

Overview of Court Documents

1. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Nuon Chea, 002/19-09-2007-ECCC-OCIJ, Co-Investigating Judges Order on Extension of Provisional Detention of Nuon Chea, 23 September 2009

Kaing Guek Eav alias “Duch”, 002/19-07-2007,-ECCC-TC, Decision on Civil Party Co-lawyers’ joint request for a ruling on the standing of Civil Party lawyers to make submissions on sentencing and directions concerning the questioning of the accused, experts and witnesses testifying on character, 9 October 2007

Ieng Sary, 002/19-09-2007-ECCC-OCIJ, Co-Investigating Judges Order on Extension of Provisional Detention, 10 November 2009

Ieng Thirith, 002/19-09-2007-ECCC-OCIJ, Co-Investigating Judges Order on Extension of Provisional Detention, 10 November 2009

2. INTERNATIONAL COURT OF JUSTICE

Application instituting proceedings by the Republic of Honduras against the Federative Republic of Brazil, 29 October 2009

Summary

On 28 October 2009, Honduras filed an Application instituting proceedings against Brazil at the International Court of Justice (ICJ). The Application complains that Brazil has interfered in Honduras’ internal affairs by giving refuge to the ousted Honduran President Manuel Zelaya in the Brazilian embassy in the Honduran Capital, Tegucigalpa.

Manuel Zelaya was ousted in a *coup d’état* on 28 June 2009 and sent into exile in Costa Rica. On 21 September 2009, Zelaya returned to Honduras, without the knowledge of the Honduran interim government, and sought refuge in the Brazilian Embassy in Tegucigalpa. The interim government, headed by former Speaker Roberto Micheletti, accused Brazil of violating diplomatic status. Honduras states in its application that Mr Zelaya and others “are using [its] premises . . . as a platform for political propaganda

and thereby threatening the peace and internal public order of Honduras, at a time when the Honduran Government is making preparations for the presidential elections which are due to take place on 29 November 2009”.

The Application states that the “dispute between the Republic of Honduras and the Federative Republic of Brazil relates to legal questions concerning diplomatic relations and associated with the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any State, a principle incorporated in the Charter of the United Nations.” Honduras requests the Court to declare that Brazil has breached article 2(7) of the UN Charter, which forbids intervention into the domestic jurisdiction of any state, and the 1961 Vienna Convention on Diplomatic Relations, a treaty setting out the privileges and immunities of diplomatic missions.

Honduras has not requested the Court to indicate provisional measures at this stage. However, Honduras states that it may file such a request if Brazil does not “immediately put an end to the disturbance caused to internal order” within the country. The Court will now determine whether it has jurisdiction to hear the case.

3. INTERNATIONAL CRIMINAL COURT

Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, ICC-01/04-01/07 OA 8, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, 25 September 2009

Summary

At an open hearing on 25 September 2009, the Appeals Chamber at the International Criminal Court (ICC) dismissed the appeal of Germain Katanga challenging a Trial Chamber decision declaring the case against him admissible. In upholding the decision on the admissibility of the case, the Appeals Chamber cleared the way for the case against Katanga and his co-accused, Mathieu Ngudjolo Chui, to commence in November 2009.

The Judgment of the Appeals Chamber followed the appeal by Katanga’s Defence against the decision by Trial Chamber II on 12 June 2009 to reject a motion challenging the admissibility of the case under the ‘complementarity’ principle of the Rome Statute. The Trial Chamber had found no grounds to support the Defence submission that this founding principle of the Court’s statute had been violated, relying in part on the Democratic Republic of the Congo’s (DRC) declared unwillingness to prosecute the case.

In its Judgment, the Appeals Chamber rejected each of the five grounds of Katanga’s appeal, including the challenge based on the ‘complementarity’ principle. The Court stated that at the time of the admissibility proceedings there were no domestic proceedings ongoing against the Accused and that the DRC had made clear that it wished for the ICC to prosecute the case. The Chamber further considered that the principle strikes a balance between safeguarding the primacy of domestic proceedings and the purpose of the ICC to “put an end to impunity”, stating that the ICC must be able to intervene when states are “unwilling or unable” to do so themselves.

The Chamber also rejected the Defence's appeal against the opinion of the Trial Chamber that a State can decide its unwillingness to prosecute "without the need to justify or explain its unwillingness". The Court determined that this would not lead to an accused being deprived of the right to challenge the case based on this ground, as the Defence had argued, since the admissibility of a case is determined by the Court alone.

The Chamber also declined to consider the merits of the first two grounds of appeal.

Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Decision on the Date of Trial, 5 November 2009

Summary

In a Decision issued on 5 November 2009, Trial Chamber III at the International Criminal Court (ICC) set the date for the commencement of the trial in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* for Tuesday, 27 April 2010. Bemba, the former vice-President of the Democratic Republic of the Congo (DRC) and leader of the *Mouvement de Libération du Congo* (MLC) militia group, is charged with five counts of war crimes and crimes against humanity for crimes committed in the Central African Republic (CAR).

In its Decision, the Trial Chamber addressed certain outstanding procedural and evidential issues, specifically regarding funding for the legal assistance of Bemba and the disclosure of Prosecution evidence. The Prosecution was given until 30 November 2009 to disclose all of its trial evidence, including potentially exculpatory evidence and other documents that are material to the Defence under Rule 77 of the Rules of Procedure and Evidence of the Court.

The Chamber noted that the Prosecution intends to call a total of 37 witnesses to testify against Bemba and will use a total of 521 documents, including photographs and video materials. It considered that since 21 of the witnesses had been disclosed in advance of the confirmation of charges hearings in January, five months from the disclosure of the evidence in November was sufficient time for preparation of the Defence case according to Article 67 (b) and (c) of the Rome Statute.

The Prosecution charges Bemba with murder and rape as crimes against humanity, as well as murder, rape and pillaging as war crimes. Bemba is charged by way of his criminal responsibility as a military commander under Article 28 (a) of the Rome Statute for crimes committed by forces under his effective control in the CAR.

Situation in the Republic of Kenya, ICC-01/09, Decision Assigning the Situation in the Republic of Kenya to Pre-Trial Chamber II, 6 November 2009

Summary

On 6 November 2009, the Presidency at the International Criminal Court (ICC) issued a decision assigning the situation in Kenya to Pre-Trial Chamber II with immediate effect. The decision follows the determination by the Prosecutor, Luis Moreno-Ocampo, that there is a reasonable basis to proceed with an investigation into the post-election violence in Kenya in 2007-2008.

Following consultations with the Kenyan authorities, the Prosecutor informed Judge Song in a letter on 5 November 2009 that he intends to submit a request under Article 15 (3) of the Rome Statute for the authorisation of an investigation into the situation. In December 2007, after Kenya's presidential election, around 1300 people were killed in violence lasting until February 2008 that flared after the opposition party accused President Mwai Kibaki of stealing the vote.

Kenya has been a State Party to the Rome Statute since March 2005, granting the Court jurisdiction over Kenyan nationals or crimes committed on its territory. Under Article 15 of the Rome Statute, the Prosecutor has the power to launch an investigation *proprio motu* based on preliminary information received by his office, but must obtain the permission of the Court before a full investigation is authorised. Once the Prosecutor has submitted his request, Pre-Trial Chamber II will examine it and the supporting materials, including victim representations, and will authorise the commencement of a formal investigation if it decides there is a reasonable basis to proceed.

In September 2009, the Prosecutor announced his intention to proceed with his preliminary investigations after Kenya failed to meet a 30 September deadline to establish a tribunal at the national level to prosecute the crimes committed. Moreno-Ocampo said that the ICC would seek to prosecute those bearing the greatest responsibility for the violence, while other perpetrators would be tried by national accountability proceedings. In July 2009, former UN Secretary General and chief mediator in the peace talks that led to Kenya's power-sharing government, Kofi Annan, handed a list of names to the Prosecutor for investigation.

4. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Prosecutor v. Michel Bagaragaza, ICTR-05-86-S, Sentencing Judgement, 17 November 2009

Summary

On 5 November 2009, Trial Chamber III at the International Criminal Tribunal for Rwanda (ICTR) sentenced Michel Bagaragaza to 8 years' imprisonment for his role in the 1994 genocide. The sentence follows testimony from character witnesses and oral submissions by the parties on 3 and 4 November respectively, during which the former Director-General of the Rwandan tea industry asked for forgiveness for his actions, telling the Chamber that "I am left with regret and scars that I cannot erase."

Bagaragaza pleaded guilty to one count of complicity in genocide before the ICTR in September after an agreement was reached with the Prosecutor to withdraw the charges of genocide, conspiracy to commit genocide and war crimes from the original Indictment. Bagaragaza, a member of the *Akazu*, or the inner circle of former President Juvénal Habyarimana that planned the genocide, admitted to helping fund the Interahamwe militias and providing them with arms, ammunition and beer stockpiled at his tea factory.

In delivering its sentence, the Chamber took into account not only Bagaragaza's admission of guilt and remorse, but also that Bagaragaza had previously testified against other

genocide suspects before the Tribunal, in spite of threats against his family. Bagaragaza has testified in cases including that of brother-in-law of former President Habyarimana, Protais Zigiranyirazo, whose appeal judgment was delivered on 16 November 2009.

In sentencing Bagaragaza the Chamber brings to an end a long and protracted saga in which the Prosecutor at the ICTR twice failed to refer the case to national jurisdictions. In May 2006 the ICTR rejected the request for referral to Norwegian jurisdiction after it was found that its criminal law did not provide for the crime of genocide. The case was eventually referred to the Netherlands under Rule 11*bis* of the Rules of Procedure and Evidence of the Tribunal in April 2007. Nevertheless, the Hague District Court held in August of the same year that it did not have jurisdiction over the acts committed by Bagaragaza, prompting the ICTR to revoke its transfer order. After the Dutch Court of Appeal upheld the decision, Bagaragaza was transferred to the ICTR in May 2008.

Protais Zigiranyirazo v. The Prosecutor, ICTR-01-73-A, Appeal Judgement, 16 November 2009

Summary

On 16 November 2009, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) overturned the convictions of Protais Zigiranyirazo and ordered his immediate release. Zigiranyirazo, the brother-in-law of Rwanda's former President Juvénal Habyarimana, was convicted of genocide and extermination as a crime against humanity in 2008.

In its Judgement, the Appeals Chamber granted Zigiranyirazo's sixth and twelfth grounds of appeal concerning exculpatory evidence related to the massacre of Tutsi civilians at Kesho Hill and the Kiyovu Roadblock. The Trial Chamber had determined that Zigiranyirazo was present at both locations during the early days of the Genocide, addressing an assembled crowd of assailants at Kesho Hill, as well as aiding and abetting killings at the Roadblock. Nevertheless, the Appeals Chamber found that the Trial Chamber erred in both law and fact in the assessment of Zigiranyirazo's alibi evidence in both situations. In delivering the appeal judgement, presiding Judge Theodor Meron stated that the conviction of Zigiranyirazo "violated the most basic and fundamental principles of justice."

During an oral hearing on 28 September 2009, the Defence presented 17 grounds of appeal, while the Prosecution had asked for a life sentence or a sentence of longer than 20 years in the alternative. In granting two of Zigiranyirazo's grounds of appeal the Chamber dismissed as moot the remaining grounds as well as the Prosecution's single ground of appeal.

In overturning the Trial Chamber's decision, the Appeals Chamber found three serious errors in the assessment of Zigiranyirazo's alibi for both Kesho Hill and Kiyovu Roadblock which invalidated his convictions based on those particular events. Concerning Kesho Hill, the Appeals Chamber found that the Trial Chamber misapprehended the burden of proof by failing to consider or provide a reasoned opinion with respect to circumstantial evidence. The Appeals Chamber stated that the burden of proof had effectively been reversed by the Trial Chamber's failure to appreciate that Zigiranyirazo only needed to establish reasonable doubt as to his presence at Kesho Hill. The Trial Chamber had

also failed to address crucially important evidence on the feasibility of Zigiranyirazo's travel between crimes sites and misconstrued evidence demonstrating clear inconsistency between witness accounts.

Concerning Kiyovu Roadblock, the Appeals Chamber found that the Trial Chamber had applied the incorrect standard for the assessment of an alibi, misconstrued key alibi evidence, and again failed to consider or provide a reasoned opinion concerning the feasibility of travel, despite evidence which provided a reasonable basis to cast doubt on Zigiranyirazo's presence at the Roadblock. For these reasons, the errors constituted miscarriages of justice, invalidating the original verdict.

In its concluding remarks, the Appeals Chamber underscored the seriousness of the Trial Chamber's errors in stating: "the crimes Zigiranyirazo was accused of were very grave, meriting the most careful of analyses. Instead the Trial Judgement misstated the principles of law governing the distribution of the burden of proof with regards to alibi and seriously erred in its handling of the evidence." Accordingly, the Appeals Chamber considered itself left with "no choice" but to reverse Zigiranyirazo's convictions.

Prosecutor v. Hormisdas Nsengimana, ICTR-01-69-T, Judgement, 17 November 2009

Summary

On 17 November 2009, Trial Chamber I at the International Criminal Tribunal for Rwanda (ICTR) acquitted Hormisdas Nsengimana of all of the charges against him. Nsengimana, a Catholic Priest who held the position of Rector of Christ-Roi College in the Butare *préfecture* during the Genocide, had been charged with genocide, as well as murder and extermination as crimes against humanity.

In its Judgement, the Trial Chamber composed of Judges Erik Møse, Sergei Alekseevich Egorov, and Florence Rita Arrey did not find a sufficient factual and legal basis for concluding that Nsengimana was guilty of any of the crimes. The Prosecution had charged Nsengimana with leading a group of killers known as *Les Dragons* or *Escadron de la mort* which included Hutu extremists and members of the *Interahamwe* militia. Nsengimana was also accused of supervising roadblocks for the purpose of identifying Tutsi civilians to be killed and personally killing Tutsis including a fellow priest.

The Chamber addressed the evidence to support the charges against Nsengimana in turn, finding that for each alleged incident the Prosecution had either failed to prove his responsibility beyond a reasonable doubt, or had failed to provide reliable evidence to sustain or corroborate the charges. Concerning Nsengimana's alleged responsibility for the death of a fellow priest, the Chamber found that the Prosecution evidence failed to eliminate doubt as to his responsibility, whilst for both Nsengimana's alleged role in *Les Dragons* and at roadblocks it was found that the evidence presented was too imprecise and failed to demonstrate his involvement in any crimes.

Nsengimana was arrested in Cameroon in March 2002 and made his initial appearance before the Tribunal in April 2002. The trial commenced on 22 June 2007 and concluded on 17 September 2008. Nsengimana is one of several members of the Catholic Church to have been indicted by the ICTR for their alleged role in the genocide. Notable others include Athanase Seromba and Elizaphan Ntakirutimana, both convicted of genocide by the ICTR.

Following the delivery of its Judgement, the Chamber ordered the immediate release of Nsengimana.

5. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Prosecutor v. Florence Hartmann, IT-02-54-R77.5, Judgement on Allegations of Contempt, 14 September 2009

Summary

On 14 September 2009, Florence Hartmann was found guilty of Contempt at the International Criminal Tribunal for the former Yugoslavia (ICTY). Ms. Hartmann was sentenced to pay a fine of 7,000 euros, to be paid in two instalments by 14 October and 14 November 2009 respectively.

Ms. Hartmann had been charged with two counts of Contempt of the Tribunal under Rule 77(A)(ii) of the Rules of Procedure and Evidence of the ICTY. The charges relate to a book and article authored by Ms. Hartmann in which she revealed confidential information from the Appeals Chamber in the case against Slobodan Milošević.

The Specially Appointed Chamber set up at the ICTY to hear the case found Ms. Hartmann guilty of disclosing confidential information in knowing violation of a court order, rejecting the Defence argument that the same information was already in the public domain. According to the Chamber, “a decision remains confidential until a Chamber explicitly decides otherwise”.

At the time of the proceedings against Milošević, Ms. Hartmann was serving as the spokesperson for former Chief Prosecutor, Carla Del Ponte. Having left the Tribunal in 2006 after six years, Ms. Hartmann subsequently published the book, “Peace and Punishment: The Secret Wars of Politics and International Justice” and several articles about the Tribunal. In its Judgement, the Chamber said that Ms. Hartmann’s work at the Tribunal meant that she was fully aware of what the confidentiality of a decision entailed.

The Chamber also found that the conduct of Ms. Hartmann could deter sovereign states from cooperating with the Tribunal, and that such conduct “impacts upon the Tribunal’s ability to exercise its jurisdiction to prosecute and punish serious violations of humanitarian law as prescribed by its mandate”. The confidential documents in question had only been released by the Serbian government for use in the Milošević trial.

In determining its sentence the Chamber echoed the concerns considered in the guilty verdict for Contempt rendered against Vojislav Šešelj on 24 July 2009, taking into account the need to deter such behaviour, but also the fact that “[p]ublic confidence in the effectiveness of protective measures, orders and decisions is vital to the success of the work of the Tribunal.” The Chamber reiterated that the integrity of its decisions and the safeguarding of its judicial functions are essential to the rule of law.

President of the International Criminal Tribunal for the former Yugoslavia, Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljan Plavšić, IT-00-39 & 40/1-ES, 14 September 2009

Summary

Former Bosnian Serb politician Biljana Plavšić was granted early release by the International Criminal Tribunal for the former Yugoslavia (ICTY), after having served two thirds of her 11 year sentence. In a Decision dated 14 September 2009, ICTY President Judge Patrick Robinson stated that Mrs Plavšić “appears to have demonstrated substantial evidence of rehabilitation” and ordered early release “notwithstanding the gravity of her crimes”.

Mrs Plavšić, one of the most senior political leaders to have been convicted by the ICTY, became eligible to be released on 27 October 2009. Biljana Plavšić was a senior Serb political figure during the war in Bosnia and was a member of the collective Presidency of Bosnia and Herzegovina and co-President of the Bosnian Serb leadership. Mrs Plavšić was found to have participated in the persecution of Bosnian Muslims and other non-Serbs by supporting a campaign of ethnic separation which resulted in the death of thousands. In 2003 she pleaded guilty to a count of persecution on political, racial and religious grounds, a crime against humanity, and was sentenced to 11 years’ imprisonment.

Under Article 28 of the Statute of the ICTY, a convicted person is eligible for release when he or she becomes eligible for pardon or commutation under the law of the state in which they serve their sentence and it is “in the interest of justice”. In ordering early release, the President took into account Mrs Plavšić’s original guilty plea, remorse, good behaviour and the fact that she has now served two thirds of her sentence. Mrs Plavšić also assisted prosecutors by testifying in the case against Momčilo Krajišnik, although she refused to testify in other cases, including against Slobodan Milošević.

Prosecutor v. Radovan Karadžić, IT-95-5/18-AR73.4, Decision on Karadžić’s Appeal of Trial Chamber’s Decision on Alleged Holbrooke Agreement, 12 October 2009

Summary

On 12 October 2009 the Appeals Chamber at the International Criminal Tribunal (ICTY) rejected Radovan Karadžić’s claim that he is immune from prosecution due to a special agreement allegedly made with U.S. envoy Richard Holbrooke in 1996. Karadžić claimed that according to the alleged agreement, U.S. Negotiator Richard Holbrooke had agreed that he would not be prosecuted in The Hague if he withdrew from public life in Republika Srpska.

Karadžić had appealed against a decision of 8 July 2009, in which the Trial Chamber rejected the immunity claim. The Appeals Chamber rejected the appeal in its entirety, stating that “even if the alleged Agreement were proved, it would not limit the jurisdiction of the Tribunal, it would not otherwise be binding on the Tribunal and it would not trigger the doctrine of abuse of process.”

Prosecutor v. Radovan Karadžić, IT-95-5/18-AR73.4, Decision on Radovan Karadžić's Appeal of the Decision on Commencement of Trial, 13 October 2009

Summary

The International Criminal Tribunal for the former Yugoslavia (ICTY) scheduled the commencement of the trial of Radovan Karadžić for 9 a.m. on Monday 26 October 2009, in Courtroom I. The announcement followed the rejection by the Appeals Chamber of Karadžić's claims of immunity, as well as his appeal against the Decision on the commencement of the trial.

However, the trial of former Bosnian Serb leader was adjourned following the failure of the self-represented accused to appear in court. Karadžić had warned that he would boycott the trial in a letter to the Tribunal on 21 October 2009, stating that he had insufficient time to prepare his defence. The trial was adjourned until the following day, when the Prosecution made its opening statement in the absence of Karadžić.

"In light of the absence of the accused and of counsel to represent him, the chamber will adjourn these proceedings today," Presiding Judge O-Gon Kwon said at the beginning of the trial after it was clear that Karadžić would not be present. Karadžić has so far chosen to represent himself in the proceedings, but the Trial Chamber may choose to impose counsel, appointing a lawyer for him if he continues to be absent from trial.

Prosecutor v. Radovan Karadžić, IT-95-5/18-AR73.4, Decision on Appointment of Counsel and Order on Further Trial Proceedings, 5 November 2009

Summary

On 5 November 2009, the Trial Chamber at the International Criminal Tribunal for the former Yugoslavia (ICTY) ordered the appointment of counsel to Radovan Karadžić. The Chamber nevertheless recognised Karadžić's right to self-representation, ordering that he would continue to represent himself, with the appointed counsel only taking over as assigned counsel if he continued to obstruct the proceedings.

The order follows a status conference held on 3 November 2009 during which the parties gave oral submissions on how to proceed with the case in light of the continued refusal of Karadžić to appear before the Tribunal.

In its decision, the Trial Chamber stated that "the overall interests of justice are best met by the appointment of counsel", and ordered the Registrar to proceed in that regard. The Trial Chamber also ordered the trial to resume on 1 March 2010, allowing the appointed counsel three and a half months to prepare for the trial.

In the status conference, which Karadžić attended, the Prosecution stated that they foresaw two scenarios for proceeding with the trial. In its first submission, the Prosecution outlined that the Chamber could order the opening statement of the Defence, followed by the hearing of the first three Prosecution witnesses and also assign standby, duty counsel to Karadžić. In its decision, the Chamber has partially followed the Prosecution's second option, on the imposition of counsel. During his submissions, Karadžić repeated his

claims to have not been given sufficient time to prepare his case, and maintained that allowing him adequate time for the preparation of his own Defence remained the best solution.

The decision of the Chamber to impose counsel follows Karadžić's refusal to attend the opening of his trial on 26 October 2009, and all subsequent trial days, including the Prosecution's opening statement. The Chamber concluded that Karadžić had "substantially and persistently obstructed the proper and expeditious conduct of his trial by refusing to attend the proceedings until such time as he considers himself to be ready". It nonetheless honoured Karadžić's fundamental right to self-representation under Article 21 of the Statute of the Tribunal. According to the Chamber, Karadžić will forfeit this right, and the appointed counsel will take over as assigned counsel to represent him, if he continues to absent himself from the proceedings or engages in any conduct that "obstructs the proper and expeditious conduct of the trial".

The trial is now scheduled to resume with Karadžić's opening statement in March 2010.

Prosecutor v. Dragomir Milošević, IT-98-29/1-A, Appeal Judgement, 12 November 2009

Summary

On 12 November 2009, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) partially upheld the Trial Chamber's Judgement in the case of Dragomir Milošević. The Appeals Chamber dismissed the Prosecution's sole ground of appeal requesting that Milošević be sentenced to life imprisonment, instead reducing Milošević's sentence from 33 to 29 years' imprisonment.

Dragomir Milošević was the former commander of the Sarajevo-Romanija Corps (SRK) of the Bosnian Serb Army (VRS) which encircled and entrapped the city of Sarajevo for three and a half years. Milošević assumed the command of the SRK from August 1994 to the end of the conflict in November 1995. In 2007, Milošević was convicted of crimes against humanity and of a violation of the laws or customs of war. He was found guilty of five counts of terror, murder and inhumane acts which resulted in the injury and death of a significant number of civilians and was sentenced to 33 years' imprisonment.

The Appeals Chamber dismissed two counts of unlawful attacks against civilians as impermissibly cumulative, stating that the elements of the crime of unlawful attacks against civilians are fully encompassed by the crime of terror.

The Appeals Chamber also upheld the majority of the Trial Chamber's convictions for ordering the shelling of the civilian population in Sarajevo, except for the shelling of the Baščaršija Flea Market, of the BITAS building and of the Markale Market. It held that the Trial Chamber failed to address deficiencies in the evidence. With respect to the shelling of the BITAS building and the Markale Market, the Appeals Chamber noted that during this period, the Chief of Staff, Čedomir Sladoje, was in charge of the SRK command in Sarajevo and issued orders as a commander, while Milošević was receiving medical treatment in Belgrade.

The Appeals Chamber also replaced Milošević's convictions for planning and ordering the sniping of the civilian population with respective convictions under Article 7(3) of the Tribunal's Statute (Command responsibility). The Appeals Chamber held that evidence

cited in the Trial Judgement did not support a finding that Milošević planned and ordered the sniping incidents. However, it held that he was responsible as a commander for having failed to prevent and punish crimes committed by his subordinates. With respect to the modes of Milošević's liability, Judge Fausto Pocar, said that no reduction in sentence was warranted since, "Milošević did more than merely tolerate the crimes as a commander [...] he provided additional encouragement to his subordinates to commit the crimes against the civilians." However, the Appeals Chamber found that the reversal of Milošević's convictions for three shelling incidents had an impact on Milošević's overall culpability and thus reduced his sentence to 29 years' imprisonment.

Milošević's claim that Vojničko Polje, Alipašino Polje, Dobrinja, Sedrenik, Hrasnica and Marin Dvor were military zones within the city of Sarajevo, was dismissed. The Appeals Chamber further rejected Milošević's challenges with respect to the civilian status of the victims of a number of shelling and sniping incidents. The Appeals Chamber dismissed both Milošević's and the Prosecution's appeal on the length of the sentence imposed by the Trial Chamber.

Dragomir Milošević surrendered to the Tribunal on 3 December 2004. His trial began on 10 January 2007 and ended in October of the same year. Milošević's predecessor at the command of the SRK, Stanislav Galić, was sentenced on appeal to life imprisonment in November 2006.

6. SUPREME COURT FOR SIERRA LEONE

Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao, SCSL-04-15-A, Appeal Judgement, 26 October 2009

Summary

On 26 October 2009, the Appeals Chamber at the Special Court for Sierra Leone (SCSL) upheld sentences against three former Revolutionary United Front (RUF) rebels. On 8 April 2009, Issa Hassan Sesay, Morris Kallon and Augustine Gbao, all charged with war crimes and crimes against humanity, were sentenced to terms of imprisonment of 52, 40 and 25 years, respectively. These convictions included the first-ever convictions for forced marriage as a crime against humanity and attacks against United Nations peacekeepers as a crime against humanity. Although the Appeals Chamber upheld some grounds of appeal, the sentences remained unchanged.

The 10-years civil war in Sierra Leone took the lives of over 100 000 people, and left thousands mutilated, with amputated limbs. The conflict also saw the large-scale perpetration of rape, sexual abuse and sexual slavery. In its prosecutions the Court has focused on three main factions that operated during the war: the pro-government Civil Defence Forces (CDF), the Armed Forces Revolutionary Council (AFRC) and the RUF. The Trial Chamber held that the RUF and AFRC leaders were part of a joint criminal enterprise with the purpose of taking over territory in Sierra Leone and its diamond mining areas.

Seven years after the end of the civil war in the west African state, the RUF judgement is the last to be delivered by the Court in Freetown, Sierra Leone. The

remaining trial is that of ex-Liberian President Charles Taylor, who is accused of supporting the RUF. Due to security reasons, the trial is taking place in The Hague.