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SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

Freetown - Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 10 March 2009

THE PROSECUTOR

Against

Issa Hassan Sesay

Morris Kallon

Augustine Gbao

Case No. SCSL-04-15-T

PUBLIC

PROSECUTION SENTENCING BRIEF

Office of the Prosecutor:

Vincent Wagana
Reginald Fynn
Elisabeth Baumgartner
Nina Jørgensen
Régine Gachoud
Amira Hudroge
Bridget Osho
Subhi Barakat

Defence Counsel for Sesay

Wayne Jordash
Sareta Ashraph

Defence Counsel for Kallon

Charles Taku
Kennedy Ogetto
Tanoo Mylvaganam

Court Appointed Defence Counsel for Gbao

John Carmegh
Scott Martin

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
10 MAR 2009	
NAME	THOMAS E. ALPHA
SIGN	[Signature]
TIME	15:50

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I. INTRODUCTION

1. On 25 February 2009, the Trial Chamber rendered its judgement in this case (the "**Trial Judgement**").¹ All three Accused, Issa Hassan Sesay ("**Sesay**"), Morris Kallon ("**Kallon**") and Augustine Gbao ("**Gbao**") were convicted. Sesay and Kallon were each convicted on 16 of the 18 counts in the Indictment, while Gbao was convicted on 14 of the 18 counts in the Indictment.

2. Pursuant to Rule 100(A) of the Rules of Procedure and Evidence ("Rules"), the Prosecution now files this Sentencing Brief, setting out relevant information that may assist the Trial Chamber in determining the appropriate sentence.

II. APPLICABLE LAW

3. The Prosecution submits that in determining the appropriate sentences, the Trial Chamber must take into consideration certain fundamental sentencing principles, the objectives and purposes of sentencing, and the factors specified in Article 19(1) and (2) of the Statute, and Rule 101(B) of the Rules.

A. Fundamental Sentencing Principles

4. Trial Chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualise the penalties to fit the circumstances of the accused and the gravity of the crime.² The individualisation of penalties is considered to be an "overriding obligation" in sentencing.³

¹ *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T, "Judgement", Trial Chamber, 2 March 2009 (the "**Trial Judgement**") The Trial Judgement was rendered orally on 25 February 2009 and in writing on 2 March 2009.

² *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, "Judgement", Appeals Chamber, 28 May 2008, ("**CDF Appeal Judgement**"), para. 466; *Prosecutor v. Momir Nikolić*, IT-02-60/1-A, "Judgement on Sentencing Appeal", Appeals Chamber, 8 March 2006, ("**Nikolić-Momir Appeal Sentencing Judgement**"), para. 106 ("[...] sentencing decisions are discretionary and turn on the particular circumstances of each case."); *Prosecutor v. Kamuhanda*, ICTR-99-54A-A, "Judgement", Appeals Chamber, 19 September 2005 ("**Kamuhanda Appeal Judgement**"), para. 351; *Prosecutor v. Kupreškić et al.*, IT-95-16-A, "Appeal Judgement", Appeals Chamber, 23 October 2001 ("**Kupreškić et al. Appeal Judgement**"), para. 441; *Prosecutor v. Kajelijeli*, ICTR-98-44A-A, "Judgement", Appeals Chamber, 23 May 2005, ("**Kajelijeli Appeal Judgement**"), para. 291; *Prosecutor v. Jelisić*, IT-95-10-A, "Judgement", Appeals Chamber, 5 July 2001, ("**Jelisić Appeal Judgement**"), para. 101.

³ *Prosecutor v. Ntakirutimana*, ICTR-96-10 and ICTR-96-17-T, "Judgement", Trial Chamber, 21 February 2003, ("**Ntakirutimana Trial Judgement**"), para. 883; also: *Prosecutor v. Semanza*, ICTR-97-20-T,

5. The Trial Chamber ultimately must impose a sentence that reflects the totality of the convicted person's culpable conduct. "The *totality principle* requires that a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused."⁴

6. Article 19 of the Statute and Rule 101 of the Rules of Procedure and Evidence require the Trial Chamber to take certain factors into account in sentencing - in particular the gravity of the crime and aggravating and mitigating circumstances - and permit the Trial Chamber to take certain other factors into account. These sentencing factors are considered in Section C below.

7. Further, there is a bar on "double-counting", which means that "no factor taken into account as an aspect of the gravity of the crime may be additionally taken into account as a separate aggravating circumstance."⁵ However, there is no double counting merely because the Trial Chamber considers "the impact of the crimes on the victim in one section and the vulnerability of the victims in the other section".⁶ The rule against double counting applies equally to mitigating circumstances.⁷

"Judgement and Sentence", Trial Chamber, 15 May 2003, ("*Semanza Trial Judgement*"), para. 560; *Prosecutor v. Akayesu*, ICTR-96-1-A, "Judgement", Appeals Chamber, 1 June 2001, ("*Akayesu Appeal Judgement*"), para. 416.

⁴ CDF Appeal Judgement, para. 546 (emphasis added).

⁵ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-A-675, "Judgement", Appeal Chamber, 22 February 2008, ("*AFRC Appeal Judgement*"), paras 213, 317: "As the Trial Chamber notes in the Sentencing Judgement, 'where a factor has already been taken into account in determining the gravity of the offence, it cannot be considered additionally as an aggravating factor . . .'. This prohibition is well established in the case law of the international criminal tribunals." (AFRC Appeal Judgement, para. 317, citing *Prosecutor v. Deronjić*, IT-02-61, "Sentencing Judgement", Trial Chamber, 30 March 2004, ("*Deronjić Sentencing Judgement*") paras 106-107; *Nikolić-Momir* Appeal Sentencing Judgement, para. 61; *Prosecutor v. Stakić*, IT-97-24-A, "Judgement", Appeals Chamber, 22 March 2006, ("*Stakić Appeal Judgement*"), para. 411; *Prosecutor v. Krajišnik and Plavšić*, IT-00-39-T, "Judgement", Trial Chamber, 27 September 2006, ("*Krajišnik Trial Judgement*"), para. 1140; *Prosecutor v. Bralo*, IT-95-17-S, "Sentencing Judgement", Trial Chamber, 7 December 2005, ("*Bralo Sentencing Judgement*"), para. 27); The factors taken into account in assessing the gravity of the offence, could not, in addition, be taken into account as aggravating circumstances (*Prosecutor v. Fofana, Kondewa*, SCSL-04-14-T-785, "Sentencing Judgement", Trial Chamber, 9 October 2007, ("*CDF Sentencing Judgement*"), para. 35 and *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-A-475, "Sentencing Judgement", Trial Chamber, 22 February 2008, ("*AFRC Sentencing Judgement*"), para. 23); The Trial Chamber also took the view that factors which it considered and accepted to lessen the gravity of the offence could not be taken into account as mitigating circumstances (CDF Sentencing Judgement, para. 35).

⁶ AFRC Appeal Judgement, para. 318 citing *Nikolić-Momir* Appeal Sentencing Judgement, para. 66 in which the Appeals Chamber said: "In its finding on the gravity of the offence, the Trial Chamber

8. Under Article 19(1) of the Statute, the only sentence that the Trial Chamber can impose is "imprisonment for a specified number of years". The Statute thus excludes other forms of punishment such as the death sentence or a fine⁸ as well as a sentence of imprisonment for an unspecified or indeterminate number of years, such as imprisonment for the remainder of the convicted person's life.

B. Sentencing Objectives

9. Considerations of the purposes of sentencing are relevant in determining in a general way the levels of sentences that are appropriate for particular types of crimes. In determining sentences, the Special Court Trial Chambers have taken into account all the factors likely to contribute to the achievement of the relevant sentencing objectives.⁹

10. The Appeals Chamber has stated that "[t]he following have been recognized by the ICTY as legitimate sentencing purposes: (i) individual and general deterrence concerning the accused and, in particular, commanders in similar situations in the future; (ii) individual and general affirmative prevention aimed at influencing the legal awareness of the accused, the victims, their relatives, the witnesses, and the general public in order to reassure them that the legal system is being implemented and enforced; (iii) retribution; (iv) public reprobation and stigmatisation by the international community; and (v) rehabilitation. *The primary objectives must be retribution and deterrence.*"¹⁰

considered the *impact* of the crimes on the people who survived the horrific events at Srebrenica. In contrast, it considered the position of vulnerability and the helplessness of the victims as an aggravating circumstance. The Appeals Chamber therefore finds that the Trial Chamber did not take into account the same consideration twice."

⁷ *Prosecutor v. Limaj et al.*, IT-03-66-A, "Judgement", Appeals Chamber, 27 September 2007, ("*Limaj Appeal Judgement*"), paras. 143-144: A factor taken into account as an aspect of gravity of the crime may not additionally be taken into account as a separate mitigating circumstance.

⁸ *Prosecutor v. Kambanda*, ICTR-97-23-S, "Judgement and Sentence", Trial Chamber, 4 September 1998, ("*Kambanda Judgement and Sentence*"), para. 10 (referring to the equivalent Article of the ICTR Statute); *Prosecutor v. Rutaganda*, ICTR-96-3-T, "Trial Judgement and Sentence", Trial Chamber, 6 December 1999, ("*Rutaganda, Trial Judgement*"), para. 448.

⁹ CDF Sentencing Judgement, para. 29 (and generally paras 26-28); AFRC Sentencing Judgement, para. 18 (and generally paras 13-17).

¹⁰ CDF Appeal Judgement, para. 532 (footnotes omitted and emphasis added).

11. Retribution is not to be understood as fulfilling a desire for revenge, but rather as duly expressing the outrage of the national and international community at these crimes.¹¹

12. With regard to deterrence, "the deterrent effect aimed at through punishment consists in discouraging the commission of similar crimes. The main effect sought is to turn the perpetrator away from future wrongdoing (special deterrence) but it is assumed that punishment will also have the effect of discouraging others from committing the same kind of crime that is, for the Tribunal, those described in the Statute (general deterrence)."¹² Commanders are included as persons to whom the deterrence purpose is directed, as "[c]ommand responsibility recognises the unique role of a superior – and particularly the duty imposed on a military commander – in promoting and ensuring compliance with the rules of international humanitarian law."¹³

13. Other purposes of sentencing include the protection of society,¹⁴ and reconciliation and the restoration of peace.¹⁵ The Special Court Trial Chambers have recognised reconciliation and the restoration of peace as an aim of sentencing and noted that, "[...]in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace."¹⁶

¹¹ See also *Prosecutor v. Aleksovski*, IT-95-14/1-A, "Judgement", Appeals Chamber, 24 March 2000, ("*Aleksovski Appeal Judgement*"), para. 185; *Prosecutor v. Dragan Nikolić*, IT-94-2, "Sentencing Judgement", Trial Chamber, 18 December 2003, ("*Nikolić-Dragan Sentencing Judgement*"), para. 140.

¹² *Prosecutor v. Miodrag Jokić*, IT-01-42/1-S, "Sentencing Judgement", Trial Chamber, 18 March 2004 ("*Miodrag Jokić Sentencing Judgement*"), para. 33.

¹³ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, IT-02-60-T, "Judgement", Trial Chamber, 17 January 2005, ("*Blagojević and Jokić Trial Judgement*"), para. 822.

¹⁴ *Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR-95-1-T, "Judgement (Sentence)", Trial Chamber, 21 May 1999 ("*Kayishema and Ruzindana Trial Judgement (Sentence)*"), paras 1-2. See also *Ntakirutimana Trial Judgement*, paras 882 and 887.

¹⁵ See, for example, *Prosecutor v. Tadić*, IT-94-1-Tbis-R117, "Sentencing Judgement", Trial Chamber, 11 November 1999, ("*Tadić Sentencing Judgement*"), paras 7-9 (referring to earlier case law of the ICTY and ICTR); *Prosecutor v. Ruggiu*, ICTR-97-32-1, "Judgement and Sentence", Trial Chamber, 1 June 2000, ("*Ruggiu Sentencing Judgement*"), para. 32.

¹⁶ CDF Sentencing Judgement, para. 29 and AFRC Sentencing Judgement, para. 13, both citing the Preamble of the UN Security Council Resolution 1315(2000), 14 August 2000, para. 7. In *Prosecutor v. Furundžija*, IT-95-17/1-T, "Judgement", Trial Chamber, 10 December 1998, ("*Furundžija Trial Judgement*"), para. 288, the Trial Chamber stated: "[i]t is the mandate and the duty of the International Tribunal, in contributing to reconciliation, to deter such crimes and combat impunity." (emphasis added); In *Prosecutor v. Jelisić*, IT-95-10-T, "Judgement", Trial Chamber I, 14 December 1999, ("*Jelisić Trial Judgement*"), para. 133, it was held that "[o]ne of the missions of the International Criminal Tribunal is to

C. Sentencing Factors

1. General

14. Article 19(1) and (2) of the Statute, and Rule 101(B) of the Rules, set out a list of factors which the Trial Chamber, "shall, as appropriate, have recourse to" in imposing sentence. These factors are:

- i) the gravity of the offences;¹⁷
- ii) any aggravating circumstances;¹⁸
- iii) any mitigating circumstances including the accused's substantial cooperation with the Prosecutor;¹⁹
- iv) the practice regarding prison sentences in the ICTR;²⁰
- v) the practice regarding prison sentences in the national courts of Sierra Leone;²¹
- vi) the individual circumstances of the convicted person;²²
- vii) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.²³

15. These factors are not exhaustive, and it is within the discretion of the Trial Chamber to consider all relevant matters when determining the sentence to be imposed.²⁴

2. Gravity of the Offence

16. In determining an appropriate sentence, the gravity of the crime is the primary consideration,²⁵ "litmus test"²⁶ or "starting point".²⁷ The gravity of the crime must be

contribute to the restoration of peace in the former Yugoslavia. To do so, it must identify, prosecute and punish the principal political and military officials responsible for the atrocities committed ..." (emphasis added).

¹⁷ Statute, Article 19(2).

¹⁸ Rule 101(B)(i).

¹⁹ Rule 101(B)(ii).

²⁰ Statute, Article 19(1).

²¹ Statute, Article 19(1).

²² Statute, Article 19(2).

²³ Rule 101(B)(iii).

²⁴ *AFRC Sentencing Judgement*, para. 11; *Kambanda Judgement and Sentence*, paras 30-31; *Prosecutor v. Serushago*, ICTR-98-39-S, "Sentence", Trial Chamber, 5 February 1999, ("*Serushago Sentencing Judgement*"), paras 21-23; *Rutaganda Trial Judgement*, paras 457-459.

individually assessed²⁸ and requires a “consideration of the *particular circumstances of the case*, as well as the *form and degree of participation* of the [a]ccused in the crime.”²⁹ Such factors include the scale and brutality of the offences committed, the role played by the accused in their commission, the degree of suffering or impact of the crime on the immediate victim, as well as its effect on relatives of the victim, and the vulnerability and number of victims.³⁰ Further, “the ‘indiscriminate, disproportionate, terrifying’ or ‘heinous’ means and methods used to commit the crimes are all relevant in assessing the gravity of the crimes [...]”³¹

17. Regarding the role of the accused in the crime, a relevant factor is the mode of liability under which the accused was convicted, as well as the nature and degree of his

²⁵ *Aleksovski* Appeal Judgement, para. 182; *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, “Judgement”, Appeals Chamber, 20 February 2001, (“*Čelebići Appeal Judgement*”), para. 731 citing *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-T, “Judgement”, Trial Chamber, 16 November 1998, (“*Čelebići Trial Judgement*”), para. 1225 with approval.

²⁶ *Čelebići Appeal Judgement*, para. 731; *Prosecutor v. Dragan Nikolić*, IT-94-2-A, “Judgement on Sentencing Appeal”, Appeals Chamber, 4 February 2005, (“*Nikolić-Dragan Judgement on Sentencing Appeal*”), para. 18.

²⁷ *Aleksovski Appeal Judgement*, para. 182.

²⁸ *AFRC Sentencing Judgement*, para. 19 citing *Prosecutor v. Blaškić*, IT-95-14-A, “Judgement”, Appeals Chamber, 29 July 2004, (“*Blaškić Appeal Judgement*”), para. 683; *Blagojević and Jokić Trial Judgement*, para. 832.

²⁹ *CDF Sentencing Judgement*, para. 33, citing *Kupreškić et al Trial Judgement*, para. 852, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, “Judgement”, Appeals Chamber, 17 December 2004, (“*Kordić and Čerkez Appeal Judgement*”), para. 1061, *Stakić Appeal Judgement*, para. 380 (emphasis added).

³⁰ For all the elements see: *CDF Sentencing Judgement*, para. 33; Trial Chamber II considered “[...] the degree of suffering, impact or consequences of the crime for the immediate victim in terms of physical, emotional and psychological effects; the effects of the crime on relatives of the immediate victims and/or the broader targeted group”. (*AFRC Sentencing Judgement*, para. 19); “[...] consequences of a crime upon the victim who is *directly* injured by it” are “always relevant to the sentencing of the offender.” (*Prosecutor v. Krnojelac*, IT-97-25-T, “Judgement”, Trial Chamber, 15 March 2002, (“*Krnojelac Trial Judgement*”), para. 512; see also *Prosecutor v. Kunarac et al.*, IT-96-23-T&23/1, “Judgement”, Trial Chamber, 22 February 2001, (“*Kunarac Trial Judgement*”), para. 852; The suffering of relatives of the victims has to be taken into account as well. (*Prosecutor v. Krnojelac*, IT-97-25-A, “Judgement”, Appeals Chamber, 17 September 2003, (“*Krnojelac Appeal Judgement*”), para. 260); Trial Chamber II included “vulnerability of the victims” under “Gravity of Offence” but also included “the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims” under “Aggravating Circumstances.” (*AFRC Sentencing Judgement*, paras 19 and 21 (emphasis added) International tribunals consider the number of victims as a relevant factor in determining the sentence and measuring the gravity of offences. (*Prosecutor v. Krstić*, IT-98-33, “Judgement”, Trial Chamber, 2 August 2001, (“*Krstić Trial Judgement*”), para. 702; *Prosecutor v. Blaškić*, IT-95-14-T, “Judgement”, Trial Chamber, 3 March 2000, (“*Blaškić Trial Judgement*”), paras. 783-787; *Kambanda Judgement and Sentence*, paras 57-58; *Prosecutor v. Erdemović*, IT-96-22-Tbis, “Judgement”, Trial Chamber, 5 March 1998, (“*Erdemović Sentencing Judgement*”), para. 15; *Prosecutor v. Nindabahizi*, ICTR-01-71-A, “Judgement”, Appeals Chamber, 16 January 2007, (“*Nindabahizi Appeal Judgement*”), para. 135.).

³¹ *Krstić Trial Judgement*, para. 703.

participation in the offence, in particular, whether the accused was held liable as an indirect or secondary perpetrator.³²

18. The sentence should reflect the relative significance of the role of the accused.³³ For instance, “[t]he participant who plans a mass destruction of life, and who orders others to carry out that plan, could well receive a greater sentence than the many functionaries who between them carry out the actual killing.”³⁴

19. The ICTR Appeals Chamber has accepted the principle that “the most senior members of a command structure, that is, the leaders and planners of a particular conflict, should bear heavier criminal responsibility than those lower down the scale, such as the foot soldiers carrying out the orders. But this principle is always subject to the crucial proviso that the gravity of the offence is the primary consideration of a Trial Chamber in imposing sentence; if the offence is serious enough, a Trial Chamber should not be precluded from imposing a severe penalty upon the accused, just because he is not at a high level of command.”³⁵ “[T]he gravity of the crime may be so great that even following consideration of any mitigating factors, and despite the fact that the accused

³² CDF Sentencing Judgement, para. 34, citing *Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, “Judgement and Sentence”, Trial Chamber, 25 February 2004, (“*Ntagerura Trial Judgement*”), para. 813; *Prosecutor v. Vasiljević*, IT-98-32-A, “Judgement”, Appeals Chamber, 25 February 2004, (“*Vasiljević Appeal Judgement*”), para. 182.

³³ *Prosecutor v. Tadić*, IT-94-1-A and IT-94-1-Abis, “Judgement in Sentencing Appeals”, Appeals Chamber, 26 January 2000 (“*Tadić Judgement in Sentencing Appeals*”), para. 55; *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, “Judgement”, Trial Chamber, 31 March 2003, (“*Naletilić Trial Judgement*”), para. 744. However, in the *Čelebići* Appeal Judgement, para. 732, the Appeals Chamber stated that “...the seriousness of a superior’s conduct in failing to prevent or punish crimes must be measured to some degree by the nature of the crimes to which this failure relates.”

³⁴ *Krnjelac Trial Judgement*, para. 77.

³⁵ *Prosecutor v. Musema*, ICTR-96-13-A, “Appeal Judgement”, Appeals Chamber, 16 November 2001 (“*Musema Appeal Judgement*”) Appeal Judgement, para. 383. The Appeals Chamber in *Prosecutor v. Hadžihasanović and Kubura* IT-01-47-A “Judgement”, Appeals Chamber, 22 April 2008 (“*Hadžihasanović and Kubura Appeal Judgement*”) (para. 321) lately confirmed this interpretation: “The ICTR Appeals Chamber in *Musema* qualified its statement that sentences should be graduated by noting that this principle ‘is, however, always subject to the proviso that the gravity of the offence is the primary consideration for a Trial Chamber in imposing sentence’ (footnote omitted). See also *Blaškić Trial Judgement*, para. 789: “... when a commander fails in his duty to prevent the crime or punish the perpetrator thereof he should receive a heavier sentence than the subordinates who committed the crime insofar as the failing conveys some tolerance or even approval on the part of the commander towards the commission of the crime by his subordinates and thus contributes to encouraging the commission of the crimes.”

was not senior in the so-called overall command structure, a very severe penalty is nevertheless justified.”³⁶

20. Where an accused has been convicted as a participant in a joint criminal enterprise, the level of contribution as well as the category of joint criminal enterprise under which responsibility attaches are to be considered in assessing the appropriate sentence.³⁷ Factors influencing gravity include the geographical and temporal scope of the crimes committed through the enterprise, and the total number of victims.³⁸ In the *Krajišnik* case, the Trial Chamber found that the scope of the criminal campaign waged by the joint criminal enterprise and the range of crimes for which *Krajišnik* was found guilty increased the relative seriousness of the criminal conduct.³⁹

21. The significance of the accused’s individual contribution is measured by the degree of intent and participation including the extent to which he acted as an architect of the plan of the joint criminal enterprise or as its leader, and the use of a leadership position to further the criminal means of the enterprise.⁴⁰ In *Martić*, the ICTY Appeals Chamber found that abuse of a leadership position may increase the relative seriousness of the crimes even if the accused did not materially and directly commit the crimes, but participated as a member of a joint criminal enterprise.⁴¹ Similarly, “[a] person who has authority over a large group of people has the ability to inflict more damage by means of this group than he or she would be able to inflict alone. Moreover, he or she may serve as an example for others to act in a similar way and, therefore, his or her criminal behaviour is likely to entail more serious effects.”⁴² Acts of encouragement that significantly contribute to the execution of the enterprise may affect gravity.⁴³

³⁶ *Čelebići* Appeal Judgement, para. 847.

³⁷ *Prosecutor v. Martić*, IT-95-11-A, “Judgement”, Appeal Judgement, 8 October 2008 (“*Martić* Appeal Judgement”), para. 350.

³⁸ *Babić* Sentencing Judgement, paras 50-51.

³⁹ *Krajišnik* Trial Judgement, para. 1153.

⁴⁰ *Prosecutor v. Babić*, IT-03-72-S, “Sentencing Judgement”, Trial Chamber I, 29 June 2004 (“*Babić* Sentencing Judgement”), para. 59.

⁴¹ *Martić* Appeal Judgement, para. 350.

⁴² *Krajišnik* Trial Judgement, para. 1156.

⁴³ *Prosecutor v. Zigiranyirazo*, ICTR-01-73-T, “Judgement”, Trial Chamber, 18 December 2008 (“*Zigiranyirazo* Trial Judgement”), para. 452.

22. Where an accused has been convicted as a superior, trial chambers have considered both the gravity of the underlying offence committed by the subordinate and the gravity of the conduct of the accused in failing to prevent or punish the crimes committed by the subordinate.⁴⁴

23. Finally, it is submitted that there is no hierarchy of crimes. Despite earlier case law to the contrary,⁴⁵ and earlier divisions between judges on the issue,⁴⁶ subsequent ICTY and ICTR case law supports the view that there is no hierarchy of crimes, at least as between crimes against humanity and war crimes.⁴⁷ Hence, an assessment of the gravity of the crime is not affected by whether the crime of which the accused is convicted is classified as a war crime or a crime against humanity.

3. Aggravating Circumstances

24. Aggravating circumstances must be established beyond a reasonable doubt.⁴⁸ Only those circumstances directly related to the commission of the offence charged, and for

⁴⁴ CDF Sentencing Judgement, para. 34 and AFRC Sentencing Judgement, para. 20. See also *Prosecutor v. Strugar* (IT-01-42-A), "Judgement", Appeals Chamber 17 July 2008 ("*Strugar* Appeal Judgement"), para. 386 and *Hadzhasanović* Appeal Judgement, para. 313, both referring to *Čelebići* Appeal Judgement, para. 732.

⁴⁵ *Kambanda* Judgement and Sentence, para. 14: "[t]he Chamber has no doubt that despite the gravity of the violations of Article 3 common to the Geneva Conventions and of the Additional Protocol II thereto, they are considered as lesser crimes than genocide or crimes against humanity."; Implicitly also in the recent *Prosecutor v. Tharcisse Muvunyi*, "Judgement", Appeals Chamber, ICTR-00-55A-A, 29. August 2008, ("*Muvunyi* Appeal Judgement"), para. 170.

⁴⁶ See: Frulli Micaela, 'Are Crimes against Humanity More Serious than War Crimes?' *European Journal of International Law*, Issue Vol. 12 (2001) No. 2, 329-350, at 330-331. In the *Blaškić* Trial Judgement, para. 802, the judges held: "Ultimately, it appears that the case-law of the Tribunal is not fixed." In *Prosecutor v. Drazen Erdemović*, Case No. IT-96-22-A, 'Judgement', Appeals Chamber, 7 October 1997, ("*Erdemović* Appeal Judgement") the case was remitted to another Trial Chamber "so that the Appellant may have the opportunity to replead in full knowledge of the nature of the charges and the consequences of his plea" or, as Judges McDonald and Vohrah put it more clearly in para. 91 of their *Separate Opinion*: "The case is hereby remitted to another Trial Chamber where the Appellant must be given the opportunity to replead in full knowledge of the consequences of pleading guilty *per se* and of the inherent difference between the alternative charges." (see p. 17, para. 5). Erdemović had initially pleaded guilty for murder as a crime against humanity and was sentenced to 10 years of imprisonment. After the remittal of his case he pleaded guilty for the same acts as war crimes and his sentence was reduced to five years of imprisonment. See *Erdemović* Sentencing Judgement, para. 23.

⁴⁷ See *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, "Judgement (Reasons)", Appeals Chamber, 1 June 2001 ("*Kayishema and Ruzindana* Judgement (Reasons)"), para. 367: The Appeals Chamber remarks that there is no hierarchy of crimes under the Statute, and that all of the crimes specified therein are "serious violations of international humanitarian law", capable of attracting the same sentence." See also *Stakić* Appeal Judgement, para. 375 ("... there is no hierarchy of the crimes within the jurisdiction of the Tribunal and ... the sentence of life imprisonment can be imposed ... for any of the crimes under the Tribunal's Statute"); *Tadić* Sentencing Appeal Judgement, para. 69.

⁴⁸ *Čelebići* Appeal Judgement, para. 763; *Blaškić* Appeal Judgement, para. 686.

which the accused has been convicted, can be considered to be aggravating.⁴⁹ However, behaviour of a convicted person constituting aggravating circumstances need not necessarily be behaviour in respect of which that person has been convicted.⁵⁰

25. This Trial Chamber has observed that since the Statute and the Rules did not exhaustively list the circumstances to be considered as aggravating, international criminal courts have, through their decisions and judgements, developed jurisprudence as to those factors.⁵¹ This Trial Chamber has considered such factors to include "the leadership role of the [a]ccused, premeditation and motive, a willing and enthusiastic participation in the crime, and the length of time during which the crime was committed."⁵²

26. According to Trial Chamber II, the judges may consider for example:

"(i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict [...]; (ii) the discriminatory intent or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime; (iii) the length of time during which the crime continued; (iv) active and direct criminal participation, if linked to a high-rank position of command, the accused's role as fellow perpetrator, and the active participation of a superior in the criminal acts of subordinates; (v) the informed, willing or enthusiastic participation in crime; (vi) premeditation and motive; (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims; (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them; (ix) the character of the accused; and (x) the circumstances of the offences generally."⁵³

27. Aggravating factors may also include: "attacks directed against protected persons in places of religious worship or sanctuary";⁵⁴ "exacerbated humiliation and degradation,

⁴⁹ CDF Sentencing Judgement, para. 36. See also *Prosecutor v. Limaj et al.*, IT-03-66-T, 'Judgement', Trial Chamber, ("Limaj Trial Judgement"), para. 729; *Kunarac Trial Judgement*, para. 850; *Prosecutor v. Stakić*, IT-97-24-T, "Judgement", Trial Chamber, 31 July 2003 ("Stakić Trial Judgement"), para. 911.

⁵⁰ *Ndindabahizi Appeal Judgement*, para. 141. In this case the Trial Chamber considered the Appellant's statements encouraging killings of Tutsi women married to Hutu men as an aggravating factor, although it did not impose liability because it found that there was insufficient evidence that the Appellant's words directly and substantially contributed to the killings.

⁵¹ CDF Sentencing Judgement, para. 37.

⁵² CDF Sentencing Judgement, para. 37 (footnotes omitted). The Appeals Chamber in *Martić* lately confirmed that "the jurisprudence of this Tribunal allows a trier of fact to consider as an aggravating circumstance the length of time during which crimes continued". *Martić Appeal Judgement*, para. 340.

⁵³ *AFRC Sentencing Judgement*, para. 21 and the authorities there cited, especially *Blaškić Appeal Judgement*, para. 686 (quoting *Čelebići Appeal Judgement*, para. 763).

⁵⁴ *AFRC Sentencing Judgement*, para. 22.

depravity and sadistic behaviour;⁵⁵ "total disregard for the sanctity of human life and dignity;"⁵⁶ the fact that the accused initiated or aggravated a crime, as opposed to being merely a participant who was drawn into a maelstrom of violence;⁵⁷ premeditation,⁵⁸ abuse of trust or official capacity;⁵⁹ cruelty;⁶⁰ discriminatory purposes of the crimes;⁶¹ behaviour of the accused during trial, such as intimidation of witnesses or the passing of notes between co-accused relating to the merits of the case, a defiant attitude and a lack of respect for the judicial process and for the participants in the trial,⁶² or smiling or laughing at survivors of crimes as they testify.⁶³

⁵⁵ Quoted in *Prosecutor v. Češić*, IT-95-10/1-S, "Sentencing Judgement", Trial Chamber I, 11 March 2004, ("Češić Sentencing Judgement", para. 53, referring to Čelebići Trial Judgement, paras. 1262, 1264, 1268. See also Jelisić Trial Judgement, para. 130 ("repugnant, bestial and sadistic nature"); Bralo Sentencing Judgement, paras 33-34 ("crimes of a most depraved nature"; "exacerbated humiliation and degradation"; "desire to debase and terrify").

⁵⁶ Čelebići Trial Judgement, para. 1268.

⁵⁷ Krstić Trial Judgement, para. 711.

⁵⁸ Blaškić Trial Judgement, para. 793, Krstić Trial Judgement, para. 711, Serushago Sentencing Judgement, para. 30.

⁵⁹ *The Prosecutor v. Athanase Seromba*, 'Judgement', Appeals Chamber, ICTR-01-66-A, 12 March 2008, ("Seromba Appeal Judgement") para. 230, Ndindabahizi Appeal Judgement, para. 136; also *Prosecutor v. Stevan Todorović*, Case No. IT-95-9/1-S, 'Sentencing Judgement', Trial Chamber, 31 July 2001 ("Todorović Sentencing Judgement") para. 61: "As submitted by the Prosecution, Stevan Todorovic, as Chief of Police, had a responsibility to protect and defend all citizens of the municipality of Bosanski Samac. Instead, in his position as chief of an institution that is responsible for upholding the law, Stevan Todorovic actively and directly took part in offences which he should have been working to prevent or punish. As discussed above, on one occasion, Stevan Todorovic also ordered three men to beat Omer Nalic. His direct participation in the crimes, as well as his abuse of his position of authority and of people's trust in the institution, clearly constitute an aggravating factor."

⁶⁰ Blaškić Trial Judgement, para. 783, where the Trial Chamber pointed out the "extreme cruelty of the beatings, the sadism with which they were inflicted and the especial humiliation which ensued" (footnote omitted); see also Todorović Sentencing Judgement, para. 65: The Chamber considered "[t]he particular cruelty shown in connection with these beatings, and their lengthy duration, to be an aggravating factor."

⁶¹ Kunarac Trial Judgement, para. 866.

⁶² Čelebići Appeal Judgement, para. 789; also Čelebići Trial Judgement, para. 1244: "The conduct of Mr. Mucic before the Trial Chamber during the course of the trial raises separately the issue of aggravation. The Trial Chamber has watched and observed the behaviour and demeanour of Mr. Mucic throughout the trial. The accused has consistently demonstrated a defiant attitude and a lack of respect for the judicial process and for the participants in the trial, almost verging on lack of awareness of the gravity of the offences for which he is charged and the solemnity of the judicial process. The Presiding Judge has, on occasions, had to issue stern warnings reminding him that he was standing trial for grave offences. The Prosecution has also presented evidence of an exchange of notes between Zejnil Delalic and Zdravko Mucic conspiring about the fabrication of evidence to be given at the trial. There have also been allegations that Mr. Mucic participated in the threatening of a witness in the courtroom. Such efforts to influence and/or intimidate witnesses are particularly relevant aggravating conduct, which the Trial Chamber is entitled to take into account in the determination of the appropriate sentence."

⁶³ Kayishema and Ruzindana Trial Judgement (Sentence) para. 17.

28. The Appeals Chamber has held that a convicted person's motives can be considered for sentencing purposes,⁶⁴ pointing out that other international criminal tribunals have recognized motives as aggravating factors, such as enjoyment of criminal acts,⁶⁵ sadism and desire for revenge,⁶⁶ group hatred or bias,⁶⁷ and a desire to cause terror;⁶⁸ and, there may be several other motives that may be considered to be aggravating circumstances, such as a desire for pecuniary gain, a desire to inflict pain or harm, and a desire to avoid detection or escape punishment.⁶⁹

29. It is settled case law that, if a particular circumstance is an element of the underlying offence, it cannot be considered as an aggravating factor.⁷⁰ Further, it is to be recalled that "the position of leadership of an [a]ccused held criminally responsible for a crime under Article 6(1) of the Statute can be considered to be an aggravating circumstance."⁷¹ However, "if an [a]ccused has been found liable under Article 6(3), his mere leadership position cannot be considered by the Chamber as an aggravating factor as it is in itself a constitutive element of the offence. But where the [a]ccused has actively abused his

⁶⁴ CDF Appeal Judgement, para. 524, in footnote 1001 it held: "In addition to the relevance of motive to sentencing, the Appeals Chamber opines that it may also be a consideration in two further circumstances: first, where it is a required element in crimes such as specific intent crimes, which by their nature require a particular motive; and second, where it may constitute a form of defence, such as self-defence."

⁶⁵ CDF Appeal Judgement, para. 524, referring to *Prosecutor v. Dragan Nikolić*, IT-94-2, "Sentencing Judgement", Trial Chamber, 18 December 2003 ("*Nikolić-Dragan Sentencing Judgement*"), para. 213; *Čelebići Trial Judgement*, para. 1264.

⁶⁶ CDF Appeal Judgement, para. 524, referring to *Čelebići Trial Judgement*, paras 1235, 1269; *Prosecutor v. Simba*, ICTR-2001-76, "Judgement", Appeal Chamber, 27 November 2007, ("*Simba Appeal Judgement*"), para. 320 ("... zeal and sadism are factors to be considered, where appropriate, as aggravating factors rather than in the assessment of the gravity of an offence.").

⁶⁷ CDF Appeal Judgement, para. 524, referring to *Blaškić Appeal Judgement*, para. 695; *Vasiljević Appeal Judgement*, para. 172; *Prosecutor v. Kunarac et al.*, IT-96-23&23/1, "Judgement", Appeals Chamber, 12 June 2002 ("*Kunarac Appeal Judgement*"), paras 356, 357, para. 357; *Blaškić Trial Judgement*, para. 785.

⁶⁸ CDF Appeal Judgement, para. 524, referring to *Prosecutor v. Galić*, IT-98-29-A "Judgement" Appeal Chamber, 30 November 2006 ("*Galić Appeal Judgement*"), Separate Opinion of Judge Schomburg, paras 2, 22, 24.

⁶⁹ CDF Appeal Judgement, para. 524.

⁷⁰ CDF Sentencing Judgement, para. 36 and *AFRC Sentencing Judgement*, para. 23, both referring to *Blaškić Appeal Judgement*, para. 693.

⁷¹ CDF Sentencing Judgement, para. 38. See also *Krstić Trial Judgement*, para. 709: "The consequences of a person's acts are necessarily more serious if he is at the apex of a military or political hierarchy and uses his position to commit crimes" (footnote omitted); *Kupreškić et al Appeal Judgement*, para. 451; *Babić Sentencing Judgement*, para. 61; *Stakić Trial Judgement*, para. 913: "The commission of offences by a person in such a prominent position aggravates the sentence substantially."

position of command or participated in the crimes of his subordinates, such conduct can be considered to be aggravating.”⁷²

30. In *Obrenović* it was held that it is the actual authority exercised by the accused and not necessarily the rank that is important – holding a middle-ranking position can also be considered aggravating.⁷³

31. The breach of a position of trust or authority is an additional aggravating factor, for instance, “where the accused was in a position which carries with it a duty to protect or defend the victims, such as in the case of a government official, police chief or commander”.⁷⁴

4. Mitigating Circumstances

32. Unlike aggravating circumstances, mitigating factors may be taken into account regardless of whether they are directly related to the alleged offence.⁷⁵ Mitigating factors must be established by the Defence on a balance of probabilities.⁷⁶ This Trial Chamber has asserted that under Rule 101(B):

“the only mitigating circumstance that the Chamber is required to consider is the substantial cooperation of the Accused with the Prosecutor. The Chamber, however, has the discretion to consider other factors or circumstances in mitigation, such as the expression of remorse, good character with no prior convictions, personal and family circumstances, behaviour and conduct subsequent to the conflict, particularly with respect

⁷² CDF Sentencing Judgement, para. 38. See also *AFRC Sentencing Judgement*, para. 24; *Seromba Appeal Judgement*, para. 230; *Simba Appeal Judgement*, paras 284-285, 309-310; *Hadžihasanović and Kubura Appeal Judgement*, para. 320: It was stated that a high level of authority does not necessarily attract greater responsibility and that it is the superior’s abuse of that level of authority which could be taken into consideration in sentencing.

⁷³ *Obrenović Trial Judgement*, para. 99.

⁷⁴ CDF Sentencing Judgement, para. 39. See also *Todorović Sentencing Judgement*, para. 61: “As submitted by the Prosecution, Stevan Todorovic, as Chief of Police, had a responsibility to protect and defend all citizens of the municipality of Bosanski Samac. Instead, in his position as chief of an institution that is responsible for upholding the law, Stevan Todorovic actively and directly took part in offences which he should have been working to prevent or punish. As discussed above, on one occasion, Stevan Todorovic also ordered three men to beat Omer Nalic. His direct participation in the crimes, as well as his abuse of his position of authority and of people’s trust in the institution, clearly constitute an aggravating factor.”

⁷⁵ *Stakić Trial Judgement*, para. 920; *Limaj Trial Judgement*, para. 729.

⁷⁶ *Simba Appeal Judgement*, para. 328; *Blaškić Appeal Judgement*, para. 697.

to promoting peace and reconciliation, good behaviour in detention, and assistance to detainees or victims.”⁷⁷

33. It is a matter for the Trial Chamber to determine what constitutes a mitigating circumstance in the exercise of its discretion.⁷⁸ “Once a Trial Chamber determines that certain evidence constitutes a mitigating circumstance, the decision as to the weight to be accorded to that mitigating circumstance also lies within the wide discretion afforded to the Trial Chamber at sentencing”.⁷⁹

34. “Proof of mitigating circumstances does not automatically entitle the Appellant to a “credit” in the determination of the sentence; rather, it simply requires the Trial Chamber to consider such mitigating circumstances in its final determination.”⁸⁰

35. Article 19(2) of the Statute requires the Trial Chamber to take into account the individual circumstances of the convicted persons in assessing mitigating circumstances.⁸¹ These have been held to include the age, antecedents and reputation of an accused,⁸² the social pressures and hostile environment in which the convicted person was operating,⁸³ and the family situation of the convicted person.⁸⁴

36. However, given the gravity of the crimes committed, little significance or weight can be given to factors such as lack of prior criminal convictions,⁸⁵ the accused’s advanced age, family situation, or the fact that he is the father of young children.⁸⁶ Further, even though the *ad hoc* tribunals take the young age of the accused into account as a mitigating factor, their assessment of youth varies considerably.⁸⁷ In the *Seromba* case the Appeals

⁷⁷ CDF Sentencing Judgement, para. 40. See also *AFRC* Sentencing Judgement, para. 25.

⁷⁸ *Simba* Appeal Judgement, para. 328.

⁷⁹ *Simba* Appeal Judgement, para. 328.

⁸⁰ *Prosecutor v. Niyetegeka*, ICTR-46-A, “Judgement”, Appeal Chamber, 9 July 2004 (“*Niyetegeka* Appeal Judgement”) para. 267.

⁸¹ CDF Appeal Judgement, para. 498.

⁸² *Čelebići* Trial Judgement, para. 1224.

⁸³ *Čelebići* Trial Judgement, paras 1245-1248.

⁸⁴ For instance, *Serushago* Sentence, para. 39.

⁸⁵ CDF Appeal Judgement, para. 511. See also *Seromba* Appeal Judgement, para. 235; *Semanza* Appeal Judgement, para. 398 and *Prosecutor v. Nahimana*, ICTR-99-52-A, “Judgement”, Appeal Chamber, 28 November 2007 (“*Nahimana* Appeal Judgement”), para. 1069.

⁸⁶ *Jokić* Sentencing Judgement, para. 100; *Obrenović* Sentencing Judgement, paras 139-140; *Nikolić-Momir* Sentencing Judgement para. 170; See also *Nahimana* Appeal Judgement, para. 1108; *Furundžija* Judgement, para. 284; *Serushago* Appeal Judgement, para 22.

⁸⁷ *Blaškić* Trial Judgement, para. 778. See also *Erdemović* Sentencing Judgement, para. 16.

Chamber found that *Athanase Seromba's* age at the time of the events, he was thirty-one years, "cannot serve as a mitigating factor."⁸⁸

37. In *Čelebići* the ICTY Appeals Chamber held that evidence as to the character of the accused has been considered in both mitigation and aggravation.⁸⁹ However, the good background of an accused may aggravate more than mitigate, since for a person of good background to commit serious crimes "requires an even greater evil will on his part than that for lesser men."⁹⁰

38. The Appeals Chamber has held that "the level of education and training of a convicted person is part of his individual circumstances which the Trial Chamber is required to take into consideration as an aggravating or mitigating circumstance"⁹¹ and that as a matter of law, the surrounding conditions including the convicted person's lack of training could be a mitigating circumstance.⁹² On the other hand, the ICTR and ICTY have considered the fact that the accused person was educated as an aggravating circumstance.⁹³

39. It is also only in exceptional or rare cases that ill health should be considered a mitigating factor.⁹⁴ Also, while good behaviour in detention has been recognised as a mitigating factor, it should not be accorded significant weight as all accused are expected

⁸⁸ *Seromba* Appeal Judgement, para. 237.

⁸⁹ *Čelebići* Appeal Judgement, para. 788.

⁹⁰ *Tadić* Sentencing Judgement, para. 59.

⁹¹ *CDF* Appeal Judgement, para. 498.

⁹² *CDF* Appeal Judgement, para. 499.

⁹³ *Hadžihasanović* Appeal Judgement, para. 328: "The Appeals Chamber recognises that intelligence and good education have been considered to be possible aggravating factors. This does not mean, however, that these factors should *only* be considered aggravating factors. The Appeals Chamber reiterates that whether certain factors going to a convicted person's character constitute mitigating or aggravating factors depends largely on the particular circumstances of each case". See also *Brdanin* Trial Judgement, para. 1114; *Simić* Sentencing Judgement, para. 1108; *Nzabirinda* Trial Judgement, paras 59 and 63; *Prosecutor v. Bisengimana*, ICTR-00-60-T, Trial Chamber Judgement and Sentence, 13 April 2006, ("**Bisengimana Judgement and Sentence**"), paras 120 and 182: "The Chamber considers that the Accused is an educated person who administered Gikoro *commune* for a period of long enough to gain full knowledge of his duties and responsibilities."

⁹⁴ *Galić* Appeal Judgement, para. 436. In *Serugendo*, the sentence was reduced because the convicted person was suffering from a terminal disease (*Serugendo* Trial Judgement, paras 70-74, 92). Recently, in *Strugar*, the ICTY Appeals Chamber decreased an eight year sentence to seven years, albeit all the appeal grounds of Strugar were dismissed and additional counts were added, taking in consideration the deterioration of Strugar's health since the rendering of the trial judgement as a mitigating factor (*Strugar* Appeal Judgement, para. 392 and p. 146).

to comport themselves well while in the court's detention and failure to do so may constitute an aggravating factor.⁹⁵

40. The Appeals Chamber has stated that, as a general principle, a convicted person's motive could be considered as a mitigating factor,⁹⁶ provided that the motive taken into consideration was consistent with sentencing purposes.⁹⁷ As to political motive, such as the convicted person's belief that the crimes were committed in furtherance of a just cause, "consideration of political motive by a court applying international humanitarian law not only contravenes, but would undermine a bedrock principle of that law."⁹⁸

41. Further, the chaotic situation at the time of the commission of the crimes should not be considered as a mitigating factor. In *Blaškić*, the ICTY Appeals Chamber stated that "a finding that a chaotic context might be considered as a mitigating factor in circumstances of combat operations risks mitigating the criminal conduct of all personnel in a war zone. Conflict is by its nature chaotic, and it is incumbent on the participants to reduce that chaos and to respect international humanitarian law. The Appeals Chamber sees no merit and no logic in recognizing the mere context of war itself as a factor to be considered in the mitigation of the criminal participants."⁹⁹ This approach was adopted by Trial Chamber II, in rejecting the argument that the guerrilla nature of the conflict lessened the grievous nature of the offences¹⁰⁰ and in holding that "[t]he battlefield is always chaotic, and therefore this fact cannot be considered as mitigating."¹⁰¹

42. In the *Strugar* Appeal Judgement, it was held that, "while proof of active participation by a superior in the criminal acts of his subordinates may constitute an

⁹⁵ *Obrenović* Sentencing Judgement, para. 138; *Nikolić-Momir* Sentencing Judgement, para. 168. See also *Miodrag Jokić* Sentencing Judgement, para. 100. In *Jelić* Trial Judgement, at para. 127, it was held that "although the accused's behaviour has improved since he has been in detention, it is not such as to mitigate the penalty in any substantial way."

⁹⁶ *CDF* Appeal Judgement, para. 528.

⁹⁷ *CDF* Appeal Judgement, para. 532.

⁹⁸ *CDF* Appeal Judgement, para. 531.

⁹⁹ *Blaškić* Appeal Judgement, paras 710-711, confirmed in *Bralo* Sentencing Judgement, para. 51.

¹⁰⁰ *AFRC* Sentencing Judgement, para. 47.

¹⁰¹ *AFRC* Sentencing Judgement, para. 124.

aggravating circumstance, absence of such participation on the part of a superior is not a mitigating circumstance.”¹⁰²

43. The fact that the accused gave substantial assistance or protection to vulnerable individuals,¹⁰³ or took steps to ameliorate the condition of detainees or other prisoners under their control or influence,¹⁰⁴ or saved lives,¹⁰⁵ may constitute a mitigating factor. However, the ICTY Appeals Chamber has made it clear that “selective assistance is less decisive when one notes that criminals frequently show compassion for some of their victims even when perpetrating the most heinous crimes.”¹⁰⁶

44. As to conduct subsequent to the crimes, trial chambers of international tribunals set a high standard. In *Babić*, for instance it was held that “[c]onduct subsequent to the crime is a factor which has been accepted in other cases before the Tribunal where the convicted person *acted immediately after the commission of the crime to alleviate the suffering of victims*. For instance, in the *Plavšić* case, the Trial Chamber accepted Biljana Plavšić’s post-conflict conduct as a mitigating factor because *after the cessation of hostilities she demonstrated considerable support for the 1995 General Framework Agreement for Peace in Bosnia-Herzegovina...*”¹⁰⁷ It should be noted that *Biljana Plavšić*’s subsequent good conduct and support for peace was immediate and was not subsequently hampered by behaviour which was contrary to the peace process. In that case, the prosecution underlined that *Biljana Plavšić* had acted “under difficult circumstances in which she manifested courage.”¹⁰⁸

¹⁰² *Strugar* Appeal Judgement para. 381 citing *Aleksvoski* Appeal Judgement, para. 183 and *Čelebići* Appeal Judgement, para. 736.

¹⁰³ *Bralo* Sentencing Judgement, para. 59.

¹⁰⁴ *Prosecutor v. Sikirica*, IT-95-8, “Sentencing Judgement”, Trial Chamber, 13 November 2001, (“*Sikirica Sentencing Judgement*”), para. 242.

¹⁰⁵ *Češić* Sentencing Judgement, para. 78.

¹⁰⁶ *Prosecutor v. Kvočka* IT-98-30/1, “Appeal Judgement”, Appeals Chamber, 28 February 2005 (“*Kvočka Appeal Judgement*”), para. 693 quoting *Čelebići* Appeal Judgement para. 776. In *Nahimana*, at para. 1106, the Appeals Chamber held that it was within the Trial Chamber’s discretion not to give significant weight to the fact that the Appellant had saved lives of Tutsi in 1994, as it had found that “his power to save was more than matched by his power to kill”.

¹⁰⁷ *Babić* Sentencing Judgement, paras 94-95 (emphasis added): “In the present case, the Trial Chamber is not satisfied that conclusive evidence was provided that Babić alleviated the suffering of victims whether immediately after the commission of the crime of persecution in SAO Krajina or after the end of the armed conflict in Croatia in 1995.”

¹⁰⁸ *The Prosecutor v. Biljana Plavšić*, Case No.: IT-00-39&40/1-S, “Sentencing Judgement”, Trial Chamber, 27 February 2003, (“*Plavšić Sentencing Judgement*”), para. 85.

45. The Appeals Chamber has held that an accused's acknowledgement of responsibility can be a mitigating circumstance because it makes an important contribution to establishing the truth and, thereby, to establishing an accurate and accessible historical record. Further, it may contribute to peace and reconciliation, set an example for other persons to make the same moral choice, alleviate the pain and suffering of victims, and contribute to the rehabilitative purpose of sentencing.¹⁰⁹ The Prosecution submits that it must, however, be a sincere expression of empathy for the victims or regret for the crimes committed and not merely words uttered to obtain a reduction in sentence.

46. With regard to remorse, the Appeals Chamber has stated that a Trial Chamber could consider genuine and sincere expressions of empathy for the victim's suffering or regret for crimes committed, without an acknowledgement of responsibility, as a mitigating circumstance.¹¹⁰ Recently, in *Strugar*, the ICTY Appeals Chamber has held that "...remorse nonetheless requires acceptance of some measure of moral blameworthiness for personal wrongdoing, falling short of the admission of criminal responsibility or guilt."¹¹¹

5. Sentencing Practice of the National Courts of Sierra Leone

47. Article 19(1) of the Statute states that the Trial Chamber shall, "as appropriate", have recourse to the practice regarding prison sentences in the national courts of Sierra Leone. The Appeals Chamber of the Special Court has determined that a Trial Chamber is to have recourse to the national courts of Sierra Leone for convictions under Sierra Leone law contained in Article 5 of the Statute.¹¹² A Trial Chamber is not *required* to consider

¹⁰⁹ CDF Appeal Judgement, para. 489.

¹¹⁰ CDF Appeal Judgement, para. 490.

¹¹¹ *Strugar* Appeal Judgement, paras 365-366 (emphasis added). See also *Vasiljević* Appeal Judgement, para. 177.

¹¹² CDF Appeal Judgement, para. 476. See also CDF Sentencing Judgement, para. 43 and AFRC Sentencing Judgement, para. 32. The *ad hoc* Tribunals have similar clauses in their respective Statutes. However, judges of both tribunals maintained that this reference to national sentencing practice was "intended as a guide to determining an appropriate sentence and does not fetter the discretion of the judges of the Trial Chamber to determine the sentence." (*Kambanda* Judgement and Sentence, para. 41; see also *Serushago* Sentencing Judgement, para. 18; *Čelebići* Appeal Judgement, paras 813 and 816; *Jelisić* Appeal Judgement, paras 116-117). National sentencing practices were considered rather as indicative (*Blaškić* Trial Judgement, paras. 759-760) or as guidance (*Rutaganda* Trial Judgement, para. 454; *Musema* Trial Judgement, para. 984).

the sentencing practice of Sierra Leone in relation to convictions under Article 2, 3 or 4 of the Statute¹¹³ although it is not necessarily precluded from doing so.

48. Under the law and practice in Sierra Leone, the crimes of which the Accused have been convicted would attract the highest available penalty.

6. Sentencing Practice of the ICTR and the ICTY

49. Article 19(1) of the Statute also directs the Chamber to consider, “where appropriate”, the sentencing practices of the ICTR. The Appeals Chamber has held that the phrase “where appropriate” shows that the Trial Chamber has a discretion in determining when to have recourse to sentencing practices in the ICTR.¹¹⁴ The Prosecution accepts the limitations of this exercise. This Trial Chamber has previously taken the view that it would consider the sentencing practices of both the ICTR and ICTY where appropriate, noting their limitations in imposing global sentences that made it difficult to ascertain the sentence for each individual crime, and also that ICTR sentences related to genocide which is not within the jurisdiction of the Special Court.¹¹⁵

7. Comparisons with Similar Cases

50. In *Martić*, the ICTY Appeals Chamber stated that :

“... the Appeals Chamber recalls that sentencees of like individuals in like cases should be comparable. While similar cases do not provide a binding assessment of the appropriate sentence, they can be of assistance if they involve the commission of the same offences in substantially similar circumstances. However, the relevance of similar sentences is often limited to a number of elements relating, *inter alia*, to the number, type and gravity of the crimes committed, the personal circumstances of the convicted person and the presence of mitigating and aggravating circumstances. These elements dictate different results in different cases, such that it is frequently impossible to transpose the sentence in one case *mutatis mutandis* to another. Thus, on appeal, a disparity between an impugned sentence and another sentence rendered in a like case can constitute an error only if the former is out of reasonable proportion with the latter.”¹¹⁶

¹¹³ CDF Appeal Judgement, para. 476.

¹¹⁴ AFRC Appeal Judgement, para. 311.

¹¹⁵ CDF Sentencing Judgement, para. 41.

¹¹⁶ *Martić* Appeal Judgement, para. 330, citing *Jelisić* Appeal Judgement, para. 96. See also *Strugar* Appeal Judgement, paras 348-349; *Limaj* Appeal Judgement, para. 135.

51. Similar crimes were committed in substantially similar circumstances by the Accused in both the AFRC and the RUF cases with regard to Counts 1 to 14. The Trial Chamber is invited to take into consideration the sentences imposed in the AFRC case in imposing sentences in the current case which appropriately reflect the modes of liability under which the Accused have been convicted as well as their personal role, the gravity of the crimes, and all aggravating factors.

D. Sentencing in Cases of Convictions for More than One Crime

52. Where an accused is convicted of more than one crime, the Trial Chamber can impose separate sentences in respect of each of those crimes, or may impose a single, global sentence in respect of all of the criminal conduct in respect of which the accused has been convicted.¹¹⁷ For instance, the ICTR Appeal Chamber has said that “where the crimes ascribed to an accused, regardless of their characterisation, form part of a single set of crimes committed in a given geographic region during a specific time period, it is appropriate for a single sentence to be imposed for all convictions, if the Trial Chamber so decides.”¹¹⁸

53. Where the Trial Chamber imposes separate sentences in respect of each of the separate crimes of which a person is convicted, Rule 101(c) of the Rules requires that “[t]he Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.” However, the broad discretion conferred upon the Trial Chamber to choose between consecutive and concurrent sentences is not unchecked, because the Trial Chamber ultimately must impose a sentence that reflects the totality of the convicted person’s culpable conduct and that reflects the gravity of the crime and the culpability of the convicted person.¹¹⁹

54. The Prosecution submits that it would therefore not be an appropriate exercise of the Trial Chamber’s discretion, in the event that it decided to impose separate sentences for each crime, to determine the sentence for each crime in isolation, as if that crime were the

¹¹⁷ *AFRC Appeal Judgement*, paras 322-325, upholding the decision of the Trial Chamber in that case to impose a global sentence. The Trial Chamber in that case was guided by the sentencing practices at both the ICTR and the ICTY, noting that the pronouncement of global sentences was a well established practice at those tribunals (see *AFRC Trial Judgement*, para. 33).

¹¹⁸ *Nahimana Appeal Judgement*, para. 1042, endorsing *Kambanda Appeal Judgement*, para. 111.

¹¹⁹ *CDF Appeal Judgement*, paras 546-547.

only crime of which the accused was convicted, and then simply to order that each sentence be served concurrently. Where an accused commits multiple crimes, the totality of the convicted person's culpable conduct is inherently greater than if that person had only committed one crime, and accordingly the total sentence ultimately to be served by the accused should therefore be longer than if the accused had committed only one of those crimes.¹²⁰ In cases where separate sentences are imposed, compliance with the totality principle can for instance be achieved by ordering that some sentences are to be served consecutively with others. It may however be consistent with the totality principle to order that all sentences be served concurrently, provided that the overall sentence that thereby results reflects the totality of the convicted person's criminal culpability.¹²¹

¹²⁰ See for example *Čelebići* Appeal Judgement, paras. 770-771.

¹²¹ *CDF* Appeal Judgement, para. 552.

III. DETERMINATION OF SENTENCES

A. Introduction

55. This part of the Brief first discusses each Accused's participation in a joint criminal enterprise and their personal roles in the crimes. Next, the Brief addresses other factors relating to the gravity of the offences committed, with regard to all three Accused and in respect of Counts 3 to 5, 6 to 9, 10 to 11, 13, 14 and 1 to 2. This is followed by the aggravating circumstances applicable to all three Accused for these Counts and then the aggravating circumstances that apply to each Accused alone, starting with Sesay. It should be noted that Count 12 followed by Counts 15 and 17 are discussed separately.

56. Atrocious and violent crimes have been found to have been committed under Counts 1 to 15 and under Count 17. For sentencing purposes a careful examination of the gravity of all these offences and of the aggravating factors attached to the commission of the crimes should be carried out. In conducting this exercise, the Trial Chamber is requested to pay particular attention to the convictions under Counts 8 (forced marriage), 12 (use of child soldiers) and 15 and 17 (attacks against peacekeepers) as these convictions reflect particular criminal conduct which, in the case of forced marriage and attacks against peacekeepers, has not been considered by any international criminal tribunal prior to this Trial Chamber's Judgement, and in the case of child soldiers the jurisprudence is still in the early stages of development.

B. Gravity of the Offences

1. Participation in a Joint Criminal Enterprise

57. The Trial Chamber has found Sesay, Kallon and Gbao (Justice Boutet dissenting) responsible for participation in a joint criminal enterprise, the purpose of which was to take power and control over the territory of Sierra Leone, in particular the diamond mining areas, through the commission of crimes within the Statute. The Chamber has noted the disproportionate nature of the means used to achieve the goals of the enterprise, which involved "massive human rights abuses and violence against and mistreatment of

the civilian population and enemy forces”¹²² and an intention “through the spread of extreme fear and punishment to dominate and subdue the civilian population” by terrorising that population.¹²³ The Trial Chamber found that the joint criminal enterprise came into existence on or shortly after 25 May 1997¹²⁴ and ceased to exist towards the end of April 1998.¹²⁵ The coordinated regime of terror by joint AFRC/RUF forces was therefore found to continue for approximately one year; a considerable period. During this period, crimes including unlawful killings, sexual violence, physical violence, forced labour of civilians, pillage and the enlistment, conscription and use of child soldiers were found to have occurred across a broad geographical area including Bo District, Kenema District, Kono District and Kailahun District. Looting, for example, became a “systemic feature” of RUF and AFRC operations after the announcement of “Operation Pay Yourself”.¹²⁶ The extensive temporal and geographical scope of the joint criminal enterprise increases the relative seriousness of the criminal conduct of the participants.

(a) Personal Role of Sesay in the Joint Criminal Enterprise

58. In assessing the gravity of Sesay’s conduct, particular attention should be paid to his high leadership position. Sesay was a Lieutenant Colonel, Battle Field Commander and effectively the second highest RUF officer in Sierra Leone after Bockarie at the inception of the joint criminal enterprise, as that joint criminal enterprise was found by the Trial Chamber.¹²⁷ He maintained this position during the temporal scope of the enterprise, and had the power and authority to approve the appointment of senior RUF commanders to deputy ministerial positions within the Junta Government as well as being a member of the AFRC Supreme Council. The Trial Chamber found that he was “one of the most important and influential RUF representatives on the Supreme Council”.¹²⁸ As a leading and influential member of the joint criminal enterprise, Sesay played a vital role in actively furthering its objectives. This included the planning and organisation of forced

¹²² Trial Judgement, para. 1980 and 1981.

¹²³ Trial Judgement, paras. 1981-1982.

¹²⁴ Trial Judgement, paras. 1979 and 1993.

¹²⁵ Trial Judgement, para. 2076.

¹²⁶ Trial Judgement, paras 2070-2071.

¹²⁷ Trial Judgement, para. 1993.

¹²⁸ Trial Judgement, para. 1994.

mining in Kenema District and the use of child soldiers to guard mining sites.¹²⁹ Indeed, his role as an architect of the forced mining scheme demonstrates the scale of his contribution to the enterprise.

59. Further, the Prosecution submits that significance should be attached to the abuse by Sesay of his high level of power and authority through the use of police officers, and AFRC and RUF fighters to arrest and detain suspected Kamajor sympathisers and collaborators in particular in Kenema Town.¹³⁰ This use of the “levers of State power”¹³¹ to further the purposes of the enterprise increases the gravity of his culpable conduct.

60. The personal mistreatment by Sesay of suspected sympathisers and collaborators is an additional factor increasing the overall gravity of his criminal conduct.¹³² The Trial Chamber found that Sesay participated in the beating of TF1-129 in Kenema Town.¹³³ He made a significant contribution to the furtherance of the common purpose by implementing the policy of eliminating civilian opposition to the Junta regime.¹³⁴

61. The Trial Chamber found that Sesay approved of and encouraged looting in Makeni which contributed to the achievement of the objectives of the enterprise.¹³⁵ He also played an important role in planning and executing the Koidu operation in February 1998¹³⁶ and was a superior to Operation Commander Superman during the attack.¹³⁷ His participation is emphasised by the execution of two retreating fighters by him.¹³⁸

62. Sesay’s contribution to the joint criminal enterprise reached chilling levels in Koidu where the Trial Chamber found that he endorsed Koroma’s instructions to kill civilians and burn civilian houses. In his directions to the fighters, Sesay told them that Koidu Town should be made a civilian-free area, meaning civilians should be killed and their houses burned because they were traitors. These orders were carried out.¹³⁹

¹²⁹ Trial Judgement, para. 1997.

¹³⁰ Trial Judgement, para. 1999.

¹³¹ Trial Judgement, para. 1999.

¹³² Trial Judgement, para. 1999.

¹³³ Trial Judgement, para. 2052.

¹³⁴ Trial Judgement, para. 2055.

¹³⁵ Trial Judgement, para. 2082.

¹³⁶ Trial Judgement, paras 794-797 and 946.

¹³⁷ Trial Judgement, para. 2083.

¹³⁸ Trial Judgement, para. 2083.

¹³⁹ Trial Judgement, para. 2084.

63. The Trial Chamber found that Sesay continued to enjoy a great deal of authority after this departure from Koidu Town and relocation to Buedu in Kailahun District and that he remained aware of crimes committed in Kono District by RUF and AFRC fighters.¹⁴⁰ He was actively involved in forced mining in Kono and RUF mining commanders, including his own bodyguards, reported directly to him.¹⁴¹ He was similarly actively involved in the training and arming of civilians, including Small Boys Units (SBU), some of whom were under his direct control, and ordered the training base to be established at Yengema.¹⁴²

64. Seasy's proven intention to commit all the crimes charged in Counts 1-14 of the Indictment during the period of the joint criminal enterprise, and the nature of his participation as a co-perpetrator and leader within the enterprise, raise the totality of his criminal conduct to the highest level of gravity.

(b) Personal Role of Kallon in the Joint Criminal Enterprise

65. The Prosecution submits that in assessing the gravity of Kallon's contribution, particular attention should similarly be paid to his high leadership position. Kallon was a senior RUF official and a member of the AFRC Supreme Council where he participated in decision and policy-making.¹⁴³ It was the Supreme Council, of which Kallon was a member, that initiated the widespread and systematic attacks in Bo and Kenema.¹⁴⁴

66. Kallon's personal contribution to the policy of forcing civilians to mine, described by the Trial Chamber as a "brutal policy",¹⁴⁵ increases the seriousness of his criminal conduct and is evident in his role at the diamond mining pits in Tongo Field. The Trial Chamber found that Kallon was present at these pits when unarmed, enslaved civilian miners were shot and killed by rebels and SBUs. Kallon not only endorsed the enslavement and killing of civilians but also played a key role in the larger plan to terrorise the civilian population and contributed directly to the transformation of a "brutal

¹⁴⁰ Trial Judgement, para. 2085.

¹⁴¹ Trial Judgement, para. 2086.

¹⁴² Trial Judgement, paras 2087-2088.

¹⁴³ Trial Judgement, para. 2004.

¹⁴⁴ Trial Judgement, para. 2004.

¹⁴⁵ Trial Judgement, para. 2006.

policy” into reality.¹⁴⁶ The Chamber found that Kallon additionally participated personally in crimes by using his bodyguards to force civilians to mine diamonds at Tongo Field.¹⁴⁷

67. Furthermore, Kallon was found to have made a significant contribution to the furtherance of the common purpose by implementing the policy of eliminating civilian opposition to the Junta regime.¹⁴⁸

68. The Trial Chamber found that Kallon was involved in the planning and execution of the attack against Koidu in February 1998 and had an active combat role during the attack. He was present when instructions were given by Koroma and Sesay to kill civilians in Kono and burn their homes and was appointed deputy to Superman during that meeting.¹⁴⁹ As an important and influential Commander who enjoyed “considerable respect, power, authority and prestige,”¹⁵⁰ Kallon used this powerful position to endorse the instructions to kill civilians and contribute to their implementation. Kallon brought persons under the age of 15 to be trained by the RUF at Bunumbu,¹⁵¹ had bodyguards who were under the age of 15,¹⁵² engaged in the creation and maintenance of a system of enslavement including the use of SBUs to guard the mining sites,¹⁵³ organised camps for civilians,¹⁵⁴ endorsed and encouraged criminal activity such as the rape of civilian women by RUF fighters during food-finding missions that he ordered,¹⁵⁵ and participated in [REDACTED]¹⁵⁶ His conduct is further aggravated by the fact that he had bodyguards who supervised mining by enslaved civilians for his own private benefit,¹⁵⁷ thus, he exploited the situation and the joint enterprise itself for personal gain.

¹⁴⁶ Trial Judgement, para. 2006.

¹⁴⁷ Trial Judgement, para. 2005.

¹⁴⁸ Trial Judgement, para. 2055.

¹⁴⁹ Trial Judgement, para. 2093.

¹⁵⁰ Trial Judgement, para. 2094.

¹⁵¹ Trial Judgement, para. 2095.

¹⁵² Trial Judgement, para. 2095.

¹⁵³ Trial Judgement, para. 2095.

¹⁵⁴ Trial Judgement, para. 2098.

¹⁵⁵ Trial Judgement, para. 2099.

¹⁵⁶ Trial Judgement, para. 2099.

¹⁵⁷ Trial Judgement, para. 2097.

69. Kallon's proven intention to commit all the crimes charged in Counts 1-14 of the Indictment during the period of the joint criminal enterprise, and the nature of his participation as a co-perpetrator and leader within the enterprise, raise the totality of his criminal conduct to the highest level of gravity.

(c) Personal Role of Gbao in the Joint Criminal Enterprise

70. In finding that Gbao was a participant in the joint criminal enterprise, the Majority in the Trial Chamber placed emphasis on his role as the RUF ideology instructor and the fact that he singled himself out as a knowledgeable and competent Commander in the RUF ideology.¹⁵⁸

71. Gbao held considerable power and prestige within the RUF in Kailahun District¹⁵⁹ and as Overall Security Commander (OSC) he held a supervisory role and position of influence over various units.¹⁶⁰ Gbao was found to have been personally involved in the planning of enslavement of civilians as farm labourers in Kailahun District¹⁶¹ and the use and management of the farm produce. Gbao played a particularly important role in the organized system in which civilians were intentionally made to engage in various forms of forced farming. For instance, the produce from the farms was taken by the G5 or S4 unit and handed to Gbao.¹⁶² Gbao oversaw the civilians mining at Giema as well as "the soldiers who had guns".¹⁶³ Gbao instructed G5 Commander Morie Fekai on which farming products to demand from the civilians and these instructions were conveyed to civilians.¹⁶⁴

¹⁵⁸ Trial Judgement, para. 2028.

¹⁵⁹ Trial Judgement, para. 2033.

¹⁶⁰ Trial Judgement, para. 2034.

¹⁶¹ Trial Judgement, paras 2036-2037.

¹⁶² Trial Judgement, paras 1479, 1428-1429.

¹⁶³ Trial Judgement, para. 1433.

¹⁶⁴ Trial Judgement, para. 1427. Justice Boutet underlined in his dissenting opinion that he was satisfied that "Gbao designed and implemented a system of agricultural production and load-carrying in Kailahun District between 25 May 1997 and late April 1998 which relied on the enslavement of civilians in order to supply provisions for the RUF" and that his "role substantially contributed to ensuring the forced labour of civilians and that he intended that those civilians be enslaved or that he was aware of a substantial likelihood that civilians would be enslaved in agricultural production and the carrying of loads." Dissenting Opinion of Justice Pierre G. Boutet, para. 19.

72. Gbao was found to have intended the killings of 64 suspected Kamajors in Kailahun Town and to have shared the intent for amputations, rapes, forced labour and terrorising the civilian population.¹⁶⁵

73. The Trial Chamber found that Gbao knew that forced marriage was likely to be committed by RUF fighters in Kono especially in view of its use as a tactic of war and means of obtaining unpaid logistical support for troops¹⁶⁶ and that he supported the crime by remaining steadfast in his pursuit of the aims of the enterprise.¹⁶⁷ In Kailahun District, the Majority found that Gbao shared the requisite intent to commit forced marriage and sexual violence with the other participants in the joint criminal enterprise.¹⁶⁸

74. Although Gbao was not found to have shared the intent to commit the crimes in Bo, Kenema and Kono Districts, the Majority found that he willingly took the risk that the crimes would be committed by other members of the joint criminal enterprise.

75. The Majority found that despite his knowledge of the crimes in Counts 3 to 5, 11 and 13 he continued to pursue the common purpose of the enterprise.¹⁶⁹ In Kailahun District specifically, Gbao made a significant contribution as a co-perpetrator in the joint criminal enterprise.¹⁷⁰ The totality of his criminal conduct during the period of the joint criminal enterprise is therefore of a high level of gravity.

2. Participation of the Accused through Other Modes of Liability

(a) Personal Role of Sesay

76. The sentence imposed should reflect the relative significance of the role of the Accused in the criminal acts. Sesay was found liable under Article 6(1) of the Statute for planning the enslavement of hundreds of civilians to work in mines at Tombodu and throughout Kono District between December 1998 and January 2000, as charged in Count 13 of the Indictment.¹⁷¹ The Trial Chamber found that his “conduct was a significant contributory factor to the perpetration of enslavement” and that he “designed

¹⁶⁵ Trial Judgement, para. 2168.

¹⁶⁶ Trial Judgement, para. 2107.

¹⁶⁷ Trial Judgement, para. 2108.

¹⁶⁸ Trial Judgement, para. 2172.

¹⁶⁹ Trial Judgement, para. 2058.

¹⁷⁰ Trial Judgement, paras. 2167 and 2169.

¹⁷¹ Trial Judgement, para. 2116.

the abduction and enslavement of hundreds of civilians for diamond mining throughout Kono District".¹⁷² The importance of Sesay's role is underlined by the Trial Chamber's finding that "the nature and magnitude of the forced mining in Kono District required extensive planning on an ongoing basis". Sesay, as the Battle Field Commander and subordinate to Bockarie at that time, was actively and intimately involved in the forced mining operations and its processes in Kono District.¹⁷³

77. In addition the Trial Chamber found Sesay liable pursuant to Article 6(3) of the Statute for the enslavement of an unknown number of civilians at Yengema training base between December 1998 and about 30 January 2000.¹⁷⁴ The Trial Chamber found that Sesay actively monitored the prolongation of this crime in his capacity as Battle Field Commander.¹⁷⁵

78. As for the gravity of the crimes committed, the Prosecution refers to its submissions in paragraphs 84-119.

(b) Personal Role of Kallon

79. Kallon has been found liable under Article 6(1) of the Statute for instigating the murder of a Nigerian female in Wendedu in Kono District. She was executed for no apparent reason, which surprised and terrified the civilians.¹⁷⁶ This is a serious crime involving the loss of life and his sentence should reflect his direct involvement.

80. The Trial Chamber has found Kallon to be liable under Article 6(3) of the Statute for failing to prevent or punish the commission of the crime of forced marriage by his subordinates in Kono District¹⁷⁷ and for the forcible marriage [REDACTED] [REDACTED] between May and June 1998.¹⁷⁸ The Prosecution submits that Kallon tolerated these acts, which were widespread, rather than using his authority to prevent them.

¹⁷² Trial Judgement, para. 2115.

¹⁷³ Trial Judgement, para. 2114.

¹⁷⁴ Trial Judgement, para. 2133.

¹⁷⁵ Trial Judgement, para. 2132.

¹⁷⁶ Trial Judgement, para. 1233.

¹⁷⁷ Trial Judgement, para. 2150.

¹⁷⁸ Trial Judgement, para. 2146 and 2151.

81. The Chamber found that Kallon is responsible under Article 6(3) of the Statute for the enslavement of hundreds of civilians in camps throughout Kono District between February and December 1998.¹⁷⁹ Kallon's rank, position and assignments enabled him to effectively control and also to order the capture of civilians in the Makeni-Magburaka area for the mines in Kono.¹⁸⁰ Kallon's role in the widespread and systematic enslavement of civilians for forced labour in diamond mines in Kono District therefore went beyond simply being a commander. He was clearly a driving power behind the system of forced mining which was one of the pillars of the RUF.

82. As for the gravity of the crimes committed, the Prosecution refers to its submissions in paragraphs 84-119.

(c) Personal Role of Gbao

83. Gbao's personal role in his aiding and abetting the attack on UNAMSIL personnel is discussed in the section relating specifically to Count 15 below.

3. Scale and Brutality of the Offences Committed

84. The killings for which the Accused are convicted were carried out on a massive scale with an extreme degree of brutality. Numerous examples exist of the exceptional brutality of these killings. A man and his wife and children were indiscriminately shot during the attack on Tikonko in Bo District and they "fell like leaves."¹⁸¹ After the Tikonko attack, TF1-004 found a woman whose stomach had an open wound,¹⁸² and the corpse of a man who had been shot in the chest and whose head had been severed and his legs broken.¹⁸³ In Gerihun, Paramount Chief Demby and an unknown number of other civilians were killed.¹⁸⁴ TF1-125 was told that B.S Massaquoi was beheaded and the severed head had been tied to a pole and displayed in Kenema.¹⁸⁵ In another incident, where the AFRC/RUF had killed a man, one of the fighters stabbed the corpse with a bayonet and removed the intestines and pulled them across the street to function as a

¹⁷⁹ Trial Judgement, para. 2151.

¹⁸⁰ Trial Judgement, para. 2145.

¹⁸¹ Trial Judgement, paras 997, 1018.

¹⁸² Trial Judgement, paras 1003, 1021.

¹⁸³ Trial Judgement, paras 1001.

¹⁸⁴ Trial Judgement, paras 1014, 1025, 1974.

¹⁸⁵ Trial Judgement, paras 1078, 1124.

checkpoint.¹⁸⁶ In Koidu, Rocky and his men killed 30 to 40 civilians by opening machine gun fire into the crowd before having the heads of those who were killed severed off. This was a massive and brutal killing which the Chamber found to be an act of extermination.¹⁸⁷ The Prosecution draws the attention of the Trial Chamber to the particularly brutal murder of a 15 year old boy in Koidu Town whose hands and feet were cut off before he was thrown in a pit by RUF fighters.¹⁸⁸ In Tombodu, Savage and his men beheaded 47 civilians and dumped their bodies into a diamond pit.¹⁸⁹ Savage killed an unknown number of civilians by burning them alive in a house.¹⁹⁰ Rambo killed 15 civilians using a cutlass in Koidu Buma.¹⁹¹ Killing by beheading and killing with a cutlass are acts of utmost brutality. The Chamber found that a massive number of civilians were killed in Tombodu and that the scale and gruesome nature of the killings guaranteed their notoriety and constituted extermination.¹⁹² The Chamber found that the killing of 64 persons in Kailahun Town occurred on a massive scale and constituted extermination.¹⁹³

85. The Trial Chamber found that sexual violence was a tactic of war to humiliate, dominate and instil fear in victims, their families and communities.¹⁹⁴ The Trial Chamber observed that sexual violence was rampantly committed against the civilian population.¹⁹⁵ Rapes and other forms of sexual violence were committed with notable regularity. The Trial Chamber has found that such acts were widespread both prior to and throughout the Indictment period.¹⁹⁶ While convictions for these acts are focussed on locations in Kono and Kailahun District, the Trial Chamber made factual findings as to sexual violence that occurred as part of a pattern of such atrocities in Freetown and the Western Area.¹⁹⁷ The Trial Chamber pointed to evidence that women and girls were

¹⁸⁶ Trial Judgement, para. 1065.

¹⁸⁷ Trial Judgement, paras 1147-48, 2063.

¹⁸⁸ Trial Judgement, paras 1149, 2063.

¹⁸⁹ Trial Judgement, paras 1165, 1273.

¹⁹⁰ Trial Judgement, para. 2063.

¹⁹¹ Trial Judgement, para. 2065.

¹⁹² Trial Judgement, para. 1275.

¹⁹³ Trial Judgement, para. 1449.

¹⁹⁴ Trial Judgement, para. 156.

¹⁹⁵ Trial Judgement, para. 1347.

¹⁹⁶ Trial Judgement, para. 1405.

¹⁹⁷ Trial Judgement, paras 1575-1583.

abducted from Koinadugu, Tonkolili, Pujehun, Kono, Bonthe, Bo, Freetown and Kenema and taken to Kailahun.¹⁹⁸

86. It was regular practice for women and girls to be forcibly taken as “wives”.¹⁹⁹ Some Commanders had five or six “wives”.²⁰⁰ The Trial Chamber has encapsulated the extreme gravity of forced marriage in its finding that many women were “forced into marriage by means of threats, intimidation, manipulation and other forms of duress which were predicated on the victims’ fear and their desperate situation”.²⁰¹

87. Brutal, multiple rapes were committed. [REDACTED]
[REDACTED]
[REDACTED] A number of women were killed after being raped.²⁰⁴ Sexual violence was sometimes combined with sexual mutilations. In Bomboafuidu, rebels slit the private parts of several male and female civilian captives with a knife and inserted a pistol into the vagina of one of the female captives where it remained overnight.²⁰⁵

88. The Prosecution submits that the seriousness of the acts encompassed by the convictions under Count 9 – outrages upon personal dignity – should be reflected in sentencing. The crimes contained an abhorrent element of humiliation and degradation and the perpetrators knew and intended that effect.²⁰⁶

89. The findings of the Trial Chamber that the crimes for which the Accused are convicted under Counts 10 to 11 were conducted brutally and on a large scale should be reflected in the sentences. In particular the widespread practice of mutilation was of particular brutality. The Chamber found for instance that in an incident in Sawao civilians

¹⁹⁸ Trial Judgement, para. 1409.

¹⁹⁹ Trial Judgement, paras 1411, 1410, 1465, 2158. See para. 1295: “The phenomenon of “bush wives” was so widespread throughout the Sierra Leone conflict that the concept of women being “taken as wives” was well-known and understood.

²⁰⁰ Trial Judgement, para. 1411.

²⁰¹ Trial Judgement, para. 1468.

²⁰² Trial Judgement, paras 1181, 1185.

²⁰³ Trial Judgement, paras 1193-1195.

²⁰⁴ Trial Judgement, para. 1195.

²⁰⁵ Trial Judgement, para. 1208.

²⁰⁶ Trial Judgement paras 1474-1475.

were beaten up with sticks and gun butts and rebels instructed a small boy to bring a cutlass and cut off the right hands of five civilian men.²⁰⁷

90. Civilians had their limbs amputated and some had letters carved onto their bodies. At Yardu, TF1-197's hand was amputated with a cutlass by rebels who then told him to go to Kabbah to fix his amputation.²⁰⁸ Staff Alhaji and his men amputated the hands of three civilians at Tombodu.²⁰⁹ Amputations were directed at the civilian population in an indiscriminate manner and they had a terrifying effect on them.²¹⁰

by rebels who then carved out the letters AFRC and/or RUF on the bodies of 18 civilians using surgical blades.²¹¹ Similar findings were made with respect to acts of mutilation by the rebels in Tomandu.²¹² Brutal beatings were commonly committed as well. For example, TF1-122 was arrested and thoroughly beaten with a belt resulting in serious physical injury.²¹³ TF1-078 and four other adults were made to lie on their stomachs before being beaten with cutlasses by rebels.²¹⁴

91. The Trial Chamber found that the crime of enslavement was committed by the RUF/AFRC on a large scale and that a planned and organised system was in place,²¹⁵ which required extensive planning on an ongoing basis.²¹⁶ The Trial Chamber found that the scale of enslavement in Tongo Field was massive and indiscriminate²¹⁷ and that forced mining in Kono District after the recapture of Koidu by the AFRC/RUF in December 1998 expanded to numerous areas.²¹⁸ Further, several findings of the Chamber

²⁰⁷ Trial Judgement, para. 1184.

²⁰⁸ Trial Judgement, para. 1187.

²⁰⁹ Trial Judgement, para. 1311.

²¹⁰ Trial Judgement, para. 1600.

²¹¹ Trial Judgement, paras 1190 and 1315.

²¹² Trial Judgement, para. 1320.

²¹³ Trial Judgement, para. 1110.

²¹⁴ Trial Judgement, para. 1226.

²¹⁵ Trial Judgement, para. 1324, regarding forced farming in Kailahun District, para. 1479.

²¹⁶ Trial Judgement, para. 2114.

²¹⁷ Trial Judgement, para. 1130.

²¹⁸ Mining took place at Tombodu, Sukudu and Peyima in Kamara Chiefdom; Number 11, Yardu Gbense, Boroma-38, Konokortah and Gbukuma in Gbense Chiefdom; Kwakoyima, Sokogbeh, Kongo Creek, Benz Garage area and the Opera Cinema area in Tankoro Chiefdom; Simbakoro, Yengema Guiyor and Bumpe in Ninikoro Chiefdom; Sewafe, Gold Town, Ndorgboi and Sandiya in Nimiyama Chiefdom; and Yomadu, Yorkodu, Baffin River, and Bagbema in Sandor Chiefdom. Other locations included Mortema, Bandafaye, Gboko, Gieya, Kaisambo, Kimberlite, 27 and Yellow Mosque. Approximately 200 civilians worked in each major pit; Trial Judgement, para. 1246.

show that the enslavement of civilians was carried out with particular brutality. Civilians were forced to work in an atmosphere of terror²¹⁹ and in oppressive conditions.²²⁰ They were treated cruelly through deprivation of food and medical assistance. They were forced to work naked and they were beaten, and at times killed.²²¹ The Trial Chamber found, for example, that the environment in Cyborg Pit in Kenema District was characterised by systematic violence and coercion,²²² that civilians who tried to escape were detained, stripped and left naked,²²³ that almost all of them were haggard and shabbily dressed²²⁴ and that anybody who violated the rules was severely punished²²⁵ or even killed.²²⁶ Regarding forced labour in Kono District, the Trial Chamber found that "[t]he mistreatment of civilians ranged from transporting them in physical restraints such as ropes or chains to providing them with little or no food and forcing them to work naked."²²⁷ The Trial Chamber also found that in the Bayama and Bunumbu training camps in Kailahun District, many captured civilians died during forced military training because they were subjected to beatings, were shot, or died as a result of a fall from a "monkey bridge" onto barbed wire during training.²²⁸ Similar findings were made with regard to the RUF "government" farms in Kailahun District, where, according to the Trial Chamber's finding, the exploitation in some cases led to injuries, starvation and death.²²⁹ On private farms of RUF commanders, forced workers were similarly treated.²³⁰

92. The fact that the crime of pillage for which the Accused were found liable was committed on a large scale, increases the gravity of the offence and should be reflected in

²¹⁹ Trial Judgement, para. 1120 regarding forced mining in Tongo Fields in Kenema District.

²²⁰ Trial Judgement, para. 1326 regarding forced labour in Kono District between February and December 1998, para. 1480 regarding forced farming in Kailahun District as of 30 November 1996 and to at least September 2000.

²²¹ Trial Judgement, para. 1119 regarding Tongo Fields in Kenema District from August to December 1997 and para. 1328 with regard to forced mining in Tombodu and throughout Kono District from December 1998 until January 2000, para. 1248 for mining camps in Kono District.

²²² Trial Judgement, para. 1121 regarding Tongo Fields in Kenema District from August to December 1997.

²²³ Trial Judgement, para. 1094.

²²⁴ Trial Judgement, para. 1094.

²²⁵ Trial Judgement, para. 1095.

²²⁶ Trial Judgement, para. 1328.

²²⁷ Trial Judgement, para. 1328.

²²⁸ Trial Judgement, paras 1440 and 1487, trainees were threatened to be executed in case they would escape, see Trial Judgement, para. 1441.

²²⁹ Trial Judgement, paras 1418. Also para. 1419, referring to the testimony of TF1-330, Transcript 14 March 2006, p. 30.

²³⁰ Trial Judgement, para. 1425.

the sentences. Looting was a systematic feature of AFRC and RUF operations.²³¹ It was not only accepted by the AFRC/RUF commanders but even served as means to gratify the fighters.²³² Looting was described by the Trial Chamber to be excessive in Koidu Town.²³³ The AFRC/RUF engaged in a systematic campaign of looting in Koidu Town marking the continuation of 'Operation Pay Yourself' and many items of significant value were looted.²³⁴ AFRC/RUF fighters committed an 'unknown number of acts of pillage' in the February/March 1998 attack on Koidu.²³⁵ Pillage was considered, amongst other crimes, to be a central attribute of a concerted campaign against civilians.²³⁶

4. Number of Victims

93. The numbers of civilians killed in the crimes for which the Accused are convicted under Counts 3 to 5 is enormous, a factor which greatly increases the gravity of the criminal conduct. While it is difficult to determine the precise number of those who were killed as a result of acts committed by RUF fighters, the findings of the Trial Chamber give some indication. Based on the findings of the Chamber, it may be estimated that for instance, in Bo District at least 227 civilians²³⁷ plus an unknown number of other civilians were killed.²³⁸ The findings also show that in Kenema District, up to 144 civilians were killed²³⁹ while in Kono District, up to 333 civilians, plus an unknown number, were killed.²⁴⁰ In Kailahun Town, 64 persons were killed.²⁴¹ Many more killings are listed in the findings of the Chamber. At this point it is important to recall that multiple instances of a crime charged under one count increases the gravity of the offence.²⁴²

94. While the precise number of victims of sexual violence and forced marriage is difficult to determine, it must be recalled that the Trial Chamber found that the crimes

²³¹ Trial Judgement para. 784.

²³² Trial Judgement para. 1982.

²³³ Trial Judgement para. 823.

²³⁴ Trial Judgement para. 1336.

²³⁵ Trial Judgement paras 1334, 1337, 2063.

²³⁶ Trial Judgement para. 956.

²³⁷ Trial Judgement, paras 1018-1025.

²³⁸ Trial Judgement, paras 1018, 1021 and 1025.

²³⁹ Trial Judgement, para. 2050.

²⁴⁰ Trial Judgement, para. 2063.

²⁴¹ Trial Judgement, para. 2156.

²⁴² Češić Sentencing Judgement, para. 34.

were widespread and systematic, constituting a pattern of behaviour throughout the conflict.²⁴³ The Trial Chamber found that “an unknown number of women were raped and forcibly taken as wives in Koidu during the February/March 1998 attack by AFRC/RUF rebels;²⁴⁴ sexual acts were perpetrated an unknown number of times on five women in Sawao and on an unknown number of women in Penduma;²⁴⁵ an unknown number of women were forcibly kept as wives by RUF fighters at Wendedu;²⁴⁶ an unknown number of women were subjected to sexual slavery, forced marriages and to outrages upon their personal dignity in Kailahun District, including TF1-314 and TF1-093.²⁴⁷ The Trial Chamber noted that it heard evidence of “numerous incidents of sexual violence in Kailahun”.²⁴⁸ The Trial Chamber referred to the number of victims of forced marriage as “countless”.²⁴⁹

95. An accurate count of the number of victims of the crimes in Counts 10 to 11 for which the Accused were convicted is not possible. However the Trial Chamber “heard evidence of numerous beatings” in Kenema District²⁵⁰ and the Trial Chamber found that in Kono District²⁵¹ an unknown number of civilians suffered mutilations including the cutting off of limbs and the carving AFRC and RUF on their bodies, for instance the incident at Kayima where 18 civilians were carved AFRC and or RUF on the bodies.²⁵²

96. According to the factual findings of the Chamber, the numbers of civilians who were enslaved and forced to work in diamond mines or on RUF farms, to carry loads, to do household chores, to go on so called “food finding missions” or who were subjected to other forms of forced labour for the RUF was massive. The Trial Chamber found for instance, that 500 civilians were forced to mine from August to December 1997 in Tongo Field, Kenema District.²⁵³ RUF rebels enslaved hundreds of civilians in camps and in

²⁴³ The Trial Chamber recalled the expert evidence of TF1-081 that as many as 648 of the 1,168 patients treated after the attack on Freetown had been raped. See Trial Judgement, para. 1575.

²⁴⁴ Trial Judgement, paras 1286 and 1291.

²⁴⁵ Trial Judgement, para. 1289.

²⁴⁶ Trial Judgement, para. 1291.

²⁴⁷ Trial Judgement, paras 1473 and 1475.

²⁴⁸ Trial Judgement, para. 1405.

²⁴⁹ Trial Judgement, para. 1351.

²⁵⁰ Trial Judgement, para. 1045.

²⁵¹ Trial Judgement, para. 1310.

²⁵² Trial Judgement, paras 1190 and 1315.

²⁵³ Trial Judgement, paras 1094 and 2051 and Section 4.1.1.4. p. 610.

diamond mines throughout Kono District and at the military training base at Yengema.²⁵⁴ Approximately 200 civilians worked in each major diamond mining site in Kono District²⁵⁵ and in Wenedu camp alone 300 to 400 civilians were kept.²⁵⁶ Sometime between 1999 and 2000, approximately 400 civilians were gathered from Makeni and its surrounding villages, jailed and then taken daily to Kono in trucks.²⁵⁷ In Tombodu, Kono District, there were over 200 miners in 1999, and when mining activities became extensive there were more than 500.²⁵⁸ The Chamber further found that hundreds of civilians from all over Kailahun District were forced to work on so called RUF "government" farms.²⁵⁹ Two large "government" farms operated in Giema on which approximately 300 civilians were forced to work.²⁶⁰ In the training camp of Bunumbu in Kailahun District, about 500 people were forcibly trained during three years.²⁶¹

97. The Trial Chamber found that the AFRC/RUF engaged in systematic looting in Koidu in 1998²⁶² and "unknown number of acts of pillage" was committed.²⁶³

5. Degree of Suffering or Impact of the Crimes on the Victims

98. The crimes for which the Accused have been convicted under Counts 6 to 9 of the Indictment entailed lasting suffering for the victims of both a physical and psychological nature.²⁶⁴ For instance, TF1-195 experienced physical pain for five years after being the victim of multiple rape and maltreatment.²⁶⁵ [REDACTED]

99. The Trial Chamber has found that the victims of sexual slavery and forced marriage endured particularly prolonged physical and mental suffering as they were subjected to

²⁵⁴ Trial Judgement, para. 1224 and Section 4.1.2.4. p. 611.

²⁵⁵ Trial Judgement, para. 1246.

²⁵⁶ Trial Judgement, para. 1233.

²⁵⁷ Trial Judgement, para. 1249.

²⁵⁸ Trial Judgement, paras 1256-1257.

²⁵⁹ Trial Judgement, para. 1417.

²⁶⁰ Trial Judgement, paras 1422 and 1479.

²⁶¹ Trial Judgement, para. 1438.

²⁶² Trial Judgement para. 1140

²⁶³ Trial Judgement paras 1334, 1337, 2063.

²⁶⁴ See Trial Judgement, para. 1206: TF1-218 described her condition after the two rapes: "I was trembling, so I got up. I stood there for some time trembling"; "I was naked. Everywhere blood was oozing out of me [...] from my vagina, and also from my hand."

²⁶⁵ Trial Judgement, para. 1185.

²⁶⁶ Trial Judgement, para. 1463.

continued sexual acts while living with their captors under difficult and coercive circumstances.²⁶⁷ The Trial Chamber has also observed that in addition to physical injuries, the conjugal association forced upon the victims carried with it a lasting social stigma which hampers their recovery and reintegration into society.²⁶⁸ Victims of sexual violence were ostracised, husbands left their wives, and daughters and young girls were unable to marry within their community.²⁶⁹ TF1-195 explained that she was no longer married, as her husband had divorced her, claiming that the rebels had battered her.²⁷⁰ While testifying about the events, TF1-195 was overcome by distress.²⁷¹ Many “wives” suffered the additional trauma and consequences of being forced to leave their legitimate husbands and bear children for their rebel “husbands”.²⁷² The Trial Chamber should consider these multiple effects as adding to gravity.

100. Victims of the crimes for which convictions were entered under Counts 10 to 11 continue to experience great suffering and trauma long after the events. Mutilations inflicted upon victims not only caused extreme pain and suffering, but rendered them “dependent on others for the rest of their lives.”²⁷³ They have to bear the indignities and disadvantages which this crime has inflicted on them. TF1-192 said “I cannot use my right hand to do anything because the bone was cut and I cannot use it any longer”. He also told the Trial Chamber that his sister whose hand was also chopped off cannot do a thing with the hand.²⁷⁴ TF1-197 who has to live with an amputation broke down in Court and told the Trial Chamber “.... when I sit down and think about what happened with me and my friends I feel so bad about it.”²⁷⁵

²⁶⁷ Trial Judgement, para. 1474; see also para. 1466: “The use of the term “wife” by the rebels was deliberate and strategic, with the aim of enslaving and psychologically manipulating the women and with the purpose of treating them like possessions.”

²⁶⁸ Trial Judgement, para. 1296.

²⁶⁹ Trial Judgement, para 1349.

²⁷⁰ TF1-195, Transcript 1 February 2005, p. 28.

²⁷¹ TF1-195, Transcript 1 February 2005, pp. 15 – 16.

²⁷² Trial Judgement, paras 1412-1413.

²⁷³ AFRC Sentencing Judgement, para. 46: the Judges found mutilations “particularly grotesque and malicious, victims who had their limbs hacked off not only endured extreme pain and suffering, if they survived, but lost their mobility and capacity to earn a living or even to undertake simple daily tasks”. See also CDF Sentencing Brief, para. 49.

²⁷⁴ TF1-192 Transcript, 1 February 2005, pp. 74-76.

²⁷⁵ TF1-197 Transcript, 22 October 2004, p. 14.

101. Victims who had carvings and marks inscribed on them have to carry these loathsome and disfiguring marks with them for the rest of their lives. TF1-074 showed the Court his chest and the records show that AFRC RUF had been inscribed on him.²⁷⁶

102. [REDACTED] and who, immediately before this act, had been held at gun point and a gun shot fired between his legs and he felt like he was dead, testified that he still feels pain [REDACTED] as a result of the treatment meted out to him by the rebel fighters.²⁷⁷ He told the Court:

"I suffered. I was in pain. Even up to this hour I'm in pain. [REDACTED]
[REDACTED] That is a big pain in my
heart today.
[REDACTED]
[REDACTED] My head will swell with
me. That's how I feel right now."²⁷⁸

103. Many more testimonies rendered before the Trial Chamber show the extreme and lasting suffering of the victims of mutilations which should be reflected in the sentence.

104. The practice of forced labour in the different forms used by the RUF caused immense suffering amongst the victims. The Chamber found, for instance, that civilians carrying food were sometimes executed rather than released if they could not manage their loads. This was also done in order to prevent them from reporting the abductions and location of the rebels.²⁷⁹ If they were caught attempting to escape or if they were unable to work they would be punished with beatings or given extra work²⁸⁰ or they would be executed.²⁸¹ The Prosecution submits that the cruel practice of carving the letters AFRC/RUF on the bodies of victims should be taken into account for sentencing purposes as a particularly appalling way of exercising powers attaching to the right of ownership over civilians.

²⁷⁶ TF1-074, Transcript 12 July 2004, pp. 31-32; Exhibit No.2 Photograph of Witness TF1-074, showing the marking on his chest.
[REDACTED]

²⁷⁹ Trial Judgement, para. 1216.

²⁸⁰ Trial Judgement, para. 1218, para. 1248 for mining camps in Kono District regarding beatings.

²⁸¹ Trial Judgement, paras 1221 and 1326 with regard to RUF camps in Kono District between February and December 1998, para. 1264 for Yengema training camp in Kono District.

105. The impact of the crime of pillage on the victims increases its gravity. Losing properties of considerable economic value would “detrimentally impact on the victim.”²⁸²

6. Effects of the Crime on Relatives of the Victims and on Witnesses of Crimes

106. The Trial Chamber should consider as adding to gravity, the effects the crimes had on relatives of the victims,²⁸³ witnesses, and the community. The killings for which the Accused have been convicted under Counts 3 to 5 caused mass displacement of civilians due to terror and fear. For instance, the murder of a Nigerian female in Wenedu terrified the civilians.²⁸⁴ TF1-122 testified that following the news that B.S Massaquoi and others had been killed in Kenema Town, “a lot of people have already started pulling out of Kenema Township. Kenema was more of a ghost town, completely empty.”²⁸⁵ [REDACTED]

[REDACTED] The effect of the crimes on relatives and witnesses became evident even during the trial proceedings. When testifying about killings in Tombodu, TF1-304 was overcome by distress, which forced the Chamber to stand down the proceedings for a while.²⁸⁸ The witness testified that one day as he approached Savage Pit, “... my hair stood on age [sic]. There were so many skeletons, human bones packed over each other. [...] When I saw the bones, I was afraid.”²⁸⁹ TF1-304 testified how his relatives who had fled Tombodu, were afraid of going back.²⁹⁰ [REDACTED] described his feelings when he witnessed the killings by Rocky: “Then I bite my teeth together. Then I stiffened my whole body. I took one step. I made it twice. Taking a tall step he opened fire. He started shooting. Then I became scared.”²⁹¹

²⁸² Trial Judgement paras 1029 and 1335

²⁸³ *Krnojelac* Appeal Judgement, paras 259-260.

²⁸⁴ Trial Judgement, para. 1233.

²⁸⁵ TF1-122 Transcript 7 July 2005, pp. 91-93.

²⁸⁶ Trial Judgement, para. 1084.

²⁸⁷ Trial Judgement, para. 1396.

²⁸⁸ TF1-304 Transcript 12 January 2005, p. 35.

²⁸⁹ TF1-304 Transcript 12 January 2005, p. 36.

²⁹⁰ TF1-304 Transcript 12 January 2005, p. 40.

²⁹¹ [REDACTED]

108. The victims of the crimes for which the Accused are convicted under Counts 3 to 5 included women, children, young as well as elderly people and detainees, thus a particularly vulnerable section of the population. This adds to the gravity of the crimes. Several findings of the Trial Chamber indicate that vulnerable victims were not saved. In Tikonko in Bo District, a man was shot dead together with his wife and children.²⁹⁴ TF1-004 saw a female corpse with an open stomach wound.²⁹⁵ A fifteen year old boy was brutally killed in Koidu Town.²⁹⁶ A female Nigerian was killed in Wendedu in Kono District.²⁹⁷ The 64 persons killed in Kailahun had been detained prior to their execution²⁹⁸ and were therefore helpless. The group included persons as old as 60 years.²⁹⁹

██████████ The victims of sexual violence were often young women and girls, which the Trial Chamber found to be the most vulnerable members of society.³⁰⁰ The Trial Chamber has found that abducted female children, including girls of less than 15 years of age were forced into sexual partnerships with fighters.³⁰¹ ██████████

³⁰¹ Trial Judgement, para. 1622.

██████████ The Trial Chamber found that other girls between 10 and 15 years of age were taken as "wives" by rebels in Buedu.³⁰³ ██████████

██████████ She was habitually given drugs³⁰⁵ which, the Trial Chamber found, reflected Superman's intention "to further abuse and exercise control over her."³⁰⁶ ██████████

██████████ The crimes under Counts 10 to 11 were committed indiscriminately and the victims included women, children and even elderly people. The rebels committed gruesome acts in full view of the public; not even children were spared the awful sights. A grim account was given by ██████████

"My children were sitting in front of me, where they were put they were sitting and they were looking at me because they did not hide them. They were in the open and they were seeing what was happening"³⁰⁹

111. Many of the enslaved civilians were particularly vulnerable, due to their young age, sickness, or pregnancy. The Trial Chamber found on several occasions that children aged eight, ten and twelve were captured,³¹⁰ and some were used for food finding missions.³¹¹ Vulnerable victims, such as elderly people, were not saved from cruel treatment on the mining sites. The Trial Chamber found for instance that at the Tombodu mining camp, older civilians bore the brunt of the rebels' punishment if diamonds were not found. They were undressed, put in cells and then taken to the riverside where they were flogged and stabbed in the head.³¹²

³⁰² Trial Judgement, paras 591, 1406.

³⁰³ Trial Judgement, para. 1407.

³⁰⁴ Trial Judgement, para. 1408.

³⁰⁵ Trial Judgement, para. 1408.

³⁰⁶ Trial Judgement, para. 1463.

³⁰⁷ Trial Judgement, para. 1291.

³⁰⁹ Trial Judgement, para. 1198, ██████████

³¹⁰ Trial Judgement, para. 1215.

³¹¹ e.g. TF1-314 was an SGU and took part in two food-finding missions along with 25 other girls from SBUs whose ages ranged between 10 to 15 years. See Trial Judgement, para. 1660.

³¹² Trial Judgement, para. 1253.

8. Gravity of the Offences Regarding Counts 1 and 2

112. The acts of terrorism and collective punishments for which the three Accused have been convicted were committed on a wide and elaborate scale with an extreme degree of brutality. These crimes were committed as part of a campaign to terrorise and subdue the civilian population through extreme fear and punishment, which, it is submitted, significantly increases their gravity.³¹³

113. In respect of Counts 3 to 5, the Trial Chamber held that the unlawful killings in Kono District found to be committed by the RUF forces amounted to acts of terrorism.³¹⁴ This was also found to be the case with respect to killings in Tikonko, Sembahun and Gerihun in Bo District,³¹⁵ in Kenema Town,³¹⁶ Tongo Field,³¹⁷ and Cyborg Pit.³¹⁸ It was found notably that acts in Kono were committed "widely and openly, without any rationale [sic] objective, except to terrorise the civilian population into submission".³¹⁹ Further, the extermination by Rocky of a group of civilians in Koidu was carried out with the intent of indiscriminately and collectively punishing them for perceived support for ECOMOG and the Kabbah Government, and thus was an act of collective punishment.³²⁰ This was also the intent behind the execution of 200 civilians in Tombudu by Savage.³²¹ The Trial Chamber found the mass killing of 63 civilians in Kailahun Town, pursuant to

³¹³ See Trial Judgement, para. 956: "[...] [the] similar *modus operandi*, with civilians raped and killed, houses razed to the ground and property looted, establishes that these were not isolated incidents but rather a central feature of a concerted campaign against civilians".

³¹⁴ Trial Judgement, para. 1341.

³¹⁵ Trial Judgement, paras 1032-1037.

³¹⁶ Trial Judgement, para. 1125: "The Chamber is satisfied that these crimes were intended to illustrate the gruesome repercussions of collaborating or being perceived to collaborate with enemies of the RUF and so to terrorise and subdue the population." See also paras 1132-1133 where it was also found that crimes committed against victims suspected of collaborating with the Kamajors constituted collective punishments, as "victims of these crimes were targeted in order to punish them for allegedly providing assistance to enemies of the RUF [...]".

³¹⁷ Trial Judgement, para. 1127: "The Chamber finds that the shooting of one civilian in a crowd at a public demonstration displays in such circumstances the specific intent to spread terror among the civilians present and the civilian population of Tongo Field in general. This is especially so in this context where civilians were protesting against the AFRC/RUF forces. The Chamber is satisfied that the perpetrators intended to impart a clear public message that such protests would be met with violence."

³¹⁸ Trial Judgement, para. 1129: "We find that the perpetrators of the killings of civilians at Cyborg Pit specifically intended by their conduct to spread terror among the civilian population in order to create an environment conducive to absolute obedience. The Chamber thus finds that the multiple incidents of violence at Cyborg Pit involving the killings of over twenty civilians; twenty-five civilians; fifteen civilians and three civilians constitute acts of terrorism as charged in Count 1 of the Indictment."

³¹⁹ Trial Judgement, para. 1343.

³²⁰ Trial Judgement, para. 1367.

³²¹ Trial Judgement, para. 1369.

Bockarie's orders and in the presence of RUF senior members, including Gbao, to amount to an act of terror and to collective punishment.³²²

114. As regards acts of sexual violence charged under Counts 6 to 9, the Trial Chamber found that perverse methods of sexual violence were used against women and men of all ages.³²³ Acts of sexual violence were committed "in a calculated and concerted pattern to use sexual violence as a weapon of terror",³²⁴ as there was a "specific intent of spreading fear amongst the civilian population as a whole, in order to break the will of the population and ensure their submission to AFRC/RUF control".³²⁵ Acts of rape, sexual slavery and forced marriages in Kono³²⁶ and in Kailahun³²⁷ Districts were found to be part of this consistent pattern of conduct targeting women. Additionally, the rapes in Tombodu, Sawao, Penduma, Bumpah and Bomboafuidu and the outrages on personal dignity committed in Bumpah and Bomboafuidu reflected "a consistent pattern of conduct *openly exhibited* by the rebel forces in their encounters with civilians".³²⁸ The Trial Chamber considered the public nature of the crimes to be "a deliberate tactic on the part of the perpetrators to instil fear into the civilians".³²⁹

115. The acts of physical violence perpetrated in Kenema Town, including the beatings and ill-treatment of TF1-129 by AFRC/RUF members and in which Sesay participated, were found to amount to acts of terror.³³⁰ These acts were also found to be collective punishments.³³¹ In Kono District, the amputations in Tombodu, Yardu and Penduma, as well as the amputations and beatings in Sawao and the carvings in Kayima and Tomandu were found to be acts of violence directed against civilians with the specific intent of terrorising the civilian population. The Trial Chamber noted that the

³²² Trial Judgement, paras 1491-1492: "The Chamber also concludes that the killing of the 63 civilians was committed with the aim of indiscriminately punishing civilians perceived to be Kamajors or collaborators".

³²³ Trial Judgement, para. 1347: these methods ranged from "brutal gang rapes, the insertion of various objects into victims' genitalia, the raping of pregnant women and forced sexual intercourse between male and female civilian abductees".

³²⁴ Trial Judgement, para. 1347.

³²⁵ Trial Judgement, para. 1348.

³²⁶ Trial Judgement, paras 1353-1356.

³²⁷ Trial Judgement, paras 1493-1494.

³²⁸ Trial Judgement, para. 1354 (emphasis added).

³²⁹ Trial Judgement, para. 1355.

³³⁰ Trial Judgement, paras 1123-1124 and 2052: "The Chamber recalls that Sesay participated in the beating of TF1-129 in Kenema Town by threatening TF1-129 and firing his gun between TF1-129's legs [...]".

³³¹ Trial Judgement, paras 1132-1133.

amputations and carvings practised by the AFRC/RUF were notorious and these crimes served as a permanent, visible and terrifying reminder to all civilians of the power and propensity to violence of the AFRC and RUF.³³² The Trial Chamber considered these beatings and amputations to be “part of a pattern of punishments indiscriminately inflicted against civilians whom the rebels accused of supporting the elected Government of President Kabbah”.³³³

116. It is to be noted that it was found that the enslavement of hundreds of civilians by AFRC/RUF fighters at Cyborg Pit was an act of violence committed with the specific intent to spread terror among the civilian population. The Trial Chamber explained that “the massive scale of the enslavement, the indiscriminate manner in which civilians were enslaved and the brutal treatment of the victims were circumstances capable of instilling, and intending to evoke, extreme fear in the civilian population of Tongo Field”.³³⁴

117. Acts of burning, charged under Count 14, were found to amount to acts of terror by the Trial Chamber.³³⁵ The evidence demonstrated that orders from AFRC/RUF senior commanders, including Sesay and Kallon, were given to burn houses in Koidu.³³⁶ The Trial Chamber found that the burning of an unknown number of civilian homes during the attack on Koidu in February/March 1998 and in Tombodu in the period from February to April 1998 constituted collective punishments and acts of terrorism, as they were intended to punish civilians for failing to support the AFRC/RUF and to prevent civilians from remaining in these towns.³³⁷ TF1-041 had reported the burning to Kallon, but his only response was that ECOMOG were advancing and he did not take any action to stop the burning. The burning continued until the troops pulled out of Koidu, by which

³³² Trial Judgement, para. 1357.

³³³ Trial Judgement, para. 1372: “[...] amputations were solely committed with the intent to punish the population. Rebels variously accused the victims of amputations of being “Kabbah’s people” or maliciously informed them that they could go to President Kabbah for new hands”.

³³⁴ Trial Judgement, para. 1130.

³³⁵ Trial Judgement, para. 455.

³³⁶ Trial Judgement, para. 836: The Trial Chamber found that when the troops were retreating from Kono during the April 1998 ECOMOG attack, Kallon supervised the burning of homes on the orders of Superman. See also para. 1141: The day after the capture of Koidu, Johnny Paul Koroma, Superman, TF1-366, Sesay, Kallon and other AFRC/RUF Commanders assembled a meeting at Kimberlite. Johnny Paul Koroma addressed the Commanders and ordered that all houses in Koidu Town should be burned to the ground so that no civilian would be able settle there as the civilians were not supporters of the Junta. Sesay reiterated this message, stating that the civilians had proved to be traitors and that they should not be tolerated.

³³⁷ Trial Judgement, para. 1361.

point it was completely destroyed.³³⁸ The Trial Chamber has found that in Bo District, the burning of more than 500 houses during the second attack on Tikonko³³⁹ on 15 June 1997 and the burning of over 30 houses in Sembahun constituted acts of terror.³⁴⁰ TF1-004 said that “the fires in some of the houses burned for two or three days after the attack.”³⁴¹

118. It is submitted that in addition to terror, acts of terrorism by burning caused serious losses in terms of shelter and household property which caused serious hardship to the victims. The burning of more than 500 homes in Tikonko³⁴² and the burning of over 30 houses in Sembahun³⁴³ left more than 530 families homeless and without any form of household items, thereby rendering their daily lives extremely difficult. The burning of civilian homes in Koidu Town³⁴⁴ left a large number of families in a similar predicament.

119. The Prosecution submits that the gravity of the acts of terrorism and collective punishments is increased by the fact that these acts formed part of a consistent pattern of atrocities across a broad geographical area and over a considerable period of time, involving a high number of victims and repercussions throughout the affected community. Thus, the fact that certain of the crimes for which the Accused have been convicted also qualify as acts of terrorism and collective punishment greatly increases the gravity of the overall conduct of the Accused.

C. Aggravating Circumstances

120. In determining the appropriate sentences for Sesay, Kallon and Gbao, the Trial Chamber is requested to take into account the aggravating circumstances presented below.

³³⁸ Trial Judgement, para. 1157.

³³⁹ Trial Judgement, para. 1002.

³⁴⁰ Trial Judgement, para. 1975. See also Trial Judgement, paras 1032 and 1039.

³⁴¹ Trial Judgement, para. 1005.

³⁴² See Trial Judgement, para. 1005.

³⁴³ Trial Judgement, para. 1975. See also Trial Judgement, paras 1032 and 1039.

³⁴⁴ Trial Judgement, paras. 1042 - 1143, 2064.

1. Aggravating Circumstances Applicable to All Accused

(a) Sexual, Violent, and Humiliating Nature of the Acts

121. Some of the crimes in Counts 3 to 5 were characterised by particular violence and humiliation. This should be considered as aggravating. For example, before B.S. Massaquoi and others were killed, they were mercilessly beaten.³⁴⁵ Their hands were tied at their backs and the rope was cutting into their flesh.³⁴⁶ B.S. Massaquoi who had been the Chairman of Kenema Town Council,³⁴⁷ was stripped to his underwear.³⁴⁸ The Chamber found that a number of violent crimes were committed in Kenema Town against victims suspected of being Kamajors or collaborating with the Kamajors.³⁴⁹

122. Civilians who were forced to work for the RUF were often treated in an extremely humiliating manner. The Chamber found that at times civilians who were captured and taken to diamond mines were brought in ropes or chains and some had to work naked.³⁵⁰ In the Tombodu mining camp, the miners were dressed only in their underpants as their clothes were taken to discourage escape attempts. They were often bitten by mosquitoes and ants but they were not given any medication. As a result, some of them died and their bodies were thrown in the water.³⁵¹ The Chamber recalled witness testimony that "civilians were captured just like you would capture a chicken."³⁵²

123. Acts of pillage were often accompanied by violence and humiliation and this should be considered as an aggravating factor.³⁵³

(b) Length of Time During Which Crimes Continued

124. Killings were carried out over an extended time period, which should be considered as aggravating. For example, the frenzy of killings in Kono District went on from

³⁴⁵ Trial Judgement, para. 1069.

³⁴⁶ Trial Judgement, para. 1070.

³⁴⁷ Trial Judgement, para. 1066.

³⁴⁸ Trial Judgement, para. 1069.

³⁴⁹ Trial Judgement, para. 1123: These violent crimes included the killings at Mambu Street, the person killed at the NIC building, the alleged Kamajor boss killed during "Operation No Living Thing," and the killing of B.S. Massaquoi, Andrew Quee and four other civilians.

³⁵⁰ Trial Judgement, paras 1251-1252 and 1328 with regard to Tombodu in Kono District.

³⁵¹ Trial Judgement, para. 1251.

³⁵² Trial Judgement, para. 1247, citing TF1-367, Transcript 22 June 2006, pp. 50-51.

³⁵³ Trial Judgement, para. 1007.

February/March through April 1998.³⁵⁴ The Chamber found for example, that a massive number of civilians were killed in Tombodu during the period from about 14 February 1998 to 30 June 1998.³⁵⁵ The killings in Tombodu were particularly notorious and disclosed a repetitive pattern with the disposal of bodies in Savage Pit.³⁵⁶

125. The fact that forced marriage was a continuous crime is to be considered an aggravating factor. Where women and girls were forced into marriages, they had no choice but to submit to the sexual desires and other demands of their “husbands” as an ongoing predicament for the duration of an often lengthy period of captivity.³⁵⁷ TF1-016 was held captive by her “husband” for a period of one year and three months and was forced to have sex with him on a daily basis.³⁵⁸

126. The crimes in Counts 10 and 11 were ongoing and indiscriminate during the period 25 May 1997 to 19 February 1998. Certain incidents involved an inordinately long period of time. For example, with respect to B S Massaquoi, “[t]hey beat him for about an hour... He was groaning, shouting, asking for help.” “They beat him mercilessly. Even a cow you cannot beat. Even no animal you cannot beat like that.”³⁵⁹ TF1-197 and other civilians were tied to a mango tree with wire and they were flogged for a very long period. Every part of the witness’s body was swollen after the flogging.³⁶⁰

127. The Chamber found that forced mining in Kono District became widespread after the recapture of Kono by RUF troops subordinate to Issa Sesay in December 1998 and continued until after January 2000.³⁶¹ The Chamber noted several times that forced mining for the RUF in Kono District continued until disarmament in 2002,³⁶² and that civilian camps in Kono District remained in existence until 2001.³⁶³ It also held that the training base in Yengema operated from 1998 until disarmament.³⁶⁴ Furthermore,

³⁵⁴ Trial Judgement, para. 2063.

³⁵⁵ Trial Judgement, para. 1275.

³⁵⁶ Trial Judgement, para. 1275.

³⁵⁷ Trial Judgement, para. 1213.

³⁵⁸ Trial Judgement, paras 1212-1213.

³⁵⁹ TF1-129, Transcript 10 May 2005, p. 75.

³⁶⁰ TF1-197, Transcript 21 October 2004, pp. 84-85.

³⁶¹ Trial Judgement, para. 1242.

³⁶² Trial Judgement, para. 1242.

³⁶³ Trial Judgement, para. 1223.

³⁶⁴ Trial Judgement, para. 1262.

regarding forced farming in Kailahun District, the Chamber found that from 30 November 1996 to at least September 2000 the RUF had a planned and organised system in place in which civilians were intentionally forced to engage in various forms of forced farming throughout Kailahun District.³⁶⁵ This lengthy period of time should act in aggravation.

(c) Exacerbated Humiliation and Degradation

128. The Trial Chamber has entered cumulative convictions under Counts 6 (rape), 7 (sexual slavery), 8 (forced marriage) and 9 (outrages upon personal dignity). The humiliating and degrading nature of the sexual violence and phenomenon of forced marriage has to a large extent been captured by the convictions under Count 9. In determining sentence, it should be taken into account that it was often the case that lasting suffering was caused, or where there was a clear and direct intent to humiliate the victim as opposed to mere knowledge of this likely effect. A manifest desire to debase victims and place them in situations of unimaginable mortification was frequently evident, particularly in the commission of sexual crimes in public or in front of family members of the victim. While some women were taken inside houses to be raped, others were raped outside in full view of other civilians.³⁶⁶

129. In carrying out mutilations, the rebels did not cut off just any hand, but ensured that the amputation had a severe effect on the victim by insisting on cutting off the right hand.³⁶⁷

(d) Total Disregard for the Sanctity of Human Life and Dignity

130. Killings were carried out in total disregard for the sanctity of human life. For example, the Chamber observed that the executions of Bonnie Wailer and two others³⁶⁸

³⁶⁵ Trial Judgement, para. 1479.

³⁶⁶ Trial Judgement, paras 1193-1195: [REDACTED]

[REDACTED] 1205: The Trial Chamber found that in Bumpeh, a couple was ordered to have sexual intercourse in front of the other captured civilians. The rebels then forced the man's daughter to wash her father's penis. Prior to that, the civilians had been stripped naked and commanded to laugh.

³⁶⁷ TF1-192, Transcript 1 February 2005, p. 23.

³⁶⁸ Trial Judgement, para. 1103.

demonstrated “the reckless disregard for civilian life”.³⁶⁹ The Chamber also found that in the killing of Mr. Dowi, “the perpetrators acted with a reckless disregard for civilian life”.³⁷⁰ In the killing of a Limba man in Tongo, “the perpetrators demonstrated a wanton disregard for human life typical of the AFRC/RUF forces”.³⁷¹

(e) Enjoyment of Criminal Acts, Depravity and Sadistic Behaviour

131. The manner in which some killings were carried out demonstrated the enjoyment of criminal acts, sadism or a desire for revenge, which is aggravating. On one occasion in Kenema, prior to being killed, a man was marched through the streets by rebels who were singing that they had caught a Kamajor and were taking him to Bockarie.³⁷² At the time the man was killed, Bockarie was, “brandishing his pistol in the air, boasting that he must do away with all the Kamajors.”³⁷³ Also in Kenema, AFRC/RUF fighters danced and sang around the dead body of a man saying they had killed the Kamajor boss.³⁷⁴

132. The rebels were sadistic in the commission of the crimes in Counts 10 to 11 and appeared to enjoy their acts. The Chamber will recall how women were asked to applaud and laugh as the hands of some men were being cut off.³⁷⁵ During the “flag trick” the rebels would raise or lower a flag and unsuspecting passers-by would then be harassed for not stopping. [REDACTED]

[REDACTED] The “flag trick” became a game to the rebels.

³⁶⁹ Trial Judgement, para. 1104.

³⁷⁰ Trial Judgement, para. 1100.

³⁷¹ Trial Judgement, para. 1128.

³⁷² Trial Judgement, para. 1058.

³⁷³ Trial Judgement, para. 1059.

³⁷⁴ Trial Judgement, para. 1065.

³⁷⁵ Trial Judgement, para. 1184.

³⁷⁶ Trial Judgement, para. 1047.

³⁷⁷ Trial Judgement, para. 1177.

(f) Exploitation of Women and Girls

134. The Trial Chamber found that forced marriage was a means of obtaining unpaid logistical support for troops.³⁷⁸ This motive, reflecting blatant exploitation of vulnerable women and girls, should be seen as an aggravating factor.

2. Aggravating Circumstances Issa Sesay

(a) Leadership Role of Sesay

135. Sesay was found liable under Article 6(1) of the Statute for planning the enslavement of hundreds of civilians to work in mines at Tombodu and throughout Kono District between December 1998 and January 2000.³⁷⁹ The Chamber found that Sesay's conduct was a significant contributory factor to the perpetration of enslavement, that he intended the commission of these crimes and that it was him, in concert with other RUF leaders, who masterminded the abduction and enslavement of hundreds of civilians for diamond mining throughout Kono District.³⁸⁰ From the factual findings of the Trial Chamber it can be inferred that Sesay used his role as a high-ranking leader of the RUF to plan the enslavement of hundreds of civilians. The RUF mining Commanders reported directly to Sesay. He visited the mines to collect diamonds, signed-off on the mining log-books and transported diamonds to Bockarie as well as taking them to Liberia. Sesay received intelligence reports from the mining camps and through his bodyguards supervised the mining by enslaved civilians.³⁸¹ Sesay also visited the mines, ordered that civilians be captured from other Districts and arranged for transportation of the captured civilians to the mines.³⁸²

(b) Education, Training and Experience of Sesay

136. Issa Sesay is a reasonably educated person up to form three,³⁸³ who was well trained prior to the commencement of the RUF war in Sierra Leone.³⁸⁴ He served in the

³⁷⁸ Trial Judgement, para. 2107.

³⁷⁹ Trial Judgement, para. 2116.

³⁸⁰ Trial Judgement, para. 2115.

³⁸¹ Trial Judgement, para. 2086.

³⁸² Trial Judgement, para. 2113.

³⁸³ Accused Issa Sesay, Transcript 3 May 2007, pp. 30-32.

³⁸⁴ Accused Issa Sesay, Transcript 3 May 2007, pp. 45-51.

RUF for a long period gaining experience and rising through the ranks,³⁸⁵ thereby gaining full knowledge of his duties and responsibilities. By the time of the crimes, Issa Sesay was a knowledgeable and experienced adult, with a high level of responsibility entrusted in him. These factors should be considered as aggravating.

(c) Desire for Pecuniary Gain

137. The Trial Chamber found that Sesay also enslaved civilians for so called “private” mining and that civilians were supervised by the bodyguards of the RUF commanders, including Sesay’s bodyguards.³⁸⁶ Recalling that Sesay was convicted both for participation in a joint criminal enterprise and for planning the crime of enslavement, the fact that he used his position and authority within the RUF as well as the established system of enslavement, for his own pecuniary gain is an important aggravating factor. This is also true of the farms, which the Trial Chamber found were owned by RUF commanders, including Sesay, between 1995 until 2000. The Trial Chamber held that “their produce was for the exclusive enjoyment of the particular proprietor of the farm”.³⁸⁷

3. Aggravating Circumstances Morris Kallon

(a) Leadership Role of Kallon

138. Kallon has been found liable under Article 6(1) of the Statute for instigating the murder of a Nigerian female in Wenedu in Kono District. The high position of leadership held by Kallon is aggravating. At the time of this crime, Kallon had the rank of Major and he was a senior RUF Commander. Kallon was an operational Commander who gave orders which were complied with by troops. Importantly, Kallon was a Vanguard and this status afforded power and engendered respect.³⁸⁸ The Trial Chamber found that Kallon’s assignment permitted him for example to exercise a supervisory role

³⁸⁵ Accused Issa Sesay, Transcript 3 May 2007, pp. 89-109; Transcript 4 May 2007, pp. 2-3 and 20-21; Transcript 22 June 2007, p. 28.

³⁸⁶ Trial Judgment, para. 2097.

³⁸⁷ Trial Judgment, para. 1425.

³⁸⁸ Trial Judgment, paras 833-838.

over Rocky, a fellow Vanguard.³⁸⁹ In instigating the murder of the Nigerian female in Wenedu, Kallon abused his leadership position, which is further aggravating.

(b) Education, Training and Experience of Kallon

139. Morris Kallon is an educated person up to form five,³⁹⁰ who was well trained prior to the commencement of the conflict in Sierra Leone³⁹¹ and he served in the RUF for a long period gaining experience, rising through the ranks³⁹² and thereby gaining full knowledge of his duties and responsibilities. By the time of the crimes, Morris Kallon was an intelligent, mature, experienced and responsible adult. These factors should be considered as aggravating.

(c) Desire for Pecuniary Gain

140. The Trial Chamber found that Kallon used enslaved civilians for “private” mining and that civilians forced to mine diamonds were supervised by Kallon’s bodyguards.³⁹³ Recalling that Kallon was convicted for participation in a joint criminal enterprise with regard to enslavement in Kenema and Kono District and as a superior for enslavement in Kono District, the fact that he used his position and authority within the RUF as well as the established system of enslavement for his own pecuniary gain is an important aggravating factor.

(d) Behaviour of Morris Kallon During Trial

141. There is evidence that Morris Kallon sometimes demonstrated a defiant attitude and lack of respect for the judicial process in his refusal to attend court.³⁹⁴ This should be considered in aggravation.

³⁸⁹ Trial Judgement, para 2118.

³⁹⁰ Accused Morris Kallon, Transcript 11 April 2008, p. 50.

³⁹¹ Accused Morris Kallon, Transcript 11 April 2008, pp. 50-56.

³⁹² Accused Morris Kallon, Transcript 18 April 2008, pp. 15-16 and 83-85.

³⁹³ Trial Judgement, para. 2097.

³⁹⁴ Exhibit 13, Morris Kallon’s letter to the Trial Chamber demanding his acquittal and indicating that he did not find his presence in court necessary; Transcript 4 February 2008, pp. 6-8, (for completeness, pp. 2-33).

4. Aggravating Circumstances Augustine Gbao

(a) Education, Training and Experience of Gbao

142. Gbao is a trained Police Officer who, prior to the war, served in the Sierra Leone Police. He was an RUF Vanguard and was an educated person who was well trained prior to the commencement of the conflict.³⁹⁵ He once served as Secretary to the Commander in Chief, Sankoh.³⁹⁶ He served in the RUF as ideology trainer.³⁹⁷ He was knowledgeable about the Geneva Conventions³⁹⁸ and served in the RUF for a long period gaining experience, rising through the ranks³⁹⁹ and thereby gaining full knowledge of his duties and responsibilities. By the time of the crimes, Augustine Gbao was an intelligent, mature, experienced and responsible adult. These factors should be considered as aggravating.

(b) Desire for Pecuniary Gain

143. The Trial Chamber found that civilians were required to work on farms owned by Gbao to do so called “private” farming. The Trial Chamber found that these private farms were operated in a similar manner to the RUF “government” farms, except that their produce was for the exclusive enjoyment of the particular proprietor of the farm.⁴⁰⁰ Civilians were forced to work on Gbao’s personal farm in 1997 and 1998. The food produced on those farms was for Gbao’s personal use and the civilians were not paid.⁴⁰¹ Recalling that Gbao was convicted for participation in a joint criminal enterprise with regard to enslavement in Kenema, Kailahun and Kono District, and that the Trial Chamber had found that he was involved in the planning of the enslavement of civilians for RUF farms,⁴⁰² the fact that he used his position and authority within the RUF as well as the system of enslavement established under the RUF for his own pecuniary gain is an important aggravating factor.

³⁹⁵ DAG-080, Transcript 6 June 2008, pp. 16-18.

³⁹⁶ DAG-080, Transcript 6 June 2008, p. 13.

³⁹⁷ Trial Judgement, paras 734 and 2010-2012.

³⁹⁸ DAG-080, Transcript 6 June 2008, p. 26.

³⁹⁹ DAG-080, Transcript 6 June 2008, p. 13.

⁴⁰⁰ Trial Judgement, para. 1425.

⁴⁰¹ Trial Judgement, paras 1426 and 2037.

⁴⁰² Trial Judgement, para. 2036.

(c) Behaviour of Augustine Gbao During Trial

144. There is evidence that Gbao in some cases demonstrated a defiant attitude and lack of respect for the judicial process in his refusal to attend court which should be considered as an aggravating factor. There is also evidence that Gbao refused to recognize the jurisdiction of the court for a significant period of the trial.⁴⁰³

D. Count 12: Child Soldiers

145. The massive recruitment of child soldiers, a particularly heinous crime, was a distinctive practice of the RUF. The Trial Chamber found that "it is established beyond reasonable doubt that: (i) between February and April 1998, RUF and AFRC fighters routinely abducted persons under the age of 15 in Kono District for the purpose of using them within their respective organisations; and (ii) RUF fighters subjected persons under the age of 15 to forced military training at Bayama and Bunumbu in Kailahun District between 1997 and December 1998 and at Yengema in Kono District between December 1998 and September 2000".⁴⁰⁴ The Chamber further held that "between November 1996 and September 2000, the RUF routinely used persons under the age of 15 to actively participate in hostilities in Kailahun, Kono and Bombali Districts, as charged in Count 12 of the Indictment."⁴⁰⁵ The Trial Chamber found Sesay and Kallon to be liable pursuant to Article 6 (1) for planning the use of children under the age of 15 to participate actively in hostilities in Kailahun, Kono and Bombali Districts between 1997 and September 2000.⁴⁰⁶

1. Gravity of the Offence

(a) Scale and Brutality of the Offences Committed

146. The Trial Chamber found that the RUF and later, the AFRC/RUF, routinely and systematically abducted children including those under the age of 15.⁴⁰⁷ The practice of

⁴⁰³ Exhibit 1, Augustine Gbao's Declaration that he did not recognise the SCSL and had resolved not to take part in its proceedings; Transcript 7 July 2004, pp. 11-15; Transcript 4 February 2008, pp. 8-9, (for completeness, pp. 2-33).

⁴⁰⁴ Trial Judgement, para. 1708.

⁴⁰⁵ Trial Judgement, para. 1748.

⁴⁰⁶ Trial Judgement, paras 2230 and 2234.

⁴⁰⁷ Trial Judgement, paras 1696 and 2220.

forcibly recruiting persons under the age of 15 and using them in hostilities has been described by the Trial Chamber, throughout its Judgement, as “large scale and organised”,⁴⁰⁸ “widespread”,⁴⁰⁹ “entrenched and institutionalised”,⁴¹⁰ and has been qualified as “a consistent pattern of conduct.”⁴¹¹ It was “deliberately executed in order to support the war effort of the RUF and AFRC forces.”⁴¹²

147. Children were brutally abducted and subjected to a harsh military training which often ended with the death of the recruits. It was found that recruits who were unable to endure the training regime would be shot and killed.⁴¹³ The evidence considered by the Trial Chamber indicates clearly that no mercy was shown towards children who were part of the RUF and that brutal acts of violence were consistently committed against them.

(b) Number of Victims

148. Countless victims were affected by the crime of conscription and use of child soldiers. In particular, the Trial Chamber found that the RUF and AFRC/RUF forces engaged in abduction campaigns in which *thousands of children* of varying ages were forcibly separated from their families.⁴¹⁴

149. The Trial Chamber found that “large numbers of children, including TF1-141 and TF1-263, were abducted by the AFRC/RUF forces in Kono District between February and April 1998.”⁴¹⁵ The evidence also showed that a “large number of recruits from Bunumbu in Kailahun District and from Kono District were trained at Yengema.”⁴¹⁶ 53 children were being trained in Bunumbu training base in May 1998.⁴¹⁷

⁴⁰⁸ Trial Judgement, paras 1614 and 2223.

⁴⁰⁹ Trial Judgement, paras 1703 and 1744.

⁴¹⁰ Trial Judgement, para. 1621.

⁴¹¹ Trial Judgement, paras 1615 and 1707.

⁴¹² Trial Judgement, para. 1744.

⁴¹³ Trial Judgement, para. 1641.

⁴¹⁴ Trial Judgement, para. 1617.

⁴¹⁵ Trial Judgement, para. 1697.

⁴¹⁶ Trial Judgement, para. 1646.

⁴¹⁷ Trial Judgement, para. 1635.

154. It is to be stressed that the crimes charged under Count 12 have a significant and prolonged psychological impact on the children. This Trial Chamber has already observed that “child soldiers are deprived of a family, deprived of an education and all the advantages that would otherwise help them be children and prepare them for adulthood [...] In the end, child soldiers will suffer deep trauma, which persists long after the fighting has stopped.”⁴²⁵ Further, it is to be noted that “besides the risk to their physical well-being active participation in armed hostilities teaches them the rule and culture of violence, disrupts their education and frequently results in gravest traumas, since children are even less capable to deal with the horrors of war than grown adults. Social re-integration poses particular problems for children that have never seen anything else than conflict and violence.”⁴²⁶ TF1-141 was in fact diagnosed with Post-Traumatic Stress Disorder (“PTSD”) originating from his experiences as a child soldier with the RUF.⁴²⁷

(d) Effects of the Crime on Relatives of the Victims and on Witnesses of Crimes

155. The crime undoubtedly also has an effect on the relatives of the victims.⁴²⁸ The experience of children conscripted and/or used in RUF ranks has an irreversible impact on their lives, but also on their families, as reintegration is a long and difficult process that affects not only the child himself, but his family and the community in general. The Special Representative of the Secretary-General for Children and Armed Conflict has noted that “the consequences for these children and for their communities are catastrophic.”⁴²⁹

⁴²⁵ CDF Sentencing Judgement, para. 55, citing *Child Soldiers* (Geneva: ICRC, 2003), available at <http://www.icc.org>.

⁴²⁶ M. Cottier, “Participation of children in hostilities”, in Otto Triffterer, *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article*, 2nd ed., Oxford, 2008, N 227, p. 467. See also Report on Impact of Armed Conflict on Children, Graça Machel, 26 August 1996, para. 50: “Former child soldiers have grown up away from their families and have been deprived of many of the normal opportunities for physical, emotional and intellectual development”.

⁴²⁷ Trial Judgement, para. 583; Exhibit 15, paras 2-3: “The Post Traumatic Stress is observable in Witness TF1-141 through symptoms like palpitations and body pains, which increase when he is asked to recall events related to the time he spent as a child combatant. Witness TF1-141 also reports feelings of fear, associated with moments of depersonalisation, as if he is back in the environment where the events took place.”

⁴²⁸ *Krnjelac* Appeal Judgement, paras 259-260.

⁴²⁹ Report of the Special Representative of the Secretary-General for Children and Armed Conflict, 6 August 2008, para. 1.

156. Evidence adduced has shown undeniably that children endured reintegration problems for a prolonged period after having been released.⁴³⁰ Child soldiers conscripted in RUF ranks have clearly expressed how difficult it was for them to reintegrate into society as a civilian. TF1-199 said that after they were handed over to Caritas, people were scared of them and the community was reluctant to receive him and other ex-child soldiers, calling them "rebel children".⁴³¹ Another boy, aged 14 at the time of his family reunification, told TF1-174 that he wanted to get married because as a member of the RUF for five years he had grown accustomed to regular sexual intercourse as he had raped many women.⁴³²

(e) Vulnerability of the Victims

157. The Trial Chamber noted that a substantial percentage of AFRC/RUF fighters were young recruits, that many abducted children were as young as ten years old, and some were even younger.⁴³³ Indeed, children as young as eight and nine were abducted.⁴³⁴ Children from 8 to 15 years of age were assigned by the RUF into SBUs.⁴³⁵ Girls of the same age range were also targeted, as Small Girls Units (SGUs), similar to the SBUs, also existed and their members underwent training".⁴³⁶

158. The Trial Chamber found that many of those children abducted from Kono District in 1998 included male and female children between 10 and 15 years of age who were organised into SBUs or SGUs.⁴³⁷ At Bunumbu training base, SBU and SGU units

⁴³⁰ See also Report of the Special Representative of the Secretary-General for Children and Armed Conflict, 6 August 2008, A/63/227, para. 46 showing the impact of the crime on the broader community and the difficulty of the reintegration process: "Reintegration of children in situations of armed conflict is a complex and long term proposition. [...] Beyond the practical challenge of locating the families and communities of lost children, successful reunification must also address the less straightforward challenge of "spiritually" reconnecting children and their communities. This includes dealing with the sense of alienation, guilt or anger that children may harbour against families whom they may accuse of failing to protect them. At the same time, reintegration programmes must also take into account challenges related to the communities themselves being prepared to accept the return of their children, in contexts where atrocities may have been committed by those children in their communities."

⁴³¹ TF1-199, Transcript 20 July 2004, pp. 38-39.

⁴³² Trial Judgement, para. 1624.

⁴³³ Trial Judgement, para. 1617.

⁴³⁴ Trial Judgement, para. 1702.

⁴³⁵ Trial Judgement, para. 1621.

⁴³⁶ Trial Judgement, para. 1622.

⁴³⁷ Trial Judgement, para. 1632.

comprised children between 8 and 15 years old.⁴³⁸ Yengema training base, similarly organized, also had such SBU and SGU units.⁴³⁹ The RUF and AFRC soldiers in Tongo included SBUs as young as nine.⁴⁴⁰ The Trial Chamber found that in May 2000, the RUF used children, some as young as ten years of age, armed with light weapons, rocket launchers and grenades, to mount an ambush against UNAMSIL peacekeepers on the road from Lunsar to Makeni.⁴⁴¹ Between 1998 and 2002, the majority of the “separated” children (child soldiers, unaccompanied children and children suffering from war-related stress) in Interim Care Centers established by UNICEF were between the ages of 12 and 16, the mean average being approximately 14 years of age in most Centres”.⁴⁴²

159. It is therefore evident from the Trial Chamber’s findings that many of the abducted children later conscripted and/or used in hostilities were young children and were therefore particularly vulnerable. The Prosecution notes the vulnerability of TF1-141 and TF1-263 who were captured and forcibly trained at the age of 12 and 14 respectively.⁴⁴³ TF1-314 was 10 years old when she was abducted by the RUF from her school in 1994.⁴⁴⁴

(f) Gravity of the Offence: Sesay

160. It was found by the Trial Chamber that Sesay, as one of the most senior RUF Commanders, made a substantial contribution to the planning of the system of conscription. Additionally, he directly participated in and made a substantial contribution to the planning and execution of the use of child soldiers to participate actively in hostilities.⁴⁴⁵

161. During the attack on Koidu Town in December 1998, Sesay was accompanied by his security guards, which included children between the ages of 12 and 15 years.⁴⁴⁶ The

⁴³⁸ Trial Judgement, para. 1635.

⁴³⁹ Trial Judgement, para. 1647.

⁴⁴⁰ Trial Judgement, para. 1664.

⁴⁴¹ Trial Judgement, para. 1714.

⁴⁴² Trial Judgement, para. 1626.

⁴⁴³ Trial Judgement, paras 1629-1630.

⁴⁴⁴ TF1-314, Transcript 2 November 2005, p. 24. Trial Judgement, para. 1660: TF1-314 was an SGU in Buedu from 1994 to 1998.

⁴⁴⁵ Trial Judgement, paras 2226 and 2229.

⁴⁴⁶ Trial Judgement, para. 1671.

Trial Chamber found that these children were actively participating in hostilities.⁴⁴⁷ While UNAMSIL Commander Edwin Kasoma was detained at Yengema, he observed that when Sesay visited the base, he was usually accompanied by 30 to 40 heavily armed RUF soldiers, including 10 to 12 child soldiers who were between 10 and 12 years of age.⁴⁴⁸ It was found that these armed boys were acting as Sesay's bodyguards and were actively participating in hostilities.⁴⁴⁹ The Trial Chamber further found that "Sesay's bodyguards, including persons under the age of 15, participated with Sesay in the attack on Koidu in December 1998 and accompanied Sesay as his security at Yengema in May 2000."⁴⁵⁰ The Prosecution submits that Sesay directly and intentionally put children at major risk of being harmed or killed in hostilities by personally using children under the age of 15 in this way. This significantly enhances the gravity of his role in planning the crime.

162. Sesay played an active role in the training camps where large numbers of persons under the age of 15 were trained between 1997 and 2000.⁴⁵¹ In June 1998, Sesay gave orders that "young boys" should be trained at Bunumbu. He also visited Camp Lion and addressed the recruits.⁴⁵² He received reports on the number of trainees, including SBUs, at Bunumbu and subsequently at Yengema.⁴⁵³ The Trial Chamber found that it was pursuant to an order from Bockarie and Sesay that Yengema was established as a training base.⁴⁵⁴ From his base in Kailahun District, Sesay ordered that all civilians be trained and that the SBUs be armed with small firearms. Many civilians from 10 to 25 years of age were trained in Buedu at that time.⁴⁵⁵

163. The Trial Chamber considered that the execution of the system of conscription required a substantial degree of planning and that this planning was conducted at the

⁴⁴⁷ Trial Judgement, para. 1735.

⁴⁴⁸ Trial Judgement, para. 1689.

⁴⁴⁹ Trial Judgement, para. 1736.

⁴⁵⁰ Trial Judgement, para. 2227. It is to be noted that the Chamber held that the Prosecution failed to particularise the personal use of children under the age of 15 by the Accused in the indictment. It consequently found none of the Accused liable for the personal commission of the use of child soldiers. (see Trial Judgement, paras 1732 and 2221)

⁴⁵¹ Trial Judgement, para. 2229.

⁴⁵² Trial Judgement, para. 2226.

⁴⁵³ Trial Judgement, paras 1699, 2224 and 2226.

⁴⁵⁴ Trial Judgement, para. 2088.

⁴⁵⁵ Trial Judgement, para. 2087.

highest levels of the RUF organisation, including by Sesay.⁴⁵⁶ In addition to personally perpetrating the crime, Sesay's role was pivotal in its planning and execution.

(g) Gravity of the Offence: Kallon

164. The Trial Chamber found that Kallon participated in the design and maintenance of the system of forced recruitment and use and that his contribution in this regard was substantial.⁴⁵⁷ Kallon was actively engaged in the abduction and planning of training of SBUs in Kono District in February/March 1998.⁴⁵⁸ He was a senior RUF Commander during the attack on Koidu Town in February 1998 in which children were abducted in large numbers to be sent to RUF camps.⁴⁵⁹ In June 1998, Kallon and Sesay gave orders for children to be trained at RUF camps. The Trial Chamber further found that "Sesay's bodyguards, including persons under the age of 15, participated with Sesay in the attack on Koidu in December 1998 and accompanied Sesay as his security at Yengema in May 2000."⁴⁶⁰ The Trial Chamber found that in 1998, Kallon brought juveniles under 15 years of age to Bunumbu for training.⁴⁶¹ The Chamber has also found that Kallon had bodyguards who were under the age of 15 years and that he knew the SBUs were used to force the enslaved mining and guard the mining sites.⁴⁶² Kallon was the senior RUF Commander on 3 May 2000 at Moria near Makeni where child soldiers were used in the ambush of UNAMSIL forces.⁴⁶³ The ambush team included fighters as young as 10 years of age who carried light weapons, rocket launchers and grenades.⁴⁶⁴

165. Kallon's engagement and involvement in the planning of the training and use of child recruits was extensive and instrumental. Kallon also personally used children under the age of 15 as bodyguards and personally conscripted children, a factor to be taken into account in the assessment of the gravity.

⁴⁵⁶ Trial Judgement, para. 2225.

⁴⁵⁷ Trial Judgement, para. 2231.

⁴⁵⁸ Trial Judgement, para. 2096.

⁴⁵⁹ Trial Judgement, para. 2232.

⁴⁶⁰ Trial Judgement, para. 2227.

⁴⁶¹ Trial Judgement, paras 1638 and 2095. However, the Trial Chamber found, that "[a]lthough there is evidence that [...] Kallon may have personally conscripted children by bringing them for training at Bunumbu, the Prosecution failed to plead these material particulars in the Indictment." (see Trial Judgement, para. 2221).

⁴⁶² Trial Judgement, para. 2095; see also para. 1732.

⁴⁶³ Trial Judgement, para. 2232.

⁴⁶⁴ Trial Judgement, para. 1687.

2. Aggravating Circumstances

(a) Length of Time During Which the Crimes Continued

166. The Trial Chamber established that the continuous recruitment of manpower by the RUF for combat was capital, vital and indispensable for the pursuit and sustenance of their war effort.⁴⁶⁵ The Trial Chamber held that the military training of children by the RUF dated from its inception as an armed movement.⁴⁶⁶ It was a consistent pattern of conduct that began as early as 1991 and continued throughout the Indictment period.⁴⁶⁷ It was found that the Yengema training base, where forced training took place, operated until the end of the disarmament.⁴⁶⁸ The fact that the RUF recruited and trained children under the age of 15 for a lengthy period of almost 10 years and certainly throughout the Indictment period, is a serious aggravating factor.

(b) Desire to Cause Terror and Desire to Inflict Pain or Harm

167. The treatment of children from the day of their capture to their conscription and subsequent use was intended to totally subdue them to the authority of the RUF. Abducted children were subjected to an excruciating training which involved flogging and ill-treatment,⁴⁶⁹ being provided with drugs,⁴⁷⁰ and being carved with the letters RUF on their bodies.⁴⁷¹ Those means and methods were used to inflict pain and instil fear in them so that they would become automatic killing machines.⁴⁷² It is submitted that this process, designed to discipline children and to which Sesay and Kallon adhered, aggravates the crime committed by them.

3. Aggravating Circumstances Sesay

168. The Prosecution submits that there are significant aggravating circumstances in Sesay's case.

⁴⁶⁵ Trial Judgement, para. 1698.

⁴⁶⁶ Trial Judgement, para. 1615.

⁴⁶⁷ Trial Judgement, paras 1615 and 1703; see also para. 1617.

⁴⁶⁸ Trial Judgement, para. 1646.

⁴⁶⁹ Trial Judgement, paras 1633-1648.

⁴⁷⁰ Trial Judgement, para. 1623.

⁴⁷¹ Trial Judgement, para. 1624.

⁴⁷² See Trial Judgement, para. 1616.

(a) Leadership Role of Sesay

169. Sesay had been found liable under Article 6(1) of the Statute for planning the use of children to actively participate in hostilities. The high position of leadership held by Sesay is aggravating. Sesay addressed the recruits at Bunumbu training base telling them that they would be sent to the battlefield and warned them to comply with orders once in the battlefield. He threatened that they would be executed if they failed to do so.⁴⁷³ Sesay noticeably exercised his leadership role by giving a speech at the training base and by proffering threats, in order to convey the message that recruits were to obey RUF commanders. This conduct should be considered as aggravating his planning of the crime.

(b) Premeditation, Motive, Willing and Enthusiastic Participation in the Crimes

170. The Trial Chamber found that the RUF habitually gave alcohol or drugs such as marijuana, amphetamines, and cocaine to child fighters before and during combat operations.⁴⁷⁴ The children testified that after ingesting the drugs, particularly cocaine, they felt no fear and they "became bloody".⁴⁷⁵ In December 1998, Sesay visited RUF fighters who included children under the age of 15 as they were preparing to conduct an attack on Daru and he distributed drugs as "morale boosters" for them.⁴⁷⁶ In the case of Sesay, the Chamber's findings show that the distribution of alcohol and drugs took place strategically just before combat, and thus indicates premeditation on the part of Sesay to use under-aged children in combat activities.⁴⁷⁷

(c) Sesay Could have Prevented Others from Committing the Crimes

171. Due to his position of authority, the Prosecution considers that Sesay's conduct in failing to prevent the crime of using child soldiers amounts to an aggravating factor.

⁴⁷³ Trial Judgement, paras 1643 and 2226.

⁴⁷⁴ Trial Judgement, para. 1623: TF1-199 and other boys of SBUs were also given marijuana by their Commanders before they engaged in an attack in order to help them remain at ease during combat.

⁴⁷⁵ Trial Judgement, para. 1623.

⁴⁷⁶ Trial Judgement, para. 2227; see also para. 1650: "Sesay and Mike Lamin arrived at the camp with "morale boosters" including jamba, Maminyini rum, cigarettes and hard tobacco known as tongoni. The "morale boosters" were distributed amongst the fighters, including TF1-141, by the Commanders in preparation for combat."

⁴⁷⁷ Trial Judgement, paras 1623 and 2227.

4. Aggravating Circumstances Kallon

(a) Leadership Role of Kallon

172. Kallon had been found liable under Article 6(1) of the Statute for planning the use of children to actively participate in hostilities. The Trial Chamber emphasized Kallon's role as a senior Commander with respect to his conviction under this Count.⁴⁷⁸ This leadership role should be seen as an aggravating factor.

E. Counts 15 and 17: Attacks on UNAMSIL Personnel

1. General Considerations Regarding Gravity of the Offence

173. In the 1990s, attacks on UN and humanitarian assistance personnel became a matter of concern on the agenda of the international community. The Security Council repeatedly condemned attacks against personnel of peacekeeping operations.⁴⁷⁹ This was also the case when UNAMSIL personnel were taken hostage in Sierra Leone. In its Resolution 1313 (2000) the Security Council condemned "in the strongest terms the armed attacks against and detention of the personnel of the United Nations Mission in Sierra Leone (UNAMSIL)," This clear wording reflects the view that attacks against peacekeepers are considered to be absolutely unacceptable by the international community. The repugnant nature of such acts is also reflected in the specific criminalisation of the act. The Security Council explicitly demanded that States prosecute and punish all those responsible for attacks against UN forces and personnel.⁴⁸⁰

174. In 1996 the International Law Commission underlined in its "Draft Code of Crimes against the Peace and Security of Mankind" the seriousness of the crime:

(2) Attacks against United Nations and associated personnel *constitute violent crimes of exceptionally serious gravity* which have serious consequences not only for the victims, but also for the international community. These crimes are *of concern to the international community* as a whole because they are committed against persons who represent the international community and risk their lives to protect its fundamental

⁴⁷⁸ Trial Judgement, paras 2231-2233.

⁴⁷⁹ S.C. Res. 788 (1992) regarding Liberia (19 November); S.C. Res. 813 (1993) regarding Sierra Leone, 26 March 1993; S.C. Res. 987 (1995) on security and safety of the UN Protection Force, 19 April 1995.

⁴⁸⁰ E.g. in the Statement of the President of the Security Council of 31 March 1993, on the safety of United Nations forces and personnel deployed in conditions of strife (S/25493/93). (underlining added).

interest in maintaining the international peace and security of mankind. These personnel are taking part in, present in an official capacity in the area of or otherwise associated with a United Nations operation which is "conducted in the common interest of the international community and in accordance with the principles and purposes of the Charter of the United Nations", as recognized in the preamble to the Convention on the Safety of United Nations and Associated Personnel. Attacks against such personnel are in effect directed against the international community and strike at the very heart of the international legal system established for the purpose of maintaining international peace and security by means of collective security measures taken to prevent and remove threats to the peace.⁴⁸¹

175. The Prosecutor of the International Criminal Court (ICC), in a recent application for an warrant of arrest against commanders of rebel groups in Darfur,⁴⁸² referred to both the above cited ILC "Draft Code of Crimes against the Peace and Security of Mankind" and the *travaux préparatoires* of the Rome Statute when assessing the gravity of the war crime of intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission under Art. 8(2) (e) (iii) Rome Statute:

In the present case, an attack was intentionally directed at international peacekeepers, 12 of whom were killed, 8 of whom were severely wounded, AMIS facilities were completely destroyed and properties that were needed for effective discharge of its mandate pillaged. AMIS operations were severely disrupted, thus affecting its protective mandated roles with respect to millions of Darfuriian civilians in need of humanitarian aid and security. Intentional directing attacks against peacekeeping operations constitute exceptional serious offences which "strike at the very heart of the international legal system established for the purpose of maintaining international peace and security". Peacekeepers are mandated to protect and attacking them jeopardizes their mandate and puts at risk the very viability and continuation of their operations.

.... attacks [were] committed against persons who represented the international community and protected its interests; [the] attacks [were] in effect directed or committed against the international community....and the

⁴⁸¹ ILC 1996 Draft Code of Crimes against the Peace and Security of Mankind, Commentary to Art. 19, para. 2, Yearbook of the International Law Commission, 1996, vol. II, Part Two, p. 51.

⁴⁸² ICC-02/05-162, Situation in Darfur, Summary of the Prosecutor's Application, 20 November 2008. On 20 November 2008 the Prosecutor of the ICC filed an application for a warrant of arrest under Article 58 of the Rome Statute of the ICC against commanders of rebel groups in Darfur for, *inter alia*, the war crimes of violence to life (murder and causing severe injury to peacekeepers) under Art. 8 (2) (c) (i) Rome Statute and intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission under Art. 8(2) (e) (iii) Rome Statute, committed in Darfur on 29 September 2007.

international community had a special responsibility to ensure the prosecution and punishment of these crimes.⁴⁸³

176. The gravity of the crime is also reflected in the UN Convention on the Safety of United Nations and Associated Personnel, which points out in the preamble that "... attacks against, or other mistreatment of, personnel who act on behalf of the United Nations are *unjustifiable and unacceptable*, by whomsoever committed", in particular because "United Nations operations are conducted in the common interest of the international community."⁴⁸⁴

177. It is important to recall that the Trial Chamber found that UNAMSIL was impartial and deployed with the consent of the warring factions.⁴⁸⁵ In fact, the Trial Chamber stressed that UNAMSIL was not manned, equipped or trained to use force in any but the most limited of circumstances.⁴⁸⁶ The Trial Chamber even noted that UNAMSIL peacekeepers were lightly armed and MILOBS were unarmed.⁴⁸⁷

178. The Trial Chamber is therefore requested to consider crimes committed against UN personnel as crimes of exceptional gravity.

2. Specific Considerations Regarding Gravity of the Offence

(a) Personal Role of Sesay, Kallon and Gbao

(i) Personal Role of Sesay

179. Sesay's role in the attacks on UNAMSIL personnel is an important one. The Trial Chamber recalled that Sesay was the RUF Battle Field Commander during the attacks. It was Sesay who gave frequent orders to his deputy Kallon in relation to UNAMSIL peacekeeping personnel, the dismantling of checkpoints and various other operational issues. Commanders also sent messages regarding disarmament to Sankoh through Sesay:

⁴⁸³ Ibid. para. 7. (emphasis added, footnotes omitted).

⁴⁸⁴ UN Convention on the Safety of United Nations and Associated Personnel, General Assembly Resolution 49/59, 9 December 1994. (emphasis added), Therefore the Convention obliges State Parties to make the crimes of murdering, kidnapping, attacking UN personnel, UN official premises or to threaten to do so with the objective of compelling a physical or juridical person to do or to refrain from doing any act; "punishable by appropriate penalties which shall take into account their grave nature. (see Article 9 para. 2 of the Convention).

⁴⁸⁵ Trial Judgement, para. 1907.

⁴⁸⁶ Trial Judgement, para. 1908.

⁴⁸⁷ Trial Judgement, para. 1759.

he was effectively the overall military Commander of the RUF on the ground.⁴⁸⁸ The fact that he was a regular interlocutor of the UNAMSIL command,⁴⁸⁹ who trusted him and saw in him the person who could advance disarmament, made his role even more important. The findings of the Trial Chamber indicate that Sesay, in his position as RUF Battle Field Commander, was actually in charge of the operations leading to the crimes for which the Accused are convicted under Counts 15 and 17. The Trial Chamber found that Sesay was in regular contact with his commanders and that he monitored and controlled the events unfolding with the UNAMSIL peacekeepers.⁴⁹⁰

(ii) Personal Role of Kallon

180. Kallon's role with regard to the attacks on UNAMSIL personnel weighs heavily. The Trial Chamber found him liable under Art. 6(1) for six attacks: for the direct attack of Salahuedin at the Makump DDR Camp on 1 May 2000,⁴⁹¹ for ordering the attack directed against Jaganathan on 1 May 2000 at the Makump DDR Camp,⁴⁹² for ordering the attack directed against Maroa and three peacekeepers on 1 May 2000,⁴⁹³ for ordering the attack directed against Mendy and Gjellesdad on 1 May 2000,⁴⁹⁴ for ordering the attack directed against Kasoma and ten peacekeepers on 3 May 2000,⁴⁹⁵ and finally for ordering the attack directed against Kasoma's convoy of approximately 100 peacekeepers on 3 May 2000.⁴⁹⁶

181. In addition, the findings of the Trial Chamber show that Kallon was not only a driving force and mainspring behind the attacks by ordering and encouraging the RUF fighters, but that he also committed and ordered the crimes in a particularly aggressive manner which showed no respect at all for the victims and must have encouraged his subordinates to behave similarly. For instance, Kallon struck Salahuedin in the face and attempted to stab him with a bayonet; stood by when his men kicked, punched and hit

⁴⁸⁸ Trial Judgement, paras 2267-2268.

⁴⁸⁹ Trial Judgement, para. 2272.

⁴⁹⁰ Trial Judgement, para. 2275.

⁴⁹¹ Trial Judgement, para. 2242.

⁴⁹² Trial Judgement, para. 2248.

⁴⁹³ Trial Judgement, para. 2250.

⁴⁹⁴ Trial Judgement, para. 2253.

⁴⁹⁵ Trial Judgement, para. 2255.

⁴⁹⁶ Trial Judgement, para. 2258.

Jaganathan and later on threatened him repeatedly;⁴⁹⁷ ordered his subordinates to fire at Maroa and three other peacekeepers;⁴⁹⁸ and forced Kasoma at gunpoint to write a note requesting his second-in-command to send forward five Land Rovers and three armoured vehicles, luring them into an ambush.⁴⁹⁹

(iii) Personal Role of Gbao

182. The Trial Chamber held Gbao liable as an aider and abetter for the attacks directed against Salahuedin and Jaganathan on 1 May 2000⁵⁰⁰ and found “that Gbao deliberately fomented an atmosphere of hostility and orchestrated an armed confrontation at the Makump DDR camp” and that Gbao was the senior RUF commander present until Kallon’s arrival and he remained the commander with the largest number of fighters present.⁵⁰¹

(b) Scale and Brutality of the Offences Committed

183. The Trial Chamber found that no less than 14 attacks were directed by the RUF against UNAMSIL peacekeeping personnel in the geographically limited area between Lunsar in Port Loko District, Makeni in Bombali District and Magburaka in Tonkolili District. These attacks were found to have been committed in a concentrated period (in early May 2000) and in close proximity, demonstrating that the RUF launched a deliberate and concerted campaign of violence against UNAMSIL peacekeeping personnel.⁵⁰² The Trial Chamber further found that the attacks continued in Kono District with the confinement of peacekeepers at Yengema, Small Sefadu and Tombodu.⁵⁰³

184. It is important to recall that multiple instances of a crime charged under one count increases the gravity of the offence.⁵⁰⁴ Count 15 of the Indictment encompasses multiple instances of the crime committed against UNAMSIL peacekeeping personnel. Not only

⁴⁹⁷ Trial Judgement, paras 2242, 2247.

⁴⁹⁸ Trial Judgement, para. 1796.

⁴⁹⁹ Trial Judgement, paras 2254, 1835.

⁵⁰⁰ Trial Judgement, para. 2265.

⁵⁰¹ Trial Judgement, paras 2262 and 2263.

⁵⁰² Trial Judgement, para. 1904.

⁵⁰³ Trial Judgement, para. 1904.

⁵⁰⁴ Češić Sentencing Judgement, para. 34.

did the Trial Chamber enumerate 14 distinct attacks,⁵⁰⁵ but it also found that forcible disarmament and detention of captured peacekeepers had occurred on seven different occasions during the course of the enumerated attacks.⁵⁰⁶

185. In addition to capturing and holding UNAMSIL peacekeeping personnel captive, the attacks mounted by the RUF involved attacks against retreating peacekeeping forces. In the attack on the DDR camp at Waterworks on 2 May 2000 the Trial Chamber found that the RUF fighters shot at a retreating armoured vehicle killing two peacekeepers, injuring others and abducting three peacekeepers.⁵⁰⁷ Similarly, the Trial Chamber found that following the attack on the Makump DDR camp on 2 May 2000 the RUF ransacked and burned down the camp.⁵⁰⁸

(c) Number of Victims

186. According to the Trial Chamber's findings, the RUF attacks during the period from 1 to 4 May 2000 resulted in the death of four peacekeepers, injury to 13 other peacekeepers and the capture and detention of about 130 peacekeepers.⁵⁰⁹ The Prosecution submits that the high number of peacekeepers who became victims of these attacks should be taken into consideration when assessing the gravity of the crimes.

(d) Degree of Suffering or Impact of the Crimes on Victims

187. Further the Trial Chamber found that the attacks against UNAMSIL peacekeeping personnel did not end with the aggressive acts and offensive military manoeuvres, but rather continued with the confinement of the peacekeepers.⁵¹⁰ These detentions were also marked by particular ill-treatment. UNAMSIL peacekeeping personnel were subjected to physical and psychological abuse on a number of occasions. The Trial Chamber found that the detainees at Teko Barracks, Yengema, Tombodu and Small Sefadu were given little to no food or water,⁵¹¹ were harassed by the RUF⁵¹² and were not given bedding nor

⁵⁰⁵ Trial Judgement, paras 1890, 1892, 1895, 1899 and 1900.

⁵⁰⁶ Trial Judgement, paras 1890, 1892 and 1895.

⁵⁰⁷ Trial Judgement, paras 1892 and 1929.

⁵⁰⁸ Trial Judgement, para. 1826.

⁵⁰⁹ Trial Judgement, paras 1890, 1892, 1895.

⁵¹⁰ Trial Judgement, para. 1904.

⁵¹¹ Trial Judgement, paras 1812, 1864 and 1867.

⁵¹² Trial Judgement, paras 1812, 1841 and 1867.

were they able to bathe regularly.⁵¹³ These dire conditions must also have been known to the RUF leadership since the Trial Chamber found that even Sesay, first-in-command, visited the detainees on at least four occasions.⁵¹⁴

188. When captured peacekeepers were being transported from Teko Barracks to Small Sefadu on 3 May 2000, the truck used to transport them was being driven in a reckless fashion and at one point careened off the road, throwing the peacekeepers from the vehicle.⁵¹⁵ Ten peacekeepers were injured, one of whom, Mendy, sustained a serious injury and bled profusely.⁵¹⁶ Left untreated, Mendy's wound became infested with maggots and began to smell due to the decomposition of his flesh.⁵¹⁷ In addition, the Trial Chamber found that Kasoma had to undergo psychological counselling after his release from captivity.⁵¹⁸

3. Aggravating Circumstances

(a) General Aggravating Circumstances Sesay, Kallon, Gbao

(i) Violent and Humiliating Nature of the Acts

189. The Trial Chamber did not only find that the captured peacekeepers were physically abused at Teko Barracks in Makeni but also that they were subjected to humiliating and degrading treatment. Specifically, on the night of 2 May 2000, the detainees were removed from their room and one by one were forced to strip to their underwear, were knocked to the ground, stepped on and had their hands bound behind their backs with electrical wire.⁵¹⁹ The ill-treatment continued during the transport to places of confinement in Kono District. During the night of 3 May 2000, while travelling in a truck from Makeni to Yengema in Kono District, RUF fighters harassed the captured peacekeepers, walked on top of them, sat on them and confiscated their belongings.⁵²⁰

⁵¹³ Trial Judgement, paras 1864 and 1867.

⁵¹⁴ Trial Judgement, para. 1689.

⁵¹⁵ Trial Judgement, para. 1820.

⁵¹⁶ Trial Judgement, para. 1820.

⁵¹⁷ Trial Judgement, para. 1868.

⁵¹⁸ Trial Judgement, para. 1883.

⁵¹⁹ Trial Judgement, para. 1814.

⁵²⁰ Trial Judgement, para. 1841.

The treatment of the captives at Yengema worsened following the arrest of Sankoh.⁵²¹ In addition to threats from the Accused themselves, the RUF leadership and fighters threatened their captives with execution on a number of occasions.⁵²² At Yengema, captive peacekeepers were told to follow Sesay's instructions or face execution.⁵²³

(ii) Abuse of Trust

190. UNAMSIL peacekeepers were lured into ambushes under false pretences on different occasions and the Trial Chamber found that "[...] the RUF flagrantly deceived the UNAMSIL peacekeeping personnel by inviting peaceful interaction only in order to engage them in combat."⁵²⁴

191. The Trial Chamber, in its factual findings, held that the RUF had, prior to the acts for which the Accused have been convicted, engaged in peace negotiations and had committed itself to the peace process and to disarmament. Sankoh had signed the Lomé Peace Agreement and RUF representatives were present in the Ceasefire Monitoring Committees.⁵²⁵ After the RUF hierarchy in Freetown and UNAMSIL agreed on the date of disarmament in the Makeni area, DDR camps were established in the Makeni and Magburaka areas.⁵²⁶ The three Accused met with UNAMSIL commanders, pretending that they were interested in cooperation. For instance, in early 2000, Sesay met with UNAMSIL Force Commander Jetley in Magburaka to discuss disarmament in Makeni.⁵²⁷ Sesay also met with Ngondi several times, and Ngondi explained to him that UNAMSIL had deployed in Makeni to cooperate and that cooperation was necessary in order to bring peace and stability to Sierra Leone.⁵²⁸ The first attacks at the beginning of May 2000 actually occurred shortly after Ngondi had several meetings, attended by the Accused, in which they seemed to peacefully discuss the issue of child combatants who had been abducted by the RUF from Caritas.⁵²⁹ For the commanders of UNAMSIL, the violent

⁵²¹ Trial Judgement, para. 1871.

⁵²² Trial Judgement, para. 1871.

⁵²³ Trial Judgement, para. 1897.

⁵²⁴ Trial Judgement, para. 1940.

⁵²⁵ Trial Judgement, para. 1763.

⁵²⁶ Trial Judgement, para. 1770.

⁵²⁷ Trial Judgement, para. 1772.

⁵²⁸ Trial Judgement, paras 1774 and 1775.

⁵²⁹ Trial Judgement, paras 1772 to 1775.

attacks came thus completely unexpectedly. The RUF knew of UNAMSIL peacekeepers' status as persons not taking part in hostilities, and intended to take advantage of this status.⁵³⁰ In fact, the RUF leadership was acting in contradiction of its obligations to disarmament⁵³¹ and in that respect the Trial Chamber found that RUF commanders were issuing warnings not to comply with the disarmament process around April 2000.⁵³² This cynical attitude towards the peacekeepers and their mandate should be seen as aggravating.

(b) Aggravating Circumstances Issa Sesay

(i) Leadership Role of Sesay

192. As the effective overall military commander of the RUF on the ground⁵³³ it was in Sesay's hands to stop the attacks, abductions and the deprivation of liberty. The fact that he was a regular interlocutor of the UNAMSIL command,⁵³⁴ who evidently considered him as the person within the RUF who could either advance or completely block any disarmament efforts and who was therefore crucial for any solution on the ground, put him in a particularly important position. Sesay decided to use it to deceive the UNAMSIL and launch the attacks, resulting in the death of several peacekeepers.

(ii) Abuse of Position of Authority

193. Sesay, as the top RUF military commander at the time of the attacks on UNAMSIL, abused his position of authority and abused the trust of UNAMSIL peacekeepers. As described above, he was in regular contact with UNAMSIL commanders to discuss issues related to disarmament.⁵³⁵ The most striking case of deceit was apparently orchestrated by Sesay: Rono and his group of peacekeepers were lured into a trap by a note, purportedly from Sesay, stating that Sesay wanted to meet Rono in

⁵³⁰ Trial Judgement, para. 1940.

⁵³¹ Article VI para. 2(vi) of the Lomé Peace Agreement and Annex 5 thereto "Draft Schedule of Implementation of the Peace Agreement; also: Exhibit 381 Fourth Report of the Secretary-General on UNAMSIL, S/2000/455, 19 May 2000, ("Fourth Secretary-General Report on UNAMSIL"), para. 3.

⁵³² Trial Judgement, para. 1780. In some instances the RUF leaders were found to have threatened their own fighters with execution if they disarmed.

⁵³³ Trial Judgement, paras 2267-2268.

⁵³⁴ Trial Judgement, para. 2272.

⁵³⁵ Trial Judgement, paras 1772 and 1775.

order to “discuss the situation.”⁵³⁶ Rono and at least three peacekeepers went to personally invite Sesay to discuss the situation but were seized by the RUF along with their vehicle and equipment.⁵³⁷

(c) Aggravating Circumstances Morris Kallon

(i) Leadership Role of Kallon

194. Kallon’s leadership role should be taken into account as an aggravating factor with respect to his convictions under Article 6(1) of the Statute. The Trial Chamber found that he “used his position of authority as senior RUF Commander and BGC to compel his subordinates to commit the offence.”⁵³⁸

(ii) Abuse of position of authority

195. With respect to his convictions under Article 6(3) of the Statute, as the effective second-in-command of the RUF forces, Kallon abused the trust and authority of his position and rank as well as the trust of the UNAMSIL peacekeeping personnel which is a factor that should be considered aggravating. Kallon’s hostile intent was to force Kasoma at gunpoint to write a note to lure the remaining peacekeepers into an armed ambush.⁵³⁹

(iii) Exacerbated humiliation and degradation, depravity and sadistic behaviour

196. The Trial Chamber found that Kallon violently assaulted an unarmed MILOB (Salahuedin) at the Makump DDR camp on 1 May 2000.⁵⁴⁰ Indeed, he punched Salahuedin in the face, shouting “white man, I’ll kill you” and threatened to stab him with a bayonet affixed to a rifle.⁵⁴¹ On another occasion the Trial Chamber found that Kallon pointed his finger at Salahuedin, gave the order to arrest him and watched as a group of armed fighters beat Jaganathan with rifle butts, kicked and punched him. One of the rebels pulled out a pistol and put it to Jaganathan’s head, saying “you are a dead

⁵³⁶ Trial Judgement, paras 1809-1810.

⁵³⁷ Trial Judgement, para. 1810.

⁵³⁸ Trial Judgement, para. 2248.

⁵³⁹ Trial Judgement, para. 1931.

⁵⁴⁰ Trial Judgement, para. 1890.

⁵⁴¹ Trial Judgement, para 1791.

man.”⁵⁴² The Trial Chamber found that Kallon again threatened Jaganathan after abducting him, stating “I’m going to kill you today, bury your body in Sierra Leone, and you will not have time to say goodbye to your family” and continued to threaten him after that.⁵⁴³

(iv) Group hatred or bias

197. During the 14 attacks against UNAMSIL peacekeeping personnel, the Trial Chamber found that Kallon personally made reference to his captives’ race. In one instance, the Trial Chamber found that Kallon, having captured Gjellesdad and Mendy, stated that Gjellesdad would be held captive as he was only interested in dealing with “white people.”⁵⁴⁴

(v) Desire to cause terror

198. The Trial Chamber found that in one of the meetings between the RUF leadership and UNAMSIL Commanders Kallon stated that “in three weeks time the world would know what the RUF would do in Sierra Leone.”⁵⁴⁵

(d) Aggravating Circumstances Augustine Gbao

(i) Leadership Role of Gbao

199. The Chamber found that at the time of the attacks on peacekeepers, “Gbao’s disciplinary powers in relation to minor offences were enhanced and that he possessed greater authority and influence over RUF fighters than previously in Kailahun District.”⁵⁴⁶ His ability to command fighters at the Makump DDR camp on 1 May 2000⁵⁴⁷ should be seen as an aggravating factor.

(ii) Abuse of Trust

⁵⁴² Trial Judgement, para. 1791.

⁵⁴³ Trial Judgement, paras 1793-1794.

⁵⁴⁴ Trial Judgement, para. 1806.

⁵⁴⁵ Trial Judgement, para. 1776.

⁵⁴⁶ Trial Judgement, para. 2293.

⁵⁴⁷ Trial Judgement, para. 2297.

200. The Trial Chamber found that Gbao was very well known to UNAMSIL personnel, especially being one of the Commanders with whom the UNAMSIL Commanders regularly met to discuss disarmament.⁵⁴⁸ His abuse of this position of trust should be seen as aggravating.

201. In addition, Gbao was spreading fear among his own fighters. The Trial Chamber makes reference to a threat made by Gbao that RUF fighters would face execution if they were found disarming secretly.⁵⁴⁹ RUF Commanders utilised the threat of execution as a disciplinary mechanism to intimidate and control their subordinates and compel obedience to superior orders.⁵⁵⁰ These threats by Gbao were in direct contradiction with the disarmament commitments of the RUF.

(iii) Gbao Initiated the Crimes

202. The Trial Chamber found that on 1 May 2000, when Kallon assaulted Salahuedin and ordered his men to arrest Jaganathan, Gbao had been the first RUF Commander on the scene, that he was accompanied by 30 to 40 armed RUF fighters and that he was uncooperative and aggressive in his interaction with Jaganathan and Odhiambo at the camp, refusing to communicate with them and refusing to leave the camp.⁵⁵¹ This behaviour set the stage for the attack and should be seen as aggravating.

F. Mitigating Circumstances

1. Mitigating Circumstances Sesay

(a) Substantial cooperation with the Prosecutor

203. Issa Sesay cannot rely on his statements to the Prosecution as a sign of cooperation. He repudiated the statements at trial on the ground that he did not make them voluntarily.⁵⁵²

⁵⁴⁸ Trial Judgement, para. 940.

⁵⁴⁹ Trial Judgement, para. 1780.

⁵⁵⁰ Trial Judgement, para. 706.

⁵⁵¹ Trial Judgement, para. 2261.

⁵⁵² *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-1188, "Written Reasons – Decision on the Admissibility of Certain Prior Statements of the Accused Given to the Prosecution," 30 June 2008.

(b) Individual circumstances

204. There is evidence that Issa Sesay was in good health throughout the greatest part of the trial,⁵⁵³ and underwent a successful operation which has had no significant negative side effects on him.⁵⁵⁴ Sesay was relatively young at the time the offences were committed, but was reasonably well-educated,⁵⁵⁵ trained⁵⁵⁶ and had gained experience.⁵⁵⁷

205. Sesay is not of advanced age, being born in June 1970⁵⁵⁸ and there is no evidence that he bears any family related circumstances that would serve in mitigation.⁵⁵⁹

(c) Good character with no prior convictions

206. Any claim by Issa Sesay to being of good character with no prior convictions, should carry no weight in view of the gravity of the offences for which he stands convicted.

(d) Behaviour and conduct subsequent to the conflict (promoting peace and reconciliation)

207. The evidence shows that Sesay participated to the peace process. However, it is to be recalled that Sesay did not act immediately after the commission of the crimes to alleviate the suffering of the victims. There is no evidence of Sesay's support for peace prior to becoming RUF Interim Leader. Further, Sesay's commitment to peace and disarmament did not derive from a personal initiative. He was placed under pressure by ECOWAS leaders who played a direct role in securing his position as RUF Interim Leader on the condition that he cooperated in the implementation of the Lomé Peace

⁵⁵³ Transcript, 23 June 2004, p. 2, Transcript 10 January 2005, pp. 3-4; Transcript 5 April 2005, p. 3; Transcript, 12 May 2005, p. 50; Transcript 4 July 2005, p. 3; Transcript 8 July 2005, pp. 79-80; Transcript 13 July 2005, pp. 2-3; Transcript 29 June 2006, p. 75; Transcript 14 July 2006, p. 76; Transcript 11 May 2007, pp. 2-5; Transcript 15 May 2007, p. 2; Transcript 26 September 2007, p. 4.

⁵⁵⁴ Transcript 1 November 2005, pp. 3-5; Transcript 19 June 2006, pp. 4-7; Transcript 27 October 2006, pp. 4-6; Transcript 20 March 2007, p. 6; Transcript 2 May 2007, pp. 4-7; Transcript 10 January 2008, p. 6.

⁵⁵⁵ Accused Issa Sesay, Transcript 3 May 2007, pp. 30-33.

⁵⁵⁶ Accused Issa Sesay, Transcript 3 May 2007, pp. 45-51.

⁵⁵⁷ Accused Issa Sesay, Transcript 3 May 2007, pp. 89-109; Transcript 4 May 2007, pp. 2-3, 20-21; Transcript 22 June 2007, p. 28.

⁵⁵⁸ Accused Issa Sesay, Transcript 3 May 2007, pp. 30-33.

⁵⁵⁹ Accused Issa Sesay, Transcript 8 May 2007, pp. 83-85.

Accord and ensured that the RUF disarmed.⁵⁶⁰ The Prosecution submits that Sesay performed a role in the peace process when it was obvious to him and others that the international community was determined to ensure that Sierra Leone kept the peace. It was therefore an act of self-preservation at a time when the RUF and Sesay had no other viable military options open to them. Sesay cannot take credit in terms of his sentence for contributing to the peace process under those circumstances. Notably, he has been convicted for his role as a superior during the May 2000 attacks against UNAMSIL peacekeepers, just months prior to becoming Interim Leader, which contradicts any suggestion that he was genuinely committed to the peace process.

2. Mitigating Circumstances Morris Kallon

(a) Substantial cooperation with the Prosecutor

208. There is no evidence of Morris Kallon ever providing any cooperation to the Prosecutor.

(b) Individual circumstances of Kallon

209. There is evidence that Morris Kallon enjoyed good health throughout the trial.⁵⁶¹ He is not of advanced age and there is no evidence that he bears any family related circumstances that would serve in mitigation.

(c) Good character with no prior convictions

210. Any claim by Morris Kallon to being of good character with no prior convictions, should carry no weight in view of the gravity of the offences for which he stands convicted.

⁵⁶⁰ Trial Judgement, paras 916-917. Accused Issa Sesay, Transcript 29 May 2007, pp. 56-68, 68-70; Transcript 30 May 2007, p. 10; DIS-249. Transcript 10 March 2008, pp. 98-99; Transcript 11 March 2008, pp. 5-6; Ahmed Tejan Kabbah, Transcript 16 May 2008, pp. 20-26; DIS-310, Transcript 6 March 2008, pp. 51-54.

⁵⁶¹ Transcript 23 June 2004, pp. 2-3; Transcript 10 January 2005, p. 4; Transcript 5 April 2005, p. 3; Transcript 4 July 2005, p. 3; Transcript 1 November 2005, p. 5; Transcript 19 June 2006, p. 7; Transcript 27 October 2006, p. 8; Transcript 20 March 2007, p. 6; Transcript 2 May 2007, p. 6; Transcript 26 September 2007, p. 4; Transcript 10 January 2008, p. 7; Transcript 12 March 2008, p. 8.

(d) Behaviour and conduct subsequent to the conflict (promoting peace and reconciliation)

211. Morris Kallon did not act immediately after the commission of the crimes to alleviate the suffering of the victims. There is no evidence of Kallon's support for peace prior to Sesay becoming RUF Interim Leader. Kallon merely went along with Sesay rather than taking any personal initiative to promote peace.

3. Mitigating Circumstances Augustine Gbao

(a) Substantial cooperation with the Prosecutor

212. There is no evidence of Augustine Gbao ever providing any cooperation to the Prosecutor.

(b) Individual circumstances of Gbao

213. There is evidence that Augustine Gbao enjoyed good health throughout the trial.⁵⁶² There is no evidence that he bears any family related circumstances that would serve in mitigation.

(c) Good character with no prior convictions

214. Any claim by Augustine Gbao to being of good character with no prior convictions, should carry no weight in view of the gravity of the offences for which he stands convicted.

(d) Behaviour and conduct subsequent to the conflict (promoting peace and reconciliation)

215. Augustine Gbao did not act immediately after the commission of the crimes to alleviate the suffering of the victims and there is no evidence of any direct contribution to the peace process. Indeed, the evidence is that he attempted to hamper the disarmament process at least up to April 2000.⁵⁶³

⁵⁶² Transcript 23 June 2004, p. 3; Transcript 10 January 2005, pp. 4-5; Transcript 5 April 2005, p. 3; Transcript 4 July 2005, p. 3; Transcript 27 October 2006, p. 9; Transcript 20 March 2007, p. 5; Transcript 2 May 2007, p. 6; Transcript 26 September 2007, pp. 4-5; Transcript 10 January 2008, p. 7; Transcript 12 March 2008, p. 8.

⁵⁶³ Trial Judgement, paras 1784-1788.

4. Cumulative Convictions

216. The Trial Chamber should take into account in sentencing the fact that in relation to certain conduct, the Accused satisfied the legal elements of more than one crime within the jurisdiction of the Special Court, and was therefore convicted cumulatively of more than one crime in respect of the same conduct.⁵⁶⁴ A convicted person cannot be punished more than once in respect of the same conduct. However, conduct that satisfies the elements of more than one crime within the jurisdiction of the Special Court is graver than conduct which satisfies the elements of only one crime, and this should be reflected in sentencing.

⁵⁶⁴ Trial Judgement, paras 2302-2310.

IV. FINAL SUBMISSIONS

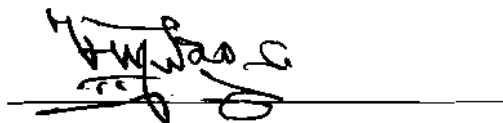
For all of the above reasons, the Prosecution submits that a global sentence is appropriate in that it encompasses the Accused's overall criminal conduct and adequately reflects their overall culpability.⁵⁶⁵ This approach ensures that emphasis is placed on the gravity of the offences and the role of the Accused rather than the multiple counts for which the Accused have been convicted.⁵⁶⁶

1. The appropriate sentence to be imposed on Sesay would be imprisonment for 60 years;
2. The appropriate sentence to be imposed on Kallon would be imprisonment for 60 years;
3. The appropriate sentence to be imposed on Gbao would be imprisonment for 40 years.

Filed in Freetown,

10 March 2009

For the Prosecution,



Vincent Wagana

⁵⁶⁵ AFRC Appeal Judgement, para. 323. See also *Nahimana* Appeal Judgement, para. 1042, endorsing *Kambanda* Appeal Judgement, para. 111.

⁵⁶⁶ AFRC Appeal Judgement, para. 324.

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