

**UNITED  
NATIONS**



Mechanism for International Criminal  
Tribunals

Case No: MICT-13-55-A

Date: 16 May 2017

Original: English

---

**IN THE APPEALS CHAMBER**

**Before:**

**Judge Theodor Meron, Presiding  
Judge William Hussein Sekule  
Judge Vagn Prüsse Joensen  
Judge José Ricardo de Prada Solaesa  
Judge Graciela Susana Gatti Santana**

**Registrar:**

**Mr. Olufemi Elias**

**THE PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

---

**NOTICE OF FILING OF REVISED PUBLIC REDACTED  
VERSION OF PROSECUTION REPLY BRIEF**

---

**The Office of the Prosecutor:**

Laurel Baig  
Barbara Goy  
Katrina Gustafson

**Counsel for Radovan Karadžić:**

Peter Robinson  
Kate Gibson

1. The Prosecution hereby files a revised public redacted version of its Reply Brief.<sup>1</sup>

Word Count: 49



---

Katrina Gustafson  
Senior Appeals Counsel

Dated this 16<sup>th</sup> day of May 2017  
At The Hague, The Netherlands

---

<sup>1</sup> *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Prosecution Reply Brief, 06 April 2017. Further information has been made public in this version as compared to the previously filed public redacted version following consultations with the Defence.

UNITED  
NATIONS



Mechanism for International Criminal Tribunals

Case No: MICT-13-55-A

Date: 6 April 2017

Original: English

---

**IN THE APPEALS CHAMBER**

**Before:**

**Judge Theodor Meron, Presiding  
Judge William Hussein Sekule  
Judge Vagn Prüsse Joensen  
Judge José Ricardo de Prada Solaesa  
Judge Graciela Susana Gatti Santana**

**Registrar:**

**Mr. Olufemi Elias**

**THE PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***REVISED PUBLIC REDACTED VERSION***

---

**PROSECUTION REPLY BRIEF**

---

**The Office of the Prosecutor:**

Laurel Baig  
Barbara Goy  
Katrina Gustafson

**Counsel for Radovan Karadžić:**

Peter Robinson  
Kate Gibson

<b>I. OVERVIEW .....</b>	<b>1</b>
<b>II. GROUND 1: THE EXCLUDED CRIMES FORMED PART OF THE OVERARCHING JCE .....</b>	<b>2</b>
A. THE EXCLUDED CRIMES FORMED PART OF THE COMMON PURPOSE FROM THE BEGINNING .....	2
B. SUB-GROUND 1(A): THE FINDING THAT KARADŽIĆ “DID NOT CARE ENOUGH” ABOUT CRIMES IS NOT AN ALTERNATIVE INFERENCE INCONSISTENT WITH SHARED INTENT .....	2
C. SUB-GROUND 1(B): THE CHAMBER UNREASONABLY CONCLUDED THAT THE EXCLUDED CRIMES DID NOT FORM PART OF THE COMMON PURPOSE .....	3
1. The Chamber’s findings show that Karadžić knew Excluded Crimes were necessary to achieve the common purpose .....	4
2. Karadžić shared the state of mind that Excluded Crimes should be carried out.....	4
3. Excluded Crimes were integral to, not “concurrent” with, the common purpose .....	4
4. Karadžić’s reaction to Excluded Crimes is inconsistent with “ambivalence” .....	5
5. Karadžić’s steadfast pursuit of the common purpose reinforces his shared intent.....	5
6. Other JCE members displayed shared intent .....	5
D. IMPACT ON GENOCIDAL INTENT ANALYSIS .....	6
<b>III. GROUND 2: MUSLIMS AND CROATS WERE SUBJECTED TO DESTRUCTIVE CONDITIONS OF LIFE WITHIN THE MEANING OF ARTICLE 4(2)(C) .....</b>	<b>7</b>
A. SUB-GROUND 2(C): THE ELEMENTS OF ARTICLE 4(2)(C) ARE ESTABLISHED.....	7
1. Conditions in Count 1 Facilities were calculated to bring about physical destruction.....	8
B. REMEDY .....	10
<b>IV. GROUND 3: KARADŽIĆ AND OTHER JCE MEMBERS HAD GENOCIDAL INTENT.....</b>	<b>11</b>
A. SUB-GROUND 3(A): THE CHAMBER FAILED TO ADJUDICATE OR PROVIDE A REASONED OPINION ON GENOCIDAL INTENT IN RELATION TO PRIJEDOR .....	11
B. SUB-GROUND 3(B): THE CHAMBER ERRONEOUSLY CONCLUDED THAT THE PERMANENT REMOVAL OBJECTIVE PRECLUDED GENOCIDAL INTENT.....	12
C. SUB-GROUND 3(C): THE CHAMBER APPLIED AN INCORRECT LEGAL STANDARD FOR GENOCIDAL INTENT .....	14
1. Genocidal intent findings in other cases do not assist .....	14
2. The Chamber’s focus on the scale of genocidal acts reflects its erroneous approach .....	15
3. The Chamber’s assessment of forcible displacement reflects its erroneous approach .....	16
4. The Chamber disregarded widespread property destruction and the broader destructive impact of genocidal acts in assessing intent.....	18
D. SUB-GROUND 3(D): KARADŽIĆ AND OTHER JCE MEMBERS POSSESSED GENOCIDAL INTENT .....	19
1. The pattern of crimes reflects genocidal intent.....	19
2. Karadžić’s and other JCE members’ conduct reflects genocidal intent .....	22
<b>V. GROUND 4: KARADŽIĆ DESERVES LIFE IMPRISONMENT.....</b>	<b>25</b>
A. KARADŽIĆ’S SENTENCE IS UNREASONABLE AND INADEQUATELY REASONED .....	25
B. THE CHAMBER ERRED IN ASSESSING AGGRAVATING AND MITIGATING FACTORS.....	26
<b>VI. GLOSSARY .....</b>	<b>27</b>

## I. OVERVIEW

1. As set out in the Prosecution's Appeal, the Chamber erred in assessing the scope of the common purpose to permanently remove Muslims and Croats from the Municipalities. Crimes found to be merely foreseeable consequences of the common purpose ("Excluded Crimes") should have been included within the common purpose.<sup>1</sup> The Chamber also erred in assessing the *actus reus*—under Article 4(2)(c)<sup>2</sup>—and *mens rea*<sup>3</sup> for genocide and incorrectly excluded genocide from the scope of the permanent removal objective. Finally, the Chamber erred in not imposing a life sentence on Karadžić.<sup>4</sup>

2. Karadžić's arguments in response do not undermine the Prosecution's Appeal. The remedies requested in the Prosecution's Appeal should be granted.

---

<sup>1</sup> Prosecution-Appeal, Ground 1.

<sup>2</sup> Prosecution-Appeal, Ground 2.

<sup>3</sup> Prosecution-Appeal, Ground 3.

<sup>4</sup> Prosecution-Appeal, Ground 4.

## II. GROUND 1: THE EXCLUDED CRIMES FORMED PART OF THE OVERARCHING JCE

3. The Chamber's findings make clear that JCE members shared the intent to permanently remove non-Serbs from Serb-claimed territory through, in part, the Excluded Crimes. Karadžić mischaracterises the Judgement in asserting that forcible transfer and deportation merely "result[ed] in additional crimes".<sup>5</sup> The JCE members accepted the Excluded Crimes as necessary means to achieve the common purpose, and their forces employed a co-ordinated pattern of Excluded Crimes as a means of effecting permanent removal.<sup>6</sup> It is irrelevant that a hypothetical common purpose to forcibly remove civilians might, under different circumstances, lead to foreseeable crimes outside the scope of the common purpose.<sup>7</sup>

### A. The Excluded Crimes formed part of the common purpose from the beginning

4. Karadžić wrongly claims the Appeal "gives no indication" as to when the Excluded Crimes became part of the Overarching JCE.<sup>8</sup> The Appeal is clear that they were central to that JCE from its inception.<sup>9</sup> Contrary to Karadžić's claim,<sup>10</sup> the Prosecution relies on findings concerning the period *before* and *after* the criminal campaign began, to show this shared intent existed by October 1991.<sup>11</sup>

### B. Sub-Ground 1(A): The finding that Karadžić "did not care enough" about crimes is not an alternative inference inconsistent with shared intent

5. No meaningful difference exists between a "willing[ness] to pursue the common purpose" with awareness of the Excluded Crimes and the Chamber's finding that Karadžić "did not care enough" about the Excluded Crimes to stop pursuing it: the former simply turns a double-negative (*not* caring enough to *stop*) into a positive (willing to continue).<sup>12</sup>

6. The Chamber found that Karadžić "did not care enough" about the *Excluded Crimes*, not that he was ambivalent about or passively acquiesced to the *common purpose*. The Chamber made extensive findings about Karadžić's active and persistent contributions to the JCE,<sup>13</sup> amply

<sup>5</sup> Karadžić-Response, paras.55-56.

<sup>6</sup> Prosecution-Appeal, paras.21-24, 27-32.

<sup>7</sup> *Contra* Karadžić-Response, para.56, fns.51-52.

<sup>8</sup> Karadžić-Response, para.6.

<sup>9</sup> Prosecution-Appeal, paras.20-21 (JCE members embraced the use of Excluded Crimes "at every stage" and "well before the conflict broke out"). *Also* paras.24, 32, 42.

<sup>10</sup> Karadžić-Response, para.8.

<sup>11</sup> Prosecution-Appeal, paras.19-42.

<sup>12</sup> *Contra* Karadžić-Response, para.19.

<sup>13</sup> *E.g.* Judgement, paras.3475-3505. *Contra* Karadžić-Response, paras.20-22.

demonstrating his “volition” in that regard. Karadžić does not deny that he was routinely informed of Excluded Crimes.<sup>14</sup> He was therefore “willing[] to pursue the common purpose with the knowledge that it entailed the commission of the Excluded Crimes.”<sup>15</sup>

7. The Chamber failed to consider whether shared intent could be inferred from Karadžić’s willingness to pursue the common purpose in the totality of the circumstances.<sup>16</sup> The Chamber made a finding inviting the question whether to infer intent in this case—and then stopped its analysis. Numerous factors strongly indicative of intent exist: Karadžić was the foremost official in the RS,<sup>17</sup> played a leading role in the JCE<sup>18</sup> over many years<sup>19</sup> and received regular information<sup>20</sup> about the commission of Excluded Crimes<sup>21</sup> while actively facilitating their commission.<sup>22</sup> The Chamber’s failure to discuss these clearly relevant factors—after making a finding warranting that analysis—reinforces its error.<sup>23</sup>

**C. Sub-Ground 1(B): The Chamber unreasonably concluded that the Excluded Crimes did not form part of the common purpose**

8. The Chamber’s conclusion that the Excluded Crimes were outside the scope of the common purpose cannot be reconciled with its underlying factual findings. The Chamber found that Karadžić was “fully aware” that a potential conflict “would be extremely violent and result in thousands of deaths”, with devastating consequences for “the Bosnian Muslim people”.<sup>24</sup> Karadžić threatened non-Serbs with “extinction”, “annihilation” and “the complete destruction of several hundred towns.”<sup>25</sup> He actively formulated and promoted policies of ethnic separation,<sup>26</sup> “adamant that he would not allow anything to stop the Bosnian Serbs from achieving their objectives.”<sup>27</sup> Although he was informed that Excluded Crimes were systematically committed against non-Serbs,<sup>28</sup> Karadžić deflected and denied the crimes,<sup>29</sup> failed to punish and even rewarded

<sup>14</sup> See Judgement, paras.3331-3375.

<sup>15</sup> Prosecution-Appeal, para.16.

<sup>16</sup> *Contra* Karadžić-Response, paras.25-27.

<sup>17</sup> Prosecution-Appeal, paras.25-26. See *Milutinović* TJ, Vol.3, para.462; *Martić* TJ, para.449.

<sup>18</sup> Prosecution-Appeal, paras.25-26, 43. See *Tolimir* TJ, paras.1093-1094; *Krajišnik* TJ, para.1119. Also *Kvočka* AJ, para.243; *Limaj* TJ, para.511; *Popović* AJ, para.1386; *Blagojević* AJ, para.273.

<sup>19</sup> Prosecution-Appeal, para.43. See *Krajišnik* AJ, para.204 citing *Krajišnik* TJ, para.1115; *Tolimir* TJ, para.1094.

<sup>20</sup> Prosecution-Appeal, paras.34-37. See *Milutinović* TJ, Vol.3, paras.463-464; *Krajišnik* AJ, para.204.

<sup>21</sup> Prosecution-Appeal, paras.27-32. See *Martić* TJ, paras.443-445.

<sup>22</sup> Prosecution-Appeal, paras.38-42. See *Đorđević* AJ, para.512; *Tolimir* TJ, para.1093; *Martić* TJ, paras.448, 451-452.

<sup>23</sup> See Prosecution-Appeal, paras.25-26, 33-43. *Contra* Karadžić-Response, paras.15-17.

<sup>24</sup> Judgement, para.2708. Prosecution-Appeal, paras.22-23.

<sup>25</sup> Prosecution-Appeal, paras.22-23.

<sup>26</sup> Prosecution-Appeal, paras.23-26.

<sup>27</sup> Judgement, para.3476.

<sup>28</sup> Prosecution-Appeal, paras.27-32.

<sup>29</sup> Prosecution-Appeal, paras.33-37.

perpetrators<sup>30</sup> and steadfastly pursued the common purpose for over four years.<sup>31</sup> The only reasonable inference is that Karadžić and other JCE members shared the intent to commit the Excluded Crimes as a means to achieve their common purpose.

9. Karadžić fails to respond to this argument. He engages instead in a piecemeal assessment of findings,<sup>32</sup> most of which he mischaracterises, as explained below. None of his arguments undermine the Appeal.

1. The Chamber’s findings show that Karadžić knew Excluded Crimes were necessary to achieve the common purpose

10. The Prosecution does not rely on a specific finding that Karadžić knew the Excluded Crimes were necessary to achieve the common purpose.<sup>33</sup> Rather, this conclusion follows from the combined effect of several findings documenting Karadžić’s threats of extreme violence against non-Serb civilians, his central role in pursuing an ethnically homogenous state, his knowledge that implementing this goal “would” result in violence and his preparedness to “use force and violence against Bosnian Muslims and Bosnian Croats” to achieve it.<sup>34</sup>

2. Karadžić shared the state of mind that Excluded Crimes should be carried out

11. Contrary to Karadžić’s claim,<sup>35</sup> the Prosecution relies on findings demonstrating that each type of Excluded Crime fell within the common purpose: for instance, that Karadžić himself threatened murder, extermination and mass destruction, and that the Excluded Crimes were integral to the implementation of the common purpose and were committed in an organised, systematic pattern with Karadžić’s knowledge and encouragement.<sup>36</sup> These findings demonstrate Karadžić’s shared intent that each of the Excluded Crimes should be committed.<sup>37</sup>

3. Excluded Crimes were integral to, not “concurrent” with, the common purpose

12. Karadžić downplays the Excluded Crimes as “concurrent” with displacement crimes<sup>38</sup> when in fact they *caused* the displacement. The Chamber found that Serb Forces and Bosnian Serb authorities systematically committed Excluded Crimes, “creating an environment of fear” in which

<sup>30</sup> Prosecution-Appeal, paras.38-42.

<sup>31</sup> Prosecution-Appeal, para.43.

<sup>32</sup> Karadžić-Response, paras.31-53. *Also e.g. Šainović* AJ, paras.306-308.

<sup>33</sup> *Contra* Karadžić-Response, paras.31-34.

<sup>34</sup> Prosecution-Appeal, paras.21-24. *Contra* Karadžić-Response, paras.35-36.

<sup>35</sup> Karadžić-Response, paras.38-43. *Also* para.24.

<sup>36</sup> Prosecution-Appeal, paras.45-46.

<sup>37</sup> *See Krajišnik* AJ, para.707.

<sup>38</sup> Karadžić-Response, paras.44-47.

non-Serbs were forced to leave their homes.<sup>39</sup> The conduct constituting the Excluded Crimes formed part of the *actus reus* of forcible transfer and deportation<sup>40</sup>—crimes at the core of the JCE which the Chamber found Karadžić intended. In these circumstances, it defies logic to conclude that he intended to forcibly displace non-Serbs, but did not intend that the acts constituting the “force” integral to their displacement should be committed.<sup>41</sup>

#### 4. Karadžić’s reaction to Excluded Crimes is inconsistent with “ambivalence”

13. The Chamber’s findings show Karadžić was not “ambivalent” about the Excluded Crimes, but rather knowingly encouraged them.<sup>42</sup> Karadžić received reports of Excluded Crimes<sup>43</sup> and took affirmative steps to facilitate them.<sup>44</sup> He deflected international concern through knowingly false public denials,<sup>45</sup> adopted a policy of not punishing crimes against non-Serbs<sup>46</sup> and rewarded perpetrators.<sup>47</sup> Karadžić refers to a single finding—that he “received information” about crimes and continued participating in the JCE<sup>48</sup>—and disregards other findings showing that he actively facilitated Excluded Crimes.

#### 5. Karadžić’s steadfast pursuit of the common purpose reinforces his shared intent

14. Karadžić does not dispute that he “persisted with promoting the objectives of ethnic separation” despite receiving a “steady stream of information demonstrating that Excluded Crimes were integral” to the “common purpose”.<sup>49</sup> He responds by incorrectly claiming the Prosecution alleged the JCE expanded to encompass the Excluded Crimes.<sup>50</sup> As argued in the Appeal, Karadžić’s steadfast pursuit of the common purpose despite regularly receiving information that it involved the commission of Excluded Crimes “further illustrat[es] his intent” for those crimes.<sup>51</sup>

#### 6. Other JCE members displayed shared intent

15. Other JCE members were not merely “prepared to use violence” and “aware that ethnic separation would result in violence”.<sup>52</sup> They advocated the destruction of mosques and that Bosnian

<sup>39</sup> Prosecution-Appeal, paras.30-31.

<sup>40</sup> Prosecution-Appeal, para.30.

<sup>41</sup> Prosecution-Appeal, paras.27-32.

<sup>42</sup> *Contra* Karadžić-Response, paras.48-49.

<sup>43</sup> Prosecution-Appeal, paras.34-37.

<sup>44</sup> Prosecution-Appeal, paras.38-42.

<sup>45</sup> Prosecution-Appeal, para.38.

<sup>46</sup> Prosecution-Appeal, paras.39-41.

<sup>47</sup> Prosecution-Appeal, para.40.

<sup>48</sup> Karadžić-Response, para.48.

<sup>49</sup> Prosecution-Appeal, para.43.

<sup>50</sup> Karadžić-Response, paras.50-51. *Above* para.4.

<sup>51</sup> Prosecution-Appeal, para.43.

<sup>52</sup> *Contra* Karadžić-Response, paras.52-53.

Muslims “be slaughtered or exterminated”, exercised control over military and police forces perpetrating Excluded Crimes, deliberately did not punish ongoing crimes against non-Serbs, and personally arranged for Excluded Crimes to be perpetrated.<sup>53</sup> Their vigorous pursuit of the common purpose through Excluded Crimes while working with Karadžić—their President, Supreme Commander and co-JCE member—illustrates their shared intent for the Excluded Crimes.

#### **D. Impact on genocidal intent analysis**

16. The Chamber found that the JCE members’ genocidal intent “is intrinsically connected to all of the evidence on the record pertaining to the existence and the scope of the Overarching JCE.”<sup>54</sup> Karadžić claims the errors had “no impact” on the genocidal intent analysis, ignoring this clear contrary statement.<sup>55</sup> The Prosecution does not contend that reclassifying the Excluded Crimes under JCE1 would be “[sufficient to impute genocidal intent]”.<sup>56</sup> The sufficiency of the evidence and findings for a genocidal intent conclusion is demonstrated in Ground 3, not Ground 1.

---

<sup>53</sup> Prosecution-Appeal, para.44.

<sup>54</sup> Judgement, para.2592. Prosecution-Appeal, para.47.

<sup>55</sup> Karadžić-Response, p.16, Heading “C”.

<sup>56</sup> *Contra* Karadžić-Response, para.60.

### III. GROUND 2: MUSLIMS AND CROATS WERE SUBJECTED TO DESTRUCTIVE CONDITIONS OF LIFE WITHIN THE MEANING OF ARTICLE 4(2)(C)

17. Karadžić concedes the Chamber failed to provide a reasoned opinion for its conclusion regarding Article 4(2)(c) conditions.<sup>57</sup> He also agrees that killings and serious bodily or mental harm under Articles 4(2)(a) and 4(2)(b) may be considered as context in assessing the elements of Article 4(2)(c).<sup>58</sup> So assessed, the factual findings and underlying evidence demonstrate Group members<sup>59</sup> were subjected to destructive conditions in the Count 1 Facilities.<sup>60</sup> Karadžić misconstrues the Article 4(2)(c) legal standard, ignores findings and evidence demonstrating the severity of detention conditions and inaccurately minimises the number of victims subjected to them.

#### A. Sub-Ground 2(C): The elements of Article 4(2)(c) are established

18. Assessing the effect of destructive conditions on a collection of group members rather than the group as a whole is consistent with Tribunal jurisprudence applying Article 4(2)(c) and the object and purpose of the Genocide Convention.<sup>61</sup> Karadžić's contrary interpretation<sup>62</sup> would collapse the "analytically distinct" *mens rea* and *actus reus* elements of genocide.<sup>63</sup> His reliance on commentaries concerning *mens rea*<sup>64</sup> illustrates his conflation of these elements. So do his hypothetical examples involving destructive conditions targeting a subset of group members:<sup>65</sup> the genocide framework indicates that this *should* constitute genocide so long as the conduct is accompanied by the intent to destroy the group in whole or in part.<sup>66</sup>

19. Karadžić's interpretation would also effectively require the entire targeted group or part to be subjected to destructive conditions, contrary to scenarios envisioned by the Genocide

---

<sup>57</sup> Karadžić-Response, para.61.

<sup>58</sup> Karadžić-Response, para.64.

<sup>59</sup> Karadžić's exclusion of Bosnian Croats is unjustified. Karadžić-Response, fn.59. The Prosecution is not required to establish a threshold number of victims. *See Stakić* TJ, para.522. Moreover, the Chamber reasonably concluded that Bosnian Muslims and Croats were subjected to inhumane living conditions in the Count 1 Facilities. *E.g.* Judgement, paras.2507-2511. *Also* paras.2584-2586.

<sup>60</sup> Prosecution-Appeal, paras.61-76. *Contra* Karadžić-Response, paras.62, 93, 95.

<sup>61</sup> Prosecution-Appeal, paras.71-72. *Also* *Croatia v. Serbia*, para.149.

<sup>62</sup> Karadžić-Response, paras.65-69, 76.

<sup>63</sup> *Karadžić 98bis* AJ, para.22. *Also* Tams Commentary, para.75.

<sup>64</sup> Karadžić-Response, paras.73-75.

<sup>65</sup> Karadžić-Response, para.68.

<sup>66</sup> *See* Prosecution-Appeal, para.71.

Convention drafting history.<sup>67</sup> Other aspects of the drafting history cited by Karadžić reveal no intention to limit Article 4(2)(c)'s application in this way.<sup>68</sup>

1. Conditions in Count 1 Facilities were calculated to bring about physical destruction

20. Karadžić's sanitised account of the Count 1 Facilities skirts findings showing that conditions in these facilities satisfy the elements of Article 4(2)(c).<sup>69</sup> The Chamber, for example, described Omarska's rooms as "overflowing" and "stifling", with detainees "packed one on top of the other", lying in excrement.<sup>70</sup> Detainees were so frightened of beatings accompanying their meagre meals that they would skip mealtime altogether, routinely losing 20-30 kilograms.<sup>71</sup> Karadžić, however, merely incorrectly claims that "[n]o one is recorded as having died from the deplorable conditions there."<sup>72</sup>

21. In any event, Article 4(2)(c) does not require proof that conditions "actually led to death or serious bodily or mental harm",<sup>73</sup> much less require that the conditions make the Group's "extinction inevitable".<sup>74</sup> Tribunal jurisprudence shows the conditions inflicted on group members need only have an objective probability of leading to their physical destruction.<sup>75</sup>

22. That many detainees were "killed by gunshots or beatings",<sup>76</sup> rather than detention conditions, or were ultimately expelled<sup>77</sup> does not mean "someone miscalculated", as Karadžić quips.<sup>78</sup> Rather, that camp authorities were executing or beating to death detainees while simultaneously subjecting them to deplorable conditions *supports* the inference that those conditions were aimed at physical destruction.<sup>79</sup> Further, many detainees were released because

<sup>67</sup> *E.g. Travaux*, Vol.1, pp.981-982 (the *Ad Hoc* Committee considered that an earlier draft of this provision would encompass "individuals herded in ghettos, interned in concentration camps, imprisoned, subjected to forced labour and exposed to conditions of life—for example, inadequate food, lack of sanitation and excessive work—which condemned them to a slow death"); Tams Commentary, para.74. *Also Ndahimana* AJ, para.231.

<sup>68</sup> *Contra* Karadžić-Response, paras.70-72.

<sup>69</sup> Prosecution-Appeal, paras.70-76.

<sup>70</sup> Judgement, para.1756. *Also* para.1755; Prosecution-Appeal, paras.74, 135.

<sup>71</sup> Judgement, para.1754.

<sup>72</sup> Karadžić-Response, para.78. *See* Prosecution-Appeal, fn.267 *citing* Judgement, paras.1756, 1774, 2448 (fn.8253) (C.20.2), 2509, 2578. Karadžić also overlooks deaths due to conditions in other facilities. Karadžić-Response, para.86. *See* Prosecution-Appeal, fn.267 *citing* Judgement, paras.772-773, 780, 2448 (fn.8251), 2509.

<sup>73</sup> Prosecution-Appeal, para.71 *citing* *Tolimir* AJ, para.225; *Popović* TJ, para.814; *Brdanin* TJ, para.691; *Stakić* TJ, para.517.

<sup>74</sup> *Contra* Karadžić-Response, paras.91-92 *citing* UN Doc. E/AC.25/SR.4, p.14.

<sup>75</sup> Prosecution-Appeal, para.73.

<sup>76</sup> Karadžić-Response, paras.78, 82. *Also* para.84.

<sup>77</sup> *See* Karadžić-Response, para.89.

<sup>78</sup> Karadžić-Response, paras.78, 80, 82. *Also* paras.84-86. Contrary to Karadžić's suggestion (Karadžić-Response, para.78), far more than 155 Omarska detainees were killed. Serb Forces executed 150 non-Serb detainees in July 1992, killed by beating or shooting hundreds of other detainees during Omarska's operation, and executed at least 120 men and women taken from Keraterm and Omarska in August 1992. Judgement, paras.1757, 1760-1764, 1766-1768, 1774-1781, 2447 (fn.8243), 2461 (B.15.2, B.15.3, B.15.4). *Also* paras.2578-2579.

<sup>79</sup> Prosecution-Appeal, paras.49-59, 61, 67-68.

Karadžić was forced to close certain facilities due to international scrutiny<sup>80</sup>—not because of sincere interest in ending detention in destructive conditions.<sup>81</sup> Footage of Omarska detainees two weeks before the camp’s closure demonstrates the drastic effects of their detention conditions: emaciated men devour their only meal of the day, too afraid to speak to reporters.<sup>82</sup> Additionally, detainees continued to be subjected to deplorable conditions in numerous other Count 1 Facilities following these closures.<sup>83</sup> Moreover, Karadžić ignores the “grave”, long-term physical and psychological impact of the terrible conditions on detainees who were ultimately released.<sup>84</sup>

23. Karadžić’s reliance on charging decisions and conclusions on genocidal intent in other cases<sup>85</sup> is irrelevant to an assessment of Article 4(2)(c)’s elements in *this* case.<sup>86</sup> Moreover, Karadžić wrongly suggests that other chambers have found the conditions in the Count 1 Facilities did not satisfy these elements.<sup>87</sup> The only other chamber to have expressly considered this issue—the *Brdanin* Trial Chamber—concluded that the Article 4(2)(c) elements *were* met with respect to Omarska, Keraterm, Trnopolje and Betonirka.<sup>88</sup>

24. Karadžić’s reliance on the *Kayishema* Trial Judgement<sup>89</sup> is similarly misplaced. That chamber found deprivations inflicted on Tutsis at sites where they were effectively detained did not qualify as Article 4(2)(c) conditions because the intent was “to exterminate them within a short period of time”.<sup>90</sup> Most were massacred within days of arrival.<sup>91</sup> In contrast, Muslims and Croats were arbitrarily arrested<sup>92</sup> and detained for an “extended period”<sup>93</sup> in inhumane living conditions that were “deliberately established and perpetuated”.<sup>94</sup>

<sup>80</sup> Judgement, para.3498. *Also* para.3386. *Below* paras.51-52.

<sup>81</sup> Judgement, paras.3399, 3500.

<sup>82</sup> Exh.P3543. *Also* E.Vulliamy:Exh.P3779, T.7940, 7946 (Omarska detainees looked “famished” and “near skeletal” on 5 August 1992); [REDACTED].

<sup>83</sup> Judgement, paras.3397, 3399, 3499. *Also* paras.888, 917, 1184, 1201, 1821. *Further* paras.2507-2511.

<sup>84</sup> Karadžić-Response, para.89. *See* Judgement, paras.2509, 2511. *E.g.* [REDACTED]; KDZ017:Exh.P3568, pp.39, 151-152, 164-165(T.2806, 2918-2919, 2931-2932). *Below* para.63; Prosecution-Appeal, fn.268.

<sup>85</sup> Karadžić-Response, paras.79, 81, 83-84.

<sup>86</sup> *Below* para.42.

<sup>87</sup> *Sikirica* Judgement on Acquittal Motions, paras.67-75 (no Article 4(2)(c) determination re: Keraterm); *Stakić* TJ, paras.544-560 and *Stakić* AJ, paras.37-57 (no Article 4(2)(c) determination re: Prijedor); *Krajišnik* TJ, paras.867-869 *cross-referencing inter alia* paras.795-806 (finding some crimes “meet the [...] *actus reus* for genocide” but concluding they were not committed with genocidal intent); *Bosnia v. Serbia*, para.354 (finding “convincing and persuasive evidence that terrible conditions were inflicted upon detainees of the camps” but unable to conclude they were accompanied by genocidal intent). *Contra* Karadžić-Response, para.93.

<sup>88</sup> *Brdanin* TJ, paras.909, 930-945, 950-954. *Also* *Karadžić 98bis* AJ, paras.47-50.

<sup>89</sup> Karadžić-Response, para.94.

<sup>90</sup> *Kayishema* TJ, para.548. *Also* paras.318, 535.

<sup>91</sup> *Kayishema* TJ, paras.315-318, 322, 358, 382, 392.

<sup>92</sup> Judgement, para.2525.

<sup>93</sup> Judgement, para.2527.

<sup>94</sup> Judgement, para.2511.

25. That the Prosecution did not include a limited number of detention facilities in Ground 2 does not “call[] into question” whether the elements of Article 4(2)(c) are established for other facilities.<sup>95</sup> Many detainees at facilities not included in Ground 2 were subjected to *other* genocidal acts, including killings,<sup>96</sup> sexual violence<sup>97</sup> and severe beatings.<sup>98</sup> Other facilities served as temporary holding locations for detainees who were subsequently transferred to facilities where they *were* subjected to destructive conditions.<sup>99</sup>

26. Karadžić’s claim that these facilities were “set up hastily in wartime conditions, where shortages of food and medicine prevailed”<sup>100</sup> ignores findings—which Karadžić has not challenged—that basic necessities were deliberately withheld.<sup>101</sup>

## **B. Remedy**

27. The number of Muslims and Croats subjected to destructive conditions in the Count 1 Facilities was not “small”, either absolutely or relatively, as Karadžić claims.<sup>102</sup> Karadžić admits that, for example, 23,000 were detained at Trnopolje,<sup>103</sup> approximately 4,000 at Keraterm<sup>104</sup> and 2,000-2,500 at Sušica.<sup>105</sup> Omarska held “as many as 3,000 detainees at one time”.<sup>106</sup> Thousands more were held at other Count 1 Facilities.<sup>107</sup> The proper application of Article 4(2)(c) would result in thousands of additional victims of genocidal acts, requiring the Appeals Chamber to re-evaluate the Chamber’s conclusion on genocidal intent.<sup>108</sup>

<sup>95</sup> *Contra* Karadžić-Response, paras.87-88.

<sup>96</sup> *E.g.* Judgement, paras.1335-1338, 2447 (fn.8248), 2461, 2578 (fn.8672) (C.27.5, B.20.1); paras.1524-1529, 2447 (fn.8240), 2578 (fn.8672) (C.15.3, B.10.1); paras.1298-1301, 2447 (fn.8248), 2461, 2578 (fn.8672) (C.27.1, B.20.2). *Also* paras.1867-1877, 2446-2447 (fns.8227, 8243), 2578 (fn.8672) (A.10.7, A.10.8, C.20.6); paras.1349, 2447 (fn.8248), 2578 (fn.8672) (C.27.6).

<sup>97</sup> *E.g.* Judgement, paras.913, 922-923, 2500-2501 (fns.8435, 8442, 8444-8445), 2581 (fn.8673) (C.10.2, C.10.4).

<sup>98</sup> *E.g.* Judgement, paras.1531-1536, 2487 (fn.8367), 2490-2491 (fns.8391, 8394), 2497 (fns.8430-8431), 2514 (fn.8474) (C.15.1). *Generally* paras.2580, 2582.

<sup>99</sup> *E.g.* Judgement, paras.763, 767 (from C.6.1 to C.6.2 and C.25.2), 876-879 (from C.10.6 to C.10.1), 2020-2024 (from C.22.5 to C.22.1).

<sup>100</sup> Karadžić-Response, para.90. While the cited evidence suggests there were shortages “among the Serb population”, this evidence is unrelated to detention facilities. Moreover, Karadžić relies on D.Radetić (Exh.D4266), whose evidence on Keraterm conditions the Chamber found not credible. *See* Judgement, fns.6137, 6151.

<sup>101</sup> *Generally* Judgement, paras.2507-2511. *E.g.* paras.889, 891, 893-895, 1166, 1175, 1188, 1754, 1797-1798, 1857, 1983, 1986, 1997, 2008. *Also* para.2514 *cross-referencing* paras.893-894.

<sup>102</sup> Karadžić-Response, para.96.

<sup>103</sup> Karadžić-Response, para.85.

<sup>104</sup> Karadžić-Response, para.84.

<sup>105</sup> Karadžić-Response, para.82.

<sup>106</sup> Judgement, para.1749. Karadžić incorrectly claims this was the overall number of Omarska detainees. Karadžić-Response, para.78.

<sup>107</sup> *E.g.* Judgement, paras.780, 888, 1304, 1989, 2006, 2014.

<sup>108</sup> *See* Prosecution-Appeal, para.77. *Contra* Karadžić-Response, para.96.

## IV. GROUND 3: KARADŽIĆ AND OTHER JCE MEMBERS HAD GENOCIDAL INTENT

### A. Sub-Ground 3(A): The Chamber failed to adjudicate or provide a reasoned opinion on genocidal intent in relation to Prijedor

28. In arguing that the Chamber considered the Prosecution's genocide case in relation to Prijedor Municipality separately, Karadžić focuses on the Chamber's substantiality observations.<sup>109</sup> This underscores the Chamber's error. It acknowledged that Prijedor was the Prosecution's primary example for purposes of the *substantiality requirement* but failed to assess *genocidal intent* with regard to the parts of the Groups in Prijedor.<sup>110</sup> It summarised its findings on Prijedor crimes but only to determine whether the pattern of crimes *across* the Count 1 Municipalities reflected genocidal intent.<sup>111</sup>

29. Karadžić wrongly contends that the "Prosecution never put its case on the basis" of a municipality-based analysis.<sup>112</sup> The Prosecution Final Trial Brief paragraph he cites falls under the heading "Karadžić and the other JCE members intended to destroy the parts of the groups in each of the seven identified municipalities" and states that "[t]he targeted communities within the municipalities specified in Count 1" were each "distinct entit[ies]" meeting the substantiality test.<sup>113</sup> This reinforces that genocidal intent was also alleged with regard to the parts of the Groups within individual Count 1 Municipalities.

30. The Prosecution relies on the *Stanišić & Simatović* Appeals Chamber's holding regarding the failure to fully adjudicate the elements of JCE for the underlying principle that a chamber must consider whether a geographically reduced part of the case is proven.<sup>114</sup> The Prosecution does not contend the Chamber should have considered "a hypothetical additional 'Prijedor JCE'".<sup>115</sup>

31. The Prosecution's alternative argument that the Chamber failed to provide a reasoned opinion does not turn on the Chamber's failure to assess any particular piece of evidence,<sup>116</sup> but

<sup>109</sup> Karadžić-Response, paras.98-99 *citing* Judgement, para.2593.

<sup>110</sup> *Compare* Judgement, para.2593 *with* paras.2623-2625.

<sup>111</sup> *See* Prosecution-Appeal, para.90. *Contra* Karadžić-Response, paras.100-102.

<sup>112</sup> Karadžić-Response, para.106 *citing* Prosecution-FTB, para.589.

<sup>113</sup> Prosecution-FTB, para.589. *Also* paras.590-591.

<sup>114</sup> Prosecution-Appeal, para.91.

<sup>115</sup> *Contra* Karadžić-Response, paras.103-104.

<sup>116</sup> Karadžić-Response, para.115.

rather on its failure to provide reasons as to why genocidal intent was not made out for individual Count 1 Municipalities.<sup>117</sup>

32. Karadžić fails to explain his alleged “risk of distortion”.<sup>118</sup> He relies on inapposite authority involving a difference between the geographic scope of the pattern of crimes and the geographic scope of genocidal intent.<sup>119</sup>

33. Karadžić incorrectly claims that because the Chamber did not infer genocidal intent for the Count 1 Municipalities cumulatively, “it is unlikely that such a conclusion would be reached by isolating the evidence of one municipality”.<sup>120</sup> Since genocidal intent is assessed in relation to the targeted part, the absence of a genocidal intent finding for a broad geographic area does not preclude a different finding relative to a smaller area. As the Prosecution argued at trial,<sup>121</sup> the scale and intensity of crimes in Prijedor unmistakably reflect genocidal intent.<sup>122</sup> For the same reason, the Prosecution does not advocate a “different fate” for Prijedor compared to other Count 1 Municipalities,<sup>123</sup> but rather highlights Prijedor for the purposes of demonstrating genocidal intent.

34. Karadžić’s reliance on genocidal intent conclusions and charging decisions in other cases<sup>124</sup> is misconceived.<sup>125</sup>

**B. Sub-Ground 3(B): The Chamber erroneously concluded that the permanent removal objective precluded genocidal intent**

35. The Chamber repeatedly conflated genocidal intent with the JCE’s objective and improperly concluded that the permanent removal objective precluded a finding of genocidal intent. Karadžić defends this reasoning by arguing that when put “back into context”, no such preclusion is apparent.<sup>126</sup> However, regardless of context, the words the Chamber used demonstrate its objective/intent conflation.<sup>127</sup>

<sup>117</sup> Prosecution-Appeal, para.93.

<sup>118</sup> Karadžić-Response, para.105.

<sup>119</sup> See *Brdanin* TJ, para.966.

<sup>120</sup> Karadžić-Response, para.106.

<sup>121</sup> See Prosecution-Appeal, fns.347-348.

<sup>122</sup> Prosecution-Appeal, paras.89, 129. *Contra* Karadžić-Response, paras.107-113.

<sup>123</sup> *Contra* Karadžić-Response, para.111. *Also* paras.108, 113.

<sup>124</sup> Karadžić-Response, paras.109-110, 112.

<sup>125</sup> *Below* para.42.

<sup>126</sup> Karadžić-Response, para.130.

<sup>127</sup> Prosecution-Appeal, paras.99-102.

36. For instance, part of the “context” Karadžić proffers is reasoning in a different section of the Chamber’s intent analysis addressing Karadžić’s and others’ statements and conduct.<sup>128</sup> He does not explain how these passages override the clear objective/intent conflation in the Chamber’s later reasoning on the pattern of crimes. Karadžić also asserts that this “context” reveals the Chamber was merely drawing an inference from the scale of genocidal acts versus forcible displacement.<sup>129</sup> Again, this cannot account for the Chamber’s use of terms demonstrating that it considered the permanent removal *objective* to be another “reasonable inference” to genocidal *intent*.<sup>130</sup>

37. Karadžić does not explain how the finding that the permanent removal objective could theoretically be achieved through “redistribution” alone was merely a “recogni[tion] that in every case, it is necessary to establish” genocidal intent.<sup>131</sup> The Chamber’s focus on what the objective theoretically “would require” rather than how it was implemented demonstrates its objective/intent conflation as the actual pattern of crimes went far beyond mere “redistribution” of the targeted communities.<sup>132</sup> This is underscored by the Chamber then stating that the “results on the ground” were consistent with the ethnic division and removal “goals”<sup>133</sup> without acknowledging that these “results” went far beyond removing the population. This illustrates the Chamber’s failure to consider whether the manner in which the permanent removal objective was pursued in the Count 1 Municipalities reflects genocidal intent.

38. In asserting that Karadžić’s and Krajišnik’s remarks about Foča “are examples of evidence that never rose to the threshold of establishing” genocidal intent,<sup>134</sup> Karadžić ignores the Chamber’s finding that these speeches exemplified that the pattern of crimes “is consistent with the BSL’s *intent* to create ethnically pure territories.”<sup>135</sup> This further illustrates the Chamber’s error: because the speeches were consistent with the “intent” (objective) of creating ethnically pure territories, genocidal intent was precluded.<sup>136</sup>

39. It is beside the point that the Chamber did not “state” that the permanent removal objective precluded genocidal intent;<sup>137</sup> this is the only explanation for the Chamber’s reasoning.<sup>138</sup>

<sup>128</sup> Karadžić-Response, paras.117, 119. *Compare* Judgement, paras.2596, 2605 *with* paras.2624-2625.

<sup>129</sup> Karadžić-Response, para.130. *Also* paras.120, 133.

<sup>130</sup> Judgement, para.2624. *See* Prosecution-Appeal, paras.98-101.

<sup>131</sup> Karadžić-Response, para.131.

<sup>132</sup> *See* Judgement, para.2625.

<sup>133</sup> Judgement, para.2625. *Contra* Karadžić-Response, para.120.

<sup>134</sup> Karadžić-Response, para.132.

<sup>135</sup> Judgement, para.2625 (emphasis added).

<sup>136</sup> *See* Prosecution-Appeal, para.101.

<sup>137</sup> *Contra* Karadžić-Response, para.125.

<sup>138</sup> *See* Prosecution-Appeal, paras.94, 98-101.

40. Fragments of reasoning in other cases regarding numerical comparisons between displacement and genocidal acts have no bearing on the Prosecution’s arguments.<sup>139</sup> The Appeals Chamber’s and an outside commentator’s interpretations of different language in different cases are also irrelevant.<sup>140</sup>

### **C. Sub-Ground 3(C): The Chamber applied an incorrect legal standard for genocidal intent**

41. Karadžić sidesteps the core of the Prosecution’s argument: that the terms of Article 4 and Tribunal jurisprudence demonstrate that genocidal intent is focused on the long-term ability of the targeted community to exist as a separate and distinct entity rather than on the immediate survival of individuals.<sup>141</sup> Karadžić defends the Chamber’s conclusions largely through his repeated—and misconceived—reliance on genocidal intent conclusions in other cases. This approach is also misplaced insofar as it implies that the Prosecution seeks to expand the meaning of genocidal intent.<sup>142</sup> To the contrary, the Prosecution seeks a proper application of genocidal intent, which compels an affirmative finding in this case.<sup>143</sup>

#### **1. Genocidal intent findings in other cases do not assist**

42. Karadžić’s recurrent invocations of genocidal intent conclusions in other cases with some geographical overlap with this case do not advance his argument.<sup>144</sup> His claim that the Chamber’s genocidal intent conclusion “should not be disturbed on appeal” due to supposed “abundant authority” that events in the Municipalities do not fulfil the requirements for genocide<sup>145</sup> is misconceived. It repeats—at times near-verbatim<sup>146</sup>—a trial argument that the Appeals Chamber correctly rejected in this case. The Appeals Chamber declined to consider such arguments, holding that “it is bound neither by the legal determinations nor by the evidentiary assessments reached by trial chambers of this Tribunal or by the ICJ”, and recalling that “findings of criminal responsibility made in a case before the Tribunal are binding only for the individual accused in that specific case.”<sup>147</sup>

43. Moreover, Karadžić exaggerates the supposed jurisprudential consensus on this issue. For instance, he disregards the *Stakić* Appeals Chamber’s observation that the trial findings “[w]ithout

<sup>139</sup> *Contra* Karadžić-Response, paras.121-124. *Below* paras.42, 44.

<sup>140</sup> *Contra* Karadžić-Response, paras.118, 129.

<sup>141</sup> Prosecution-Appeal, paras.104-113.

<sup>142</sup> *E.g.* Karadžić-Response, para.162.

<sup>143</sup> Prosecution-Appeal, paras.103-125.

<sup>144</sup> *E.g.* Karadžić-Response, paras.84, 93, 109-110, 112, 121, 123-124, 129, 136-137, 141-144, 147, 149, 162-163, 166, 169, 171-179, 192-194, 200-201.

<sup>145</sup> Karadžić-Response, para.147.

<sup>146</sup> *Compare e.g.* Karadžić-Response, para.162 *with* Karadžić 98bis Response, para.40 [REDACTED].

<sup>147</sup> *Karadžić 98bis* AJ, para.94.

question [...] could, in principle, be taken as evidence that [Stakić] intended to destroy the Bosnian Muslim group in part”.<sup>148</sup> Similarly, in claiming the ICJ “emphasized” the difference between intent to deport and genocidal intent,<sup>149</sup> Karadžić ignores language from the very paragraph he cites emphasising that ethnic cleansing acts occurring alongside genocidal acts “may be significant as indicative of the presence of a specific intent (*dolus specialis*) inspiring those acts.”<sup>150</sup>

44. Genocide conclusions in cases involving different factual scenarios are irrelevant.<sup>151</sup>

## 2. The Chamber’s focus on the scale of genocidal acts reflects its erroneous approach

45. Karadžić’s effort to paint the Chamber’s assessment of the pattern of crimes as a proper application of the “scale” factor<sup>152</sup> cannot be reconciled with the Chamber’s reasoning, which disregards other factors relevant to assessing intent.<sup>153</sup> Karadžić’s reliance on *Krstić* in this context underscores the Chamber’s erroneous approach. Karadžić notes the *Krstić* Appeals Chamber’s reliance on the “scale of the killing” as an indicator of intent.<sup>154</sup> But he fails to mention that, in the same sentence, the Appeals Chamber also relied on the “detrimental consequences” the killings “would have for the Bosnian Muslim community of Srebrenica” as well as “other actions the Main Staff took to ensure that community’s physical demise” (a reference to forcible transfer). These factors, *taken together*, constituted “a sufficient factual basis for the finding of specific intent.”<sup>155</sup>

46. Conversely, here the Chamber looked solely at the scale of genocidal acts<sup>156</sup> without examining other relevant factors, including those articulated in *Krstić*. The Chamber did not consider the context of the forcible displacement nor whether it contributed to the communities’ physical destruction in assessing intent.<sup>157</sup> It also ignored the detrimental consequences of genocidal acts on the communities.<sup>158</sup>

<sup>148</sup> *Stakić* AJ, para.56 (declining to interfere with the Trial Chamber’s conclusion on Stakić’s specific intent because it did not find it unreasonable). Also *Karadžić 98bis* AJ, paras.100-102.

<sup>149</sup> Karadžić-Response, para.141 citing *Bosnia v. Serbia*, para.190.

<sup>150</sup> *Bosnia v. Serbia*, para.190.

<sup>151</sup> *Contra* Karadžić-Response, paras.122, 126-127, 145-146, 188. Moreover, Karadžić relies on an *Eichmann* passage indicating the Court sought proof of an “intentional aim to exterminate”, a standard unrelated to the genocidal intent standard in Tribunal jurisprudence. Karadžić-Response, para.146.

<sup>152</sup> Karadžić-Response, paras.135-137.

<sup>153</sup> Prosecution-Appeal, paras.114-124.

<sup>154</sup> Karadžić-Response, para.136.

<sup>155</sup> *Krstić* AJ, para.35.

<sup>156</sup> The Chamber’s scale analysis was also distorted due to its erroneous assessment of Article 4(2)(c). See Prosecution-Appeal, paras.77, 120.

<sup>157</sup> Prosecution-Appeal, paras.118-120.

<sup>158</sup> Prosecution-Appeal, paras.122-124.

47. Karadžić's reliance on other chambers' conclusions regarding the scale of genocidal acts—stripped from their context—does not show the Chamber correctly assessed this factor.<sup>159</sup> The Prosecution does not claim that the Chamber should not have considered scale at all. Rather, it erred in not considering other relevant factors.<sup>160</sup>

### 3. The Chamber's assessment of forcible displacement reflects its erroneous approach

48. Contrary to Karadžić's suggestion,<sup>161</sup> the Prosecution is not seeking to elevate forcible displacement to an underlying act of genocide *per se*. The Chamber's error arises from its overly simplistic analysis of forcible displacement. In discussing the applicable law, the Chamber mentioned that forcible transfer was a relevant consideration.<sup>162</sup> In application, however, it disregarded the circumstances surrounding the forcible displacement in the Count 1 Municipalities and failed to assess whether those circumstances supported an inference of genocidal intent. Instead, it hinged its analysis on a numerical comparison of the "total number" of Muslims and Croats displaced versus the number subjected to genocidal acts, thus treating forced displacement as automatically detracting from a finding of genocidal intent.<sup>163</sup>

49. While forcible displacement is not *per se* a genocidal act,<sup>164</sup> the terms of Article 4(2) and ICTY jurisprudence establish that forcible displacement can constitute an underlying act of genocide.<sup>165</sup> Karadžić acknowledges that chambers have found forcible displacement to constitute serious mental harm under Article 4(2)(b) based on factors such as: painful separations from—and loss of—family members; appalling transport conditions; lasting financial and emotional difficulties; fear and uncertainty over loved ones' fate; feelings of anxiety, helplessness and betrayal; and victims' inability or fear of returning home.<sup>166</sup> He ignores that all these factors are present in this case<sup>167</sup> and were disregarded by the Chamber in its intent analysis.<sup>168</sup> That forced displacement was not charged as a genocidal act is inconsequential as to the evidentiary inferences

<sup>159</sup> Karadžić-Response, paras.136-137. *Above* para.42.

<sup>160</sup> Prosecution-Appeal, paras.114-124.

<sup>161</sup> Karadžić-Response, paras.138, 140.

<sup>162</sup> Karadžić-Response, para.138. *See* Prosecution-Appeal, fn.425.

<sup>163</sup> Prosecution-Appeal, paras.111, 118-120. This is a different but related error to that alleged in Sub-Ground 3(B). When assessing the crimes, the Chamber concluded that large-scale forced displacement automatically detracted from a finding of intent (Sub-Ground 3(C)). The Chamber then found that the removal *objective* precluded genocidal intent (Sub-Ground 3(B)).

<sup>164</sup> *See* Karadžić-Response, paras.138, 149-150.

<sup>165</sup> *See* Prosecution-Appeal, para.107 & fn.430.

<sup>166</sup> Karadžić-Response, para.152.

<sup>167</sup> *E.g.* Prosecution-Appeal, paras.29-31, 128, 131-139. *Below* fns.221-223. *Also* Bratunac: Judgement, paras.725, 728-732, 748, 763, 784-791; Foča: paras.857, 862, 873, 929-934; Ključ: paras.1512, 1561-1568; Prijedor: paras.1610, 1619, 1621, 1626-1628, 1666, 1680, 1687-1690, 1696, 1723-1733, 1834-1842, 1851, 1869, 1887, 1897-1913; Sanski Most: paras.1925, 1945, 1955, 2006, 2014, 2032-2060; Vlasenica: paras.1119, 1129, 1133, 1139, 1186, 1199, 1201, 1214-1222; Zvornik: paras.1260, 1264-1269, 1271-1274, 1277, 1304, 1330, 1340, 1360-1365. *Further* para.2468.

<sup>168</sup> Prosecution-Appeal, para.119.

warranted.<sup>169</sup> Where the circumstances of forcible displacement would satisfy Article 4(2)(b)'s elements, this supports a genocidal intent inference and thus illustrates the Chamber's error: it did not examine the circumstances surrounding expulsion operations and their impact on the victims nor consider the potential for these expulsions to amplify genocidal intent.<sup>170</sup> Had it done so, it would have found the expulsions supported a genocidal intent inference.<sup>171</sup>

50. Article 4(2)(b) jurisprudence also refutes Karadžić's argument—based on his misreading of *Krstić*—that forcible displacement can only support a genocidal intent inference when perpetrators are hindered from “massacr[ing]” the victims or where it involves “severe procreative implications”.<sup>172</sup> The *Krstić* Appeals Chamber held that forcible transfer “could be an additional means by which to *ensure the physical destruction* of the Bosnian Muslim community in Srebrenica” because it “completed the removal of all Bosnian Muslims from Srebrenica, thereby eliminating even the residual possibility that the Muslim community in the area could reconstitute itself.”<sup>173</sup> That the perpetrators “may” have decided against killing women and children due to “sensitivity to public opinion” has no bearing on the destructive impact of the forcible transfer.<sup>174</sup> Likewise, this destructive impact finding stands independently of the finding that killing the men “had severe procreative implications” for the community.<sup>175</sup>

51. To the extent Karadžić is claiming that the Prosecution does not “suggest[.]” Count 1 Municipality victims were forcibly displaced rather than subjected to genocidal acts due to constraints such as international scrutiny<sup>176</sup> he is wrong. He later acknowledges<sup>177</sup> the finding, relied on by the Prosecution, that Karadžić only made efforts to close the Prijedor camps—where the commission of genocidal acts was particularly intense<sup>178</sup>—when “the international media started reporting on the inhumane conditions”.<sup>179</sup> More generally, the Judgement is replete with findings on international pressure Karadžić faced regarding crimes in the Municipalities and his efforts to defuse this pressure while pursuing his criminal objectives.<sup>180</sup> In assessing genocidal intent,

<sup>169</sup> *Contra* Karadžić-Response, para.151.

<sup>170</sup> *See* Prosecution-Appeal, paras.118-120.

<sup>171</sup> *See* Prosecution-Appeal, paras.136-137.

<sup>172</sup> Karadžić-Response, para.139. *Also* para.154. *See Tolimir* AJ, paras.209, 211-212 (in assessing whether forced displacement constitutes serious mental harm under Article 4(2)(b), a chamber must consider, based on a holistic evaluation, whether the conduct causes a grave, long-term disadvantage to victims' ability to lead normal and constructive lives so as to contribute or tend to contribute to the group's destruction in whole or in part).

<sup>173</sup> *Krstić* AJ, para.31 (emphasis added). *Also Tolimir* AJ, para.209.

<sup>174</sup> *Krstić* AJ, para.31. *Contra* Karadžić-Response, paras.139, 157.

<sup>175</sup> *Krstić* AJ, para.28. *Contra* Karadžić-Response, para.139.

<sup>176</sup> Karadžić-Response, para.139.

<sup>177</sup> Karadžić-Response, para.156.

<sup>178</sup> *See* Prosecution-Appeal, paras.134-135.

<sup>179</sup> Judgement, para.3498. *Also* paras.3499-3500. *See* Prosecution-Appeal, paras.74 (1<sup>st</sup> bullet), 120, 135.

<sup>180</sup> *E.g.* Judgement, paras.2847, 3347-3348, 3369-3370, 3376-3378, 3393, 3503-3504.

however, the Chamber disregarded this even though international scrutiny of perpetrators can be relevant in determining their genocidal intent.<sup>181</sup>

52. Karadžić seeks to circumvent the finding that he only took steps to close camps in response to international scrutiny by invoking the finding that the purpose of the camp system was to facilitate the forcible removal of non-Serbs.<sup>182</sup> This conflates the permanent removal objective with the criminal means used to achieve it.<sup>183</sup> It also glosses over the facts: Karadžić knew Muslims and Croats were detained in appalling conditions—conditions involving the regular infliction of genocidal acts in Count 1 Facilities<sup>184</sup>—and “spent months denying that the conditions in these centres were appalling” rather than intervene.<sup>185</sup> He only moved to improve conditions or close camps in response to international attention.<sup>186</sup> Thus, the duration and extent of genocidal acts in Count 1 Municipalities were tempered by international scrutiny.

53. Karadžić points to findings he claims indicate he and the BSL envisaged “a co-existent relationship with non-Serb groups”<sup>187</sup> while ignoring the conclusion that Karadžić and other JCE members pursued a permanent removal objective involving sustained violence against Muslims and Croats in Serb-claimed territory.<sup>188</sup> Regardless, the Prosecution has never claimed Karadžić intended to destroy the Groups in whole.

#### 4. The Chamber disregarded widespread property destruction and the broader destructive impact of genocidal acts in assessing intent

54. Karadžić does not contest that genocidal acts against individual group members can have a broader destructive impact on their communities or that this is relevant in assessing genocidal intent.<sup>189</sup> His claim that the Chamber’s passing reference to sexual violence and the targeting of Group leaders amounted to an assessment of broader community impact is belied by the Chamber’s simplistic numerical analysis, prepared to derive intent only from criminal acts falling within the terms of Article 4(2).<sup>190</sup> Likewise, Karadžić notes the same findings already acknowledged by the Prosecution regarding destruction of cultural and religious property.<sup>191</sup> He does not engage with the Prosecution’s argument that, by not assessing the impact on the targeted communities of the

<sup>181</sup> *Krstić* AJ, paras.31-32.

<sup>182</sup> Karadžić-Response, paras.155-157 *citing* Judgement, paras.3399, 3498.

<sup>183</sup> *See* Prosecution-Appeal, paras.95-97.

<sup>184</sup> *See* Prosecution-Appeal, paras.134-135.

<sup>185</sup> Judgement, para.3399.

<sup>186</sup> Judgement, para.3498. *Also* paras.3499-3500.

<sup>187</sup> Karadžić-Response, para.148.

<sup>188</sup> Judgement, paras.3440-3447.

<sup>189</sup> *Compare* Prosecution-Appeal, paras.122-123 *with* Karadžić-Response, paras.159, 178.

<sup>190</sup> *See* Prosecution-Appeal, paras.122-124. *Contra* Karadžić-Response, paras.159-160.

<sup>191</sup> *Compare* Karadžić-Response, paras.158, 178 *with* Prosecution-Appeal, para.121.

widespread destruction of homes and sacred sites, the Chamber failed to properly account for this destruction in assessing genocidal intent.<sup>192</sup>

#### **D. Sub-Ground 3(D): Karadžić and other JCE members possessed genocidal intent**

55. Karadžić does not address the core of the Prosecution’s argument: a holistic evaluation of the pattern of crimes in Count 1 Municipalities and Karadžić’s and other JCE members’ acts and conduct, assessed with a correct understanding of genocidal intent, eliminates any reasonable doubt that Karadžić shared the intent to destroy the Muslim and Croat communities in those municipalities.<sup>193</sup> Whether genocidal intent can be inferred from individual strands of evidence—as argued by Karadžić<sup>194</sup>—is irrelevant.<sup>195</sup>

##### 1. The pattern of crimes reflects genocidal intent

56. Karadžić isolates individual factors the Prosecution relies on to establish genocidal intent, compares them to assessments in other cases where genocidal intent was not found, and argues on that basis that the Chamber’s conclusion was correct.<sup>196</sup> This compartmentalised reliance on genocidal intent conclusions in other cases is misconceived.<sup>197</sup> Karadžić’s speculation regarding potential *motives*<sup>198</sup> is also irrelevant to assessing genocidal *intent*.<sup>199</sup>

57. Moreover, Karadžić’s effort to show that the pattern of crimes has been properly analysed in prior cases demonstrates the opposite. For instance, he claims the traumatic forcible separations in Prijedor were “noted” in prior cases, but his references reveal they were not considered in assessing genocidal intent,<sup>200</sup> matching the Chamber’s similar failure.<sup>201</sup> Likewise, in asserting that previous chambers “considered” the destructive impact on those not directly subjected to genocidal acts, he points to evidence that neither prior chambers nor this Chamber considered in assessing genocidal intent:

- [REDACTED] and Nermin Karagić were forced to collect and bury dead bodies, including disfigured and decaying bodies [REDACTED].<sup>202</sup> Karadžić points to *Brdanin* findings that

<sup>192</sup> Prosecution-Appeal, paras.121, 137.

<sup>193</sup> Prosecution-Appeal, para.126.

<sup>194</sup> Karadžić-Response, paras.165-179, 191-200.

<sup>195</sup> *Karadžić 98bis* AJ, para.56; *Tolimir* AJ, paras.246-247 quoting *Tolimir* TJ, para.745.

<sup>196</sup> Karadžić-Response, paras.165-166, 169, 171-179, 192-194, 200-201.

<sup>197</sup> *Above* paras.42, 55.

<sup>198</sup> Karadžić-Response, paras.168, 177, 189.

<sup>199</sup> *Stakić* AJ, para.45.

<sup>200</sup> Karadžić-Response, para.174 citing *Stakić* TJ, para.143; *Krajišnik* TJ, paras.477, 487; *Brdanin* TJ, paras.115, 549.

<sup>201</sup> See Prosecution-Appeal, para.119.

<sup>202</sup> [REDACTED]; N.Karagić:Exh.P651, pp.36-37(T.5237-5238) [REDACTED]. See Karadžić-Response, fn.278.

this constituted torture.<sup>203</sup> Here, the Chamber failed to consider this and other evidence demonstrating the destructive impact on those who witnessed the violence that devastated their communities and took away neighbours and loved ones.<sup>204</sup>

- KDZ038 testified about the attack on Brdo, detention at Trnopolje and the Korićanske Stijene massacre.<sup>205</sup> The *Stakić* Trial Chamber described (unrelated to its genocide analysis) how KDZ038: “found his old house destroyed”; “lost part of a leg, his youth and his career”; “had to live as an exiled person”; and, as is “the hardest task for all the survivors: [...] cannot forget the missing and the dead.”<sup>206</sup> Such accounts illustrate the destructive impact on the targeted communities resulting from the combination of forced displacement and mass deadly violence and underscore the Chamber’s failure to assess holistically the impact of the crimes on the targeted communities.<sup>207</sup>

58. Karadžić’s claim that the Chamber “weigh[ed] up factors both *for* and *against* genocidal intent” in assessing forcible displacement<sup>208</sup> finds no support in the Judgement.<sup>209</sup> Karadžić contends that the Chamber could rely on the involvement of international organisations in removing some non-Serbs as weighing against genocidal intent. But the Judgement shows that the Chamber did not consider the circumstances surrounding the forcible displacement in its genocidal intent analysis. Regardless, Karadžić ignores that non-Serbs were forced out of Prijedor through a sustained pattern of violence.<sup>210</sup> Any involvement of international organisations in the final stages of removal does not detract from the destructive impact—and corresponding destructive intent—of these violent expulsions.<sup>211</sup>

59. In asserting that the survival of six Prijedor witnesses “confirms the lack of genocidal intent”,<sup>212</sup> Karadžić wrongly equates genocidal intent with intent to kill all or most group members.<sup>213</sup> These witnesses’ accounts overwhelmingly support an inference of genocidal intent.

60. The witnesses confirmed the widespread commission of genocidal and other culpable acts against their communities. They described how Serb Forces attacked towns and villages,<sup>214</sup> killed<sup>215</sup>

<sup>203</sup> Karadžić-Response, fn.278 citing *inter alia* *Brdanin* TJ, para.511.

<sup>204</sup> See Prosecution-Appeal, paras.136-137.

<sup>205</sup> E.g. KDZ038:Exh.P676.

<sup>206</sup> *Stakić* TJ, paras.867-868 citing testimony of Witness X admitted in this case as Exh.P676, pp.37(T.6886), 73(T.6929) relied on at Karadžić-Response, fn.278. The *Stakić* Trial Chamber incorrectly cites T.6888 instead of T.6886, and T.6928 instead of T.6929.

<sup>207</sup> Prosecution-Appeal, paras.136-139.

<sup>208</sup> Karadžić-Response, para.167.

<sup>209</sup> See Prosecution-Appeal, paras.118-120.

<sup>210</sup> E.g. Judgement, paras.1912-1913, 2468-2471.

<sup>211</sup> Prosecution-Appeal, paras.119, 136-137.

<sup>212</sup> Karadžić-Response, para.180. Also paras.186, 188.

<sup>213</sup> See Prosecution-Appeal, paras.104-113.

and wounded<sup>216</sup> inhabitants; and destroyed homes and religious sites.<sup>217</sup> Muslims and Croats were mistreated,<sup>218</sup> restricted in their movement<sup>219</sup> and expelled.<sup>220</sup> They recounted painful separations and loss of family members.<sup>221</sup> For instance, [REDACTED]<sup>222</sup> and [REDACTED].<sup>223</sup>

61. The six witnesses were imprisoned in Omarska, Trnopolje and/or the Prijedor SJB. At these sites, Muslims and Croats were subjected to egregious mistreatment and deplorable conditions.<sup>224</sup> The witnesses described how detainees, including women, children and elderly, were subjected to constant physical and psychological abuse;<sup>225</sup> rape and sexual violence;<sup>226</sup> and life-threatening conditions.<sup>227</sup> Detainees were murdered “daily”.<sup>228</sup> The crimes at Omarska—which five of the six

<sup>214</sup> [REDACTED]; [REDACTED]; Nusret Sivac:Exh.P3478, pp.24-26(T.6574-6576), 67(T.6617), 217(T.6767); [REDACTED]; K.Mešanović:Exh.P3528, pp.21-22; M.Sejmenović:T.20478-20480, 20482; I.Merdžanić:Exh.P3881, pp.15-21(T.7728-7734). *See* Judgement, paras.1606, 1618, 1621.

<sup>215</sup> I.Merdžanić:Exh.P3881, pp.26(T.7739), 31(T.7744); M.Sejmenović:T.20479-20480, 20483.

<sup>216</sup> I.Merdžanić:Exh.P3881, pp.20-21(T.7733-7734), 24(T.7737). *See* Judgement, para.1624.

<sup>217</sup> Nusret Sivac:Exh.P3478, pp.25-26(T.6575-6576), 56-58(T.6606-6608), 60-61(T.6610-6611), 74-75(T.6624-6625), 142-143(T.6692-6693), 170-171(T.6720-6721), 217(T.6767), 222(T.6772); [REDACTED]; K.Mešanović:Exh.P3528, pp.78-82; K.Mešanović:T.19841, 19861-19862; M.Sejmenović:T.20479-20480, 20596-20598; I.Merdžanić:Exh.P3881, pp.30(T.7743), 87(T.7800), 94(T.7815). *See* Judgement, paras.1606, 1621, 1890, 1893.

<sup>218</sup> Nusret Sivac:Exh.P3478, pp.73(T.6623), 218(T.6768).

<sup>219</sup> [REDACTED]; Nusret Sivac:Exh.P3478, p.26(T.6576); Nusret Sivac:T.19639-19640; [REDACTED]; M.Sejmenović:T.20467-20468, 20483; I.Merdžanić:Exh.P3881, pp.7-10(T.7720-7723), 19-20(T.7732-7733), 24-25(T.7737-7738). *See* Judgement, paras.1608, 1625.

<sup>220</sup> [REDACTED]; Nusret Sivac:Exh.P3478, pp.218(T.6768), 220-221(T.6770-6771); Nusret Sivac:T.19605; M.Sejmenović:T.20480-20481; I.Merdžanić:Exh.P3881, pp.74(T.7787), 77(T.7790). *See* Judgement, para.1626.

<sup>221</sup> *E.g.* Nusret Sivac:Exh.P3478, pp.73(T.6623) (soldiers attacked Rasković village, raped the women and took the men to camps), 217-218(T.6767-6768) (after the attack on Kozarac “some of these people had lost their children, their mothers, so they were calling out to each other and looking for each other.” The intervention platoon “separat[ed] women and children and abus[ed] them”, then ordered them onto buses destined for Trnopolje); K.Mešanović:Exh.P3528, p.23; M.Sejmenović:T.20480; I.Merdžanić:Exh.P3881, pp.26(T.7739), 33(T.7746), 42-43(T.7755-7756), 73-74(T.7786-7787). *See* Judgement, para.1628.

<sup>222</sup> [REDACTED].

<sup>223</sup> [REDACTED].

<sup>224</sup> Judgement, paras.2485, 2510, 2580.

<sup>225</sup> [REDACTED]; [REDACTED]; Nusret Sivac:Exh.P3478, pp.62-64(T.6612-6614), 77-79(T.6627-6629), 87(T.6637), 129-130(T.6679-6680), 132-133(T.6682-6683); Nusret Sivac:T.19529; [REDACTED]; K.Mešanović:Exh.P3528, pp.26-30, 35, 49-51; M.Sejmenović:T.20490, 20495; I.Merdžanić:Exh.P3881, pp.53-55(T.7766-7768), 60(T.7773), 64-65(T.7777-7778), 70-72(T.7783-7784); I.Merdžanić:T.21463. *See* Judgement, paras.1757-1760, 1762-1764, 1772-1773, 1824-1826.

<sup>226</sup> [REDACTED]; [REDACTED]; [REDACTED]; M.Sejmenović:T.20490; I.Merdžanić:Exh.P3881, p.48(T.7761). *See* Judgement, paras.1769, 1771-1772, 1831.

<sup>227</sup> [REDACTED]; [REDACTED]; Nusret Sivac:Exh.P3478, pp.88(T.6638), 92(T.6642), 197-198(T.6747-6748); [REDACTED]; K.Mešanović:Exh.P3528, pp.26, 70-71; M.Sejmenović:T.20489-20490; I.Merdžanić:Exh.P3881, pp.44-46(T.7757-7758), 52(T.7762), 79(T.7792). *See* Judgement, paras.1754-1755, 1823.

<sup>228</sup> Nusret Sivac:Exh.P3478, pp.82-84(T.6632-6634), 89(T.6639); Nusret Sivac:T.19648; K.Mešanović:Exh.P3528, pp.27, 31, 34, 52-56; K.Mešanović:T.19838, 19841, 19852; [REDACTED]; [REDACTED]; [REDACTED]; M.Sejmenović:T.20487-20490; I.Merdžanić:Exh.P3881, pp.61(T.7774), 72-73(T.7785-7786), 116-117(T.7837-7838); I.Merdžanić:Exh.P3882, p.3. *See* Judgement, paras.1757, 1760, 1771, 1780, 1827.

witnesses experienced<sup>229</sup>—were so horrific that transfer to the mistreatment and deplorable conditions of Trnopolje was considered “salvation”.<sup>230</sup>

62. [REDACTED], Nusret Sivac, Kerim Mešanović and Mevludin Sejmenović were themselves kicked and beaten until bloody or unconscious,<sup>231</sup> and [REDACTED].<sup>232</sup> They were denied food and deprived of sanitary facilities or potable water.<sup>233</sup> Guards threatened or attempted to kill [REDACTED] Nusret Sivac and Idriz Merdžanić<sup>234</sup> and listed KDZ026 and Mešanović among those to be liquidated.<sup>235</sup> That the witnesses survived—largely thanks to international exposure<sup>236</sup>—does not negate the destructive impact of such acts on them, on the thousands of other Prijedor Muslims and Croats who suffered similar or worse ordeals or on their broader communities.<sup>237</sup>

63. Moreover, Karadžić’s focus on these witnesses’ survival disregards their enduring physical and psychological pain. [REDACTED].<sup>238</sup> [REDACTED].<sup>239</sup> [REDACTED].<sup>240</sup> The other witnesses described [REDACTED] and feeling “haunt[ed]” by their experiences.<sup>241</sup> When their consistent accounts of lasting physical and psychological damage are multiplied by the many thousands of victims who similarly suffered, the destructive impact on the targeted communities is plain.

## 2. Karadžić’s and other JCE members’ conduct reflects genocidal intent

64. Karadžić does not engage directly with the Prosecution’s argument that the statements and conduct of JCE members, assessed holistically and together with the pattern of crimes, demonstrate

<sup>229</sup> Karadžić-Response, paras.181-186.

<sup>230</sup> Nusret Sivac:Exh.P3478, p.135(T.6685).

<sup>231</sup> [REDACTED]; M.Sejmenović:T.20492; Nusret Sivac:Exh.P3478, pp.70-71(T.6620-6621), 130-131(T.6680-6681); K.Mešanović:Exh.P3528, pp.24-26. *Also* [REDACTED]; [REDACTED]; K.Mešanović:Exh.P3528, pp.27, 34. *See* Judgement, para.1744.

<sup>232</sup> [REDACTED]. *See* Judgement, para.1769.

<sup>233</sup> [REDACTED]; [REDACTED]; Nusret Sivac:Exh.P3478, p.198(T.6748); [REDACTED]; K.Mešanović:Exh.P3528, pp.27, 70-71; I.Merdžanić:Exh.P3881, pp.45-46(T.7758-7759). *See* Judgement, paras.1754-1755, 1822-1823.

<sup>234</sup> Nusret Sivac:Exh.P3478, p.134(T.6684); [REDACTED]; I.Merdžanić:Exh.P3881, pp.47-48(T.7760-7761), 88(T.7801). *See* Judgement, paras.1773, 1826.

<sup>235</sup> [REDACTED]; KDZ026:T.10320 (confidential); K.Mešanović:Exh.P3528, pp.40-41; K.Mešanović:T.19850-19852. *See* Judgement, para.1764.

<sup>236</sup> *Above* paras.22, 51-52. *See* [REDACTED]; Nusret Sivac:Exh.P3478, pp.135(T.6685), 137(T.6687), 141-142(T.6691-6692); K.Mešanović:Exh.P3528, p.65; M.Sejmenović:T.20503-20510; I.Merdžanić:T.21482. Karadžić’s claim that “[a]fter her release, [Nusreta Sivac] remained in Prijedor town” misrepresents her evidence. She fled Prijedor after being forced to sign over all her possessions to the ARK. [REDACTED]. *Contra* Karadžić-Response, para.182 *citing* T.20383-20384.

<sup>237</sup> *E.g.* Prosecution-Appeal, paras.123, 136-139. *Contra* Karadžić-Response, para.180.

<sup>238</sup> *E.g.* [REDACTED]; [REDACTED].

<sup>239</sup> [REDACTED]; [REDACTED].

<sup>240</sup> [REDACTED].

<sup>241</sup> M.Sejmenović:T.20495; [REDACTED].

genocidal intent.<sup>242</sup> Instead, he (improperly) assesses these statements in isolation, seeks to re-interpret them while disregarding the Chamber’s contrary conclusions and makes irrelevant comparisons to other cases.<sup>243</sup>

65. For example, Karadžić relies on a single passage of Herbert Okun’s testimony discussing Karadžić’s orders purportedly aimed at protecting non-Serbs.<sup>244</sup> He ignores findings that these orders were insincere,<sup>245</sup> including the Chamber’s reliance on Okun’s observation that Karadžić’s public assurance that Muslims would be protected was “thoroughly disingenuous”.<sup>246</sup>

66. Karadžić likewise seeks to reinterpret late 1991 conversations—in which he threatened the “disappear[ance]” and “annihilat[ion]” of Bosnian Muslims in a “real bloodbath” in which the Muslim people “would be up to their necks in blood”<sup>247</sup>—as “express[ions]” of “concern” about Muslims preparing for war.<sup>248</sup> He disregards the Chamber’s conclusion that these “threat[s]” showed Karadžić “was fully aware that a potential conflict would be extremely violent and result in thousands of deaths, the destruction of property and the displacement of people and that it would be *particularly devastating for the Bosnian Muslim population.*”<sup>249</sup>

67. Contending that Mladić’s comments about “kick[ing] the hell out of the Turks” and having Muslims and Croats “vanish[]” related to the army,<sup>250</sup> Karadžić ignores contrary findings<sup>251</sup> and the context of Mladić’s statements contradicting his claim.<sup>252</sup>

68. Karadžić mischaracterises the Judgement concerning his reaction to the Korićanske Stijene massacre.<sup>253</sup> Karadžić was angry because he had “received calls from international organisations about the killings”.<sup>254</sup> Moreover, regardless of Karadžić’s “request[] [for] an investigation”,<sup>255</sup> “none of the policemen involved [...] were held accountable”.<sup>256</sup> Instead, Karadžić “promoted and awarded medals of bravery” to Prijedor SJB Chief Simo Drljača, other senior officials and the

<sup>242</sup> Prosecution-Appeal, paras.126-147.

<sup>243</sup> Karadžić-Response, paras.191-200.

<sup>244</sup> Karadžić-Response, para.191.

<sup>245</sup> *E.g.* Judgement, paras.3400-3401, 3410, 4852-4853, 4927. *Also* paras.2736, 2745, 2841, 2846, 2849-2853, 2855-2856.

<sup>246</sup> Judgement, para.2740 *quoting* H.Okun:T.1810-1811. *Also* para.4853 *citing* Exh.P799, pp.10, 14; H.Okun:T.1662, 1844-1846.

<sup>247</sup> Judgement, paras.2677-2678 *discussing* Exhs.P3200, D279.

<sup>248</sup> Karadžić-Response, para.196 *citing* Exhs.P3200, D279.

<sup>249</sup> Judgement, para.2708 (emphasis added). *Also* para.2599.

<sup>250</sup> Karadžić-Response, para.197.

<sup>251</sup> Judgement, paras.2766, 2771, 2839-2856, 3272.

<sup>252</sup> *E.g.* Exhs.P1385, p.49 (“[m]y concern is not that they will create the state. My concern is to have them vanish completely.”); P4442, p.1 (“you ought to kill these Ustasha [in Canada and the U.S.]”).

<sup>253</sup> Karadžić-Response, para.200.

<sup>254</sup> Judgement, para.3346.

<sup>255</sup> Judgement, para.3418.

Prijedor SJB unit who were implicated in the massacre knowing they were responsible.<sup>257</sup> This reinforces Karadžić's support for the extreme violence employed to effect the permanent removal objective and thus his genocidal intent.<sup>258</sup>

---

<sup>256</sup> Judgement, paras.1845, 3418, fn.10931. *Contra* Karadžić-Response, para.200. *See* S.Avlijaš:T.35189-35191.

<sup>257</sup> Judgement, paras.1845, 3432-3433. *Also* S.Avlijaš:T.35187-35188 (“all of the RS” knew Drljača's police forces were responsible).

<sup>258</sup> *Also e.g.* Exh.P809, p.3 (Karadžić, in September 1992, brushing off, but not denying, reports of “atrocities”, “executions” and “brutal”, “Nazi-like” camp conditions) *cited at* Judgement, para.3348.

## V. GROUND 4: KARADŽIĆ DESERVES LIFE IMPRISONMENT

69. The scope and gravity of Karadžić’s crimes—unparalleled at this Tribunal—called for the highest available sentence.

### A. Karadžić’s sentence is unreasonable and inadequately reasoned

70. Karadžić acknowledges the Chamber deliberately imposed less than a life sentence<sup>259</sup> despite its findings regarding the extreme gravity of his crimes. He fails to engage with the Prosecution’s arguments that his sentence was so unreasonable that it constitutes an abuse of discretion. This argument is not premised on “mandatory sentences” or “fixed sentencing guidelines”, nor does it seek to “redistribute discretion from Judges to prosecutors”.<sup>260</sup> The Prosecution does not contend that “*some crimes* are so serious that they warrant restricting judicial discretion”,<sup>261</sup> but rather that *Karadžić’s* unprecedented criminal responsibility—without significant mitigation—leaves no room for any other sentence.<sup>262</sup>

71. Karadžić’s sentence is so far out of proportion with previous sentences that it requires appellate intervention.<sup>263</sup> In relation to each of the three main JCEs, Karadžić’s criminal responsibility surpasses that of his subordinates, a number of whom received sentences equal to or higher than Karadžić for only a fraction of his overall crimes.<sup>264</sup> Karadžić’s convictions eclipse all previous ICTY cases—including those for which life sentences have been imposed.<sup>265</sup>

72. The Chamber failed to provide a reasoned opinion explaining why it decided not to impose a life sentence despite the Prosecution’s arguments and the Chamber’s own findings.<sup>266</sup> At trial, the Prosecution made a straightforward argument, based on compelling facts, that a life sentence was the only appropriate sentence.<sup>267</sup> The length of the Prosecution’s argument does not relieve the Chamber of its obligation to explain why it did not impose a life sentence.<sup>268</sup>

<sup>259</sup> Karadžić-Response, paras.211-214.

<sup>260</sup> Compare Karadžić-Response, paras.204-207 with Prosecution-Appeal, para.159.

<sup>261</sup> Karadžić-Response, paras.206-207 (emphasis added).

<sup>262</sup> Prosecution-Appeal, para.159. *Contra* Karadžić-Response, paras.215-216.

<sup>263</sup> *D.Milošević* AJ, para.327; *D.Nikolić* SAJ, para.15 quoting *Čelebići* AJ, para.757. Also *Galić* AJ, Judge Meron Dissent, para.6.

<sup>264</sup> Prosecution-Appeal, paras.164-168.

<sup>265</sup> Prosecution-Appeal, paras.158-159, 168.

<sup>266</sup> Prosecution-Appeal, paras.169-172. *Contra* Karadžić-Response, paras.217-220.

<sup>267</sup> Prosecution-FTB, paras.1119-1122; T.47699, 47817-47818.

<sup>268</sup> *Contra* Karadžić-Response, paras.217-218.

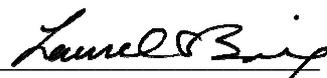
## **B. The Chamber erred in assessing aggravating and mitigating factors**

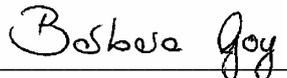
73. Karadžić abused his authority, wielding it on a massive, sustained basis against civilians he was entrusted to protect.<sup>269</sup> Given the significance of this aggravating factor, if the Chamber included it in its gravity findings, as Karadžić submits,<sup>270</sup> the manifest inadequacy of the sentence is even more pronounced.

74. The Appeals Chamber did not find that Karadžić’s alleged “agreement with Richard Holbrooke to resign and withdraw from public life is relevant to sentencing”, as he claims.<sup>271</sup> Rather, it declined to rule on the matter and stated that “such allegations could be considered for the purpose of sentencing, if appropriate.”<sup>272</sup> The Trial Chamber, in turn, indicated that Karadžić’s motives for resigning would be relevant to sentencing<sup>273</sup> but then inexplicably found motive irrelevant in its Judgement.<sup>274</sup>

75. Karadžić’s unsupported suggestion that he resigned “for the sake of peace”<sup>275</sup> is inconsistent with his persistent claim that he resigned to avoid prosecution following his ICTY indictment.<sup>276</sup> Karadžić was a leader who “clung to power with catastrophic results”,<sup>277</sup> resigning in an effort to obtain a personal benefit only after a peace agreement was imposed against the wishes of the RS leadership.<sup>278</sup> His circumstances are clearly distinguishable from the cases he cites,<sup>279</sup> particularly those in which convicted persons took positive actions toward fulfilling peace agreements despite opposition or threats,<sup>280</sup> or without preconditions or “seek[ing] personal gain”.<sup>281</sup>

Word count: 8996

  
Laurel Baig  
Senior Appeals Counsel

  
Barbara Goy  
Senior Appeals Counsel

  
Katrina Gustafson  
Senior Appeals Counsel

Dated this 6<sup>th</sup> day of April 2017  
At The Hague, The Netherlands

<sup>269</sup> Prosecution-Appeal, paras.173-175.

<sup>270</sup> Karadžić-Response, paras.221-226.

<sup>271</sup> Karadžić-Response, para.227.

<sup>272</sup> Karadžić Holbrooke Appeal Decision, para.55.

<sup>273</sup> Karadžić Sentencing Information Decision, para.11.

<sup>274</sup> Judgement, para.6057.

<sup>275</sup> Karadžić-Response, para.228.

<sup>276</sup> Karadžić-FTB, paras.3379-3398, 3405; Karadžić-AB, para.848.

<sup>277</sup> Contra Karadžić-Response, para.228.

<sup>278</sup> Judgement, paras.435-437.

<sup>279</sup> See Karadžić-AB, paras.208-209, 228-229.

<sup>280</sup> RUF SJ, para.226. Also Plavšić SJ, paras.85-94; Katanga SJ, paras.107-112, 115.

<sup>281</sup> RUF SJ, para.226. Also para.225.

## VI. Glossary

### *Pleadings, Orders, Decisions from Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18 / MICT-13-55-A*

Abbreviation used in Prosecution Reply Brief	Full citation
Chamber	Trial Chamber in <i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T
Judgement	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95/5/18-T, T.Ch., Judgement, 24 March 2016 (confidential)  <i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, T.Ch., Public Redacted Version of Judgement Issued on 24 March 2016, 24 March 2016 (public)
Prosecution-Appeal	<i>Prosecutor v. Radovan Karadžić</i> , Case No. MICT-13-55-A, Prosecution Appeal Brief, 5 December 2016 (confidential)  <i>Prosecutor v. Radovan Karadžić</i> , Case No. MICT-13-55-A, Prosecution Appeal Brief, 11 January 2017 (public redacted version)
Prosecution-FTB	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, Prosecution's Final Trial Brief, 23 September 2014 (public redacted version)
Karadžić-AB	<i>Prosecutor v. Radovan Karadžić</i> , Case No. MICT-13-55-A, Radovan Karadžić's Appeal Brief, 23 December 2016 (revised public redacted version)
Karadžić-FTB	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, Defence Final Trial Brief, 29 September 2014 (public redacted version)
<i>Karadžić</i> Holbrooke Appeal Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR73.4, Decision on Karadžić's Appeal of Trial Chamber's Decision on Alleged Holbrooke Agreement, 12 October 2009

Karadžić-Response	<p><i>Prosecutor v. Radovan Karadžić</i>, Case No. MICT-13-55-A, Radovan Karadžić's Response Brief, 15 March 2017 (confidential)</p> <p><i>Prosecutor v. Radovan Karadžić</i>, Case No. MICT-13-55-A, Radovan Karadžić's Response Brief, 15 March 2017 (public redacted version)</p>
<i>Karadžić</i> Sentencing Information Decision	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-T, T.Ch., Decision on Admission of Information Relating to Sentencing, 26 February 2014
<i>Karadžić 98bis</i> AJ	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR98bis.1, App.Ch., Judgement, 11 July 2013
Karadžić 98bis Response	<i>Prosecutor v. Radovan Karadžić</i> , Case No. IT-95-5/18-AR98bis.1, Respondent's Brief, 5 November 2012 [Revised Public Redacted Version filed 26 November 2012]

**Other ICTY authorities**

<b>Abbreviation used in Prosecution Reply Brief</b>	<b>Full citation</b>
<i>Blagojević</i> AJ	<i>Prosecutor v. Vidoje Blagojević &amp; Dragan Jokić</i> , Case No. IT-02-60-A, App.Ch., Judgement, 9 May 2007
<i>Brdanin</i> TJ	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, T.Ch., Judgement, 1 September 2004
<i>Čelebići</i> AJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. “Pavo”, Hazim Delić &amp; Esad Landžo, a.k.a. “Zenga”</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
<i>Đorđević</i> AJ	<i>Prosecutor v. Vlastimir Đorđević</i> , Case No. IT-05-87/1-A, App.Ch., Judgement, 27 January 2014
<i>Galić</i> AJ, Judge Meron Dissent	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, Separate and Partially Dissenting Opinion of Judge Meron, 30 November 2006
<i>Krajišnik</i> AJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, App.Ch., Judgement, 17 March 2009
<i>Krajišnik</i> TJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, T.Ch., Judgement, 27 September 2006
<i>Krstić</i> AJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, App.Ch., Judgement, 19 April 2004
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić &amp; Dragoljub Prcać</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005
<i>Limaj</i> TJ	<i>Prosecutor v. Fatmir Limaj, Haradin Bala &amp; Isak Musliu</i> , Case No. IT-03-66-T, T.Ch., Judgement, 30 November 2005
<i>Martić</i> TJ	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, T.Ch., Judgement, 12 June 2007
<i>D.Milošević</i> AJ	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, App.Ch., Judgement, 12 November 2009
<i>Milutinović</i> TJ	<i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević &amp; Sreten Lukić</i> , Case No. IT-05-87-T, T.Ch., Judgement, 26 February 2009

<i>D.Nikolić SAJ</i>	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-02-A, App.Ch., Judgement on Sentencing Appeal, 4 February 2005
<i>Plavšić SJ</i>	<i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, T.Ch., Sentencing Judgement, 27 February 2003
<i>Popović AJ</i>	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić &amp; Vinko Pandurević</i> , Case No. IT-05-88-A, App.Ch., Judgement, 30 January 2015
<i>Popović TJ</i>	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero &amp; Vinko Pandurević</i> , Case No. IT-05-88-T, T.Ch., Judgement, 10 June 2010
<i>Šainović AJ</i>	<i>Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević &amp; Sreten Lukić</i> , Case No. IT-05-87-A, Judgement, 23 January 2014
<i>Sikirica Judgement on Acquittal Motions</i>	<i>Prosecutor v. Duško Sikirica, Damir Došen &amp; Dragan Kolundžija</i> , Case No. IT-95-8-T, T.Ch., Judgement on Defence Motions to Acquit, 3 September 2001
<i>Stanišić &amp; Simatović AJ</i>	<i>Prosecutor v. Jovica Stanišić &amp; Franko Simatović</i> , Case No. IT-03-69-A, App.Ch., Judgement, 9 December 2015
<i>Stakić AJ</i>	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, App.Ch., Judgement, 22 March 2006
<i>Stakić TJ</i>	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, T.Ch., Judgement, 31 July 2003
<i>Tolimir AJ</i>	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-A, App.Ch., Judgement, 8 April 2015
<i>Tolimir TJ</i>	<i>Prosecutor v. Zdravko Tolimir</i> , Case No. IT-05-88/2-T, T.Ch., Judgement, 12 December 2012

**ICTR authorities**

<b>Abbreviation used in Prosecution Reply Brief</b>	<b>Full citation</b>
<i>Kayishema</i> TJ	<i>Prosecutor v. Clément Kayishema &amp; Obed Ruzindana</i> , Case No. ICTR-95-1-T, T.Ch., Judgement, 21 May 1999
<i>Ndahimana</i> AJ	<i>Grégoire Ndahimana v. Prosecutor</i> , Case No. ICTR-01-68-A, App.Ch., Judgement, 16 December 2013

**ICJ authorities**

<b>Abbreviation used in Prosecution Appeal Brief</b>	<b>Full citation</b>
<i>Bosnia v. Serbia</i>	<i>Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)</i> , Judgement of 26 February 2007, I.C.J. Reports 2007
<i>Croatia v. Serbia</i>	<i>Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)</i> , Judgement of 3 February 2015, I.C.J. Reports 2015

**SCSL authorities**

<b>Abbreviation used in Prosecution Response</b>	<b>Full citation</b>
<i>RUF</i> SJ	<i>Prosecutor v. Issa Hassan Sesay, Morris Kallon &amp; Augustine Gbao</i> , Case No. SCSL-04-15-T, T.Ch., Sentencing Judgement, 8 April 2009

**ICC authorities**

<b>Abbreviation used in Prosecution Response Brief</b>	<b>Full citation</b>
<i>Katanga SJ</i>	<i>The Prosecutor v. Germain Katanga</i> , Case No. ICC-01/04-01/07, T.Ch., Decision on Sentence Pursuant to Article 76 of the Statute, 23 May 2014

**National authorities**

<b>Abbreviation used in Prosecution Reply Brief</b>	<b>Full citation</b>
<i>Eichmann</i>	<i>Attorney General v. Adolf Eichmann</i> , Judgment, District Court of Jerusalem, Criminal Case No.40/61 (1961)

**General Sources**

<b>Abbreviation used in Prosecution Reply Brief</b>	<b>Full citation</b>
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 U.N.T.S. 277 (entered into force 12 January 1951)
<i>Travaux</i>	Hirad Abtahi and Phillipa Webb, <i>The Genocide Convention: The Travaux Préparatoires</i> , 1 <sup>st</sup> Edition (Leiden: Martinus Nijhoff, 2008)
Tams Commentary	Christian J. Tams, Lars Berster, Björn Schiffbauer, <i>Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary</i> , 1 <sup>st</sup> Edition (Munich: C.H.Beck/Hart Publishing/Nomos, 2014)

**Other Abbreviations**

<b>Abbreviation used in Prosecution Reply Brief</b>	<b>Full citation</b>
ARK	Autonomous Region of Krajina
BSL	Bosnian Serb Leadership
Count 1 Facilities	Detention facilities in the Count 1 Municipalities
Count 1 Municipalities	Bratunac, Foča, Ključ, Prijedor, Sanski Most, Vlasenica and Zvornik, collectively
Excluded Crimes	Crimes found foreseeable to the implementation of the common purpose: extermination; murder; and persecution through killings, cruel and/or inhumane treatment (through torture, beatings, physical and psychological abuse, rape and other acts of sexual violence, and the establishment and perpetuation of inhumane living conditions in detention facilities), forced labour at the frontlines and use of human shields, appropriation or plunder of property, and the wanton destruction of private and public property, including cultural monuments and sacred sites
Exh.	Exhibit
Exhs.	Exhibits
fn.	footnote
fns.	footnotes
Groups	The Bosnian Muslim and Bosnian Croat groups
ICTY	International Criminal Tribunal for the Former Yugoslavia
JCE	Joint criminal enterprise
JCE1	First category of joint criminal enterprise
Municipalities	Banja Luka, Bijeljina, Bosanski Novi, Bratunac, Brčko, Foča, Hadžići, Ilidža, Ključ, Novi Grad, Novo Sarajevo, Pale, Prijedor, Rogatica, Sanski Most, Višegrad, Vogošća, Sokolac, Vlasenica, Zvornik

Overarching JCE	The joint criminal enterprise existing from at least October 1991 to 30 November 1995 with the objective of permanently removing Bosnian Muslims and Bosnian Croats from Bosnian Serb claimed territory through the commission of crimes charged in the Indictment
para.	Paragraph
paras.	Paragraphs
p.	Page
pp.	Pages
RS	<i>Republika Srpska</i> (before 12 August 1992, named Serbian Republic of Bosnia and Herzegovina (SerBiH))
Serb Forces	Members of the MUP, VRS, JNA, VJ, TO, the Serbian MUP, Serbian and Bosnian Serb paramilitary forces and volunteer units, and local Bosnian Serbs
SJB	Public Security Station
T.	Trial Transcript
U.S.	United States of America