 477, 486 (U.S. 1994).

(Available at <http://docs.justia.com/cases/supreme/512/477.pdf>).