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SCSL - 04-15-T
(33460 - 33583)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER I

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

Registrar: Herman von Hebel

Date: 8th of April 2009

PROSECUTOR Against ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

SENTENCING JUDGEMENT

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CONTENTS

I. INTRODUCTION 4

II. CONVICTIONS AND FORM OF LIABILITY 4

1. ISSA HASSAN SESAY 4
2. MORRIS KALLON 6
3. AUGUSTINE GBAO 9

III. APPLICABLE LAW 11

1. APPLICABLE PROVISIONS 11
2. SENTENCING OBJECTIVES 12
3. SENTENCING FACTORS 13
   - 3.1. Gravity of the Offence 14
   - 3.2. Aggravating Factors 16
   - 3.3. Mitigating Factors 17
4. SENTENCING PRACTICE OF OTHER TRIBUNALS AND COURTS 19

IV. SUBMISSION OF THE PARTIES 19

1. PROSECUTION 19
   - 1.1. Sentencing Principles 19
   - 1.2. Gravity of the Offences and Aggravating Circumstances 21
2. SESAY 25
   - 2.1. Gravity of the Offences 26
   - 2.2. Mitigating Factors 31
3. KALLON 33
   - 3.1. Gravity of the Offences 34
   - 3.2. Mitigating Circumstances 35
4. GBAO 37
   - 4.1. Gravity of the Offences 38
   - 4.2. Mitigating Circumstances 39

V. DELIBERATIONS 41

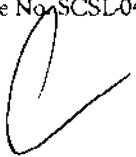
1. GRAVITY OF THE OFFENCES 42
   - 1.1. General Comments 42
   - 1.2. Unlawful Killings (Counts 1 to 5) 43
     - 1.2.1. Nature of the offence 43
     - 1.2.2. Scale and brutality 43
     - 1.2.3. Impact on victims and society 45
     - 1.2.4. Conclusion 45
   - 1.3. Sexual Violence Crimes (Counts 1 and 6 to 9) 46
     - 1.3.1. Nature of the offence 46
     - 1.3.2. Scale and brutality 47
     - 1.3.3. Vulnerability of victims 49
     - 1.3.4. Number of victims 49
     - 1.3.5. Impact on victims and degree of suffering 50
     - 1.3.6. Impact on relatives and society 51
     - 1.3.7. Conclusion 51
   - 1.4. Physical Violence Crimes (Counts 1 to 2 and 10 to 11) 52

33462

1.4.1. Nature of the offence ... 52
1.4.2. Scale and brutality ... 53
1.4.3. Vulnerability of victims ... 55
1.4.4. Number of victims ... 55
1.4.5. Impact on victims and degree of suffering ... 56
1.4.6. Impact on relatives and society ... 56
1.4.7. Conclusion ... 57
1.5. Enslavement (Counts 1 and 13) ... 57
1.5.1. Nature of the offence ... 57
1.5.2. Scale and brutality ... 57
1.5.3. Number of victims ... 59
1.5.4. Impact on victims and degree of suffering ... 59
1.5.5. Impact on relatives and society ... 60
1.5.6. Conclusion ... 60
1.6. Crimes of Pillage and Acts of Burning as Terrorism (Counts 1 to 2 and 14) ... 60
1.6.1. Nature of the offence ... 60
1.6.2. Scale and brutality ... 60
1.6.3. Vulnerability of victims ... 61
1.6.4. Number of victims ... 61
1.6.5. Impact on victims and degree of suffering ... 61
1.6.6. Impact on relatives and Society ... 62
1.6.7. Conclusion ... 62
1.7. Use of Child Soldiers (Count 12) ... 62
1.7.1. Scale and brutality ... 62
1.7.2. Vulnerability of victims ... 63
1.7.3. Number of victims ... 64
1.7.4. Impact on victims and degree of suffering ... 64
1.7.5. Impact on relatives and society ... 64
1.7.6. Conclusion ... 65
1.8. Crimes against UNAMSIL Personnel (Counts 15 and 17) ... 65
1.8.1. Scale and brutality ... 66
1.8.2. Vulnerability of victims ... 66
1.8.3. Number of victims ... 67
1.8.4. Impact on victims and degree of suffering ... 67
1.8.5. Impact of attacks on the UNAMSIL peacekeeping force and the international community ... 68
1.8.6. Conclusion ... 69
2. INDIVIDUAL CIRCUMSTANCES OF THE ACCUSED ... 69
2.1. Applicable to all accused ... 69
2.1.1. Sentence possibly to be served outside of Sierra Leone ... 69
2.1.2. References in submissions to evidence adduced during trial ... 70
2.2. Sesay ... 70
2.2.1. Convictions and form of liability ... 70
2.2.2. Form and degree of responsibility ... 71
2.2.3. Aggravating factors ... 75
2.2.4. Mitigating circumstances ... 75
2.3. Kallon ... 79
2.3.1. Convictions and form of liability ... 79
2.3.2. Form and degree of responsibility ... 79
2.3.3. Aggravating factors ... 84
2.3.4. Mitigating circumstances ... 85
2.4. Gbao ... 88

2.4.1. Convictions and form of liability........88
2.4.2. Form and degree of responsibility........88
2.4.3. Aggravating factors........91
2.4.4. Mitigating Circumstances........92

VI. DISPOSITION........93



I. INTRODUCTION

1. On 25 February 2009 the Trial Chamber I of the Special Court for Sierra Leone ("Chamber") handed down its verdict in this case, delivered in summary form in open court.[1] On 2 March 2009, the Chamber filed its Judgement.[2]

2. The Chamber hereby renders its Sentencing Judgement.

II. CONVICTIONS AND FORM OF LIABILITY

1. Issa Hassan Sesay

3. Issa Hassan Sesay was found guilty of the crimes, set out below, by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute:

(i) **Acts of Terrorism**, punishable under Article 3(d) of the Statute (Count 1), for crimes set forth in Counts 3 to 11 and Count 13 in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(ii) **Collective Punishments**, punishable under Article 3(b) of the Statute (Count 2), for crimes set forth in Counts 3 to 5 and Count 10 to 11 in relation to events in specified locations in Kenema, Kono and Kailahun Districts;

(iii) **Extermination**, a Crime against Humanity, punishable under Article 2(b) of the Statute (Count 3), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(iv) **Murder**, a Crime against Humanity, punishable under Article 2(a) of the Statute (Count 4), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

[1] Transcript of 25 February 2009.
[2] SCSL-04-15-T-1234, Judgement, 25 February 2009 ("Judgement").

(v) **Violence to life, health and physical or mental well-being of persons, in particular murder**, punishable under Article 3(a) of the Statute (Count 5), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(vi) **Rape**, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 6), in relation to events in specified locations in Kono District;

(vii) **Sexual slavery**, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 7), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(viii) **Other inhumane acts (forced marriage)**, a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 8), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(ix) **Outrages upon personal dignity**, punishable under Article 3(e) of the Statute (Count 9), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(x) **Violence to life, health and physical or mental well-being of persons, in particular mutilation**, punishable under Article 3(a) of the Statute (Count 10), in relation to events in specified locations in Kono District;

(xi) **Other inhumane acts (physical violence)**, a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 11), in relation to events in specified locations in Kenema and Kono Districts;

(xii) **Enslavement**, a Crime against Humanity, punishable under Article 2(c) of the Statute (Count 13), in relation to events in Tongo Field in Kenema District and unspecified locations in Kono and Kailahun Districts; and

(xiii) **Pillage**, punishable under Article 3(f) of the Statute (Count 14), in relation to events in specified locations in Bo and Kono Districts.

4. Additionally, Issa Hassan Sesay was found guilty, pursuant to Article 6(1) of the Statute, of planning the following crimes:

(i) **The use of children to actively participate in hostilities**, an other serious violation of International Humanitarian Law, punishable under Article 4(c) of the Statute (Count 12), in relation to events in Kailahun, Kenema, Kono and Bombali districts; and

(ii) **Enslavement**, a Crime against Humanity, punishable under Article 2(c) of the Statute (Count 13), in relation to events in specified and unspecified locations in Kono District.

5. Lastly, pursuant to Article 6(3) of the Statute, Issa Hassan Sesay was convicted of:

(i) **Enslavement**, a Crime against Humanity, punishable under Article 2(c) of the Statute (Count 13), in relation to events in Yengema in Kono District;

(ii) **Intentionally directing attacks against the UNAMSIL peacekeeping operations**, an other serious violation of International Humanitarian Law, punishable under Article 4(b) of the Statute (Count 15), in relation to events in Bombali, Port Loko, Kono and Tonkolili Districts; and

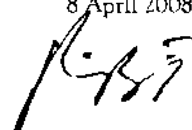
(iii) **Violence to life, health and physical or mental well-being of persons, in particular murder**, punishable under Article 3(a) of the Statute (Count 17), in relation to events involving UNAMSIL peacekeepers in Bombali and Tonkolili Districts.

2. Morris Kallon

6. Morris Kallon was found guilty of the crimes, set out below, by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute:

(i) **Acts of Terrorism**, punishable under Article 3(d) of the Statute (Count 1), for crimes set forth in Counts 3 to 11 and Count 13 in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(ii) **Collective Punishments**, punishable under Article 3(b) of the Statute (Count 2), for crimes set forth in Counts 3 to 5 and Count 10 to 11 in relation to events in specified locations in Kenema, Kono and Kailahun Districts;



(iii) **Extermination**, a Crime against Humanity, punishable under Article 2(b) of the Statute (Count 3), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(iv) **Murder**, a Crime against Humanity, punishable under Article 2(a) of the Statute (Count 4), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(v) **Violence to life, health and physical or mental well-being of persons, in particular murder**, punishable under Article 3(a) of the Statute (Count 5), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(vi) **Rape**, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 6), in relation to events in specified locations in Kono District;

(vii) **Sexual slavery**, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 7), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(viii) **Other inhumane acts (forced marriage)**, a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 8), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(ix) **Outrages upon personal dignity**, punishable under Article 3(e) of the Statute (Count 9), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(x) **Violence to life, health and physical or mental well-being of persons, in particular mutilation**, punishable under Article 3(a) of the Statute (Count 10), in relation to events in specified locations in Kono District;

(xi) **Other inhumane acts (physical violence)**, a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 11), in relation to events in specified locations in Kenema and Kono Districts;

(xii) **Enslavement**, a Crime against Humanity, punishable under Article 2(c) of the Statute (Count 13), in relation to events in Tongo Field in Kenema District and unspecified locations in Kono and Kailahun Districts; and

(xiii) **Pillage**, punishable under Article 3(f) of the Statute (Count 14), in relation to events in specified locations in Bo and Kono Districts.

7. Additionally, Morris Kallon was found guilty, pursuant to Article 6(1) of the Statute, of the following crimes:

(i) **Instigating Murder**, a Crime against Humanity, punishable under Article 2(a) of the Statute (Count 4), in relation to an event in Wendedu in Kono District;

(ii) **Instigating Violence to life, health and physical or mental well-being of persons, in particular murder**, punishable under Article 3(a) of the Statute (Count 5) in relation to an event in Wendedu in Kono District;

(iii) **Planning the use of children to actively participate in hostilities**, an other serious violation of International Humanitarian Law, punishable under Article 4(c) of the Statute (Count 12), in relation to events in Kailahun, Kenema, Kono and Bombali districts; and

(iv) **Committing and ordering attacks against peacekeepers**, and other serious violation of International Humanitarian Law, punishable under Article 4(b) of the Statute (Count 15), in relation to events in Bombali District.

8. Lastly, pursuant to Article 6(3) of the Statute, Morris Kallon was convicted of:

(i) **Acts of Terrorism**, punishable under Article 3(d) of the Statute (Count 1), for a crime under Count 7 in Kissi Town in Kono District;

(ii) **Sexual slavery**, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 7), in relation to an event in Kissi Town in Kono District;

(iii) **Other inhumane acts (forced marriage)**, a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 8), in relation to an event in Kissi Town in Kono District;

(iv) **Outrages upon personal dignity**, punishable under Article 3(e) of the Statute (Count 9), in relation to an event in Kissi Town in Kono District;

(v) **Enslavement**, a Crime against Humanity, punishable under Article 2(c) of the Statute (Count 13), in relation to events in unspecified locations in Kono District;

(vi) **Intentionally directing attacks against the UNAMSIL peacekeeping operations**, an other serious violation of International Humanitarian Law, punishable under Article 4(b) of the Statute (Count 15), in relation to events in Bombali, Port Loko, Kono and Tonkolili Districts; and

(vii) **Violence to life, health and physical or mental well-being of persons, in particular murder**, punishable under Article 3(a) of the Statute (Count 17), in relation to events involving UNAMSIL peacekeepers in Bombali and Tonkolili Districts.

3. Augustine Gbao

9. By a majority, Justice Boutet dissenting, Augustine Gbao was found guilty of the following crimes by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute:

(i) **Acts of Terrorism**, punishable under Article 3(d) of the Statute (Count 1), for crimes set forth in Counts 3 to 5 and Counts 6 to 9 in relation to events in Kailahun Town and throughout Kailahun District;

(ii) **Collective Punishments**, punishable under Article 3(b) of the Statute (Count 2), for crimes set forth in Counts 3 to 5 in relation to events in Kailahun Town and throughout Kailahun District;

(iii) **Extermination**, a Crime against Humanity, punishable under Article 2(b) of the Statute (Count 3), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(iv) **Murder**, a Crime against Humanity, punishable under Article 2(a) of the Statute (Count 4), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

33470

(v) **Violence to life, health and physical or mental well-being of persons, in particular murder**, punishable under Article 3(a) of the Statute (Count 5), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(vi) **Rape**, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 6), in relation to events in specified locations in Kono District;

(vii) **Sexual slavery**, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 7), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(viii) **Other inhumane acts (forced marriage)**, a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 8), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(ix) **Outrages upon personal dignity** punishable under Article 3(e) of the Statute (Count 9), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(x) Violence to life, **health and physical or mental well-being of persons, in particular mutilation**, punishable under Article 3(a) of the Stature (Count 10), in relation to events in specified locations in Kono District;

(xi) **Other inhumane acts (physical violence)**, a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 11), in relation to events in specified locations in Kenema and Kono Districts;

(xii) **Enslavement**, a Crime against Humanity, punishable under Article 2(c) of the Statute (Count 13), in relation to events in Tongo Field in Kenema District and unspecified locations in Kono and Kailahun Districts; and

(xiii) **Pillage**, punishable under Article 3(f) of the Statute (Count 14), in relation to events in specified locations in Bo and Kono Districts.

10. Additionally, Augustine Gbao was found guilty, pursuant to Article 6(1) of the Statute, in relation to events in Bombali District, of **aiding and abetting attacks on peacekeepers**, an

other serious violation of International Humanitarian Law, punishable under Article 4(b) of the Statute (Count 15).

III. APPLICABLE LAW

1. Applicable Provisions

11. Article 19 of the Statute and Rules 100 and 101 of the Rules of Procedure and Evidence ("Rules") provide as follows:

Article 19- Penalties

> 1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
>
> 2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

Rule 100 - Sentencing Procedure

> (A) If the Trial Chamber convicts the accused or the accused enters a guilty plea, the Prosecutor shall submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence no more than 7 days after such conviction or guilty plea. The defendant shall thereafter, but no more that 7 days after the Prosecutor's filing submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.
>
> (B) Where the accused has entered a guilty plea, the Trial Chamber shall hear submissions of the parties at a sentencing hearing. Where the accused has been convicted by a Trial Chamber, the Trial Chamber may hear submissions of the parties at a sentencing hearing.
>
> (C) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102(B).

Rule 101 - Penalties

> (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
>
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:

(i) Any aggravating circumstances;

(ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) 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.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

2. Sentencing Objectives

12. It is settled law that the goals and objectives of sentencing in the sphere of international criminal law derive essentially from the doctrines underlying penal sanctions in the domestic or national law setting.

13. The SCSL Appeals Chamber has stated that, in relation to legitimate sentencing purposes, "[t]he primary objectives must be retribution and deterrence."[3] The ICTY Appeals Chamber has further stated that "[i]t is well established that, at the [ICTY] and at the ICTR, retribution and deterrence are the main objectives in sentencing."[4] In its simplest formulation, retribution implies that punishment must be proportionate to guilt and the gravity of the offence.[5] Elsewhere it has been stated that "[t]his is not to be understood as fulfilling a desire for revenge but as duly expressing the outrage of the international community at these crimes."[6] Deterrence is both general, referring to the notion that a convicted person who is punished can serve as an example to others, who will then desist from committing or will be unlikely to commit the said crimes for fear of being punished, and also specific deterrence or incapacitation, which describes the objective of preventing future criminal conduct by restraining or incapacitating convicted persons.

[3] *CDF* Appeals Judgement, para. 532.

[4] *Krajisnik* Appeals Judgement, 17 March 2009, para. 775.

[5] Bankole Thompson, *Criminal Law of Sierra Leone*, p. 17; *Krajisnik* Appeals Judgement, 17 March 2009, para. 777.

[6] *Aleksovski* Appeals Judgement, para. 185.

14. Other sentencing objectives recognised under international criminal law are (i) prevention; (ii) rehabilitation; and, (iii) stigmatisation.[7]

15. In relation to the commission of international crimes, it such as crimes against humanity, war crimes and other serious violations of international humanitarian law, is our opinion that the punishment of the offender must also adequately reflect the revulsion of the international community to such conduct, and denounce it as unacceptable. The Chamber endorses the following rationale:

> One of the main purposes of a sentence imposed by an international Tribunal is to influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be accepted by everyone.[8]

16. Rehabilitation as a goal of punishment means the restoration of the convicted person to a state of physical, mental and moral health through treatment and education, so that he can become a useful and productive member of society.[9] However, the Chamber recognises that despite its importance as an objective of punishment, rehabilitation is more relevant in the context of domestic criminality than international criminality.

3. Sentencing Factors

17. The Chamber notes that Article 19 and Rule 101(B) stipulate that certain factors have to be considered in determining an appropriate sentence. These include the gravity of the offence, the individual circumstances of the Accused, any aggravating and mitigating factors, and where appropriate, the general sentencing practices of the ICTR and of the national courts of Sierra Leone.

18. In this regard the Chamber recognises that it is necessary to impose a sentence which reflects the totality of the convicted person's criminal conduct.[10] Furthermore we note that it is universally recognised and accepted that a person who has been convicted of many crimes

[7] CDF Appeals Judgement, para. 532.
[8] *Nikolic*, Sentencing Judgement (TC), para.139.
[9] Bankole Thompson, *Criminal Law of Sierra Leone*, p. 18.
[10] CDF Appeals Judgement, para. 546.

should generally receive a higher sentence than a person convicted of only one of those crimes.[11] By parity of reasoning, the Chamber acknowledges that the sentence should be individualised and also proportionate to the conduct of the Accused,[12] reflecting the inherent gravity of the totality of the criminal conduct of the convicted person, taking into consideration the particular circumstances of the case and the form and degree of the participation of the accused.[13] Within these parameters, and provided that the factors which have been considered are made clear, a Trial Chamber has a broad discretion to choose between the imposition of either a single "global" sentence or separate sentences for each count on which the Accused was found guilty.[14] After having carefully considered the issue, the Chamber deems it more appropriate to address each count separately. Where the Chamber so exercises its discretion to impose separate sentences, it must indicate whether those sentences should be served concurrently or consecutively.[15]

3.1. Gravity of the Offence

19. The Chamber acknowledges that Article 19(1) of the Statute imposes the obligation, when determining an appropriate sentence, to take into account the "gravity of the offence." It has been held that the gravity of the offence is the "litmus test for the appropriate sentence",[16] and that it requires a "consideration of the particular circumstances of the case, as well as the form and degree of participation of the Accused in the crime".[17] In assessing the gravity of the offence, the Chamber has taken into account such factors as:

i) the scale and brutality of the offences committed;[18]

ii) the role played by the Accused in their commission;[19]

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[11] *Celibici* Appeals Judgement, para. 771.
[12] *Tadic*, Sentencing Appeals Judgement, para.22; *Todorovic*, Sentencing Judgement, para. 29; *Kupreskic* Appeal Judgement]. para. 445; *Furundzija* Appeal Judgement], para. 249.
[13] CDF Appeals Judgement para. 546; *Krajisnik* Appeals Judgement, para. 774; *Nahimana* Appeals Judgement, para. 1038; *Furundzia* Appeals Judgement, para. 249; *Blaskic* Appeals Judgement, para. 683; *Aleksovski* Appeals Judgement, para. 182; *Celebici* Appeals Judgement, para. 731.
[14] AFRC Appeals Judgement, paras 328-329.
[15] CDF Appeals Judgement, para. 547.
[16] *Celibici* Trial Judgement, para. 1225; *Aleksovski* Appeal Judgement, para. 182.
[17] *Kupreskic et al* Trial Judgement, para. 852, *Kordic and Cerke Appeals Judgement*, para. 1061, *Stakic* Appeals Judgement, para. 380.
[18] *Stakic* Appeal Judgement, para. 380, Oric, IT-03-68-T, Judgement (TC), 30 June 2006 [Oric Trial Judgement], para. 729.

iii) the degree of suffering or impact of the crime on the immediate victim, as well as its effect on relatives of the victim;[20] and,

iv) the vulnerability and number of victims.[21]

20. Furthermore, in determining the role of the Accused in the crime, the Chamber may take into account the mode of liability under which the Accused was convicted, as well as the nature and degree of his participation in the commission of the offence. The Chamber may also consider whether the Accused was held liable as an indirect or a secondary perpetrator.[22] In this respect, we have found that aiding and abetting as a mode of liability generally warrants a lesser sentence than that imposed for a more direct form of participation.[23]

21. The Chamber acknowledges that it is also settled law that in assessing the gravity of the offences for which the Accused was convicted as a superior, it should consider the gravity of the underlying offence and the gravity of the conduct of the Accused in failing to prevent or punish the crimes committed by his subordinates.[24]

22. We also endorse the view that where the 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.[25] As stated in *Brdjanin*, the doctrine of joint criminal enterprise:

> [...] offers no formal distinctions between JCE members who make overwhelmingly large contributions and JCE members whose contributions, though significant, are not as great. However, the Appeals Chambers recalls that any such disparity is adequately dealt with at the sentencing stage.[26]

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[19] *Celibici* Appeal Judgement, para. 847; *Blagojevic*, Trial Judgement, para. 833.
[20] *Blaskic* Appeal Judgement, para. 683; *Stakic* Appeal Judgement, para. 380, *Oric* Trial Judgement, para. 729.
[21] *Blaskic* Appeal Judgement, para. 683; *Babic* Sentencing Judgement, para. 47. The Chamber notes that the Prosecution has discussed some of these factors, including the vulnerability and age of victims and the humiliating and degrading nature of the acts, as aggravating factors (Prosecution Sentencing Brief, para. 56). The Chamber is of the view that these are more appropriately considered in relation to its determination of the gravity of the offence.
[22] *Ntagerura, Sentencing* Judgement, para. 813; *Vasiljevic* Appeal Judgement, para. 182.
[23] CDF Sentencing Judgement, para. 50.
[24] *Celibici* Appeals Judgement, para. 732.
[25] *Martic* Appeals Judgement, para. 350.
[26] *Brdjanin* Appeals Judgement, para. 432.

33476

23. The Chamber is cognisant of the impermissibility of "double-counting", meaning that the factors considered in assessing the gravity of the offence, cannot be used or considered as aggravating circumstances.[27] The Appeals Chamber has however endorsed the view that there is no double-counting merely because a Trial Chamber considers the impact of the crimes on the victim in one section and the vulnerability of the victims in the other section.[28] In this regard, this Chamber takes the view that factors which it considers and accepts as lessening the gravity of the offence, cannot be taken into account as mitigating circumstances.

3.2. Aggravating Factors

24. The Chamber opines that it is an accepted practice that aggravating factors should be established by the Prosecution beyond a reasonable doubt[29] and that only circumstances directly related to the commission of the offence charged, and for which the Accused has been convicted, can be considered to be aggravating.[30] Hence, when a particular circumstance is an element of the underlying offence, it cannot be taken into account as an aggravating factor.[31]

25. The Chamber acknowledges that the Statute and the Rules do not provide an exhaustive enumeration of the circumstances that the Trial Chamber may consider to be aggravating. Based on the established jurisprudence, factors considered as aggravating in other international criminal jurisdictions, however, include the leadership role of the Accused,[32] premeditation and motive,[33] a willing and enthusiastic participation in the crime,[34] the length of time during which the crime was committed,[35] the location of the attacks – attacks committed in traditional places of civilian sanctuary such as churches, mosques, schools and hospitals being generally considered as more serious,[36] sadism and a desire for revenge,[37] abuse

[27] AFRC Appeals Judgement, para. 317.
[28] AFRC Appeals Judgement, para. 318.
[29] *Celibici* Appeals Judgement, para. 763.
[30] *Kunarac et al* Trial Judgement, para. 850; *Hadsahasanovic* Trial Judgement, para. 2069.
[31] *Blaskic* Appeals Judgement, para. 693; *Vasiljevic* Appeals Judgement, paras 172-173; *Ndindabahizi* Appeals Judgement, para. 137.
[32] *Jokic* Appeals Judgement, paras 28-29; *Obrenovic* Sentencing Judgement, para. 99; *Babic* Appeals Judgement, para. 80.
[33] *Blaskic* Appeals Judgement, para. 686.
[34] *Ibid.*
[35] *Blaskic* Appeal Judgement, para. 686. As noted, the Chamber has considered certain factors, such as the vulnerability and age of victims, and the humiliating or degrading nature of the acts, that are sometimes considered as aggravating factors, as part of the gravity of the offence (see n. 51).
[36] AFRC Trial Judgement, para. 22; *Muhimana* Trial Judgement, para. 605.

of trust or official capacity,[38] "total disregard for the sanctity of human life and dignity." The Chamber takes the view that deceptive behaviour such as luring others into a false sense of security through fraudulent offers to discuss or negotiate and subsequently taking advantage of the others revealed weakness may also amount to aggravating circumstances. The Prosecution submitted that bad behaviour of an accused during trial might constitute and aggravating factor, however the Chamber does not accept that argument.

26. Furthermore, the Chamber opines that the position of leadership of an Accused held criminally responsible for a crime under Article 6(1) of the Statute, may constitute an aggravating circumstance.[39] However, it has been held that if an Accused has been found liable under Article 6(3), his leadership position cannot be considered by the Chamber as an aggravating factor as it is in itself a constitutive element of the offence.[40] It has also been held that where the Accused has actively abused his position of command or participated in the crimes of his subordinates, however, such conduct can be considered to be aggravating.[41]

3.3. Mitigating Factors

27. The Chamber recalls that neither the Statute nor the Rules exhaustively define the factors that may be considered to be mitigating. As a consequence, we opine that the category of mitigating circumstances is not closed. Accordingly, "what constitutes a mitigating factor is a matter for the Trial Chamber to determine in the exercise of its discretion."[42]

28. It has been held that the burden of proof on the Accused with regard to mitigating circumstances is that of a balance of probabilities, meaning that it is more probable than not that the circumstances in question did exist. Therefore, it is a much lower burden of proof

[37] CDF Appeals Judgement, para. 524.
[38] *Seromba* Appeals Judgement, para. 230; *Ndindabahizi* Appeals Judgement, para. 136.
[39] *Jokic* Sentencing Appeal, paras 28-29; *Obrenovic* Trial Judgement, para. 99; *Babic* Appeals Judgement, para. 80. *See* Prosecution Sentencing Brief, para. 27.
[40] *Obrenovic* Trial Judgement, para. 99, *Deronjic* Appeals Judgement, para. 67; *Jokic* Sentencing Appeal, para. 28, *Babic* Sentencing Judgement, para. 60.
[41] *Celibici* Appeals Judgement, para. 736, *Aleksovski* Appeal Judgement, para. 183.
[42] *Musema* Appeals Chamber, para. 395.

than that required by the Prosecution.[43] Unlike aggravating factors, mitigating factors may be taken into account regardless of whether or not they are directly related to the alleged offence.[44]

29. However, the Chamber notes that under Rule 101(B), it is mandatory to consider as a mitigating circumstance the substantial cooperation of the Accused with the Prosecutor. Further, the Chamber has the discretion to consider other factors or circumstances in mitigation, such as:

i) the expression of remorse or acknowledgement of responsibility;[45]

ii)lack of education or training;[46]

iii) good character with no prior convictions;[47]

iv) personal and family circumstances;[48]

v) behaviour and conduct subsequent to the conflict, particularly with respect to promoting peace and reconciliation;[49]

vi) good behaviour in detention;[50] and

vii) assistance to detainees or victims.[51]

30. The Chamber may also consider the motive of the Accused in either aggravation or mitigation of sentence. However, whilst "motive may shade the individual perception of culpability, it does not amount to a legal excuse for criminal conduct".[52] In addition, "allowing mitigation for a convicted person's political motives, even where they are considered by the

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[43] *Simba* Appeals Judgement, para. 328; *Blaskic* Appeals Judgement, para. 697.
[44] *Stakic* Trial Judgement, para. 920; *Limaj* Trial Judgement, para. 729.
[45] CDF Appeals Judgement, paras 489-490; *Babic* Sentencing Judgment, paras 81-84; *Oric* Trial Judgement , para. 752.
[46] CDF Appeals Judgement, para. 498.
[47] CDF Appeals Judgement, para. 511. *Blaskic* Appeals Judgement, para. 696; *Erdemovic* Trial Judgement, para. 16(i); *Celibici* Appeals Judgement, para. 788; *Deronjic*, Sentencing Judgement, para. 156.
[48] *Kunarac et al*, Appeals Judgement, para. 362; *Blaskic* Appeals Judgement, para. 708.
[49] *Babic* Appeals Judgement, paras 56-59; *Plavsic*, Sentencing Judgement, paras 85-93.
[50] *Blaskic* Appeals Judgement, para. 696.
[51] *Blaskic* Appeals Judgement, para. 696, *Babic* Appeal Judgement, para. 43, *Deronjic* Sentencing Judgement, para. 156.
[52] CDF Appeals Chamber, paras 523, 524, 528.

Chamber to be meritorious, undermines the purposes of sentencing rather than promotes them".[53]

4. Sentencing Practice of Other Tribunals and Courts

31. Article 19(1) empowers the Chamber to consider as appropriate the practice regarding sentencing at the International Criminal Tribunal for Rwanda ("ICTR"). The Chamber also considers as appropriate the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), which shares a common Appeals Chamber with the ICTR, to be instructive, and has also considered this as appropriate. The Chamber has also eonsidered the sentencing practice of this court, to the limited extent possible.

32. Article 19(1) authorises the Chamber to consider, where appropriate, the sentencing practices of Sierra Leonean domestic courts. However, as none of the Accused was charged for offences under Sierra Leonean law, the Chamber deems it unnecessary to make this enquiry.[54]

IV. SUBMISSION OF THE PARTIES

33. In issuing this Judgement, the Chamber has taken into consideration both the written and oral submissions of the Parties.[55]

1. Prosecution

1.1. Sentencing Principles

34. The Prosecution submits that in determining the appropriate sentences the Chamber must consider certain fundamental sentencing principles, the objectives and purposes of sentencing and the factors specified in Articles 19 of the Statute and Rule 100(B).

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[53] *Ibid.* para. 534.
[54] See CDF Appeals Judgement, para. 476.
[55] SCSL-04-15-T-1239, Prosecution Sentencing Brief (public version), 10 March 2009 ("Prosecution Brief"); A copy of the Prosecution Sentencing brief was also filed containing some additional confidential information as SCSL-04-15-T-1238; SCSL-04-15-T-1242, Sesay Defence Sentencing Brief, 17 March 2009 ("Sesay brief"); SCSL-04-15-T-1244, Kallon Sentencing Brief, 17 March 2009 ("Kallon Brief"); SCSL-04-15-T-1243, Public With Confidential Annexes Sentencing Brief for Augustine Gbao, 17 March 2009 ("Gbao Brief"); Sentencing Hearing, Transcript of 23 March 2009.

33480

35. The Prosecution emphasises that the sentence imposed must reflect the totality of the culpable conduct of the Convicted person[56] Due to the Chamber's obligation to individualise the sentence, the Chamber has a "broad discretion" to tailor the punishment to fit the circumstances of each Accused. This duty to individualise the penalties is considered the Chamber's 'overriding obligation.'[57]

36. The Chamber must consider aggravating and mitigating factors in the determination of an appropriate sentence.[58] The Prosecution notes the bar on 'double-counting' meaning that 'no factor taken into account as an aspect of the gravity of the offence may be additionally taken into account as separate aggravating circumstance[59] and the 'double-counting' rule equally applies to mitigation.[60]

37. The Prosecution recommends that the Chamber takes into consideration the sentences imposed in the AFRC case which reflects the modes of liability under which the Accused were convicted including their personal role, the gravity of the crimes and all aggravating factors.[61]

38. The Prosecution suggests that the Chamber in imposing sentences where there is a conviction for more than one crime, a global or a single sentence may be imposed in respect of all criminal conduct on which convictions were found.[62]

39. Pursuant to Rule 101(C), sentences are served consecutively or concurrently. The Prosecution submits that in event the Chamber imposes separate sentences for each crime; it would be inappropriate to determine the sentence for each crime in isolation, as if that crime were the 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 person's culpable conduct is inherently greater than if that person only committed one crime. The time served as a sentence should be longer and the overall sentence should reflect the totality of the accused's criminal conduct.[63]

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[56] Prosecution Sentencing Brief, paras 5, 53.
[57] Prosecution Sentencing Brief, para. 4.
[58] Prosecution Sentencing Brief, para. 6.
[59] Prosecution Sentencing Brief, para. 6.
[60] Prosecution Sentencing Brief, para. 7.
[61] Prosecution Sentencing Brief, para. 51.
[62] Prosecution Sentencing Brief, para. 52.
[63] Prosecution Sentencing Brief, para. 54.

1.2. Gravity of the Offences and Aggravating Circumstances

40. In analysing the gravity of the offences, the Prosecution categorises the culpability of the Convicted persons in their participation in the JCE, submitting that in approximately one year when the JCE existed 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. The Prosecution submits that the extensive temporal and geographical scope of the JCE increases the relative seriousness of the criminal conduct for the participants in the JCE.[64]

41. The Prosecution draws the Chambers specific attention to the aggravation attached to convictions in relation to forced marriages in Count 8, the use of child soldiers in Count 12[65] and attacks against UN Peacekeepers in Counts 15 and 17.[66] The Prosecution emphasises that in the case of forced marriage and attacks against peacekeepers, such conduct has not been considered by any international criminal tribunal prior to this Chamber's Judgement, and in the cases of child soldiers the jurisprudence is still in the early stages of development.[67]

42. The Prosecution submits that Sesay and Kallon held high positions within the RUF and the Junta alliance especially within the Supreme Council. And through their positions as leaders, they actively participated in planning and furthering of the objectives of the JCE.[68]

43. The Prosecution highlights Sesay's role in planning and organising forced mining in Kenema District, the use of child soldiers to guard mining sites, the beating of TF1-129 in Kenema town, and, in particular, endorsement of JPK's instructions to kill civilians and burn civilian houses in Koidu Town, which should be made a "civilian free area".[69]

44. Kallon in his leadership role endorsed the brutal policies of enslavement of civilians in Kono and Tongo Field, and the killing of civilians and the elimination of the enemy. The

[64] Prosecution Sentencing Brief, para. 57.
[65] Prosecution Sentencing Brief, paras 145-159, 172.
[66] Prosecution Sentencing Brief, paras 173-177; Sentencing Hearing, Transcript of 23 March 2009, p.35.
[67] Prosecution Sentencing Brief, para. 56.
[68] Prosecution Sentencing Brief, paras 58, 65.
[69] Prosecution Sentencing Brief, paras 58-63.

Prosecution highlights his active participation in the execution of the attack on Koidu, which resulted in brutal killings and mutilations of civilians.[70]

45. The Prosecution states that Gbao had considerable power and prestige within the RUF in Kailahun district and also in his role as the Overall Security Officer (OSC). In his leadership role as the RUF Ideology instructor he significantly contributed to the furtherance of the JCE. The Prosecution highlight Gbao's personal involvement in the enslavement of civilians for farming, and also that he was found to have intended the killings of 64 suspected Kamajors in Kailahun District and that he shared the intent for amputations, rapes, forced labour and terrorising the civilian population.[71]

46. Sesay and Kallon committed crimes charged in Counts 1 to 14 and Gbao committed crimes charged in Counts 3 to 5, 11 and 13 in pursuance of the JCE objectives by virtue of their leadership roles and as co-perpetrators within the JCE which therefore raises the totality of their criminal conduct to the highest gravity.[72] The Prosecution submits that atrocious and violent crimes were found to have been committed under Counts 1 to 15 and 17.

47. All three Accused played a personal role with regard to the attacks on UNAMSIL personnel, Sesay through communications and Kallon by personal direct attacks. Gbao aided and abetted the attacks against Salahuedin and Jaganathan.[73] The aggravation was portrayed by the violent and humiliating treatment of the personnel,[74] the abuse of trust by RUF by false pretences of negotiations and meeting which resulted into attacks and the Accused abused their authority as leaders.[75]

48. The Prosecution analyses the gravity of the offence through the Accused's participation through other modes of liability. It notes Sesay's conviction under Article 6(1) for planning enslavement crimes in Kono District and under Article 6(3) for enslavement crimes in Yengema, Kono District. Kallon is found liable under Article 6(1) for instigating the killing of a Nigerian woman in Wendedu, Kono District and under Article 6(3) for failure to prevent or

[70] Prosecution Sentencing Brief, paras 66-68.
[71] Prosecution Sentencing Brief, paras 71-72. The Prosecution refer to Judgement, para. 2168; See Judgement, para. 2166.
[72] Prosecution Sentencing Brief, paras 64, 69, 75.
[73] Prosecution Sentencing Brief, paras 179-188.
[74] Prosecution Sentencing Brief, para. 189.

punish commission of crimes of forced marriage of TF1-016 in Kono District.[76] Finally, it notes Gbao's conviction under Article 6(1) for his personal role in aiding and abetting of the attack on UNAMSIL personnel.[77]

49. In its oral submissions, the Prosecution stated that:

> Concerning the argument that Article 6(3) liability warrants a lesser sentence than [...] Article 6(1) liability, we do not agree as contended in Sesay's brief paragraph 80 and at footnote 30 of the Kallon brief. There is no general principle to that effect. It all depends on the circumstances of each individual case.[78] [...]
>
> However, we also formed the view that JCE is not necessarily a less or more serious mode, that it all depends upon the circumstances of an individual case – of a particular case – and that in some situations it's possible that a 6(1) mode may be less serious than a JCE mode, but there are also many situations when a JCE mode of liability could be more serious than a 6(1) mode.[79]

50. The Prosecution highlights the scale and the brutality of the offences committed throughout the period of the JCE. It notes the indiscriminate killings of civilians in Tikonko, the slitting open of a woman's stomach in Bo District, the severing of corpses, and the beheading and stabbing of civilians where sometimes the intestines of were used to demarcate checkpoints.[80] The evidence reflects that brutal and mass killings took place in Koidu, Kono and Kailahun District. Gruesome acts of sexual violence were perpetrated with the specific intent to terrorise the civilian population, such as the slitting of the private parts of men and women with knifes, and the insertion of a pistol into the vagina of a woman.[81] The Prosecution argues that the humiliating and degrading manner in which these acts of sexual violence and mutilations were inflicted should be reflected in the imposition of the sentences.[82] The prolonged enslavement of civilians in Kailahun, Kenema and Kono while being subjected to

[75] Prosecution Sentencing Brief, paras 190-202.
[76] Prosecution Sentencing Brief paras 76-80.
[77] Prosecution Sentencing Brief para. 83.
[78] Sentencing Hearing, Transcript of 23 March 2009, p. 13.
[79] Sentencing Hearing, Transcript of 23 March 2009, pp. 45-46.
[80] Prosecution Sentencing Brief para. 84.
[81] Prosecution Sentencing Brief paras 85-87.
[82] Prosecution Sentencing Brief paras 88-90.

inhumane treatment, exploitation, starvation, beatings and summary executions should also be adequately reflected in the sentence to be imposed.[83]

51. The Prosecution submits that even though it is difficult to determine with precision the number of victims, the Chamber's findings show that a considerably large number of victims were killed or mutilated and a large number of vulnerable women and girls were subjected to enslavement, forced marriages and gruesome rapes.[84] The dire suffering and impact of these crimes on the victims, the stigmatisation and shame of the victims, the effects of these crimes on family members and societies as a whole are aggravating factors.[85] Furthermore, the gravity of the offences escalates particularly where the Chamber's findings reflect that the crimes were committed as a policy of terror and collective punishment.[86]

52. The Prosecution argues that the indiscriminate killings for which the accused have been found guilty demonstrate their total disregard for the sanctity of human life, and the sadistic manner in which the crimes were committed must be taken into account as an aggravating circumstance.[87] The Prosecution argues that with respect to Sesay and Kallon, their leadership roles, their education, training, experience and desire for personal gain must be considered as aggravating factors in determining their sentences.[88] In relation to Kallon, it further submits that his defiant attitude during the trial also constitutes an aggravating circnmstance. Gbao's education, training, experience, desire for personal gain and his defiant attitude during Trial, in particular his disregard for the jurisdiction of the Court for a long period of time, must be considered as aggravating factors in determining his sentence.[89]

53. The Prosecution submits that the gravity of the crimes committed by subordinates increases the gravity of the crimes committed by the accused, by their failure to prevent or punish those crimes.[90]

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[83] Prosecution Sentencing Brief paras 91-92.
[84] Prosecution Sentencing Brief, paras 51-111.
[85] Prosecution Sentencing Brief, paras 112-119.
[86] Prosecution Sentencing Brief, para. 119.
[87] Prosecution Sentencing Brief paras 127-137.
[88] Prosecution Sentencing Brief paras 138-140.
[89] Prosecution Sentencing Brief paras 141-144.
[90] Sentencing Hearing, Transcript of 23 March 2009, pp.6, 8,

33485

54. The Prosecution requests global sentences of 60 years imprisonment for Sesay, 60 years imprisonment for Kallon, and 40 years imprisonment for Gbao.[91] When asked repeatedly by the Chamber the basis for such a recommendation, the Prosecution responded variously that:

> My Lord, there was no mathematical basis. [...][92]
>
> Our starting point was the convictions in the case before your Lordships. After that we did take into consideration other cases decided at the Special Court before and we did also take into consideration sentences in other cases. [...][93]
>
> My Lords, I did not have in mind a scale in the context you've described it. What I had in mind was to identify for each crime the factors that would lead me to conclude it was a grave crime, or that the crime is aggravated by the aggravating factors. That is why we took the approach to identify for each crime the factors for each crime which we considered for aggravation, but I did not have a particular scale to say that at the end of the day this is the most serious crime, or at the end of the day this is the least of them all.[94]

2. Sesay

55. Both in written and oral submissions, the Sesay Defence emphasises that Sesay's limited direct involvement in the crimes he has been found guilty of and the exceptional role he played in the Sierra Leone peace process as relevant factors that should result in a reduced sentence. To this effect the Sesay Defence highlights the role of deterrence as a sentencing aim, particularly in terms of "rewarding' a person's demonstrable efforts to prevent the ongoing commission of crimes, by the surrender of that person's military command, and other acts designed to bring peace and reconciliation."[95] It points the Chamber to jurisprudence holding what factors the Chamber may consider when assessing the gravity of the offences, including the function and duties performed by the Accused, the manner in which those tasks and duties were carried out and the mode of liability under which the Accused is convicted.[96] In particular, with regard to liability under Article 6(3), the Sesay Defence puts forth that a

[91] Prosecution Sentencing Brief, p. 81.
[92] Sentencing Hearing, Transcript of 23 March 2009, p. 37.
[93] Sentencing Hearing, Transcript of 23 March 2009, p. 38.
[94] Sentencing Hearing, Transcript of 23 March 2009, p.44.
[95] Sesay Sentencing Brief, para. 15; Transcript of 23 March 2009.
[96] Sesay Sentencing Brief, paras 25-28 citing jurisprudence from the ICTY including: *Nikolic*, Trial Sentencing Judgement, para. 114; *Martic* Appeals Judgement, para. 350.

33486

superior only bears responsibility for failing to act, and this is "the only crime for which he is to be sentenced."[97]

56. The Sesay Defence also presents jurisprudence on factors that may be deemed as aggravating or mitigating in the imposition of a sentence.[98] Of particular note is the Sesay Defence's position that "a convicted person ought to receive a *considerable reduction* in sentence in recognition of a valuable contribution" to the restoration and maintenance of peace.[99]

2.1. Gravity of the Offences

57. In its submissions on the gravity of the offences for which Sesay has been found guilty through his participation in the joint criminal enterprise, the Sesay Defence argued that Sesay's actual authority during the joint criminal enterprise was limited and secondary to that of members of the AFRC and other, more senior members of the RUF.[100] In particular, it notes that "Sesay did not hold any official *public* position, within the junta government, nor was his military command recognised (or appointed) by the joint forces, unlike other members of the JCE."[101] Further, it is presented that, during the Junta period, Sesay did not hold influence or far-reaching, autonomous decision-making authority and that, after the Intervention in February 1998, Sesay's position and influence within the joint criminal enterprise deteriorated.[102] Consequently, the Sesay Defence requests that the sentence Sesay receives for the crimes while he was participating in a joint criminal enterprise reflect their argument that Sesay "throughout the Junta period and beyond was one of the least influential members of the joint criminal enterprise."[103]

58. The Sesay Defence highlights that, in Bo District, Sesay was not found to have personally or directly commit any of the crimes, nor was he found to be in effective command

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[97] Sesay Sentencing Brief, para. 29 citing *Oric* Trial Judgement, para. 727.
[98] Sesay Sentencing Brief, paras 31-42.
[99] Sesay Sentencing Brief, para. 36, citing *Plavsic* Sentencing Judgement, para. 85. The Chamber observes, however, that in that case the ICTY Trial Chamber, while it noted the "very significant mitigating circumstances, in particular the guilty plea and the post-conflict conduct", nonetheless found that "undue leniency would be misplaced." (*Plavsic* Sentencing Judgement, para. 132)
[100] Sesay Sentencing Brief, paras 49-51.
[101] Sesay Sentencing Brief, para. 51 [emphasis in the original].
[102] Sesay Sentencing Brief, paras 52-53.
[103] Sesay Sentencing Brief, para. 49.

and control of any of the fighters operating there.[104] Regarding Sesay's responsibility for the crimes committed in Kenema District, it is the Sesay Defence's position that Sesay's role in the diamond mines "was strictly prescribed by those who made the real decisions, maintained control, and ultimately organised the operations."[105] It was not Sesay, but rather the senior members of the Supreme Council, such as SAJ Musa, Zagalo and Gullit, who were charged with overseeing mining operations. Furthermore, the evidence suggests that there was no prospect of Sesay being able to override their command to be able to substantially affect the day-to-day implementation of the operations.[106] According to the Chamber's findings, by September 1997, Bockarie and Eddie Kanneh, themselves directly subordinated to Koroma and SAJ Musa, were the *de facto* authorities in Kenema. Sesay's visits to Kenema were infrequent, and the crimes found proven against him, pursuant to the JCE, were largely committed in his absence. The Sesay Defence submits that these factors should be taken into account by the Chamber in assessing gravity.[107]

59. In relation to the Chamber's finding that Sesay participated directly in the arrest and mistreatment of TF1-129, the Sesay Defence points out that the Chamber did not find that the personal mistreatment of TF1-129 was sufficiently grave to constitute an inhumane act. Furthermore, whilst the Chamber found that Sesay abused the "levers of state" power, the arrest was at the behest of Sesay's direct superior, Bockarie. The Sesay Defence notes that any involvement by Sesay "was carefully and stringently controlled by state authorities" and that his influence extended only to the military level. The Sesay Defence submits that in these circumstances Sesay was not responsible for the abuse of a public position or the breach of any legitimate expectations attaching to his position, and this should not be deemed an aggravating factor.[108]

60. According to the Sesay Defence, since Sesay was only infrequently present in Kenema District, the findings for Kenema do *not* show those factors which might usually aggravate the offences, such as "premeditation", the "discriminatory purposes of the crimes", "total disregard for the sanctity of human life and dignity", nor was it shown that he enjoyed the commission

[104] Sesay Sentencing Brief, paras 54-56.
[105] Sesay Sentencing Brief, para. 60.
[106] Sesay Sentencing Brief, para. 60.
[107] Sesay Sentencing Brief, para. 61.
[108] Sesay Sentencing brief, para. 62.

of these criminal acts or displayed a desire (unlike others) to inflict pain. The Sesay Defence argues that the mining operations were in large part conducted for utilitarian purposes related to the survival of the junta government, which (however illegitimate) had functions which extended to governance and the welfare of civilians. Thus, they submit, there is a lack of aggravating factors.[109]

61. In relation to Kono district, the Sesay Defence accepts that the finding of the Chamber that Sesay endorsed JPK's order to make Koidu Town a 'no-go' area for civilians is serious. However, it points out that in relation to the rest of the crimes committed in Kono district – those that did not result from this order – Sesay was notably absent, and the Prosecution did not prove that Sesay had personally committed any crimes in Kono district.[110] They submit that his level of direct or material contribution to the majority of crimes ought to be assessed as low.[111] The Sesay Defence notes that the plan to attack and capture Koidu was formulated by Superman and SAJ Musa, and then communicated to Bockarie. Whilst the Chamber found that Sesay was "actively involved in the overall planning of this operation", which was in pursuit of the joint criminal enterprise, the Sesay Defence submits that the objective of the operation to capture Koidu was non-criminal.[112] Further, in relation to this same attack on Koidu and the pillaging that ensned, the Sesay Defence characterises Sesay's contribution to the crimes as a "culpable omission" as opposed to direct or overt encouragement since Sesay did not play an active role in the attack.[113]

62. The Sesay Defence states that:

> It was found that in May 1998 Sesay was assigned as BFI to Pendembu and, although Sesay was an active Commander in Pendembu, Sesay's control was limited to Kailahun District at that time. The Trial Chamber took cognisance of the fact that while Superman was overall Commander for Kono District from March until August 1998, he refused to take orders from Sesay.[114]

63. With regard to the crimes committed in Kono District from May to December 1998, the Sesay Defence points the Chamber to the finding that Sesay only *directly* contributed to

[109] Sesay Sentencing Brief, paras 63-64.
[110] Sesay Sentencing Brief, para. 65.
[111] Sesay Sentencing Brief, para. 66.
[112] Sesay Sentencing Brief, para. 67.
[113] Sesay Sentencing Brief, para. 68.

crimes related to the mining activities and the associated enslavement of civilians. The Sesay Defence further submits that:

> The Chamber found that it was not established beyond reasonable doubt that Sesay was in a superior-subordinate relationship with RUF fighters in Kono District during the period from May to the end of November 1998. It is submitted that these, and related command and control issues, indicating a lack of material or direct involvement in the crimes in Kono during the currency of the JCE, reduces the gravity of the offences.
>
> It cannot be said that Sesay acted as the architect of these criminal activities, or that he abused his leadership position, or encouraged *those* crimes – notwithstanding his command role in the RUF. It is submitted that Sesay's significant contribution to the overall criminal enterprise at this time, with the exception of the mining in Kono, was restricted to activities outside of the district. It is significant that in the context of hundreds of crimes committed by others, most- if not all- of whom were not in direct contact with Sesay. Sesay's contribution to *these* crimes (or his involvement in them) must be categorised as minimal and remote: in the context of the breadth of this JCE, one of the broadest – in terms of direction and geographical scope – known to international criminal law.[115]

64. Similarly, for the crimes committed in Kono District between 14 February and May 1998, the Sesay Defence submits that Sesay was not in contact with or directly superior to those fighters who perpetrated many of the crimes – including CO Rocky, Rambo RUF, Savage and Staff Alhaji. Since the Chamber was not satisfied that these men were members of the joint criminal enterprise but rather subordinated to and used by other members of the joint criminal enterprise, it follows, according to the Sesay Defence, that the crimes can be imputed to these other members and this should be taken into account when sentencing Sesay.[116] Accordingly, they submit, aggravating factors such as premeditation, total disregard for the sanctity of human life and dignity and a displayed desire to inflict pain should not be taken into account.[117]

65. In relation to crimes committed in Kailahun District, the Sesay Defence recalls the Chamber's finding that Sesay did not personally commit any crimes in Kailahun District and

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[114] Sesay Sentencing Brief, para. 77 (footnotes omitted from original). The Trial Chamber notes that it did not make the findings as stated by the Sesay Defence.
[115] Sesay Sentencing Brief, paras 71-72.
[116] Sesay Sentencing Brief, paras 73-74.
[117] Sesay Sentencing Brief, para. 75. The Chamber notes, however, is finding that Sesay did receive regular reports from Kono District by radio and through his bodyguards, including reports of crimes committed by RUF and AFRC fighters during this time (Judgement, para. 2085).

that he was not present during the killing of the 63 civilians accused of being Kamajors.[118] Further, the Sesay Defence submits that, even though the Chamber concluded Sesay's status as BFC and his close relationship to Bockarie was indicative of his great deal of authority, his "authority was carefully circumscribed and restricted by his relationship" thereby making Sesay's role in the criminal activities "dispensable".[119] Lastly, the Sesay Defence submits that being second to Bockarie did not equate to operational or policy-level decision-making and that this should be considered when assessing the gravity of Sesay's criminal conduct in Kailahun District.[120]

66. With regard to Sesay's participation in the joint criminal enterprise for the planning of Enslavement in Tombodu and throughout Kono District, the Sesay Defence submits that the finding that the abductions and forced labour were primarily for military or utilitarian purposes, and not to terrorise the civilian population, is a relevant factor when considering the gravity of the offence.[121] Similarly, they submit that, since the conviction on enslavement related to the military training base in Yengema in Kono District is based on command responsibility (pursuant to Article 6(3) of the Statute), it warrants a lesser sentence than that reserved for principals or co-perpetrators.[122]

67. In terms of Sesay's liability for the attacks on UNAMSIL peacekeepers under Article 6(3) of the Statute, the Sesay Defence submits that Sesay should be sentenced based on his failure to act once the events had commenced and further submits that there is an absence of aggravating factors for these crimes.[123] Further, they argue that his unwillingness to use the UN detainees as hostages demonstrates Sesay's positive use of his leadership position and his commitment to the peace process since his overall efforts were directed to disarming the RUF, rather than running the risk of causing further schisms amongst key members of the RUF who resented his position as Interim Leader.[124] It is thus submitted that his convictions under Counts 15 and 17 should be seen in light of his efforts to use his leadership position after the abductions to bring the conflict to an end.

[118] Sesay Sentencing Brief, para. 76.
[119] Sesay Sentencing Brief, para. 77.
[120] Sesay Sentencing Brief, para. 78.
[121] Sesay Sentencing Brief, para. 79.
[122] Sesay Sentencing Brief, para. 80.
[123] Sesay Sentencing Brief, para. 81.

68. The Sesay Defence, in responding to the Prosecution's Trial Brief, rejects the comparisoo between the crimes committed by Sesay and those of which the AFRC accused were convicted, deeming this comparison a false one in terms of the gravity of the offences and the differences in available mitigating factors.[125] They point to that case not having a finding based on joint criminal enterprise, but rather based on committing, ordering, planning, aiding and abetting or even instigating the crimes. Further, those offences were aggravated by findings based on a number of Article 6(3) convictions. The Sesay Defence also recalls the particular circumstances of Brima, Kamara and Kanu, their direct commission of the most serious crimes and the absence of mitigating factors.[126] The Sesay Defence submits that the form and degree of Sesay's participation in the crimes he has been convicted of is significantly less and the aggravating factors absent, or few as compared to those of the AFRC accused.[127]

2.2. Mitigating Factors

69. In terms of mitigating factors, the Sesay Defence submits that Sesay's forced conscription at the age of 19 and subsequent loss of youth ought to be taken into account since it made Sesay another of Sankoh's many victims.[128] It is argued that the consequent loss of opportunity and limited life choices should be a mitigating factor in favour of Sesay, as should his lack of training in the dictates of international humanitarian law.

70. The Sesay Defence also submits that Sesay's reputation as a moderate within the RUF is what led to his being approached by the international community to become the Interim Leader of the RUF, and be counted upon to cooperate in the peace process and disarmament.[129] It submits that this reputation was well founded, a result of his treatment of civilians in Makeni and his willingness to take personal action against fighters to prevent and punish crimes.[130] The Sesay Defence argues that Sesay's actions and disciplinarian ways clearly resulted in the saving of hundreds of lives and countless homes and livelihoods.[131] To support

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[124] Sesay Sentencing Brief, para. 109.
[125] Sesay Sentencing Brief, para. 82.
[126] Sesay Sentencing Brief, paras 83-87.
[127] Sesay Sentencing Brief, para. 88.
[128] Sesay Sentencing Brief, paras 89-90.
[129] Sesay Sentencing Brief, paras 91-93 and Annexes A and B.
[130] Sesay Sentencing Brief, paras 94-95 and Anexes C and D.
[131] Sesay Sentencing Brief, paras 96-98, and Annex H. The Chamber notes that, to support its claim, the Sesay Defence relied on testimony presented at trial.

its claim as to Sesay's status and reputation, the Sesay Defence reminds the Chamber of the 42 civilians called by them who came forward to speak on Sesay's behalf, as well as the more than 250 witnesses whose testimony was excluded as repetitive or who were not called for procedural constraints.[132] Consequently, the Sesay Defence submits that Sesay's reputation and treatment of civilians must be regarded as cogent mitigation.[133]

71. The Sesay Defence highlights Sesay's role in the disarmament and reconciliation process of Sierra Leone as a mitigating factor. It argues that Sesay remained committed to the peace and disarmament process despite considerable internal opposition from the RUF leadership and their fighters.[134] Sesay, by his actions, was able to bring peace where others before him had failed. It is requested that his efforts from 2000 to 2002 attract "the most significant of mitigation" since his actions "are without precedent in any conflict in our life times."[135]

72. According to the Sesay Defence, further mitigating factors include Sesay's lack of previous convictions, his treatment by the Prosecution during his arrest and interview process and his cooperation with proceedings. Of note is the Sesay Defence's allegation that, because of the Prosecution's "coercive conduct", Sesay "was deprived of a real possibility of cooperation."[136]

73. Lastly, the Sesay Defence posits that the enforcement of the sentence outside of Sierra Leone constitutes a mitigating circumstance since it will cause further hardship on Sesay's personal and family circumstances.[137]

74. The Sesay Defence refers to a "statement of remorse" in its sentencing brief, where Sesay "fully acknowledges that the conflict in Sierra Leone harmed many of his own country-men, women and children, and for that he expresses unqualified regret and remorse."[138] During oral submissions, Sesay personally delivered the following statement to the court and to the public:

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[132] Sesay Sentencing Brief, paras 99-100.
[133] Sesay Sentencing Brief, para. 104.
[134] Sesay Sentencing Brief, paras 105-107 and Annex B.
[135] Sesay Sentencing Brief, paras 110 and 112.
[136] Sesay Sentencing Brief, para. 120.
[137] Sesay Sentencing Brief, paras 123-128.
[138] Sesay Sentencing Brief, para. 130.

> My Lords, I am extending my sincere sympathies to the victims who have suffered during the days of the war. I am also extending my thanks to the 250 civilians who came forward to aid my defence. I want the Chamber to know that what the United Nations is looking forward to in the world today is to see an interim rebel leader who would come forward, who would come forward to cooperate with the United Nations without any pre-condition or personal conditions. [...]
>
> So today, those who didn't want for peace to return to Sierra Leone, they have benefited from the UN while I, who have put my life on the table for peace to prevail, have found myself in this condition. [...]
>
> And, my Lords, I would want you also to know that I was not the one who put a piece of cloth in the water well for the people of Sierra Leone to drink filthy water. So if I say I'm going to take the piece of cloth out of that water well, is that something wrong? [...]
>
> The ECOWAS leaders gave me this responsibility for me to implement the Lomé Accord and, my Lords, until the day of my arrest on 10 March 2003, nobody ever told me that the Lomé Accord was not valid. They gave me awards in this country, you know, for the role that I played in implementing the Lomé Accord, so my Lords, I thank you all for giving me the opportunity to say one or two words.[139]

75. Speaking to the principal aim of sentencing Sesay, the Sesay Defence submits that Sesay can be an example both within Sierra Leone and abroad since his courage and foresight to lay down arms ought to be encouraged by the policy and practices of the international community. Further, they contend that a lenient sentence for Sesay will also help towards the collective peace and reconciliation of Sierra Leone.[140]

76. For these reasons, the Sesay Defence suggests that the Chamber give Sesay a sentence of 15 to 20 years imprisonment if the comparison to the AFRC sentences is given merit or, if the Chamber accepts those crimes as more serious and Sesay's mitigation significant, a sentence of 10 to 15 years imprisonment.[141]

3. Kallon

77. The Kallon Defence submits that the primary objectives of sentencing at the International Criminal Tribunals are deterrence, retribution and rehabilitation, with "some emphasis on

[139] Sentencing Hearing, Transcript of 23 March 2009, pp. 68-70.
[140] Sesay Sentencing Brief, paras 131-134.
[141] Sesay Sentencing Brief, paras. 135-137.

rehabilitation".[142] It refers the Chamber to the *Seromba* Judgement, where the Chamber held that "the aims of sentencing are retribution, deterrence, reprobation, rehabilitation, protection of society and restoration of peace."[143]

78. The Kallon Defence submits that there is a danger that when so few are prosecuted for the harms that befell the people of Sierra Leone, it may be tempting for the court to try and serve a broader function, by expressing the outrage of the international community, and placing the blame on the nine individuals prosecuted by this court. It cautions that the focus must remain in the actual conduct of the Accused awaiting sentencing.[144] In summary, the punishment must fit the crime.[145]

3.1. Gravity of the Offences

79. The Kallon Defence submits that an Accused shall be held liable for his actions and omissions, no more or less. Therefore, in considering the gravity of the offence, the Chamber must focus on those acts or omissions of the individual accused for which he is personally responsible.[146] It points out that the Prosecution, in its Sentencing Brief, frequently considers factors as going towards both the gravity of the offence and aggravating factors, and cautions the Chamber against double-counting.[147]

80. The Kallon Defence reminds the Chamber that it has found the accused responsible for participation in a JCE extending from May 1997 to April 1998, and whilst the temporal and geographical scope may increase the seriousness of the crimes, "the attenuated involvement of the accused as to various crimes decreases it".[148] It submits that the Chamber has convicted Kallon mostly of crimes committed through a JCE in which his liability is largely indirect, and that the intent to commit the crimes for which Kallon has been convicted was indirectly attributed to him through the conduct of his subordinates.[149]

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[142] Kallon Sentencing Brief, para. 15.
[143] Kallon Sentencing Brief, para. 15 citing *Seromba* Trial Judgement, para. 376.
[144] Kallon Sentencing Brief, para. 16.
[145] Kallon Sentencing Brief, para. 15.
[146] Kallon Sentencing Brief, para. 21.
[147] Kallon Sentencing Brief, para. 25.
[148] Kallon Sentencing Brief, para. 55.
[149] Kallon Sentencing Brief, para. 56.

81. The Kallon Defence submits that the only crime for which Kallon was convicted as having been directly involved in was his 'instigating' the murder of the Nigerian woman in Wendedu in Kono District.[150]

82. The Kallon Defence does not attempt to minimise the scale and brutality of the crimes, nor the number of victims, or the degree of suffering or the impact of the crimes, but submits that the Chamber must focus specifically on Kallon's role for the offences for which he is convicted. The breadth of the JCE under which Kallon was found responsible means that he is often only remotely linked to these crimes.[151]

83. The Kallon Defence submits that where the Prosecution has urged the Chamber to consider the "scale and brutality of the offences committed" in relation to gravity of the offence, and then "exacerbated humiliation and degradation" as an aggravating factor, this would result in impermissible double-counting. Furthermore, the Prosecution has not pointed to any incident where Kallon personally or directly committed any acts of exacerbated humiliation and degradation. These should not therefore be considered as aggravating factors against Kallon.[152] Similarly, there is overlap with "scale and brutality of the offences committed" where the Prosecution pleads "total disregard for the sanctity of human life and dignity", "enjoyment of criminal acts, depravity and sadistic behaviour," and "exploitation of women and girls", and the Prosecution has not pointed the Chamber to any personal commission of these acts by Kallon.[153]

3.2. Mitigating Circumstances

84. The Kallon Defence submits that Kallon's leadership role was not clear because he was not fully in a position to exercise without risking his life. Kallon was acting within a rigid RUF command structure over which he had no control and discretion to act as he wished. It specifically highlights the Chamber's findings that "Foday Sankoh was the driving force behind the RUF movement and shaped its political and military ideology," that Sankoh was the "*de jure* and *de facto* Leader of the RUF" who was "at times authoritarian, if not dictatorial"[154] It argues that, as a middle level officer, Kallon received orders from senior officers like Sesay, Superman and Bockarie, who were themselves

[150] Kallon Sentencing Brief, para. 57.
[151] Kallon Sentencing Brief, paras 58-62.
[152] Kallon Sentencing Brief, paras 63-64.
[153] Kallon Sentencing Brief, paras 65-67.
[154] Kallon Sentencing Brief, para. 68.

33496

answerable to Sankoh.[155] Hence Kallon was acting in obedience to superior orders and under duress.[156] The Kallon Defence submits that case law has considered acting under superior orders to be an independent mitigating factor from duress. It further argues that orders from Sankoh regarding the UNAMSIL peacekeepers amounted to both superior orders and an "order given under duress", doubling warranting mitigation. Similarly, orders given by Bockarie as *de facto* RUF leader were ultimatums that carried severe penalties upon default.[157]

85. The Kallon Defence submits that Kallon was forcibly recruited into the RUF and was consequently brainwashed in its ideology. He was preparing for his advanced education. He therefore was forced to leave secondary school at an early age.[158] The Kallon defence submits that Kallon made contributions to promoting peace and reconciliation subsequent to the conflict and that this conduct must be considered in mitigation of sentence.[159] It further submits that as a mitigating factor, Kallon's lack of prior criminal conduct must be taken into account, as well as his good conduct while in detention.[160] It acknowledges that even though the amnesty granted to the Accused was not a bar to prosecution, the Chamber should, in the spirit of forgiveness and reconciliation, consider it as a mitigating factor particularly because the RUF that Kallon convinced to lay down arms now have been rehabilitated into the society.

86. In relation to Kallon's individual circumstances, the Chamber is informed that Kallon is married to three wives and has nine young children, and this increases his chances of successful rehabilitation and reintegration into society.[161]

87. In response to the Prosecution's comparison of the case against Kallon to that of the AFRC trial for purposes of sentencing, the Kallon Defence submits that the comparison is grossly inaccurate. The Kallon Defence lists some of the brutal crimes for which the AFRC leaders were convicted.[162]

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155 Kallon Sentencing Brief, para. 69.
156 Kallon Sentencing Brief, para. 70.
157 Kallon Sentencing Brief, para. 78.
158 Kallon Sentencing Brief, paras 75, 77.
159 Kallon Sentencing Brief, paras 79-83.
160 Kallon Sentencing Brief, paras 105-106.
161 Kallon Sentencing Brief, para. 104.
162 Kallon Sentencing Brief, paras 109-111.

88. During the Sentencing hearing, Kallon personally delivered the following statement to the court and to the public:

> My Lord, I wish sincerely to express the deepest remorse from the bottom of my heart to the victims of the conflict in Sierra Leone and I ask for forgiveness. [...]
>
> I accept that crimes were committed by the RUF and I acknowledge my own role and responsibility for those crimes. [...]
>
> I apologise to UNAMSIL, ECOWAS, ECOMOG and the international community who suffered in their coming to bring peace in my country, Sierra Leone. I call on all people in the conflict zone of the war to respect and collaborate with the peace mission. [...]
>
> I am further asking the family of the victims in particular, and people of Sierra Leone in general, for forgiveness for my role in this conflict for which I feel deep remorse. [...]
>
> I don't want at all to take for granted the pain of those who were maimed, those who were sexually assaulted, those who loved their loved ones [...]
>
> The six years I have spent in detention has given me the opportunity to seriously reflect upon my role in the conflict. I want to assure the Court and all Sierra Leoneans that I am a totally reformed person. I recognise the role of the Special Court in contributing peace and reconciliation in Sierra Leone and I have profound respect for the rule of law and institution of justice. [...]
>
> I apologise to my family and all family of Sierra Leone for the agony they have gone through. War is bad for everyone.[163]

89. The Kallon Defence prays that the Chamber takes credit of the time Kallon has served whilst in detention, "tempers justice with mercy," and grants him "a lenient sentence".[164]

4. Gbao

90. In its written and oral submissions the Gbao Defence emphasises the limited role played by Gbao in the specific crimes for which he has been convicted, requesting the Chamber to take into account the mode of liability under which Gbao was convicted, as well as the limited nature and degree of his participation in the offences.[165] The Gbao Defence recalls jurisprudence holding that the category of joint criminal enterprise under which responsibility

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[163] Sentencing Hearing, Transcript of 23 March 2009, pp. 102-103.
[164] Kallon Sentencing Brief, para.112.
[165] Gbao Sentencing Brief, paras 10, 14, 17, 20.

attaches, as well as indirect form of participation and the degree of intent, constitute important factors to consider and that may result in the imposition of a lower sentence.[166] In particular, the Gbao Defence suggests that "Gbao's level of participation and the degree of his intent places him at the lower end of the sentencing continuum."[167]

91. The Gbao Defence submits that the Prosecution fails to prove beyond reasonable doubt *any* aggravating circumstance with respect to Gbao.[168] In particular, the Gbao Defence takes issue with the Prosecution's grouping of the three Accused when discussing the gravity of the offences, thereby failing, in the Gbao Defence's view, to take into account the instances where the Chamber acquitted Gbao or distinguished his level of participation or intent from that of Sesay and Kallon.[169]

4.1. Gravity of the Offences

92. The Gbao Defence refers to the finding that Gbao remained in Kailahun throughout the commission of the crimes committed in Bo, Kenema and Kono Districts during the Junta period, and therefore "was not directly involved or did not directly participate in any of the crimes committed" in these Districts.[170] Further, the Gbao Defence recalls that for these same three Districts, Gbao was found not to "share the intent of the principal perpetrators".[171] Similarly, the Gbao Defence submits that there were no findings of Gbao exercising command and control over RUF fighters or Overall Commanders of the various security units, or of having effective control over the IDU, MPs, IO and G5.[172] The Gbao Defence also recalls the finding that Gbao did not have a superior-subordinate relationship over the RUF fighters that perpetrated crimes in Kono District between April 1998 and about 30 January 2000. Similarly, the Gbao Defence highlights the findings regarding Gbao's limited role in military planning

[166] Gbao Sentencing Brief, paras 10-12, citing *Babic* Sentencing Judgement, para. 40; Prosecution Sentencing Brief, para. 20; *Krajnisk* Trial Judgement, para. 886; *Brdjanin* Appeals Judgement, para. 432.
[167] Gbao Sentencing Brief, para. 21.
[168] Gbao Sentencing Brief, para. 18.
[169] Gbao Sentencing Brief, paras 24, 40-43. The Chamber is cognisant that paragraphs 113-118 of the Prosecution Sentencing Brief, as adduced in Gbao's Sentencing Brief at paragraphs 41-42, refer to the general gravity of the offences of acts of terrorism and collective punishment and are not directly imputable to any particular Accused.
[170] Gbao Sentencing Brief, paras 23, 25.
[171] Gbao Sentencing Brief, para 24.
[172] Gbao Sentencing Brief, para. 28. The Chamber recalls, however, its finding that Gbao had "considerable influence" over these bodies and had a "supervisory role" of the different units (Judgement, paras 2034-2035).

33499

and decision-making, that he was not found to have visited the frontlines, and that he was found to have no authority to initiate investigations of misconduct against RUF fighters.[173]

93. With regard to Counts 15 to 18, the Gbao Defence emphasised that Gbao was "only convicted for aiding and abetting two of the fourteen attacks" against UNAMSIL personnel found by the Chamber to have occurred in May 2000.[174] In submitting that Gbao's overall level of participation during the attacks on UNAMSIL personnel were "low", the Gbao Defence makes specific reference to the Chamber's finding that the Prosecution had failed to establish a superior-subordinate relationship between Gbao and the perpetrators of the 12 attacks in which he did not directly participate.[175]

94. The Gbao Defence rejects the Prosecution's arguments as to aggravating factors with regard to the UNAMSIL counts and denounces them as misrepresenting the factual and legal findings of the Judgement, taking particular exception to the Prosecution's claim that the Accused (Gbao included) issued threats to captured UNAMSIL personnel.[176] The Gbao Defence submits that, in so doing, "the Prosecution is wrongly attempting to utilise findings that bear no relevance to the actions of Gbao in relation to Counts 15-18."[177] Further, the Gbao Defence argues that the Prosecution attempts to adduce aggravating factors that were not proved beyond reasonable doubt, to misinterpret the Chamber's findings, or to impute wrongful behaviour on the Accused that was not in the Judgement.[178]

4.2. Mitigating Circumstances

95. The Gbao Defence submits that Gbao's relationship with and assistance to UNAMSIL Peacekeepers should be seen as a mitigating factor, as should his role in the disarmament of RUF fighters and in the rebuilding of Makeni before the May 2000 attacks.[179] Further, the Gbao Defence puts forth Gbao's assistance to CARITAS and the Interim Care Centre– at the risk of personal embarrassment – as indicative of "the extent to which he was working to

[173] Gbao Sentencing Brief, paras 30-33. The Chamber recalls, however, its finding that investigations were not just commenced at the order of those higher than the IDU in the Chain-of-Command, but also upon the filing of complaints by civilians (Judgement, para. 684).
[174] Gbao Sentencing Brief, para. 38.
[175] Gbao Sentencing Brief, paras 38-39, 44.
[176] Gbao Sentencing Brief, paras 44-45, 83-94.
[177] Gbao Sentencing Brief, para. 87.
[178] Gbao Sentencing Brief, paras. 88-94.

facilitate disarmament and rehabilitation of former child soldiers."[180] Similarly, the Gbao Defence highlights Gbao's role in relation to the release of 45 suspected Kamajors in Kailahun, before the second group of 64 was killed, and requests that this be considered as a mitigating factor.[181]

96. Other mitigating factors adduced by the Gbao Defence include Gbao's personal and family circumstances, his advanced age, his health condition, good character and lack of prior convictions.[182] In particular, the Gbao Defence would like the Chamber to refrain from imposing a long sentence on Gbao because, given his age, this would functionally amount to a life sentence. Additionally, it was submitted that serving his sentence in a foreign country would result in undue hardship on Gbao and on his family and should, consequently, be taken into account when determining the length of Gbao's imprisonment.[183]

97. The Chamber recalls that during oral submissions, Counsel for Gbao stated that:

> Mr. Gbao does not wish to address the Chamber. This is not because he is feeling any form of disrespect towards this Chamber. It is not because he is feeling surly. It is because he prefers not to. He prefers to speak through me.[184]

98. Counsel for Gbao made further submissions to the effect that: (i) Mr. Gbao does not hold a grudge against his former opponents, indeed he made his peace with the CDF and others a while ago, and even became close with the late Chief Hinga Norman whilst in detention;[185] (ii) he has genuinely forgiven his former enemies, even those who testified against him;[186] and, (iii) "Although [Gbao] accepts that certain members of the RUF committed crimes during the war, Mr. Gbao's conscience forbids him to apologise for those events of which he had no knowledge, let alone control, but one must not assume from that that he doesn't feel deep profound and lasting regret at what happened in this country during the war".[187]

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[179] Gbao Sentencing Brief, paras 72-74.
[180] Gbao Sentencing Brief, paras 80-81.
[181] Gbao Sentencing Brief, para. 82.
[182] Gbao Sentencing Brief, paras 47-65 and Confidential Annexes I, II and III.
[183] Gbao Sentencing Brief, paras 66-71.
[184] Sentencing Hearing, Transcript of 23 March 2009, p. 128.
[185] Sentencing Hearing, Transcript of 23 March 2009, p. 128.
[186] Sentencing Hearing, Transcript of 23 March 2009, pp. 128-129.
[187] Sentencing Hearing, Transcript of 23 March 2009, p. 130.

99. The Gbao Defence takes exception to the "arbitrary" nature of the Prosecution's suggested sentence of 40 years imprisonment.[188] It requests that Gbao be sentenced for a period equal to "time served up until the date the sentencing judgement is rendered."[189]

V. DELIBERATIONS

100. Having fully considered the submissions of the Parties in relation to sentencing, the Chamber emphasises that only those factors that it found to be relevant in the determination of appropriate sentences will be explicitly addressed by the Chamber.

101. In determining an appropriate sentence, we subscribe to the view that "sentences of like cases should be comparable", although there are inherent limits to this approach since "any given case contains a multitude of variables, ranging from the number and type of crimes committed to the circumstances of the individual."[190] The Chamber is cognisant that it must impose the penalties to fit the individual circumstances of each accused and the gravity of the criminal conduct.[191]

102. Mindful of the need to make explicit its reasoning, as well as to avoid double-counting any factors, the Chamber has sought to distinguish as clearly as possible those factors which have been considered in its analysis of the gravity of the criminal conduct of each accused, and those factors which have been considered as either aggravating or mitigating circumstances to sentencing. Considering that the majority of the crimes for which the accused have been convicted were committed pursuant to a joint criminal enterprise, the Chamber has analysed first the gravity of the offences committed in terms of (1) their nature and physical impact, or the objective gravity of the offences, and separately addressed (2) the form and degree of participation of each individual accused, which as we have found is not the same for each accused. Aggravating and mitigating circumstances have been dealt with separately.

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[188] Sentencing Hearing, Transcript of 23 March 2009, p. 64.
[189] Gbao Sentencing Brief, para. 95.
[190] *Kvocka et al.* Appeal Judgement, para. 681.
[191] *Krajisnik* Appeals Judgement, para. 783.

33502

1. Gravity of the Offences

1.1. General Comments

103. We consider that some factors and considerations may overlap in the analysis. It is been held in the ICTY that:

> The Appeals Chamber is of the view that, while a Trial Chamber should strive to distinguish between the gravity of the criminal conduct and the aggravating circumstances, it might be difficult or artificial to separate the two in some cases. For instance, in the present case, Krajisnik's contribution to the JCE is precisely his abuse of powers and public positions; this element arguably concerns both the 'gravity of the criminal conduct' and the 'aggravating circumstances'. What is important is to avoid double counting (i.e. no factor should be taken into account twice in sentencing);[192]

Where a factor could equally be considered under either the "gravity of the criminal conduct" or under aggravating circumstances, the Chamber has opted to consider it under the former.

104. The Chamber recalls its findings that Sesay, Kallon and Gbao, Justice Boutet dissenting in relation to the finding on Gbao, have been found guilty of a high number of crimes against humanity and war crimes. The Chamber also observes that some of these crimes were particularly heinous and brutal, and were committed over a long period of time and a large geographical area. Much human suffering resulted from the crimes committed pursuant to the joint criminal enterprise, of which we have found all the accused, Justice Boutet dissenting in relation to the finding on Gbao, to be joint participants.

105. We have concluded that the crimes show a systematic targeting of civilians and a wanton disregard for life, property and collective well-being. These crimes were, in many instances, intended to force the civilian population into submission and dissuade them from collaborating with what they considered to be the enemies of the Junta.

106. The Chamber, Justice Itoe dissenting, is of the view that, where a particular act amounting to criminal conduct within the jurisdiction of the Court, such as murder or rape as a crime against humanity has also, because of the additional element of intent necessary for a conviction for acts of terrorism or collective punishments as a war crime, amounted to a crime

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[192] *Krajisnik* Appeals Judgement, para. 787.

as alleged in Counts 1 and 2 of the Indictment, for purposes of sentencing we will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

1.2. Unlawful Killings (Counts 1 to 5)

1.2.1. Nature of the offence

107. The Chamber takes the view that the unlawful killings for which the Accused have been found guilty are of the utmost gravity. For instance, civilians - including babies, children, women and men of all ages - were murdered in diverse brutal ways. Many civilians were targeted on suspicion that they were Kamajors or Kamajor collaborators.[193] The rebels showed a general disregard for civilians. They sometimes dressed in ECOMOG uniforms so as to deceive the civilians.[194] Civilians were shot, beaten to death, burned alive and hacked to death, often indiscriminately and in large numbers.[195]

108. The Chamber also recalls its finding that in Penduma, Staff Alhaji allowed the killing of the wife of TF1-217, after he organised, supervised and presided over her brutal rape by eight rebels.[196]

1.2.2. Scale and brutality

109. Killings were done arbitrarily, brutally and cruelly. A man was shot in the chest and had his head severed and his legs broken. A Limba man was killed because he refused to surrender palm wine.[197] Rebels would routinely sing, celebrate murders and taunt survivors. Men were disembowelled with their intestines subsequently used as makeshift checkpoints.[198] The severed heads of victims were placed on sticks and displayed publicly.[199] A boy had all four limbs hacked off before being thrown into a latrine pit and left to die.[200] Civilians were made to choose between their own lives or those of their family members and, and one instance, a

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[193] Judgement, para. 1099.
[194] Judgement, paras 1147, 1546-1549.
[195] Judgement, paras 1018, 1022, 1024, 1035.
[196] Judgement, paras 1278, 1191, 1195.
[197] Judgement, paras 1081, 1105.
[198] Judgement, paras 998, 1033, 1058, 1065, 1023, 1024, 1124.
[199] Judgement, para. 1124.
[200] Judgement, para. 1149.

civilian was made to watch as rebels cast lots on whether he would live or die.[201]

110. The Chamber further recalls that in Bo District, the unlawful killings were committed during attacks on Tikonko, Sembehun and Gerihun all between 15 and 30 June 1997. At least 207 people were killed by rebels who, at times, used anti-aircraft weapons on the civilians.[202] The rebels discharged their weapons indiscriminately, committing these murders in homes and at a school.[203] All the killings in Bo District, given amongst others their public nature were found to constitute acts of terrorism and that the massive killing in Tikonko was found to constitute extermination.[204]

111. We found that in Kenema Town and Tongo Field in Kenema District, the unlawful killings occurred between 25 May 1997 and about February 1998. At least 82 people were then murdered, of which 63 were found to have been exterminated, 72 died as a result of acts of terrorism and 11 from collective punishments on suspicions of collaborating with the Kamajors.[205] We also found that the massacres at Cyborg Pit in Tongo Field, in particular, highlight the scale and brutality of the killings of civilians who complained of the very treatment they were being subjected to in furtherance of the Junta's quest for diamonds.[206]

112. The Chamber has found that Kono District was the site of some of the most extensive and brutal massacres committed in Sierra Leone during the period of the Indictment. Between 14 February and 30 April 1998 at least 317 civilians, plus an unknown number of civilians, were murdered in Koidu Town, Tombodu, Yardu and Penduma. Of those 317 murders, at least 280 were acts amounting to extermination and 230 were considered to be the result of collective punishment. All of the killings for this time period were considered to be acts of terrorism, including the killings at the Sunna Mosque in Koidu committed by CO Rocky as he forced a man to pray. Similarly, the killings done by Savage and Staff Alhaji show the brutality and scale of the murders – such was the magnitude of the killings that the diamond pit where corpses and severed heads were dumped became known as "Savage Pit".[207]

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[201] Judgement, paras 1150, 1176, 1277, 1341(vi).
[202] Judgement, para.1081, 1021, 1022, 1033.
[203] Judgement, paras 1003, 1022, 1033.
[204] Judgement, para. 1022, 1033.
[205] Judgement, paras 1099, 1108.
[206] Judgement, para. 1107, 2050, 2055, 2056.
[207] Judgement, paras 1146, 1148, 1149, 1165-1170, 1174, 1176, 1184, 1196, 1204.

113. Between May 1998 and June 1998, after the JCE had ceased to exist, an additional 29 murders were committed in Kono District at PC Ground, Koidu Buma and Wendedu. 8 of these murders, committed by Captain Banya on Superman's orders, were an act of terrorism. We recall in particular the brutal killing of 15 civilians by RUF Rambo and a group of rebels, who "felled the victims with a cutlass."[208]

114. We have found that on 19 February 1998, 63 civilians were murdered in Kailahun Town, Kailahun District, on the orders of Sam Bockarie. This extermination, one of the worst single incidents during the war, also constituted an act of terrorism and collective punishment. It shocked the conscience of the town and of all those present.[209]

1.2.3. Impact on victims and society

115. The Chamber observes that the killing of civilians in such circumstances brings along with it a lot of suffering on families and on the community. In several of these incidents the Chamber made findings as to the grief of the civilian populations and their ordeal in burying the corpses, estimated in the hundreds. Some were exposed to the decomposing bodies, left in the streets for days, or to the severed heads of victims, also left on the street. Many were subjected to the ordeal of observing one or several family members killed in their presence.[210]

1.2.4. Conclusion

116. Having carefully considered the instances of crimes of unlawful killings as we have found in the Judgement (Counts 3 to 5 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high. Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

[208] Judgement, paras 1280, 2065, 1278-1281, 2063.
[209] Judgement, paras 1447-1450, 2156 (5.1.1.).
[210] Judgement, paras 1195, 1150, 1176, 1277, 1341 (vi).

1.3. Sexual Violence Crimes (Counts 1 and 6 to 9)

1.3.1. Nature of the offence

117. In this case, the sexual violence crimes that we found were committed by the AFRC/RUF as a tactic of war was often perpetrated with impunity to humiliate, dominate and instil fear in victims, their families and communities during the armed conflict.[211]

118. The Chamber observes that the gravamen of crimes of sexual violence involves physical aggression on the most private and intimate parts of an individual's body. The Chamber found ample evidence of gruesome crimes of sexual violence which were perpetrated exclusively and disproportionately against unknown number of the female population throughout the territory of Sierra Leone, in locations including but not limited to, Tombodu, Sawao, Penduma, Bumpeh, Wendedu and Bomboafuidu in Kono District[212] and in locations within Kailahun District. For instance, a group of captured civilians in Bumpeh were stripped naked and forced to laugh and line-up before the rebels molested and defiled them.[213] A husband and wife and their daughter were overtly selected from a group of civilians and the couple was ordered to have sexual intercourse in public or otherwise face death. The couple's 10 year old daughter was then forced to wash her father's penis.[214]

119. In another instance, a rebel armed with a gun and knife, threatened to kill TF1-218 as he lifted and opened her legs before penetrating her. She described her condition stating "I was trembling, so I got up. I stood there for some time trembling." [215] The rapes were sometimes followed with further violence to the victims. TF1-218 managed to escape after she was raped but got shot in her hand. She was naked oozing with blood everywhere, from her vagina and her hand."[216] Similarly, in Sawao, as in Penduma, the multiple rapes of women were committed simultaneously as men were killed or had their limbs amputated.[217]

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[211] Judgement, para. 1348.
[212] Judgement, para. 1354.
[213] Judgement, paras 1205, 1354.
[214] Judgement, para. 1205.
[215] Judgement, para. 1206.
[216] Judgement, para. 1206.
[217] Judgement, paras 1180, 1181-1185, 1208.

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120. The Chamber has found that the AFRC/RUF systematically rampaged through towns and villages, armed and dangerous on missions to demolish and despoil the civilian population. In Bomboafuidu about 50 armed men, captured TF1-192 and approximately 20 civilians who were then paired up, male and female, and ordered to have sexual intercourse with each other.[218] The violent sexual acts were also indiscriminately perpetrated against the civilians regardless whether they were nursing mothers, pregnant women or children. In Tombodu, Staff Alhaji pointed a gun at the head of a woman carrying a child and commanded her to put the child down and undress. He touched her private part and then raped her in front of her child.[219]

121. We have also found that the public manner in which the crimes of sexual violence were committed was a deliberate tactic on the part of the perpetrators to instil fear into the civilians.[220]

122. In addition, as we have found, many women and girls were forcibly made 'wives' of RUF commanders and rebels in Kono and Kailahun District. These "wives" were "married" against their will, forced to engage in sexual intercourse and perform domestic chores, and were unable to leave their "husbands" for fear of violent retribution.[221] Many of these women were under the control of the Commanders for prolonged period of time, "serving them as their wives,"[222] and for sex. An unknown number of women were forced into sexual slavery for protracted period of time in Koidu and Wendedu, in Kono District[223] and also in Kailahun District.[224]

1.3.2. Scale and brutality

123. The Chamber considers that the crimes of sexual violence for which the accused stand convicted are of an extremely serious nature and were committed in conspicuously brutal manner as demonstrated in the Factual Findings of the Trial Judgement. We have also found

[218] Judgement, paras 1207, 1208.
[219] Judgement, paras 1171, 1288.
[220] Judgement, para. 1355, 1356.
[221] Judgement, para. 1293.
[222] Judgement, para. 1155.
[223] Judgement, para. 1294.
[224] Judgement, paras 1406-1413, 1460-1461.

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as already stated that these crimes were committed with the further intent to terrorise the civilian population.[225]

124. The Chamber has found that sexual violence was rampantly committed against the civilian population in an atmosphere in which violence, oppression and lawlessness prevailed.[226] The Chamber notes that armed RUF rebels paraded through towns and villages, threatening women and girls, and in some instances capturing, assaulting or killing them.

125. Moreover, the rebels, as we have found, used perverse methods of sexual violence against women and men of all ages ranging 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.[227] TF1-217's wife was gang raped by eight rebels as he and his children were forced to watch. He was ordered to count each rebel as they consecutively raped his wife, as they laughed and mocked him. After this ordeal, one of the rapists, Tamba Joe, took a knife and stabbed TF1-217's wife in front of her entire family.[228]

126. We have also found that several other victims faced brutal multiple rapes. For example TF1-195 was raped fives times[229] and a stick was inserted into her vagina[230] and since this treatment she has experienced physical pain. TF1-218 was raped twice and another victim in Bomboafuidu had a pistol driven into her vagina and left inside of her.[231] In addition, at least 20 captured civilians were forced to engage in sexual intercourse with each other, slitting the genitalia of several males and females persons.[232]

127. The Chamber has concluded that the AFRC/RUF also systematically and arbitrarily continued to capture and abduct an unknown number of women and girls, forcibly labelled 'wives' in Koidu and Wendedu camps in Kono District. For instance, TF1-314 was captured and abducted at the tender age of 10 and forcibly married to an RUF fighter in Kailahun District and so was TF1-093. Both victims and an unknown number of other women were

[225] Judgement, paras 1346-1352.
[226] Judgement, para. 1185, 1347.
[227] Judgement, para. 1347.
[228] Judgement, para. 1347.
[229] Judgement, para. 1289.
[230] Judgement, para. 1185.
[231] Judgement, para. 1207.
[232] Judgement, paras 1207-1208.

forcibly married to RUF fighters and Commanders for a protracted period of time in Kailahun District.[233] The Chamber considers the brutal and large scale manner in which crimes of sexual violence were perpetrated increases the gravity of these offence.

1.3.3. Vulnerability of victims

128. With specific regard to the crimes of sexual violence, the Chamber observes that many of the victims were particularly young and vulnerable; several of them after arbitrary abductions were held in captivity for prolonged periods of time. This was the situation particularly in Kailahun District which was the RUF stronghold and headquarters, an area where crimes of sexual violence were so prevalent that the victims suffered immensely because the RUF closely exercised territorial dominance and physical control over them. TF1-314 at the tender age of 10 and TF1-093 at 15 were abducted and forcibly married to an RUF fighter in Kailahun District.[234] The Chamber found that the majority of the victims of forced marriages, rapes and sexual slavery were young girls of school going age or village women, who were petty traders or farmers.[235]

129. The Chamber has found that the crimes of sexual violence specifically targeted the female population regardless of age or status, whether pregnant or not, it was done to effectively to disempower the civilian population, and it had the direct effect of instilling fear in communities.[236] Accordingly, for purposes of sentencing, the Chamber concludes that this practice by the rebels of using sexual violence to terrorise the civilian population increases the gravity of the underlying offence.

1.3.4. Number of victims

130. Although it may be problematic to give an exact or approximate number of victims of the crimes of sexual violence, we have found that the crimes were committed over a long period of time and a large geographical area. We have further found that on numerous occasions an unknown number of women were raped and/or taken as 'wives'. For instance, in Tombodu, Staff Alhaji pointed a gun at the head of a woman carrying a child on her back,

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[233] Judgement, paras 1406-1409.
[234] Judgement, para. 1406-1409.
[235] Judgement, paras 1409, 1410. Exhibit 138 "*Expert Report on Forced Marriages*," p.12097-12098.
[236] Judgemeut, para. 1348.

made her undress, and then raped her.[237] TF1-217's wife was gang-raped.[238] In Bumpeh, a rebel ordered a couple to have sexual intercourse in front of the other captured civilians, stating that he would kill them if they did not comply. The rebels then forced the man's daughter to wash her father's penis.[239] In Bomboafuidu, a woman had a pistol driven into her vagina and left inside of her.[240] An unknown number of women and girls including TF1-314 and TF1-093 were held captive in sexual slavery for prolonged periods of time and as 'wives' in Kailahun District.[241]

131. The Chamber emphasises that all rapes and forced marriages were found also to constitute acts of terrorism and outrages against personal dignity.[242] Accordingly, the Chamber concludes that for purposes of sentencing the practice of using rapes and forced marriage to terrorise the civilian population increases the gravity of the underlying offence.

1.3.5. Impact on victims and degree of suffering

132. In our view, the degree of suffering that was endured by victims of sexual violence still continues. Some victims of forced marriage, sexual slavery and rape borne children of their ordeal. The Chamber considers that the crimes of sexual violence also inflicted physical and psychological pain on the victims. The victims continued to live with their captors in a hostile and coercive environment[243], unable to break away from such desperate circumstances. The Chamber recalls the demeanour and testimonies of various victims of sexual violence who expressed deep shame and stigma which they feel and face to date, several years after the abuse. The Chamber specifically recalls Witness TF1-305, the victim of a violent gang rape, who, as a result of the rape, sustained injuries which left her genitally impaired and incontinent. The Witness required frequent rest breaks during her testimony as a result of her condition. As we have found, the victims of sexual violence continue to live their lives in isolation, ostracised from their communities and families, unable to be reintegrated and reunited with their families

[237] Judgement, para. 1171.
[238] Judgement, para. 1347.
[239] Judgement, para. 1205.
[240] Judgement, para. 1208
[241] Judgement, para.1406-1409, 1465.
[242] Judgement, paras 1298, 1356, 1474-1475.
[243] Judgement, para. 1474.

and /or in their communities.[244] Many of these victims of sexual violence were ostracised or abandoned by their husbands, and daughters and young girls were unable to marry within their community.[245]

1.3.6. Impact on relatives and society

133. The Chamber further considers that the crimes of sexual violence were committed in a society where cultural values greatly dictate the sacred manner in which any form of sexual acts take place. Such violations in a society where the sexual lives of women and girls are strictly scrutinised would have an adverse impact on the family as a whole and the society at large.

134. We therefore recall our finding that the brutal manner in which women and girls were debased and molested, in the naked view of their protectors, the fathers, husbands and brothers deliberately destroyed the existing family nucleus, and flagrantly undermined the cultural values and relationships which held the societies together.[246] The Chamber observes that the shame and fear experienced by victims of sexual violence, alienated and tore apart communities, creating vacuums where bonds and relations were initially established.

135. In the Chamber's view the AFRC/RUF inflicted physical and psychological pain and harm which transcended the individual victim and relatives to an entire society. These acts of sexual violence left several women and girls extremely traumatised and scarred for life, consequently destroying the bearers of future generations. The Chamber infers that crimes of sexual violence further erode the moral fibre of society.

1.3.7. Conclusion

136. Having carefully considered the instances of crimes of sexual violence as we have found in the Judgement (Counts 6 to 9 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high. Where those acts have also been found to constitute Acts of Terrorism (Count 1 of the Indictment) the Chamber, Justice Itoe

[244] Judgement, para. 1349.
[245] Judgement, para. 1349.
[246] Judgement, para. 1349; Exhibit 146, Human Rights Watch, "We'll Kill You if You Cry", p. 4.

dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

1.4. Physical Violence Crimes (Counts 1 to 2 and 10 to 11)

137. In evaluating the gravity of the offence, the Chamber considers that the crimes of physical violence include mutilations, carvings, amputations and beatings.

138. In this regard, and for the purposes of determining the gravity of these offences for which the Accused have been convicted, the Chamber deems it necessary to take into consideration, the extent to which these offences consequentially amounted to acts of terrorism and of collective punishment.

139. We take this stand because the Accused persons by their criminal acts as we have found intended and meted out to the victims, not only collective punishments but also terrorised them and the population at large with a view to subdue and to intimidate those who they and their fighters perceived as being hostile to them and to the fulfilment of the ideals and ideology of their movement, with a clear message and signal that a similar fate awaits those who do not embrace their cause.

140. The Chamber considers that where it has found that crimes of physical violence were committed with the intent to terrorise the population, or were committed as collective punishments, that for purposes of sentencing it increases the gravity of the underlying offence.

1.4.1. Nature of the offence

141. The Chamber is cognisant that the crimes of physical violence were perpetrated against innocent civilians in a cruel manner. We have found that victims were physically mutilated; some had inscriptions of the letters "RUF" with hot irons into their flesh while others were relentlessly beaten by rebels with the view to collectively punish or terrorise them. We further found that the physical and psychological ill-treatment left many victims permanently disfigured, unconscious or dead.[247]

142. The Chamber considers that the cruel manner in which these crimes of physical

[247] Judgement, paras 1049, 1311-1320.

violence were carried out in absolute disregard for the sanctity of life or respect for human life or human dignity are factors which increase the gravity of the offence.

1.4.2. Scale and brutality

143. The Chamber recalls that several innocent civilians suspected of being collaborators were arbitrarily detained, tied up, ill-treated and thoroughly beaten in Kenema District. We recall in this regard that B.S. Massaquoi was beaten and tortured over a period of many days until he was unconscious.[248]

144. The Chamber has also found that in Kono District, several civilians were blindfolded and severely beaten with gun butts, and some were held down in nests of black ants. Rebels fired a gun between the legs of victims.[249] TF1-197 was beaten with sticks and stabbed in the head by rebels whilst other victims were tied on mango trees and mercilessly beaten with wires.[250]

145. The Chamber also considers as particularly brutal, insensitive and inhumane manner in which Major Rocky, an RUF commander shoved a board into the mouth of TF1-015, knocking out his teeth.[251]

146. We have found that victims were subjected to gruesome amputations in Kono District, some of which were committed simultaneously or successively with other crimes. For instance, TF1-195's right arm was severed by a small boy[252] after she was raped five times by rebels. TF1-197's arm was amputated and he was told to go to get extra hands from President Kabbah.[253] Victims were mutilated by rebels; at least 16 victims in Kayima were ordered to undress while a surgical blade was used to carve the letter "RUF" and/or "AFRC" into their bodies;[254] more victims in Tomandu suffered the same fate when a rebel named Soh carved "RUF" into their backs and arms using a razor blade.[255]

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[248] Judgement, paras 1072-1079.
[249] Judgement, para. 1162.
[250] Judgement, para. 1173.
[251] Judgement, paras 1177, 1314 (4.1.1.3.)(ii), 2066.
[252] Judgement, para. 1184.
[253] Judgement, para. 1187.
[254] Judgement, para. 1190.
[255] Judgement, para. 1210.

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147. The Chamber recalls that in Penduma in Kono District, civilians who had been placed in three lines were tied up and locked in a house that was set ablaze.[256] The Chamber also recalls that more than 8 men at the Penduma Primary School were beheaded by Staff Alhaji and his men. The Chamber further recalls that Staff Alhaji and his rebels amputated the hands of the first two men in the line of men where TF1-217 was standing.[257]

148. The Chamber takes particular note of the manner in which TF1-217 was subjected to physical violence in the presence of his children. TF1-217 and his children after bearing the ordeal of watching his wife gang raped was subjected to physical injury. His feet were tied up to a tree, and Staff Alhaji hit his head with a cutlass so that it bled. His wrist watch was taken from him and his left hand was amputated in the presence of his children.[258] TF1-217 stated that:

> My children were sitting in front of me. Where they were put, they were sitting and they were looking –seeing me, because they didn't hide them. They were in the open and they were seeing what was happening [...][259]

149. Even whilst TF1-217 tried to reclaim his amputated hand, he was stabbed in the back by Staff Alahaji stating;

> It is this hand that we want [...] go to Tejan Kabbah for him to give you a hand because he has brought ten containers load [sic] of arms. Now that you say you don't want our military rule, then go to your civilian rule.[260]

150. The Chamber recalls its finding regarding physical violence inflicted on a 15 year-old boy in Koidu, whose hands were amputated at the wrist and both his legs were amputated at the ankle. He was then thrown alive into a latrine. The boy was still crying as the rebels walked away.[261]

151. The Chamber considers that the crimes of physical violence were perpetrated on a large scale and in a brutal manner and that this elevates the gravity of the offence.

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[256] Judgement, para. 1196.
[257] Judgement, paras 1196-1197.
[258] Judgement, paras 1191-1200.
[259] Judgement, para. 1198.
[260] Judgement, para. 1199.

Furthermore, where the Chamber has found that such crimes also amounted to collective punishments,[262] the Chamber considers that for purposes of sentencing this further increases the gravity of the underlying offence.

1.4.3. Vulnerability of victims

152. The Chamber observes that the majority of the victims of these crimes of physical violence were particularly vulnerable. Many of them were very young children, women or men who were unarmed and incapable of defending themselves against such brutal violence. Moreover, the armed rebels used intimidation, threats, coercion and terror to break the will of the people, thereby making civilians more vulnerable.

1.4.4. Number of victims

153. The Chamber found that a countless number of persons were victims of crimes of physical violence. It is noteworthy to recount the victims who were mentioned on record. However, this is not intended to minimize the actual vast number of victims. The Chamber notes that 3 civilians were amputated on the orders of Staff Alhaji in Tombodu,[263] TF1-197 suffered an amputation and his brother was flogged,[264] at least 3 men suffered amputations in Penduma,[265] 5 victims of amputations in Sawao[266] and also an unknown number of civilians were beaten with sticks and with guns.[267] In Wendedu, TF1-015's teeth were knocked out of his mouth[268] and at Kayima at least 18 civilians had "RUF" and/or "AFRC" carved into their flesh.[269] At least 13 civilians in Tomandu in Kono District suffered the same fate. In Kenema District there were several victims including TF1-122, TF1-129, 9 suspected collaborators and 6 detained civilians all of whom were severely beaten. The Chamber notes that at least 16 of the acts of physical violence perpetrated in Kenema were also found to constitute acts of terrorism and collective punishment. Where this is the case, the Chamber, for purposes of sentencing, considers that it further increases the gravity of the underlying offence.

[261] Judgement, para. 1149.
[262] Judgement, paras 1372, 1373.
[263] Judgement, para. 1311.
[264] Judgement, paras 1312, 1313.
[265] Judgement, para. 1318.
[266] Judgement, para. 1316.
[267] Judgement, para. 1317.
[268] Judgement, para. 1314.
[269] Judgement, para. 1315.

154. The Chamber notes that while it is not possible to make an accurate numerical estimate of the victims of crimes of physical violence, the victims were evidently in large numbers.

1.4.5. Impact on victims and degree of suffering

155. The Chamber considers that these crimes had a significant adverse physical and psychological effect on the victims. Many victims of these crimes of physical violence have found themselves permanently disfigured and incapacitated. For instance, during his oral testimony, TF1-015 mentioned that he still feels the pain in his mouth, and that he is still unable to chew any food.[270] The Chamber particularly notes the cruel suffering imposed upon those civilians who had hands, feet, or limbs amputated. The immediate degree of suffering involved in amputations is immense. Amputees are also left to bear the consequences of a permanent and serious physical disability, which in many cases has led to a degree of dependency upon family, and in some cases total and permanent reliance upon others for their every need. The Chamber notes the lasting effects of these crimes on victims, on their dependants and relatives.

156. The Chamber observes that many of these victims endured severe pain and suffering as a result of the physical violence. Some victims have lost the ability to work or the capacity to earn a living. Hence these victims have become dependants in their families, further making the victims feel like burdens to their impoverished families. Victims have lost their mobility and capacity to undertake simple daily tasks. Most victims who were once able persons are now disabled and forced to beg for a living.

1.4.6. Impact on relatives and society

157. The Chamber also considers these crimes had a significant adverse impact not only on the immediate victims but also on their relatives and upon the society. Many relatives lost members of their families as a consequence of such physical injury inflicted. The number of dependants in already impoverished families has increased. The Chamber notes that the immediate victims, their relatives and the society as a result of these acts continue to endure serious suffering. The several victims of crimes of physical violence live amidst their relatives

and in their communities, permanently scarred, serving as a constant reminder to all of these sufferings.

1.4.7. Conclusion

158. Having carefully considered the instances of crimes of physical violence as we have found in the Judgement (Counts 10 and 11 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high. Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

1.5. Enslavement (Counts 1 and 13)

1.5.1. Nature of the offence

159. The Chamber has considered that the enslavement crimes for which the accused have been found guilty are of the utmost gravity. We found that hundreds of civilians throughout Kenema, Kono and Kailahun Districts were enslaved and forced to farm, mine for diamonds, carry loads, train for war and generally serve to support the RUF war effort. We recall that deprivation of their liberty, the conditions under which they worked and the harassments and threats they constantly faced symbolise a system designed to exploit civilians, without any regard for their safety or well-being, being focused solely on furthering the accused's criminal objective.

1.5.2. Scale and brutality

160. The Chamber recalls that at Tongo Fields in Kenema District hundreds of civilians were enslaved and forced to mine for diamonds. Civilians were captured from surrounding villages and taken to the mines, sometimes tied to ropes. They were given orders by AFRC/RUF Commanders. Those who attempted to escape from the forced mining sites were stripped and left naked so that they would not be able to bide or take diamonds, others were

[270] Judgement, para. 1177.

beaten or killed.[271]

161. Again, in Kono District, from about 14 February to 30 April 1998, the Chamber found that there was unknown numbers of civilians enslaved in camps and forced to participate in food-finding missions and used to carry loads of food, ammunition and looted property between Kono and Kailahun Districts.[272] Those who attempted to escape were punished with beatings or given extra work. The use of enslaved civilians to collect and transport goods continued throughout Kono District between May and December 1998 under the same inhumane treatment, in coercive and oppressive conditions.[273] Civilians were organised into so-called RUF Camps at Kaidu, Wendedu and Kunduma where they were held with no possibility of escaping and lived under harsh conditions with no adequate access to food and medicines.[274]

162. We found that civilians abducted were from far-away towns and transported to the diamond pits like slaves tied together with ropes and chains, and were arbitrarily removed from their communities and support systems.[275] Under the guise of 'protecting' the civilians, they were kept in camps and had their movement and well-being severely limited.[276]

163. The Chamber also found that the RUF established well-organised extensive diamond mining operations in Kono District in which hundreds of civilians were forced to mine under the guard of armed men and child soldiers. Civilians who refused to mine were beaten, mining conditions were appalling with no pay, housing, food or medical treatment.[277] Civilians worked from sunrise to sunset, tirelessly digging pits with shovels, pickaxes, sieves and pans. Miners were inhumanely treated, forced to dig while dressed only in their underpants to discourage those who attempted to escape.

164. The mining was characterised by further brutality, when diamonds were not found they would be branded witches and wizards then undressed and severely flogged, stabbed or restrained in cells.[278]

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[271] Judgement, paras 1119, 1121.
[272] Judgement, para. 1324, 1215-1221
[273] Judgement, para. 1326.
[274] Judgement, paras 1215-1221, 1223
[275] Judgement, para. 1258.
[276] Judgement, para. 1325.
[277] Judgement, paras 1328
[278] Judgement, paras. 1253.

165. We recall that in Kailahun District, enslavement was an institutionalised system in which civilians were screened and enslaved, forced to farm, mine, perform domestic chores, train for combat, work as porters and engage in other forms of forced labour.[279] Civilians were commonly subjected to arbitrary violence and physical retribution. Civilians had to walk several miles to RUF farms, and received no payment or food in return. Some commanders owned private farms cultivated by forced civilian labour and some engaged in private mining under the watchful eyes of child soldiers or other armed security.[280] The rebels guarded the mining pit with guns in order to prevent any of the civilians from escaping.[281]

166. The Chamber notes that the arbitrarily abducted civilians were particularly vulnerable. The circumstances under which the civilians were enslaved rendered the victims powerless and vulnerable. These victims were rampantly abducted often in situations of extreme violence, tied up with ropes and chained like chattels, to be used as slaves, working long hours under oppressive conditions with no adequate food or medicines. Many victims lived under strict control and guard, fear of being killed hence unable to escape. As a result, the victims resigned to their fate, living lives of slaves for prolonged periods of time.

1.5.3. Number of victims

167. The Chamber observes that to make au accurate assessment of the number of enslaved civilians forced to mine, train, fish, hunt, farm, and cook, carry loads and/or engage in any other forms of forced labour would be difficult. The Chamber recalls that from the totality of evidence, a massive number of civilians in hundreds were enslaved in one or more ways. It is noteworthy to state that these acts of enslavement were continual, perpetrated on a large scale and for prolonged periods of time.

1.5.4. Impact on victims and degree of suffering

168. The Chamber considers that the manner in which innocent civilians were abducted from their settled homes, restrained by ropes and chains and forced to live in camps manned by armed guards was cruel and degrading. Victims lived under humiliating conditions of complete submission, and resistance to RUF control and dominance brought severe

[279] Judgement, paras 1260-1265.
[280] Judgement, para. 1259.

punishment, often death.

169. The Chamber concludes that the enslavement caused its victims immense suffering and pain.

1.5.5. Impact on relatives and society

170. The Chamber considers that enslavement removed people from their families and communities and caused psychological injury to the relatives and to the broader community.

1.5.6. Conclusion

171. Having carefully considered the instances of crimes of enslavement killings as we have found in the Judgement (Count 13 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high. Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

1.6. Crimes of Pillage and Acts of Burning as Terrorism (Counts 1 to 2 and 14)

1.6.1. Nature of the offence

172. The Chamber found that the crime of pillage predominantly relates to the looting of civilian property in Bo and Kono Districts. The Chamber notes that the looting of property was often accompanied by the setting of many houses and buildings on fire in a chaotic war environment with the intent to instil fear and terror.[282]

1.6.2. Scale and brutality

173. The Chamber did find that the destruction of property was committed on a large scale and in an indiscriminate manner, and also as a means to terrorise the civilian population. In Bo District, the fighters looted Le 800, 000 from one Ibrahim Kamara. The Chamber notes

[281] Judgement, para. 1258.

that the destruction of property occurred amidst violent attacks, which were accompanied by the setting of houses in towns on fire. The burning of 500 houses in Tikonko and 30 houses in Sembehun clearly sowed fear and terror among the civilian population.[283] Further, the burning of civilian property during the attacks on Koidu and Tombodu were perpetrated as a means to collectively punish the civilian population for allegedly failing to support AFRC/RUF.[284]

1.6.3. Vulnerability of victims

174. The Chamber further considers that the attacks on Koidu Town and on Bo District which led to the extensive destruction of civilian property were so violent and rampantly perpettated, to the extent that they rendered all civilians in the vicinity vulnerable.

1.6.4. Number of victims

175. The Chamber considers that the indiscriminate manner in which civilian property was destroyed affected several unknown number of civilians. Sometimes towns were set ablaze, as was the case during the attack on Koidu Town. The Chamber recalls that hundreds of civilians became victims of such widespread destruction in Koidu town.

1.6.5. Impact on victims and degree of suffering

176. In addition, the Chamber notes that many victims suffered emotional and psychological harm because they powerlessly had to watch their homes and livelihood arbitrarily taken from them or burned as a means of creating immeasurable fear amidst them. Many victims were deprived of property with no remedy for reclaiming it. The Chamber considers that in such impoverished communities, where victims lived on a subsistence basis, all forms of appropriation or destruction by fighters adversely impacted the victims.

[282] The Chamber is cognisant of the fact that Acts of Burning do not constitute Pillage. However as acts of pillage and burning often occurred at the same time, we have opted to describe the physical impact of the crimes together.
[283] Judgement, paras 1032, 1035, 1037.
[284] Judgement, paras 1375, 1376.

33522

1.6.6. Impact on relatives and Society

177. The Chamber considers that the widespread destruction of property through burning[285] has manifestly had a substantial negative impact on the economy of these communities and stifled their further development. Family ties were broken because many victims fled from their homes and became displaced persons in their own land.

1.6.7. Conclusion

178. Having carefully considered the instances of crimes of pillage as we have found in the Judgement (Count 14 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is high. Having in addition carefully considered the instances of burning where we have found that they constitute acts of terrorism, we consider that the inherent gravity of the criminal acts in question is high. Hon. Justice Benjamin Muranga Itoe dissents from the Chamber's conclusion in this regard.

1.7. Use of Child Soldiers (Count 12)

179. In considering the gravity of this offence, the Chamber has taken into account the organised, widespread and institutionalised practice by the RUF of recruiting, conscripting and in particular using persons under 15 to actively participate in hostilities.[286]

1.7.1. Scale and brutality

180. The Chamber has found that the offences relating to the use of child soldiers, who were known within the context of the war as SBUs/SGUs, were committed throughout the territory of Sierra Leone on a large scale and with a significant degree of brutality. Large numbers of children under 15 years were rampantly abducted from their families, often in a belligerent environment.[287] These child soldiers were subjected to cruel and harsh military training in Yengema, Camp Lion, Bunumbu and Bayama. Those who were unable to endure the training regime were often summarily shot and killed.[288] Children as young as 10 years old were armed with light weapons, rocket launchers and grenades. They were also used to mount

[285] Judgement, para. 1361.
[286] Refer to Judgement, paras 614, 1621, 2223, 1703, 1744.
[287] Judgement, para.1617.
[288] Judgement, para.1641.

ambushes, for instance against the UNAMSIL peacekeepers on the road from Lunsar to Makeni.[289] Some children were armed and used as bodyguards to commanders including Sesay and Kallon, others such as 14 year old Vandy were used during armed patrol which inevitably put the childrens' lives in danger.

181. The Chamber found that very young children were used to engage in the perpetration of gruesome crimes directed against innocent civilians. Armed children manned mining sites[290] in Tombodu, Tongo Fields and Cyborg Pit, guarding civilians who were forced to mine, and indiscriminately beating and killing those who would not perform mining activities. The Chamber also found that the RUF fighters habitually drugged these children with alcohol, cocaine and marijuana which made the children fearless to kill and to perpetrate other violent and heinous crimes.[291] Children became notorious killing machines, some aged between 8 and 14 actively participating in hostilities by killing and raping civilians;[292] others amputated civilians and burned houses and cars. Children also beheaded corpses of civilians in Koidu following the killings by Rocky of 30 to 40 civilians, and that the 12 year-old child soldier Samuel shot Chief Sogbeh.

1.7.2. Vulnerability of victims

182. The Chamber further observes that children were recruited on the basis of their age. The Chamber takes the view that the exceptionally young age of those who were abducted and conscripted rendered them vulnerable. Children as young as 8 or 9 years old[293] were forcibly taken for military training, some barely able to lift the guns they were to shoot. For instance the AFRC/RUF forces forcibly abducted TF1-141 and TF1-263 ages 12 and 14 years respectively in Kono District between February and April 1998.[294]

[289] Judgement, para. 1714.
[290] Judgement, para. 1425.
[291] Judgement, paras 1623-1624.
[292] Judgement, para. 1711.
[293] Judgement, paras 1631-1632, 1699.
[294] Judgement, para. 1697.

1.7.3. Number of victims

183. The Chamber has found that a large number[295] of children under the age of 15 were arbitrarily recruited and used as child soldiers by the AFRC/RUF on a large scale throughout the territory of Sierra Leone. Therefore, the Chamber's position is that the phenomenon of recruitment of child soldiers by the RUF was so ordinary and vastly practiced that it affected a large number of victims and this increases the gravity of the offence.

1.7.4. Impact on victims and degree of suffering

184. The Chamber recalls that child soldiers were arbitrarily abducted from their families, forced into the RUF forces for a protracted period of time and further deprived of a normal childhood and education. Many children were shot and killed during training and in combat activities. Some of the abducted children had the letters "RUF" carved into their bodies[296] essentially branding them as RUF property. The Chamber opines that the use of children under the age of 15 years in this manner considerably increases the gravity of the offence.

185. The Chamber's view is that the psychological impact of the recruitment on these children is particularly evidenced by the fact that in various Interim Care Centres (ICCs) established by UNICEF, the majority of the 'separated' children including child soldiers suffered from war-related stresses which persisted long after the war ended. Hence, the Chamber considers that the use of children under 15 to actively participate in hostilities had severe physical and psychological impact on the victims and their families due to the separations.

1.7.5. Impact on relatives and society

186. The Chamber notes that some former child soldiers have never re-established contact with their families and many who have been re-integrated into society or reunited with their families have inevitably been deprived of a normal childhood, education, physical and psychological development. Most families are in no position to cater for the needs of these children affected by the effects of war. Furthermore, the Chamber considers that because most of these children were forced into the ideology of the RUF, the development of their own

[295] Judgement, para. 1617.

33525

identities and understanding of social dynamics are thereby impaired, particularly where no mechanisms are in place to re-channel them and thereby to make positive contributions to development.

1.7.6. Conclusion

187. Having carefully considered the instances of crimes of the use of children to actively participate in hostilities as we have found in the Judgement (Count 12 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high.

1.8. Crimes against UNAMSIL Personnel (Counts 15 and 17)

188. The Chamber recalls its findings with regard to crimes committed against UNAMSIL peacekeepers in Bombali, Port Loko and Tonkolili Districts in relation to Counts 15 and 17.[297]

189. As a preliminary observation, we hold that the deployment of UN peacekeepers in troubled regions is an important instrument used by the international community for the maintenance of international peace and security and therefore that adequate protection must be granted to peacekeepers deployed in such missions. Consistent with the foregoing, we take cognisance that Resolution 1270 of 22 October 1999 was passed by the UN Security Council authorising the establishment of UNAMSIL as a peacekeeping force to be deployed with the consent of the warring parties because the situation in Sierra Leone was deemed to constitute a threat to international peace and security.[298]

190. The Chamber further recalls that Article XVI of the Lomé Peace Agreement of 7 July 1999 between the Government of Sierra Leone and the RUF provided for the creation of a neutral peacekeeping force to disarm all fighters belonging to the RUF, CDF, SLA and other paramilitary groups. UNAMSIL peacekeepers were therefore acting in fulfilment of their mandate, that is, to assist with the process of disarming, demobilising and re-integrating combatants, as well as monitoring a ceasefire and facilitating humanitarian assistance. [299]

[296] Trial Chamber Judgement, para. 1624.
[297] Judgement, para. 2238.
[298] Judgement, para. 1749; Exhibit 99, S/Res/1270(1999), 22 October 1999.
[299] Judgement, paras 1749-1750.

1.8.1. Scale and brutality

191. The Chamber also recalls that in a short period of time the RUF directed 14 attacks against the UNAMSIL peacekeepers. We further recall that these attacks were characterised by abductions, captures, brutality, threats of death and the disarming of UNAMSIL peacekeepers.

192. We found that the RUF fighters assaulted individual members of the peacekeeping force, such as Salahuedin, Jaganathan, Maroa's group, Odhiambo's group and Rono's groups. The RUF fighters even used dishonest means to lure the peacekeepers, pretending to display interest in resolving the situation but only to seize and capture them. Several peacekeepers were detained in small filthy rooms with no food to eat at Teko barracks, some peacekeepers were photographed as they were forced to stand behind dead bodies covered with blood stained blankets. Six peacekeepers were stripped to their underwear, hands tied to their backs with electrical wire; some were severely beaten and slapped. Many captured peacekeepers were recklessly transported in trucks from one location to another, guarded by armed RUF fighters. At least 10 peacekeepers were seriously injured in an accident during snch transfers.

193. We also recall that the fighters also staged ambushes and launched violent offensive against the peacekeepers, even children under the age of 15 years armed with grenades and rockets where used to ambush peacekeepers on the Makeni-Magburaka highway. Kasoma and 10 of his men from the Zambian Battalion (ZAMBATT) were then captured and held captive for 23 days. Three other peacekeepers were attacked in Lunsar and two of them disappeared never to be seen again. Approximately 100 peacekeepers in convoy were surrounded and forcibly disarmed by 1000 RUF fighters. Some peacekeepers were deprived of their liberty, constantly confined under guard, their passports and money confiscated, stripped naked. The fighters further launched attacks by opening gunfire on UN helicopters in Yengema and engaging peacekeepers in crossfire in Magburaka.

1.8.2. Vulnerability of victims

194. The Chamber recalls that the mandate of the peacekeepers and the purpose of their deployment was to facilitate peace and security with the objective of bringing an end to the protracted conflict.

195. Due to the limited nature of their mandate, peacekeeping forces are inevitably placed in a vulnerable position when deployed in a situation where the peace itself is fragile, and are often situated in the midst of ongoing or protracted violence. We recall that we found that in May 2000 the UNAMSIL peacekeepers consistently conveyed their peaceful intent and interest in maintaining the peace, and engaged in negotiations with the RUF leadership. Nevertheless, the RUF fighters engaged the UNAMSIL peacekeepers. In the Chamber's view, this heightens the gravity of the crime.

1.8.3. Number of victims

196. The Chamber recalls its finding that several peacekeepers were captured, injured or killed as a result of these attacks. The Chamber recalls that these included, KENBATT peacekeepers Private Yusif and one Wanyama who died as a result of injuries inflicted during the attacks, two unidentified KENBATT peacekeepers, three peacekeepers in Lunsar went missing and two never returned and were declared dead. In addition, a vast majority of peacekeeper suffered physical assault and were forcibly detained these included Kasoma and ten ZAMBATT's who were detained for 23 days, 100 UNAMSIL peacekeepers were captured by approximately 1000 RUF fighters.[300]

1.8.4. Impact on victims and degree of suffering

197. The Chamber further considers that the peacekeepers suffered severe physical and psychological pain and injury as a direct consequence of the attacks by the RUF fighters. The peacekeepers intended to maintain the peace but found themselves as victims of such violent attacks.

198. Salahudein was punched in the face by Kallon, who then attempted to stab him. Jaganathan was beaten and forcibly abducted in a vehicle and taken to different locations where he was held for approximately three weeks. Maroa and three other peacekeepers were shot at, disarmed, beaten and consequently detained. Gjellsdad and Mendy were detained for several weeks. Rono and three others suffered the same fate.[301] The conditions of detention were very poor and unsuitable for their purpose. The Chamber concludes that the attacked and

[300] Judgement, paras 1892, 1895, 1958.
[301] Judgement, para. 1890.

captured UNAMSIL peacekeepers suffered physical and psychological harm, as well as humiliation and degrading treatment.

1.8.5. Impact of attacks on the UNAMSIL peacekeeping force and the international community

199. The international community unequivocally condemned the deliberate and unprovoked attacks by the RUF fighters on the UNAMSIL peacekeepers. It was vital for the UN and the international community to continue the process of peace and reconstruction in Sierra Leone after such a devastating decade long strife.

200. The suffering of the Sierra Leonean people was no longer limited to internal security concerns but extended to regional and international focus.

> The international community should not lose sight of the overarching objective of helping the people and Government of Sierra Leone to establish a durable peace in their country and rekindling their hope. Their plight has become a crucial test of the solidarity of the international community, rising above race and geography, which is a basic guiding principle of this Organisation. The UN has not abandoned and will not abandon Sierra Leone. It should continue to provide humanitarian aid and the required assistance in taking the many steps needed on the path to peace, national reconciliation and development.[302]

201. In this regard, regional leaders of the ECOWAS nations like Ghana, Burkina Faso, Liberia, Mali, Guinea, Nigeria and Togo convened meetings to thwart the situation.[303] A joint Implementation Committee meeting was also held to exert strong diplomatic pressure on the RUF and increase the military capacity of UNAMSIL to enhance its operational capabilities.[304] This meeting, chaired by the Minister of Foreign Affairs of Mali was attended by

[302] Exhibit 173, Fourth Report of the Secretary-General on the United Nations Mission in Sierra Leone, 19 May 2000, para. 96.
[303] *Ibid.* para. 7.
[304] *Ibid.* para. 78.

representatives from Ghana, Guinea, Libya, Sierra Leone, Canada, UK, USA, the then Organisation of African Unity (now African Union) and UNAMSIL.[305]

202. It was of utmost international interest that all the UNAMSIL peacekeepers were safely returned, those detained, wounded or injured, death or alive and all the missing peacekeepers.[306] The political effort to assist the Sierra Leonean people should be supplemented by a credible military force. The UK decided to deploy their spearhead battalion to restore relative calm in Freetown, Lungi and the Peninsula areas.

203. The objective of the international community was to assist in creating conditions for the establishment of lasting peace. At the 4139th meeting of the Security Council on 11 May 2000, many member states advocated that UNAMSIL should be given a strong peace enforcement mandate under Chapter VII of the Charter.[307] The Under-Secretary-General deemed it essential for the international community to show the necessary will and resolve to sustain such a commitment to impose peace in Sierra Leone and called on member states with ready capacity and necessary resources to assist.

1.8.6. Conclusion

204. Having carefully considered the instances of crimes against UNAMSIL personnel as we have found in the Judgement (Counts 15 and 17 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high.

2. Individual Circumstances of the Accused

2.1. Applicable to all accused

2.1.1. Sentence possibly to be served outside of Sierra Leone

205. Having considered the submissions of the Parties in relation to serving a sentence in a foreign country,[308] as well as the submissions of the Registrar in this regard,[309] the Chamber

[305] *Ibid*. para. 78.
[306] *Ibid*. para. 94.
[307] *Ibid*. para. 100.
[308] Sentencing Hearing, Transcript of 23 March 2009, pp. 33, 126-127.
[309] SCSL-04-15-T-1248, Submission of the Registrar Pursuant to Rule 33(B) Regarding the Conclusion of Agreements for the Enforcement of Sentences, 25 March 2009 ("Registrar's Submission")

notes that whilst it seems more likely than not at this stage that the convicted persons in this trial will serve sentences outside of Sierra Leone,[310] this is a decision that ultimately lies within the discretion of the President of the Court, based upon agreements concluded by the Registrar.[311] The Chamber is unable to speculate on the result of these negotiations and decision making processes, upon which it has no conclusive information, and which lie outside of its control. It therefore notes for purposes of record that it has not given any weight to this factor in the consideration of the sentences of any of the convicted persons in this case.

206. The Chamber however wishes to recognise that, in general terms, sentences served abroad, where family visits are likely to be few, may be harder to bear. Such circumstances would normally amount to a factor in mitigation of sentence.

2.1.2. References in submissions to evidence adduced during trial

207. Although both the Prosecution and the Defence teams referred to evidence adduced at trial in support of their arguments on sentencing, the Chamber has not given this evidence substantial consideration unless such evidence resulted in a finding of fact in the Judgement. The Chamber had determined that some of the evidence adduced at trial was found to be not credible and therefore attached no probative value to it. In making its findings on the individual circumstances of the Accused for the purposes of sentencing, the Chamber has relied upon the findings in the Judgement, the arguments of the parties including any information adduced specifically in support thereof and the procedural history of the case.

2.2. Sesay

2.2.1. Convictions and form of liability

208. The Chamber recalls the crimes for which Sesay has been convicted, and the form of liability for each crime, as set out above in Section II of this Sentencing Judgement.

[310] Registrar's Submission, Annex B, Letter to the Special Court from the Republic of Sierra Leone.
[311] Rule 103(B) of the Rules of Procedure and Evidence.

2.2.2. Form and degree of responsibility

2.2.2.1. *Article 6(1) Responsibility – Personal Commission*

209. The Chamber further recalls its finding in the Judgement that the illicit sale of diamonds was the RUF's primary means of financing its operations, and that the mining system in Kono District was designed and supervised at the highest levels.[312] The overall mining commander reported to Sesay, and Sesay received mining commanders at his house in Koidu town. He visited the mines, ordered that more civilians be captured, and arranged for the transportation of civilians to the mines.[313] The Chamber concluded that Sesay's conduct was a significant contributory factor to the perpetration of enslavement, and that he, acting in concert with other senior members of the RUF, designed the abduction and enslavement of hundreds of civilians for diamond mining throughout Kono district.[314] On the basis of these findings, the Chamber concluded that Sesay was liable under Article 6(1) of the Statute for the planning of enslavement, as charged in Count 13 of the Indictment.[315]

210. Referring to the Chamber's finding that the "primary purpose behind commission of abductions and forced labour was not to spread terror among the civilian population, but rather was primarily utilitarian or military in nature" and also that "[e]ven where abductions and forced labour occurred simultaneously with other acts of violence otherwise examined by this Chamber with regards to the crime of terror" [316] the Defence submits that these findings are relevant to an assessment of gravity.[317] The Chamber accepts that this is a factor which is relevant to the consideration of the gravity of Sesay's criminal conduct. It is precisely because the Chamber has *not* made the finding that Sesay's conduct in this respect amounts to an act of terror that the Chamber will *not thereby increase* the gravity of the offence for which he has been convicted for purposes of sentencing. Clearly however this does not in any way decrease the gravity of the offence- enslavement- for which he *has* been convicted.

[312] Judgement, para. 2114.
[313] Judgement, para. 2113.
[314] Judgement, para. 2115.
[315] Judgement, para. 2116.
[316] Judgement, para. 1360.
[317] Sesay Sentencing Brief, para. 79.

211. Recalling its findings above in relation to the nature and physical impact of the crime of enslavement,[318] and noting that Sesay was directly involved in the planning of the crime of enslavement, the Chamber concludes that the gravity of Sesay's criminal conduct reaches the highest level.

212. The Chamber recalls its finding in the Judgement that the RUF routinely used persons under the age of 15 to actively participate in hostilities between November 1996 and September 2000 in Kailahun, Kono and Bombali Districts.[319] We have found that conscription of child soldiers was conducted on a massive scale.[320] We recall our finding that Sesay, as one of the most senior RUF Commanders, had a substantial involvement to the planning of this system of conscription, and he interacted directly with the child soldiers on a regular basis: some of his own personal bodyguards were child soldiers and participated in hostilities. He gave orders that "young boys" should be trained at Bunumbu and Yengema training bases, he told trainees that if they failed to comply with orders they would be executed. He distributed drugs as "morale boosters" for these fighters.[321] At a meeting in Makeni, Sesay expressed his concern that child combatants were being removed from the RUF, and RUF were thereby losing "their fighters".[322] On the basis of these findings, the Chamber concluded that Sesay was liable under Article 6(1) of the Statute for planning the use of persons under the age of 15 to participate actively in hostilities in Kailahun, Kenema, Kono and Bombali between 1997 and 2000, as charged in Count 12.[323] Recalling its findings above in relation to the nature and physical impact of the crime of use of child soldiers,[324] and noting that Sesay was directly involved in the planning of the crime of use of persons under the age of 15 to participate actively in hostilities, the Chamber concludes that the gravity of Sesay's criminal conduct reaches the highest level.

[318] *See* Section V.1.5.
[319] Judgement, para. 2220.
[320] Judgement, para. 2223.
[321] Judgement, paras 2226-2227.
[322] Judgement, para. 2229.
[323] Judgement, para. 2230.
[324] *See* Section V.1.7.

2.2.2.2. *Article 6(1) Responsibility – Joint Criminal Enterprise*

213. The Chamber recalls its findings above in relation to the nature and physical impact of the crimes committed pursuant to the joint criminal enterprise, including unlawful killings, sexual violence crimes, physical violence crimes, enslavement, and crimes of pillage and acts of burning.[325] Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

214. With respect to the form and degree of Sesay's participation in the joint criminal enterprise, the Chamber recalls its findings that at time of the commission of these crimes, Sesay held a very high position of authority within the RUF, as a Vanguard, Lieutenant Colonel and Battle Group Commander. During the currency of the joint criminal enterprise, from May 1997 until the end of April 1998, Sesay was effectively the second highest senior RUF officer after Sam Bockarie.[326] Sesay was a member of the AFRC Supreme Council, and participated in the meeting of this body throughout the Junta regime. Within the RUF, Sesay, together with Bockarie, approved the appointment of senior RUF Commanders to deputy ministerial positions within the Junta government, in order to integrate the RUF into the AFRC regime.[327] The Chamber concluded that given his position of power, authority and influence, including his role, rank and relationship with Bockarie, Sesay contributed significantly to the joint criminal enterprise.[328]

215. The Chamber further recalls that the crimes committed in furtherance of the joint criminal enterprise, which "intended through the spread of extreme fear and punishment to dominate and subdue the civilian population in order to exercise power and control over the captured territory"[329] were crimes of a shocking nature, deserving of condemnation in the strongest terms possible. Considering Sesay's hugely influential role within the enterprise as a senior military leader and member of the Supreme Council, who "by his personal conduct

[325] *See* Section V.1.2-V.1.6.
[326] Judgement, para. 1993.
[327] Judgement, para. 1994.
[328] Judgement, paras 1982, 1983, 1996.
[329] Judgement, para. 1981.

furthered the common purpose by securing revenues, territory and manpower for the Junta Government and by aiming to reduce or eliminate the civilian opposition to the Junta regime".[330] The Chamber concludes that Sesay's level of participation in the joint criminal enterprise was key to the furtherance of the objectives of the joint criminal enterprise. In addition, by his hands-on approach, including acting as an architect of the scheme by planning in the enslavement of civilian miners and the use of child soldiers to guard mining sites, we likewise conclude that his level of participation in the joint criminal enterprise was key to the furtherance of the objectives of the joint criminal enterprise. Considering also the fact that the crimes committed pursuant to the joint criminal enterprise engulfed scores of civilians, spread over several Districts, and were perpetrated over an extended period of time, the Chamber concludes that Sesay's conduct seriously increased the gravity of the offences committed, and his culpability thus reaches the highest level.

2.2.2.3. Article 6(3) Responsibility

216. The Chamber recalls its findings in relation to the nature and physical impact of the crimes of Enslavement as well as crimes against UNAMSIL personnel.[331] The Chamber found Sesay liable under Article 6(3) of the Statute for crimes under Counts 13, 15 and 17 of the Indictment. These crimes included Enslavement in relation to events in Kono District, as well as attacks committed against UNAMSIL Peacekeepers in Bombali, Port Loko, Kono and Tonkolili Districts.

217. The Chamber found that at the time the RUF directed attacks against the UNAMSIL peacekeepers, Sesay was the Battle Field Commander, effectively that he was the most senior and overall military commander of the RUF on the ground.[332] Sesay in his leadership role gave orders to all commanders, in relation to the dismantling of checkpoints and also on operational issues. These commanders included Kallon.[333] The Chamber recalls its finding that Sesay was in full command of the operations of the RUF troops in relation to UNAMSIL peacekeeping personnel in later April and May 2000, and that he was in a superior-subordinate relationship with the perpetrators of the attacks directed against UNAMSIL personnel in May

[330] Judgement, para. 2001.
[331] *See* Section V.1.5, V.1.8.
[332] Judgement, para. 2268.
[333] Judgement, para. 2268.

2000.[334] The Chamber consequently found Sesay liable for failing to prevent or punish his subordinates for directing 14 attacks against UNAMSIL personnel and killing four UNAMSIL personnel in May 2000, as charged in counts 15 and 17.

218. The Chamber considers it utterly reprehensible that such a senior military commander, who was in a position of authority and had effective control of subordinate commanders and troops, would allow, or would allow to go unchecked, attacks directed against a UN Peacekeeping Force that had been deployed as a result of the Lomé Peace Accord, to which the RUF was one of the signatories. UN Peacekeepers act at the behest of the international community in order to preserve the peace for the benefit of ordinary civilians. Sesay's conduct as overall military commander can only be condemned in the strongest terms possible, and the Chamber considers the gravity of Sesay's criminal conduct in this regard to reach the highest level.

2.2.3. Aggravating factors

219. The Chamber finds that, beyond those general and individual circumstances already considered by the Chamber under the gravity of Sesay's criminal conduct,[335] the Prosecution has not established beyond a reasonable doubt any additional aggravating factors as to Sesay's conduct for the crimes for which we have convicted him.

2.2.4. Mitigating circumstances

2.2.4.1. *Forced recruitment*

220. The Chamber notes that Sesay was 19 years old at the time he was forcibly recruited into the RUF. The Chamber is of the opinion that this forced recruitment cannot mitigate the crimes which Sesay later committed, as we consider that he could well have chosen another path.

[334] Judgement, para. 2279.
[335] *See above*, Sections V.1, V.2.1 and V.2.2.

33536

2.2.4.2. *Lack of prior criminal conduct*

221. The Chamber has duly noted that it has not been demonstrated that Sesay has any prior criminal convictions. Although the Chamber has considered this factor we are of the opinion that only very limited weight can be given to it.

2.2.4.3. *Substantial cooperation*

222. Whilst Sesay initially gave statements to the Prosecution, the Chamber recalls that, after a lengthy *voir dire* proceeding during the course of the trial, it ruled that the statements taken from Sesay were not given freely and voluntarily.[336] At the request of the Defence, the Chamber expunged the statements from the record.[337] The Chamber is of the opinion that Sesay has already been accorded an adequate judicial remedy.

223. In the alternative, the Sesay Defence argues that by his treatment at the hands of the Prosecution, Sesay was effectively deprived of the real possibility of cooperation with the Prosecution. The Chamber does not accept this argument. It has been open to Sesay at any time since that episode to offer his cooperation. However, and quite understandably, he has chosen to vigorously defend himself against the charges which he faced. The Chamber finds that the Sesay Defence has not demonstrated on a balance of probabilities that Sesay either substantially cooperated with the Prosecution, or was unduly deprived of that possibility.

2.2.4.4. *Good character and contributions*

224. In its submission, the Sesay Defence requested that the Chamber reviews the evidence which shows that Sesay made contributions that improved the lives of many civilians, in particular in Kailahun District and in Makeni. The Chamber made no findings in the Judgement in this regard. We observe however that it appears Sesay on occasion gave assistance to civilians. Such a conclusion however would do little in our opinion to show Sesay's good character. The Chamber considers that any assistance he gave civilians on occasion, in the circumstances we found to exist then, should not be given undue weight in mitigation.

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[336] SCSL-04-15-T-1188, para.66; *See Also*: Oral Ruling on *Voir Dire*, Transcript of 22 June 2007, pp.2-3.
[337] *Ibid.*

2.2.4.5. *Facilitation of the peace and reconciliation process*

225. The Chamber recognises that in situations of protracted armed conflicts where peace can be fragile, all efforts must be made to encourage its preservation. We cannot and do not say that the law should forgive past criminal conduct, however we do agree that in exceptional cases, mitigation of sentence may be offered as an exceptional benefit to those convicted criminals who despite their past actions have, subsequent to their crimes, made a critical and decisive contribution to the peace process. Sesay submits that he is such a person.

226. The Defence submits that at the time he became interim leader, the RUF was in control of approximately half of the territory of Sierra Leone, including the diamond mines in Kono District, and had every reason and ability to fight for its survival. The Sesay Defence presents the Chamber with several witness statements lending support to the suggestion that Sesay made a critical contribution to the peace process. Among them is a statement of the former Special Representative of the Secretary-General of the UN to Sierra Leone ("SRSG") from 1999-2003 (and subsequently Chair of the African Union), Oluyemi Adeniji, where he states that:

> As the peace process progressed to the disarmament stage, Sesay showed that he was able to make promises and keep them. He was, undoubtedly, directing a lot of his energies towards bringing the RUF to disarmament in the face of internal opposition [...][338]

In another attached statement, by the former President of ECOWAS from 1999-2000 and the former President of Mali, Alpha Konaré, reads:

> He [Sesay] was always very correct in his dealings with the ECOWAS leaders and his actions demonstrated that he was committed to fulfilling the RUF's part of the [Lomé] Accords. Sesay was always very honest and reliable. He never created any preconditions for the RUF's disarmament. This was in contrast to some of the other senior commanders who did not want the RUF to disarm unless Sankoh was released from prison. While Sesay was loyal to Sankoh, as all the RUF were, he did no attempt to use the disarmament process as a tool to secure Sankoh's freedom. Neither did he seek personal gain for himself. He behaved at all times in a straightforward and honourable way. He appeared to be such a contrast to the other commanders and indeed

[338] Sesay Sentencing Brief, Annex B.

> Sankoh himself, that he appeared to be an anomaly in the RUF movement.[339]

Sesay also points to the fact that according to an attached letter from a former Senior Legal Adviser at UNAMSIL that in 2003 Sesay and Kallon informed the SRSG of an imminent *coup d' état* by some elements in the military.[340]

227. Standing in contrast to these clear statements describing Sesay as a reliable partner in the peace process however are his convictions by this Chamber for his part in the attacks directed against the UNAMSIL peacekeepers in May 2000. To this, the Sesay Defence submits that

> Sesay's failure to prevent or punish the perpetrators of the attacks is not inconsistent with the determination to disarm and bring the RUF through the peace process: his efforts were directed to disarming the RUF, rather than run the risks of causing further schisms by acting precipitously against key members of the RUF. Whilst this omission has been judges to be criminal, this failure to act arose through the determined intention to bring peace and reconciliation to Sierra Leone, rather than reflecting any disregard for the international community. There is nothing to suggest that Sesay used his leadership position, after the abductions, except to try and ameliorate the overall situation and thereafter bring the conflict to an end.[341]

228. The Chamber finds that the Defence have proved mitigating circumstances on the basis of a balance of probabilities in relation to Sesay's real and meaningful contribution to the peace process in Sierra Leone following his appointment as interim leader of the RUF, however, the Chamber does not accept Sesay's explanation of his reasons for failing to prevent or punish the perpetrators of the attacks against the UNAMSIL personnel, a direct affront to the international community's own attempts to facilitate peace in Sierra Leone.

229. Hon. Justice Benjamin Mutanga Itoe dissents on the Chamber's conclusions in relation to Sesay's contribution to the peace process in Sierra Leone.

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[339] Sesay Sentencing Brief, Annex A.
[340] Sesay Sentencing Brief, Annex K.
[341] Sesay Sentencing Brief, para. 109.

2.2.4.6. Family circumstances

230. The Chamber finds that nothing in Sesay's family situation that would necessitate mitigating his sentence.

2.2.4.7. *Remorse*

231. The Chamber considers that Sesay's statement of remorse was not sincere. Sesay essentially emphasised what he considered were his moderate attributes as a leader, which he claimed propelled the regional ECOWAS leaders to appoint him as the Interim leader of the RUF.

232. The Chamber does accept however that Sesay has expressed empathy with the victims of the conflict, and to this extent will grant him a very limited mitigation in respect of his sentence.

2.3. Kallon

2.3.1. Convictions and form of liability

233. The Chamber recalls the crimes for which Kallon has been convicted, and the form of liability for each crime, as set out above in Section II of this Sentencing Judgement.

2.3.2. Form and degree of responsibility

2.3.2.1. *Article 6(1) Responsibility – Personal Commission*

234. The Chamber recalls its findings above in relation to the nature and physical impact of crimes of unlawful killings, use of child soldiers and committing attacks against peacekeepers.[342]

235. Kallon's personal conduct and interaction with his subordinate RUF Commander Rocky prompted Rocky to order the death of a Nigerian female called Waikyoh in Wendedu in Kono District.[343] Kallon's involvement in the murder of the woman was direct and serious, and the Chamber notes that she was killed because Kallon was concerned that if Waiyoh escaped she would disclose information on RUF positions to ECOMOG and, as Kallon's subordinate

[342] *See* Sections V.1.2, V.1.7, V.1.8.

Rocky later told the civilians, if she escaped she would disclose their position to ECOMOG and the camp would be bombarded by ECOMOG jets.[344]

236. The Chamber recalls its finding that Kallon participated in the design and maintenance of the system of forced recruitment of child soldiers, as well as their use in hostilities, and that his contribution in this regard was important. Furthermore, his involvement was direct: he personally brought a group of children to Bunumbu for training in 1998. Kallon was the senior RUF Commander on 3 May 2000 at Moria near Makeni where child soldiers were used to ambush the UNAMSIL forces.[345] Considering the seriousness of the crimes and Kallon's high level of authority and power and personal involvement, the Chamber concludes that the gravity of Kallon's criminal conduct in relation to the use of child soldiers reaches the highest level.

237. In relation to Kallon's liability for attacks on UNAMSIL peacekeepers, the Chamber recalls its findings that Kallon was directly involved in many of those attacks. For instance, we have found that Kallon struck Major Salahuedin in the face and attempted to stab him with a bayonet. He was also involved in five other separate attacks, including ordering an attack against a convoy of 100 Zambian Peacekeepers resulting in their capture by approximately 1000 RUF fighters.[346] In addition to his direct involvement, his participation was characterised by a heightened level of aggression. Considering the exceptional gravity of the crimes, condemned in the strongest terms by the UN Security Council in Resolution 1313,[347] and Kallon's primary role in their commission, the Chamber concludes that the gravity of Kallon's criminal conduct reaches the highest level.

2.3.2.2. *Article 6(1) Responsibility – Joint Criminal Enterprise*

238. The Chamber recalls its findings in relation to the nature and physical impact of the crimes committed pursuant to the joint criminal enterprise, including unlawful killings, sexual violence crimes, physical violence crimes, enslavement crimes, pillage crimes and the act of burning properties.[348] Where those acts have also been found to constitute either Acts of

[343] Judgement, paras 2117-2120.
[344] Judgement, paras 1174, 1233.
[345] Judgement, paras 2231-2232.
[346] Judgement, paras 2242-2258.
[347] Exhibit 170, S/Res/1313(2000), 4 August 2000.
[348] *See* Section V.1.2-V.1.6.

Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

239. With respect to the form and degree of Kallon's participation in the joint criminal enterprise, the Chamber recalls its findings that Kallon was one of the few RUF commanders to be a member of the AFRC Supreme Council, which was a privileged position in the Junta governing body, and that he attended meetings on a fairly regular basis.[349] The Chamber recalls that it was satisfied that his involvement in the governing body of the Junta substantially contributed to the joint criminal enterprise, as this body was involved in the decision-making processes through which the Junta regime determined how best to secure power and maintain control over the territory over Sierra Leone.[350] The Chamber recalls that Kallon was also directly involved in crimes committed in the diamond mining areas of Kenema District. He used his bodyguards to force civilians to mine diamonds at Tongo Field, a practice which was prevalent among senior RUF and AFRC Commanders.[351] The Chamber also found that on two occasions, Kallon was present at the mining pits in Tongo Field when SBUs and other rebels shot into the pits, killing unarmed enslaved civilian miners.[352] The Chamber held in the Judgement that Kallon endorsed the enslavement and the killing of civilians in order to control and exploit natural resources vital to the financial survival of the Junta Government.[353]

240. We recall that the crimes committed in furtherance of the joint criminal enterprise, which "intended through the spread of extreme fear and punishment to dominate and subdue the civilian population in order to exercise power and control over the captured territory"[354] and concludes they were crimes of a shocking nature, deserving of condemnation in the strongest terms possible. Considering our findings regarding Kallon's important role within the enterprise as a senior military leader and member of the Supreme Council, the Chamber concludes that Kallon's level of participation in the joint criminal enterprise was that of a Senior Commander, whose participation in important decision making processes and personal

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349 Judgement, para. 2004.
350 Judgement, para. 2004.
351 Judgement, para. 2005.
352 Judgement, para. 2006.
353 Judgement, para. 2006.
354 Judgement, para. 1981.

involvement in the commission of crimes made him a key player in the regime. Considering also that the crimes committed pursuant to the joint criminal enterprise engulfed scores of civilians, spread over several Districts, and were perpetrated over an extended period of time, the Chamber concludes that Kallon's contribution to the offences committed was substantial, and his culpability thus reaches a high level.

2.3.2.3. *Article 6(3) Responsibility*

241. The Chamber has found Kallon liable pursuant to Article 6(3) of the Statute for Counts 1, 7-9, 13, 15 and 17. The Chamber recalls its findings in relation to the nature and physical impact of these crimes including unlawful killings, sexual violence crimes, enslavement, and crimes against UNAMSIL personnel.[355] Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

242. We recall that in Kono District in February/March 1998, Kallon as a superior officer of the RUF had the capacity to give orders to his subordinates.[356] However, by virtue of the complex culture of status, assignment and rank within the RUF there were senior RUF Commanders in Kono District over whom Kallon did not have effective control, such as Superman, Isaac Mongor and RUF Rambo.[357]

243. As an operational commander, he ordered the fighters under his command to lay ambush at the Guinea-Highway,[358] to maintain contact with Battalion commanders. He had personal bodyguards and addressed muster parades in his leadership role.[359] In addition, Kallon held a supervisory role at the RUF run camps in which hundreds of civilians were detained.[360] He also had the authority to grant permission to civilians to obtain travel passes.[361] In his leadership role, Kallon had the ability to assign commanders for missions.[362] He was

[355] See Section V.1.2,1.3, 1.5, 1.8
[356] Judgement, para. 835.
[357] Judgement, para. 2138.
[358] Judgement, paras 835, 836, 2094.
[359] Judgement, paras 1216, 2094, 2286.
[360] Judgement, paras 2118, 2137, 2148.
[361] Judgement, para. 1228.
[362] Judgement, para. 1216.

further found liable pursuant to Article 6(3) of the Statute for events relating to the attacks directed against the UNAMSIL peacekeepers by the RUF fighters.

244. The Chamber further recalls that as a superior, Kallon was found liable for eight attacks and the killing of four UNAMSIL peacekeepers.[363] At the time of commission of these crimes, as the BGC, Kallon was the *de jure* and *de facto* third in command in the whole RUF hierarchy. He was also the second in command and deputy to Sesay, who was then the most senior military commander of the RUF. He had the responsibility for the Makeni-Magburaka area where the UNAMSIL events predominately occurred.[364]

245. The Chamber recalls its findings that during the events following the attacks on UNAMSIL peacekeepers, Kallon was the senior RUF Commander on 3 May 2000 at Moria near Makeni when children were used to ambush the UNAMSIL forces.[365] The Chamber observes that Kallon as one of the most superior commanders in that area, at that particular time, issued and addressed orders to commanders regarding the events leading to the attacks on the UNAMSIL peacekeepers. These orders were implemented by Kallon's subordinates who in turn reported and sought further instructions from him. We recall that Kallon also maintained direct contact with Sankoh who passed orders to him.[366] The Chamber further notes that Kallon in his position as a senior commander had the authority and capacity to punish his subordinates, for instance on one occasion he punished an unidentified RUF fighter for his involvement in an accident. By virtue of his position, Kallon also received communications and regular reports regarding the UNAMSIL peacekeepers,[367] however he made no attempt to prevent and punish the perpetrators of the attacks on the peacekeepers.

246. Considering his position as a superior commander, his high ranking, his status as a Vanguard and his real authority and power to control all subordinate commanders in the area at that time, and his personal involvement and failure to prevent or punish the crimes of subordinates, the Chamber concludes that the gravity of Kallon's criminal conduct in relation

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[363] Judgement, para. 2292.
[364] Judgement, para. 2286.
[365] Judgement, para. 1714.
[366] Judgement, paras 929, 2288.
[367] Judgement, para. 2287.

to his 6(3) responsibility is of the highest level, for which appropriate punishment shall be issued.

2.3.3. Aggravating factors

247. The Chamber recalls its findings that in April 1998, during the AFRC/RUF retreat from Koidu, RUF Commander Major Rocky and a group of rebels arrived at the Sunna Mosque in Koidu and captured a large group of civilians. The civilians were taken away, some were executed and beheaded. TF1-015 was ordered to accompany the rebels back to the Sunna Mosque. Upon arrival at the Mosque, he met 30 Commanders, including Kallon and Rambo.[368] Rambo was not happy that TF1-015 was still alive and proposed that the other Commanders vote on whether or not he should be killed. The rebels, including Kallon, voted on TF1-015's life, with the result being that he was allowed by a majority of one vote, to live.[369] The Chamber finds that the fact that civilians were abducted from a Mosque- a traditional place of civilian safety and sanctuary- and that the same site was further used by the rebels, including Kallon, in voting on TF1-015's life, constitutes an aggravating factor.

248. Aside from this, the Chamber finds that, beyond those general and individual circumstances already considered by the Chamber under the gravity of Kallon's criminal conduct,[370] the Prosecution has not established beyond a reasonable doubt any additional aggravating factors as to Kallon's conduct for the crimes for which we have convicted him.

2.3.3.1. *Accused's conduct during trial*

249. The Chamber does not accept the Prosecution's submission that Kallon's "defiant attitude" during trial is an aggravating circumstance, indeed we consider that it has not been established that Kallon acted in such a manner. We have made no such findings and we add that at no time did Kallon exhibit such an attitude in court.

[368] Transcript of 27 January 2005, TF1-015, p. 128.
[369] Judgement, paras 1147-1150.
[370] See above, Sections V.1, V.2.1 and V.2.3.2

2.3.4. Mitigating circumstances

2.3.4.1. *Forced recruitment*

250. The Chamber is of the opinion that Kallon's forced recruitment into the RUF cannot mitigate the crimes which Kallon later committed, since in our opinion he could instead have chosen another path.

2.3.4.2. *Lack of prior criminal conduct*

251. The Chamber has duly noted that it has not been demonstrated that Kallon has any prior criminal convictions. Although the Chamber has considered this factor we are of the opinion that only very limited weight can be given to it.

2.3.4.3. *Good character and contributions*

252. The Chamber notes that the Kallon Defence presented Kallon's efforts in the improvement of the well-being of the civilian population by providing social amenities like schools, mosques churches and markets. The Chamber observes that this evidence demonstrates that Kallon on occasion gave assistance to civilians. Such a conclusion however would do little in our opinion to show Kallon's good character, as it simultaneously demonstrates his ability to influence RUF systems in relation to the well-being of civilians, but did not use it consistently. The Chamber considers that the assistance he gave on occasion should not be given undue weight in mitigation.

2.3.4.4. *Amnesty*

253. The Chamber reaffirms that amnesty is no bar to prosecution for the crimes Kallon stands convicted. The Chamber considers Kallon's submission on the issue moot and finds that it cannot be taken into account as a mitigating factor.

2.3.4.5. *Family circumstances*

254. The Kallon Defence submits that the fact that Kallon is married with three wives and nine children should be considered as a mitigating factor. The Chamber is aware that punishment has an impact on the lives of persons other than the convicted person. The relatives of the convicted person, in particular are likely to suffer from the consequences of the

sentence. However, considering the gravity of the crimes for which Kallon has been convicted, the Chamber finds that Kallon's personal family circumstances can have only a minimal impact on his sentence.

2.3.4.6. Remorse

255. At the sentencing hearing, Kallon personally delivered a statement of remorse, an extract of which has been set out above in Section IV.3. To the knowledge of this Chamber, it is uncommon that a convicted person standing before an international court makes a statement of genuine remorse. In his statement, Kallon also recognised that he played a role in the conflict and sought forgiveness for his actions which claimed the lives of unknown number of civilians. He further apologised to the victims of the war and their relatives, his family, his country, ECOWAS, UNAMSIL and the international community as a whole. Kallon clearly recognises the pain and suffering borne by all the persons affected by the war, and accepts his own role within the conflict.

256. For the Chamber to admit remorse as a mitigating factor in the determination of an appropriate sentence, it must be satisfied that the remorse expressed was sincere.[371] The Chamber is thus satisfied, and Kallon's sincere acknowledgement of his role in the conflict and his apology to the people for the role that he played has been taken into account as a mitigating factor to reduce his sentence.

2.3.4.7. Executing orders

257. The Chamber notes that the Kallon Defence advanced duress and acting under superior orders as separate mitigating factors in support for Kallon. The Chamber shall consider these factors under the above heading 'Executing Orders,' however, this does not necessarily imply that they are the same.

258. The Kallon Defence submits that Kallon was acting under duress with specific regard to the UNAMSIL events. They submit that Kallon was under threat and forced to obey Sankoh's orders to arrest the peacekeepers. The Kallon Defence further avers that since his recruitment,

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[371] *Todorovic* Sentencing Judgement para. 89; *Erdemovic* Sentencing Judgement, para. 16(iii); *Serushago* Sentencing Judgement, paras 40-41.

33547

Kallon found himself in an organisation that operated in an atmosphere of duress and fear. The Kallon Defence have consider as superior orders, the orders given by Sankoh as the RUF leader and orders by Sam Bockarie's as *de facto* RUF leader, and claim these orders were '*ultimatums that carried severe penalties upon default*.'[372]

259. As a preliminary note, the Chamber notes that Kallon has not established on balance of probabilities, Justice Benjamin Mutanga Itoe dissenting, that in fact his life was under actual threat in event that he failed to obey these orders. With specific regard to the UNAMSIL events for which Kallon claims he was acting under duress and superior orders, the Chamber emphasises that Kallon was found liable under Article 6(3) of the Statute for these acts. Kallon was personally in a superior position, issuing orders. The Chamber, Justice Benjamin Mutanga Itoe dissenting, finds that Kallon's liability under Article 6(3) of the Statute negates him from raising these defences.

260. On a balance of probabilities, the Chamber finds, Justice Benjamin Mutanga Itoe dissenting, that the Kallon Defence submission does not establish that Kallon was acting under duress and/or pursuant to a superior's orders.

261. The Chamber has further addressed itself to the provision of Article 6(4) of the Statute which provides that:

> 'The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.'

262. Cautious of the above provision, the Chamber emphasises that it is implausible that Kallon acted under duress and/or superior orders with respect to the UNAMSIL events. The Chamber further recalls that the evidence on record indicates that in early 2000 Sankoh appointed Kallon the Battle Group commander,[373] a couple of months after Sankoh was arrested in Freetown on treason charges[374] and Sam Bockarie had left the RUF membership in

[372] Kallon Sentencing Brief, para. 78.
[373] Judgement, para. 914.
[374] Judgement, para. 916.

December 1999.[375] As we have stated earlier, the Chamber considers that Kallon was one of the most superior commanders in the area and who was in effective control.[376] In light of the foregoing reasons, the Chamber, Justice Benjamin Mutanga Itoe dissenting, considers that the Defence has not established, on a balance of probabilities, that this is a factor in mitigation of sentence.

2.4. Gbao

2.4.1. Convictions and form of liability

263. The Chamber recalls the crimes for which Gbao has been convicted, and the form of liability for each crime, as set out above in Section II of this Sentencing Judgement.

2.4.2. Form and degree of responsibility

2.4.2.1. *Article 6(1) Responsibility – Personal Commission*

264. The Chamber recalls its findings in relation to the nature and physical impact of crimes against UNAMSIL Personnel.[377] Gbao was found guilty by the Chamber of aiding and abetting the attacks directed against Salahuedin and Jaganathan on 1 May 2000 and found that he deliberately fomented an atmosphere of hostility and orchestrated an armed confrontation at that Makump DDR camp.[378] The gravity of this crime is high. However the Chamber recognises that Gbao was not primarily responsible for the attack, and may not have been able to prevent it,[379] although he remains criminally responsible for his direct involvement in it.

2.4.2.2. *Article 6(1) Responsibility – Joint Criminal Enterprise*

265. The Chamber recalls its findings in relation to the nature and physical impact of the crimes committed pursuant to the joint criminal enterprise, including unlawful killings, sexual violence crimes, physical violence crimes, enslavement, the crime of pillage and acts of burning.[380] Where those acts have also been found to constitute either Acts of Terrorism or

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[375] Judgement, para. 913.
[376] Judgement, paras 2285-2289.
[377] See Section V.1.8
[378] Judgement, para. 2263.
[379] Judgement, para. 2262.
[380] See Section V.1.2-V.1.6.

Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Benjamin Mutanga Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

266. The Chamber recalls its finding that Gbao's status, assignment, rank and personal relationship with Sankoh, as well as his knowledge of the RUF's ideology were all factors demonstrating that Gbao had considerable prestige and power within the RUF in Kailahun District.[381] Gbao's supervisory role entailed the monitoring of the implementation of the ideology.[382] We also recall that we found that the RUF ideological objective of toppling the "selfish and corrupt" regime by eliminating all those who supported that regime and who, *a fortiori*, were considered as enemies to the AFRC/RUF Junta alliance.[383] The Chamber, by a majority, Justice Boutet dissenting, found that:

> [...] Gbao was an ideology instructor and that ideology played a significant role in the RUF movement as it ensured not only the fighters' submission and compliance with the orders and instructions of the RUF leadership but also hardened their determination, their resolve and their commitment to fight to ensure the success and achievement of the ideology of the movement. It was in this spirit that the crimes alleged in the Indictment and for which the Accused are charged, were committed. Given this consideration, it is undeniable therefore, that the ideology played a central role in the objectives of the RUF.[384]

267. The Chamber recalls that Gbao was also directly involved in the planning and enslavement of civilian labour on RUF government farms in Kailahun District, and worked very closely with the G5 in Kailahun Town to manage the large-scale, forced civilian farming that existed in Kailahun between 1996 and 2001, including the period between 25 May 1997 and 14 February 1998.[385] Furthermore, Gbao's involvement in designing, securing and organising the forced labour of civilians to produce foodstuffs significantly contributed to maintaining the strength and cohesiveness of the RUF fighting force.[386] Despite having

[381] Judgement, para. 2030.
[382] Judgement, para. 2035.
[383] Judgement, para. 2028.
[384] Judgement, para. 2010.
[385] Judgement, paras 2036-2037.
[386] Judgement, para. 2039.

knowledge that crimes were being committed by RUF fighters on a large scale, Gbao continued to pursue the common purpose of the joint criminal enterprise.[387]

268. The Chamber recalls however that Gbao did not have direct control over fighters. He was not a member of the AFRC/RUF Supreme Council, and he remained in Kailahun during the Junta regime.[388] He did not have the ability to contradict or influence the orders of men such as Sam Bockarie. He was not directly involved and did not share the criminal intent of any of the crimes committed in Bo, Kenema or Kono Districts.[389]

269. The Chamber has found that crimes committed in furtherance of the joint criminal enterprise, which "intended through the spread of extreme fear and punishment to dominate and subdue the civilian population in order to exercise power and control over the captured territory"[390] were crimes of a shocking nature, deserving of condemnation in the strongest terms possible.

270. We have also found that Gbao's personal role within the overall enterprise was neither at the policy making level, nor was it at the "fighting end" where the majority of the actual atrocities were committed. Indeed, as the Gbao Defence pointed out in its closing submissions, Gbao "has not been found to have ever fired a single shot and never to have ordered the firing of a single shot".[391] Gbao was a loyal and committed functionary of the RUF organisation, whose major contributions to the joint criminal enterprise can be characterised by his role as an ideology instructor and his planning and direct involvement in the enslavement of civilians on RUF government farms within Kailahun District.

271. Whilst the crimes committed pursuant to the joint criminal enterprise for which Gbao has been convicted are vast and atrocious, the Chamber recognises that Gbao's involvement within the overall scheme, whilst sufficient in law to attract criminal liability, was more limited than that of his co-defendants. The Chamber thus finds Gbao's individual contribution to the joint criminal enterprise, and his own particular criminal responsibility, to be on the lower end

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[387] Judgement, para. 2046.
[388] Judgement, para. 775.
[389] Judgement, paras 2040, 2059, 2109.
[390] Judgement, para. 1981.
[391] Sentencing Hearing, Transcript of 23 March 2009, pp. 127-128.

of the continuum, and considers his role as diminishing his responsibility for sentencing purposes.

2.4.3. Aggravating factors

272. Gbao was convicted by the Chamber of aiding and abetting the attacks directed against Salahuedin and Jaganathan at the Makump DDR camp on 1 May 2000, where he was "the senior RUF Commander present until Kallon's arrival and he remained the Commander with the largest number of fighters present".[392] The Chamber finds that Gbao's abuse of his position of leadership and authority to be an aggravating factor in his criminal conduct on that occasion.

273. The Prosecution submits that Gbao's education, training as a police office and experience serve as aggravating factors to the offences for which he has been convicted. The Chamber does not agree, and sees nothing extraordinary in Gbao's prior education, training and experience which should properly be considered as aggravating factors.

274. The Prosecution further submits that the Chamber should consider Gbao's desire for pecuniary gain as an aggravating factor, and highlights the fact that Gbao was convicted for participation in a joint criminal enterprise with regard to enslavement in Kenema, Kailahun and Kono district, and that civilians were forced to work on Gbao's personal farm in 1997 and 1998, the produce of which was for his own personal use. The Chamber understands that the desire for pecuniary gain can be considered as an aggravating factor for some offences, however for the offence of enslavement, where the circumstances consisted of forcing civilian labour on farms, there is always going to be an element of pecuniary gain, and this in itself cannot be considered as an aggravating factor in these circumstances.

275. Gbao's behaviour during trial has been cited as an aggravating factor by the Prosecution, his "lack of respect for the judicial process in his refusal to attend court" as well as the fact that for a significant period of time Gbao refused to recognise the jurisdiction of the court.[393] The Chamber recalls that the jurisdiction of the court is itself a question which the Chamber and the Appeals Chamber have been called to pronounce upon in the past and

[392] Judgement, para. 2262.
[393] Prosecution Brief, para. 144.

legitimately so. We are therefore of the opinion that challenging the Court's jurisdiction is always a justiciable issue and cannot be considered an aggravating factor in sentencing because it is a fundamental legal right of an accused to raise any legal issue he considers valid to ensure his defence. The Chamber would therefore be contravening his universally accepted fundamental right if we were to uphold the Prosecution's thesis in this respect because such submission is clearly misconceived and fundamentally flawed in law.

276. In the same vein, the Chamber opines that Gbao's refusal at one stage to attend trial cannot be considered an aggravating circumstance. Rule 60 empowers the Chamber to continue the proceedings in the absence of an accused. Indeed, the Chamber proceeded in his absence when Gbao exercised his right own not to attend the proceedings.

2.4.4. Mitigating Circumstances

2.4.4.1. *Remorse*

277. The Chamber is unable to conclude that Gbao has demonstrated genuine remorse for the crimes for which he has been convicted, and thus gives no weight in mitigation of sentence in this respect.

2.4.4.2. *Advanced age*

278. The Chamber does not accept the Defence's submission that life expectancy is a relevant factor in sentencing;[394] however it does accept that a lengthy sentence can be harder to bear in older age. Gbao's age of 60 years has thus been taken into account as a relevant factor in mitigation of sentence.

2.4.4.3. *Lack of prior criminal conduct*

279. The Chamber has duly noted that it has not been demonstrated that Gbao has any prior criminal convictions, and that the Chamber is obliged to consider this as a factor in mitigation of sentence. The Chamber has done so, however we are of the opinion that only very limited credit for this factor can be given where the crimes committed are of a very serious nature, such as in this case.

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[394] *See Plavsic* Sentencing Judgement.

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VI. DISPOSITION

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

SENTENCES Issa Hassan Sesay to the following:

<u>For Count 1:</u> Acts of Terrorism, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(d) of the Statute, a **TERM OF IMPRISONMENT OF 52 YEARS**;

<u>For Count 2:</u> Collective Punishments, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(b) of the Statute, a **TERM OF IMPRISONMENT OF 45 YEARS**;

<u>For Count 3:</u> Extermination, a Crime Against Humanity, punishable under Article 2(b) of the Statute, a **TERM OF IMPRISONMENT OF 33 YEARS**;

<u>For Count 4:</u> Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute, a **TERM OF IMPRISONMENT OF 40 YEARS**;

<u>For Count 5:</u> Violence to life, health and physical or mental well-being of persons, in particular murder, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute, a **TERM OF IMPRISONMENT OF 40 YEARS**;

<u>For Count 6:</u> Rape, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a **TERM OF IMPRISONMENT OF 45 YEARS**;

<u>For Count 7:</u> Sexual slavery, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a **TERM OF IMPRISONMENT OF 45 YEARS**;

<u>For Count 8:</u> Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a **TERM OF IMPRISONMENT OF 40 YEARS**;

<u>For Count 9:</u> Outrages upon personal dignity, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(e) of the Statute, a **TERM OF IMPRISONMENT OF 35 YEARS**;

For Count 10: Violence to life, health and physical or mental well-being of persons, in particular mutilation, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute, a **TERM OF IMPRISONMENT OF 50 YEARS**;

For Count 11: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a **TERM OF IMPRISONMENT OF 40 YEARS**;

For Count 12: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an Other Serious Violation of International Humanitarian Law, punishable under Article 4(c) of the Statute, a **TERM OF IMPRISONMENT OF 50 YEARS**;

For Count 13: Enslavement, a Crime Against Humanity, punishable under Article 2(c) of the Statute, a **TERM OF IMPRISONMENT OF 50 YEARS**;

For Count 14: Pillage, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute, a **TERM OF IMPRISONMENT OF 20 YEARS**;

For Count 15: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, an Other Serious Violation of International Humanitarian Law, punishable under Article 4(b) of the Statute, a **TERM OF IMPRISONMENT OF 51 YEARS**;

For Count 17: Violence to life, health and physical or mental well-being of persons, in particular murder, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute, a **TERM OF IMPRISONMENT OF 45 YEARS**;

ORDERS that these sentences shall run and be served concurrently.

SENTENCES Morris Kallon to the following:

For Count 1: Acts of Terrorism, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(d) of the Statute, a **TERM OF IMPRISONMENT OF 39 YEARS**;

For Count 2: Collective Punishments, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(b) of the Statute, a **TERM OF IMPRISONMENT OF 35 YEARS**;

For Count 3: Extermination, a Crime Against Humanity, punishable under Article 2(b) of the Statute, a **TERM OF IMPRISONMENT OF 28 YEARS**;

For Count 4: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute, a **TERM OF IMPRISONMENT OF 35 YEARS**;

For Count 5: Violence to life, health and physical or mental well-being of persons, in particular murder, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute, a **TERM OF IMPRISONMENT OF 35 YEARS**;

For Count 6: Rape, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a **TERM OF IMPRISONMENT OF 35 YEARS**;

For Count 7: Sexual slavery, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a **TERM OF IMPRISONMENT OF 30 YEARS**;

For Count 8: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a **TERM OF IMPRISONMENT OF 30 YEARS**;

For Count 9: Outrages upon personal dignity, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(e) of the Statute, a **TERM OF IMPRISONMENT OF 28 YEARS**;

For Count 10: Violence to life, health and physical or mental well-being of persons, in particular mutilation, a Violation of Article 3 Common to the Geneva Conventions

and of Additional Protocol II, punishable under Article 3(a) of the Statute, a **TERM OF IMPRISONMENT OF 35 YEARS**;

For Count 11: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a **TERM OF IMPRISONMENT OF 30 YEARS**;

For Count 12: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an Other Serious Violation of International Humanitarian Law, punishable under Article 4(c) of the Statute, a **TERM OF IMPRISONMENT OF 35 YEARS**;

For Count 13: Enslavement, a Crime Against Humanity, punishable under Article 2(c) of the Statute, a **TERM OF IMPRISONMENT OF 35 YEARS**;

For Count 14: Pillage, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute, a **TERM OF IMPRISONMENT OF 15 YEARS**;

For Count 15: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, an Other Serious Violation of International Humanitarian Law, punishable under Article 4(b) of the Statute, a **TERM OF IMPRISONMENT OF 40 YEARS**;

For Count 17: Violence to life, health and physical or mental well-being of persons, in particular murder, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute, a **TERM OF IMPRISONMENT OF 35 YEARS**;

ORDERS that these sentences shall run and be served concurrently.

SENTENCES Augustine Gbao, Justice Pierre Boutet dissenting, to the following:

For Count 1: Acts of Terrorism, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(d) of the Statute, a **TERM OF IMPRISONMENT OF 25 YEARS**;

For Count 2: Collective Punishments, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(b) of the Statute, a **TERM OF IMPRISONMENT OF 20 YEARS**;

For Count 3: Extermination, a Crime Against Humanity, punishable under Article 2(b) of the Statute, a **TERM OF IMPRISONMENT OF 15 YEARS**;

For Count 4: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute, a **TERM OF IMPRISONMENT OF 15 YEARS**;

For Count 5: Violence to life, health and physical or mental well-being of persons, in particular murder, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute, a **TERM OF IMPRISONMENT OF 15 YEARS**;

For Count 6: Rape, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a **TERM OF IMPRISONMENT OF 15 YEARS**;

For Count 7: Sexual slavery, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a **TERM OF IMPRISONMENT OF 15 YEARS**;

For Count 8: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a **TERM OF IMPRISONMENT OF 10 YEARS**;

For Count 9: Outrages upon personal dignity, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(e) of the Statute, a **TERM OF IMPRISONMENT OF 10 YEARS**;

For Count 10: Violence to life, health and physical or mental well-being of persons, in particular mutilation, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute, a **TERM OF IMPRISONMENT OF 20 YEARS**;

For Count 11: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a **TERM OF IMPRISONMENT OF 11 YEARS**;

For Count 13: Enslavement, a Crime Against Humanity, punishable under Article 2(c) of the Statute, a **TERM OF IMPRISONMENT OF 25 YEARS**;

For Count 14: Pillage, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute, a **TERM OF IMPRISONMENT OF 6 YEARS**;

For Count 15: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, an Other Serious Violation of International Humanitarian Law, punishable under Article 4(b) of the Statute, a **TERM OF IMPRISONMENT OF 25 YEARS**;

ORDERS that these sentences shall run and be served concurrently.

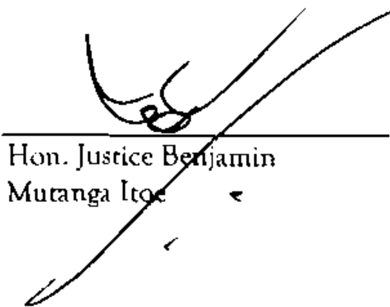
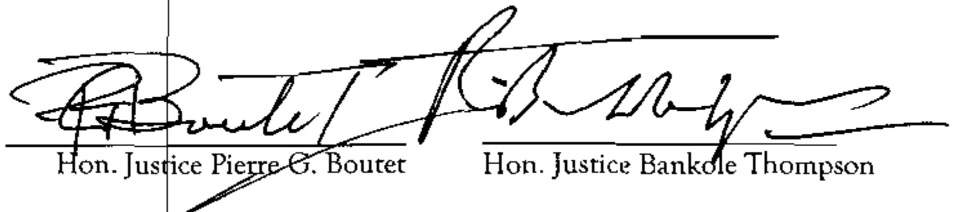
ORDERS that, pursuant to Rule 101(D) of the Rules, credit shall be given to each of the convicted persons for any period during which they were detained in custody pending trial;

FURTHER ORDERS that, pursuant to Rule 103 of the Rules, each of the convicted persons should remain in the custody of the Special Court pending the finalisation of arrangements for their transfer to the designated place of imprisonment where they shall serve sentence;

Hon. Justice Pierre G. Boutet appends a Separate and Dissenting Opinion, in relation to the punishment imposed for Augustine Gbao.

Hon. Justice Benjamin Mutanga Itoe appends a Separate Concurring and Partially Dissenting Opinion.

Delivered on 8th April 2009 in Freetown, Sierra Leone.

Hon. Justice Benjamin Mutanga Itoe	Hon. Justice Pierre G. Boutet	Hon. Justice Bankole Thompson
	Presiding Judge Trial Chamber I	

[Seal of the Special Court for Sierra Leone]

33560

SEPARATE AND DISSENTING OPINION OF JUSTICE PIERRE G. BOUTET

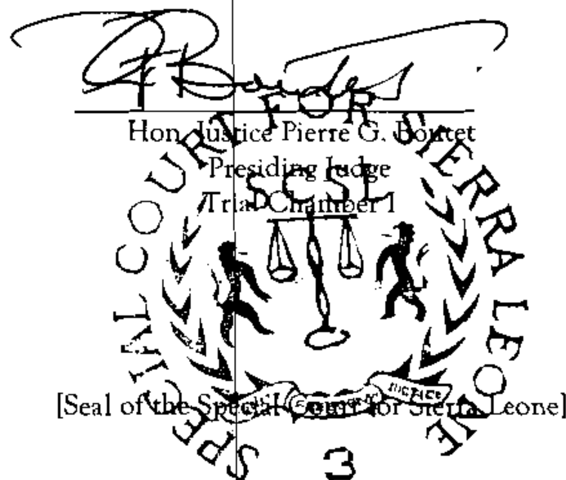
1. I regret that I am not able to support the sentence the Chamber has imposed upon the Accused Augustine Gbao.

2. In the Judgement rendered on 25 February 2009, I dissented on the conviction of Gbao in relation to Counts 1 to 11 and Count 14. As mentioned in my dissenting opinion I would have found Gbao only individually responsible under Article 6(1) of the Statute for the planning of enslavement in Kailahun District, as charged under Count 13 of the Indictment, and for aiding and abetting the attacks against peacekeepers, as charged under Count 15 of the Indictment.[1]

3. I respectfully dissent from the sentence imposed by my learned colleagues for Gbao's convictions on these two counts in the Sentencing Judgement. In my opinion, my learned colleagues have overstated the culpable criminal conduct of Augustine Gbao.

4. Having carefully considered the gravity of the crimes for which I found Gbao to be criminally responsible, as well as his form and degree of participation in these crimes, his responsibility and his individual circumstances, I consider that a sentence of 15 years imprisonment for Count 13 of the Indictment, and 15 years imprisonment for Count 15 of the Indictment, sentences to run concurrently, would be appropriate.

Done at Freetown, Sierra Leone, this 8th day of April 2009



Hon. Justice Pierre G. Boutet
Presiding Judge
Trial Chamber I

[Seal of the Special Court for Sierra Leone]

[1] Judgement, Dissenting Opinion of Justice Pierre G. Boutet, para. 23.

A SEPARATE CONCURRING AND PARTIALLY DISSENTING OPINION OF HON. JUSTICE BENJAMIN MUTANGA ITOE.

1. In submitting this Opinion to the records for purposes of this Sentencing Judgment, I would like to say, on a preliminary note, that I am in agreement with our Sentencing Judgment for the most part and would only add to some of its contents. I will also differ in some as well.

1. THE GRAVITY OF THE CRIME

2. It is pertinent for me to also mention that, I am in agreement with the applicable law and generally, with the principles relating to sentencing in International Criminal Tribunals, as we have recapitulated them in this Judgement.

3. I would further like to observe that even though the principles of liability and procedural rules applicable in International and Criminal Tribunals are, for the most part, an emanation of the principles and usages in the main municipal legal systems in the world, and particularly the common law inspired jurisdictions where there is a staturory stratification of offences as far as their penalties and gravity are concerned, those that are defined in Statutes that set up International Criminal Tribunals are not so categorized.

4. The reason I would imagine is that they are generally classified globally and at the same level with different designations either as genocide crimes, war crimes, crimes against humanity, or crimes against International Humanitarian Law. In view of their gravity and seriousness which is motivared hy the intent and resolve of the International Community to combat impunity by seeking to punish exemplarily, violations against[1] these categories of offences which carry the same sentences of either life imprisonment elsewhere or as it is the case with Our Court, 'an imprisonment for a specified number of years'[2] which of course excludes the life penalty.

5. It therefore means that for the Authors of the Statutes of International Criminal Tribunals, all the offences defined in those Statutory Instruments are placed at the same level in terms of importance and gravity with the discretion and latitude available to the Judges only in the sentencing phase of the proceedings. At this stage, certain criteria, particularly those relating to either the gravity of the offence and the aggravating or mitigating or other jurisprudentially elaborated criteria in order to make up for what has not, on this subject heen extensively

[1] In the ICTY, ICTR or the ICC.

[2] Article 19 of the Statute of the Special Court for Sierra Leone.

provided for in the Statutes, can be invoked either to aggravate or to mitigate the sentence to be meted out by the Tribunal either in an aggravated or in a mitigated form.

2. THE GRAVITY OF THE OFFENCE

6. The Chamber has been cautious to reiterate its adherence to the Rule against "Double Counting" which could, if contravened, prejudice, or violate the rights of the Accused.

7. If, as I admit, the sentence to be inflicted on the Accused Persons should be determined by the gravity of the offence amongst others, for which they have been convicted, the question to be answered is, what criteria determine the "gravity" of the offence. It is the sentence attached to it the constitutive elements, the mode of commission or one or more of the criteria.

3. CATEGORISATION OF OFFENCES

8. In principle and in Common Law driven judiciaries, the gravity or seriousness of the offence is properly distinguished by a categorization of offences, generally into 4 broad categories namely: Felonies, Misdemeanors, Simple Offences and lastly, Contraventions, in that order of their importance, and I would say, in that order of their gravity.

9. What is also prevalent in these systems is that even within the confines of the categories, in any system the gravity of felonious is measured by the penalty that is, of life imprisonment as is the case with some International Criminal Tribunals, and in some cases within those systems, with the death penalty which is quite apart and different from some other felonies of lesser gravity that are characterised by sentences which are statutorily fixed within a discretionary range and whose minimum and maximum at times vary.

10. In Sierra Leone, offences are classified as Treasons, Felonies and misdemeanors,[3] the sentences attached to them creating the main distinction as to their gravity.

11. As I have already mentioned, all offences such as those that feature in the Statutes of International Criminal Tribunals, by their very nature, enjoy the same status in terms of the possible term of imprisonment to be meted out upon a conviction, a fortiori, in terms of their gravity.

12. Notwithstanding this Statutory equality in status and in gravity that is attributed to these offences however, an examination of Articles 2, 3 and 4 of the Statute of the Special Court and the offences provided for and defined therein, makes it evident that some of these offences do not, in reality, carry the same status nor do they highlight the same characteristics of

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[3] See the Penal Code of Cameroon.

seriousness in terms of gravity particularly when one looks at of high profile offences such as murder, extermination, abduction, killing and mistreatment of U.N. Peacekeepers, Torture, rape, sexual slavery or other sexually related offences or inhumane acts provided for in Article 2 of the Stature; or those provided for in Articles 3 such as violence to life, health and physical or mental well being in particular, murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment, acts of terrorism, to mention just these, as compared to other with a relatively low profile like pillage, Persecution on political, rational, ethnic or religious grounds and threats to commit any of the foregoing acts.

13. In fact the provision in Article 18 (2) of the Stature that the sentence should reflect the gravity of the offence is in itself a recognition of the fact that all the offences defined in to Statute do not enjoy the same status in terms of gravity, and that it is left to the Judges for purposes of sentences to determined this element having regard to the nature of the offence and the circumstances surrounding its commission.

14. It is in the context of these categorisations that an International Tribunal can properly guide itself in making a determination on the issue of what the gravity of the offence is or not, depending, how and where it was perpetrated, and its consequences on the victims, with a view to determining the sentence to be handed down to the Convict.

4. THE "BASIC" AND "AGGRAVATED" FORMS OF OFFENCES

15. In considering what I term the" basic" and "aggravated" forms of offences, it is pertinent to observe and to state that the role of legislator of Penal instruments and Statutes is to define and spelt out conduct which is considered to be dangerous and disruptive of social harmony, peace, cohesion, and human and proprietary rights with a view to proscribing them by envisaging penalties in various forms and scales of imprisonment or fines or both, for the offenders.

16. In this process, crimes generally are categorized on the scale of their gravity, all of them sharing the common characteristic of prescribing a sanction.

17. In any opinion, what is legislated upon in Criminal Codes, in Penal Codes, in Statutes or other Instruments regulating criminal conduct which defines criminal offences their ingredients and their penalties is the "basic form" of the offences provided for and defined therein. It is in this form that the category and gravity of the offence is determined.

18. In International Criminal Tribunals for instance, and particularly the Special Court for Sierra Leone, all the crimes that are stipulated in the Stature are spelt out but not defined in terms of specifying their constitutive elements or ingredients in their basic form. However, the

penalty of 'imprisonment for a specified number of years' as provided for in the Article 19(1) of the Statute is already indicative of the high profiled nature and gravity of those offences should any Accused such as the 3 before us, be found guilty of them'.

19. Even though Article 19 (2) provides that in imposing the sentences, the Trial Chamber should take in to account, such factors as the gravity of the offences and the individual circumstances of the convicted person, I am by the opinion that a finding of guilt for any of the offences defined in the Statute and for which the Accused has been indicted, is already indicative of the fact that he has been found guilty, not just for an ordinary offence, but, indeed for one which is viewed with extreme gravity because it attracts an incarceration for a considerable aud an unspecified number of years.

20. What is true however, is that the legislator of penal Statute, like those of the Special Court for Sierra Leone, gives to the Trial Chamber, some wriggling room to determine the sentence to be imposed, due consideration being given, as is stated in the Statute to the gravity of the offence and the individual circumstances of the convicted person and I would add, the constitutive elements of the offence whose ingredients are defined by the Chamber in its judgment on the subject of the "Law on the Crimes Charged" and as has been held by other *ad hoc* International Tribunals whose practices, Article 19(2) of the Statute recommends tbat we have recourse to 'where appropriate'.

21. In its delineation of the general requirements and the ingredients of the offence charged in order to base and define the crimes enumerated in the Statute, the Chamber has, highlighted all the factors that enable it to determine the liability or not, of the Accused. Some of these elements, I would observe, are clearly very indicative of the gravity of the offences charged and for which the Accused Persons have been found guilty.

22. In these circumstances, and as we have opined following the Blaskic precedent, if a particular circumstance is an element of the underlying offence, it cannot and in fact should not be taken into account as an aggravating factor.[4]

23. It is therefore my considered opinion, as we have already indicated in the Judgment, that the gravity of the offence, in our analysis of what may be considered as a constitutive element of the offence cannot, under the risk of violating the principle of 'Double Counting' or indeed, the Rule against 'Double Jeopardy', also be considered under the rubric of the gravity of the offence as provided for under tbe provisions of Article 19 (2) of the Statute.

[4] *See* *Blaskic* Appeal Judgement, para. 693.

5. AGGRAVATING THE SENTENCE ON THE BASIS OF FACTS OF AN OFFENCE NOT CHARGED

CRIMES OF PILLAGE AND ACTS OF BURNING AS TERRORISM (COUNT 1 TO 2 AND COUNT 14)

24. In our sentencing judgment, the following decision has been made and adopted by a chamber majority decision which reads as follows and I quote,

The Chamber has found that the crime of pillage predominately relates to the looting of civilian property in Bo and Kono Districts. The Chamber notes that the looting of property was often accompanied by the setting of many houses and buildings on fire in a chaotic war environment with intent to instil fear and terror.

25. The Chamber did find that the destruction of property was committed on a large scale and in an indiscriminate manner, and also as a means to terrorize the civilian population.[5] Having carefully considered the instances of crimes of pillage as we have found in the Judgment (count 14 of the Indictment) the Chamber concluded that the inherent gravity of the criminal acts in question is high. Having in addition carefully considered the instances of burning where we have found that they constitute acts of terrorism, we consider that the inherent gravity of the criminal acts in question is high. Hon. Justice Benjamin Itoe dissents[6] from the Chamber conclusion in the regard.

26. I respectfully dissent from this opinion and findings of my Distinguished Colleagues on the nexus which they have created between crimes of Pillage and Acts of Burning as Terrorism.[7]

27. In this regard, I would like to observe that pillage is a War Crime provided for, in Article 3 of the Statute. We, as a Chamber, have determined and defined the ingredients of the offence of pillage as a war crime.[8] They include:

i) The accused unlawfully appropriated the property;

ii) The appropriation was without the consent of the owner; and

iii) The Accused intended to unlawfully appropriate the property.

28. The Prosecution in the exercise of their prosecutorial prerogative which, in my opinion, is very extensive and elastic, has the latitude to prefer charges in the same indictment alleging both the crimes of pillage under Article 3 of the Statute and of burning under Article 5 of the

[5] Sentencing Judgement, paras 172 and 173.
[6] Sentencing Judgement, para. 178.
[7] Sentencing Judgement, para. 172.
[8] Sentencing Judgement, para. 207.

said statute. The prosecution did not. It only opted to indict the Accused persons for pillage as a war crime and decided, in the exercise of this discretion not to indict the convicts for the crimes of burning under Sierra Leonean Law as envisaged in Article 5 of the Statute.

29. I would like to add here, our Chamber finding that some of the offences charged in the in the indictment overlapped in terms of the commonality of their constitutive elements as well as of the evidence adduced to prove them. It is my considered opinion that if the prosecution, intended that the offence of pillage should overlap with that of the crimes of burning, they should also have included the offence of burning as a count in the indictment as this would have made the present Chamber Majority Decision to have a semblance of any credibility at all appear credible at all at this stage and particularly so because as the Appeals Chamber, has held, the definition of he offence of pillage does not include burning.

THE USE OF THE OFFENCES OF ACTS OF TERRORISM OR OF COLLECTIVE PUNISHMENTS TO ENHANCE THE GRAVITY OF THE CRIMES OF MURDER, RAPE, AND OF OTHER OFFENCES FOR WHICH THE ACCUSED HAVE BEEN CHARGED OR CONVICTED.

30. The second arm of my Dissent is grounded on the other decision which contextually says the following in a number of paragraphs;[9] and I quote:

> Where murder or rape has been found to amount to an act of terrorism or collective punishment, for purposes of sentencing we will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence[10]

31. The first comment I would like to make here to support the Dissenting position I have taken is that the indictment on which the Accused Persons have been found guilty comprised 18 counts. It is my view that in law, each of those counts, provided they were not charged in the alternative with another, stands or falls on its own and on the evidence that the prosecution has adduced to prove it.

32. If the prosecution succeeds in establishing the guilt of the Accused on all or some of the Counts, it appear to me, legally anomalous, in the sentencing process, to decide or to direct that the gravity of one offence should aggravate or enhance the gravity of the other which stands independently on its own, and this, notwithstanding, as one will expect in a multi-dimensional indictment, that all the offences charged do not have the same status in terms of their gravity,

[9] Sentencing Judgement, paras 136, 158, 171, 178, 213, 238, 241 and 265.
[10] Sentencing Judgement, para. 107.

and that the same evidence may overlap or may be adduced to prove more than one of the Counts.

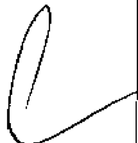
33. I would like in this regard to invoke here, the affinity of this situation to a statutory and very fundamental legal right of an Accused person, under Article 17(4) (a) of the Statute, for him 'to be informed and promptly in detail, of the nature and cause of the charge against him or her.' This right and principle is founded on the rules of fundamental fairness so as to avoid surprises before and during the trial and I would say, during both the Judgment and Sentencing as well.

34. In my opinion, it is and should be the legal position as well, and I so opine, that what the Chamber Majority Judgment has decided on the process of now making a determination on the sentences to be handed down to the Accused Persons, should have been explained and served or notified to them at the time that they were being served with the Indictment or during the exchange of trial briefs or even in the course of the trial, so as to enable them to plan and pattern their defence strategies accordingly and well in advance.

35. This was not done during the opening of these RUF proceedings on the 4th day of July 2004. In was not the case either even as the trial proceeded all along because the Accused Persons have never been informed that if they were convicted of acts of rape and it turned out that the evidence adduced to establish that offence contained elements or ingredients of offences of terrorism or of collective punishments, the gravity of that offence of the rape will be increased, meaning of course, that the sentence for those offences will be higher and severer than they ordinarily would have been, or should be.

36. Consequentially and inferentially, therefore, what I read in this is that this Chamber is technically and legally convicting and sentencing the Accused Persons for an unknown and a more serious offence for which they have neither been indicted nor tried, and imposing an arbitrary and imaginary sentence which is not fixed by law, thereby violating the *nolle poena sine lege*, and at the same time, the *nullum crimen sine lege* principles.

37. Since the Chamber Majority Judgment, in my opinion, seriously undermines and compromises the legal rights of the Accused Persons at this sentencing stage where they come into grips for the first time and are confronted with a novel decision which I respectfully consider prejudicial to their judicial interests, I am constrained to accompany the said Chamber Majority jndgment in this regard, with an unfavourable expression of dissent and disapproval.



6. OTHER ACTS THAT ENHANCE THE GRAVITY OF THE OFFENCE

38. What I say here is that there is no doubt that besides what is proven in terms of the required elements of each of these offences which I have characterised as constitutive, elements of considerable gravity in their "basic form", there are some other acts which the Accused person committed in addition to, and beyond those envisaged in the basic form as defined in the "Law Applicable on the Crimes Charged". In such a case, it cannot be contested that these acts which are committed in addition to and beyond those required to establish the basic constitutive elements of the 'basic offence', give the offence another grave indeed, a graver dimension.

39. For instance, there is no offence known as gang rape. In this context, gang rape is not an ingredient to be proven in establishing the constitutive elements of the basic offence of rape as defined by the Chamber. In a case therefore against the Accused person for rape, it is not necessary for the Prosecution to prove the fact of a commission of the offence of rape by a gang-raping team to establish the ordinary elements of the 'basic offence' of rape as defined by the Chamber in the judgment.[11]

40. However, if the Prosecution in establishing the basic form of rape, also elicits, as it has done in some instances in this case, evidence of gang raping, this should, in my view, be considered more as an aggravating factor even though I concede that it could also logically constitute an additional element which certainly enhances the basic offence and thereby impacts on the process of determining the gravity of the offence as required by Article 19 (2) of the Statute of the Special Court.

41. As a Chamber we should stand cautioned in such situations and avoid to factor the gravity of the offence element into the aggravating circumstances equation. Indeed, even though at this stage of the proceedings, the term "gravity" and "aggravating" tend to muddy the waters for the Judges in their quest to know which one to know which one they can opt for in these circumstances, it should be conceded that they are complementary to each other. Indeed as was held in the case of the Prosecutor vs. Momcilo Krajisnick,[12] "the Trial Chamber should strive to distinguish between the gravity of criminal conduct and the aggravating circumstances in making the determination on which of them should apply and to which situation. This, to my mind should have been avoided in our analysis on the gravity of the offences on the one hand and on the aggravating circumstances of the offences as we appear to have done in this Decision. I say this because the *raison d'etre* of the rule against 'double counting' is to shield the convicted person

[11] Sentencing Judgement, para. 145.
[12] Case No IT-00-39-A Appeals Chamber Judgment of 17th March 2009.

from incurring a severer sentence than is ordinarily necessary and further, to rescue him from the hazards of the double jeopardy rule for the same offence and in relation to the same conviction.

7. GRAVITY OF THE OFFENCES IN THEIR BASIC FORM

42. Even though the Statute, in its Article 19 (2), mandates the Chamber to take in to account, the gravity of the offence in determining a sentence, it is my considered opinion, as I have already stated, that all the offences provided for therein, in their very basic form, are offences of extreme gravity particularly given their constitutive elements and as they are defined and set out by the Chamber in the 'Law applicable to the crimes charged".

43. For instance the offence of murder as a crime against humanity is stipulated in Article 2 of the Statute. The general requirements which reveal the gravity and indeed seriousness of the office, are that there must be an attack and that it must be widespread or systematic and directed against any civilian population. The term widespread, this Chamber has held, refers to the large scale nature of the attack and the number of victims.[13] This obviously, and without more, in my opinion, denotes the gravity of such an offence, particularly where such attacks, as we have found proven, were systematic in terms of the organized nature of the acts of violence and the improbability of their random occurrence.[14]

44. The trend of our analysis is the same for the other offences on this same chapter on the "Gravity of Offences" in relation to Sexual Crimes, Physical Violence, (counts 1-2 and 10-11), Enslavement, (Counts 1 and 13), Pillage and Burning crimes (Counts 1-2 and Count 14), Use of Child Soldiers (Counts 12) Crimes against UNAMSIL Personnel (Counts 15 and 18).

45. The comments I have made on the issue of the gravity of war crimes, and the caution I have formulated on murder as a crime against humanity, hold good for these offences as well. I say this however, with a caveat. In certain findings, the Accused persons are guilty of some offences such as Murder, Sexual Offences, Physical Violence and Crimes against UNAMSIL Personnel to mention just a few.

46. It must be recognized that some of these offence have been perpetrated in a gruesome manner that one cannot and with exceptional acts of inhumanity and methodology that transcend the basic and ordinary ingredients, that are constitutive of the offence in its basic form.

47. I will mention here, only some of the numerous gruesome incidents which I consider significant in demonstrating this phenomenon of extreme brutality and inhumanity that has

[13] Sentencing Judgement, para. 76.

[14] Sentencing Judgement, para. 78.

contributed to enhancing and raising the profile, in terms of their gravity and of the basic offences for which the Accused have been found guilty in the context of liability under the Joint Criminal Enterprise.

8. THE "AGGRAVATED FORM" OF OFFENCES

48. In the definition of an offence in the creating Statute, it can also take an aggravated dimension in its "basic form" and definition. For instance, ordinary theft in the creating Statute which has a lesser gravity and of course a maximum penalty of 10 years cannot be compared to the offence in its basic form of aggravated theft which is punishable with the death penalty.[15]

49. In its ordinary basic form, an offence such as rape can assume aggravating proportions even if this were not envisioned by its definition in the creating Statute. In this regard, and as I have already opined, the Prosecution does not need to prove the aggravating gang-raping element to establish the offence of Rape as a Crime against Humanity. The Prosecution can however, adduce evidence of gang-raping in order to establish the ordinary and basic offence of Rape as defined in the Statute. Where this is done it is my view that it enhances the gravity of the offence of rape and to my mind and considered opinion, only for purposes of a finding of aggravating circumstances with a view to securing a higher sentence.

9. GRAVITY OF OFFENCES COMMITTED BY STAFF ALHAJI

50. In this regard, I observe that in our analysis of the gravity of the offences for which we have convicted the accused persons under the rubric of joint criminal enterprise, the Chamber has highlighted some of the most despicable and heinous acts of physical and sexual violence and brutality which, as we have found were committed, in this case, within the context of the enterprise, by Staff Alhaji who personally presided over those horrendous acts.

51. These offences include gang-rapes which he organized in Penduma and particularly, those perpetrated on the wife of TF1-217 which were supervised by the said Staff Alhaji in the presence of her husband and their children. In fact, Staff Alhaji who sat on the stump of a tree, designated eight of his fighters and ordered them to gang-rape TF1-217's wife in the latters presence as well as in the presence of the children. Each of these fighters took his turn and raped this woman very brutally and openly and, as TF1-217 testified:

> Some of them, they bow her down, some of them laid on her and take the feet up this is how they raped my wife.[16]

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[15] For instance see sections 318 and 320 of the Penal Code of Cameroon.

[16] Judgement, para. 1193.

52. Men holding guns ordered TF1-217 to watch and to count the men raping his wife. His children were also watching the scene. As they raped his wife, he testified that they taunted him:

> [T]hey only told me that I don't know how to do it, they knew how to do it, they were laughing, they shouted.[17]

53. After Tamba Joe has ended his turn in the gang-rape episode on TF1-217's wife, he stabbed her to death.[18]

54. The gravity, the gruesomeness, the inhumanity and negative intensity of Staff Alhaji's joint criminal enterprise delinquency is typified by this dialogue between Staff Alhaji and TF1-217 which, for the records and for purposes of determining the nature of the sentences to be imposed on the Accused Persons, whose active Joint Criminal Enterprise agent and actor Staff Alhaji, as a Chamber we have found, was, in implementing and executing the criminal plan which the convicts shared. I take the liberty to reproduce this dialogue here under, *in extenso*:

> Then he said, 'untie him,' then I was untied. He said, 'come here,' then I went nearer to him. He said, 'give me the watch," but I was nerving, and it was a Seiko-Five watch,' but couldn't. I was nerving. Then he held on to the watch and cut off the strap. Then I was wounded. Look at the mark. (Witness displays) It's the mark that I'm having on my wrist now. Then he said 'put your' – (...) "Yes. Then he said, 'put your hand on the floor.' He said, 'it is because of these watches that you wear that you go about bluffing to those women. He said, "until the end of the world you never put a – you'll never put wrist watch on this particular hand." I said –and I pleaded with him, I said, 'please' but he didn't adhere to my plea. Then I put the right hand to him, I put it on the ground, but as he raised up the cutlass to chop, then I threw my hand away from it. Then he hit me with the cutlass on my forehead. Look at the mark on my forehead. The mark is right on my forehead. Then blood started oozing out. Right there I knew that if I had – that if I was unwilling to do anything he would kill me. Then I took the left hand, I put it on the ground and it was amputated. Then I said, "thank you, God, because that's the way you want me to be.' Then he told my children, he said, 'follow you father' because he is a man that knows my children well. And my children used to call him uncle, and his own children used to call me uncle. "Then the children were following me while I was going. When I returned to take the hand, the amputated one, then he wounded my back. He said, 'it is this hand that we want. 'He said, 'go to Tejan Kabbah for him to give you a hand because he has brought ten containers load of arms. Now that you say you don't want our military rule, then go to your civilian rule.[19]

[17] Judgement, para. 1194.
[18] Judgement, para. 1195.
[19] Transcript of 22nd July 2004, TF1-217, pp. 22-24.

55. In considering the responsibility of the Staff Alhaji in this episode, and as the Chamber has concluded, it has reached what can be considered as the very and topmost highest level.

10. SESAY'S PLEA IN MITIGATION.

56. I highlight here for the purpose of this Dissent, Sesay's plea for mitigation in relation to his Facilitation of the Peace and Reconciliation Process.

57. In this regard, the Chamber made the following unanimous findings:

> The Defence have proved mitigating circumstances on the basis of a balance of probabilities in relation to Sesay's real and meaningful contribution to the peace process in Sierra Leone following his appointment as interim leader of the RUF.

58. The dissent is based on the Chamber Majority decision that follows the unanimous decision of the Chamber and states as follows after the word 'RUF'. It reads as follows:

> However, the Chamber does not accept Sesay's explanation of his reasons for failing to prevent or to punish the perpetrators of the attacks against UNAMSIL personnel, a direct affront to the International Community's own attempts to facilitate peace in Sierra Leone.[20]

59. The Majority Judgment in this regard very conspicuously fails to make any mention of whether this mitigating circumstance which the Chamber found was proved, on the balance of probabilities, entitles Mr. Sesay to take the benefit of mitigating circumstances with a view to reducing the sentences which we have impose on him.

60. Since I consider this silence to which I made no contribution, on the part of the Chamber Majority to make a pronouncement on this issue, as a rejection of Sesay's plea for mitigation which I find very deserving and well founded on this ground, I would like to dissent from that decision rejecting or refusing to grant mitigating circumstances in his favour after the Chamber had unanimously found, that Sesay's defence have proved mitigating circumstance on the 'Facilitation of the – Peace – and – Reconciliation – Process' ground in question.

61. I say this because at the time of the attack on UNAMSIL personnel for which the 3 Accused persons have been convicted, and during the leadership transition to Sesay from Foday Sankoh after the disappearance of Sam Bockarie in December 1991, there was no unanimity in the RUF on the question of disarmament in relation to Sankoh's detention.

62. I entirely believe the evidence of Sesay when he testified that some of the top ranking officers of the RUF were against disarmament just as they were against Sesay for disarming without making the release of Sankoh from prison as a condition precedent. I believe that Sesay,

[20] Sentencing Judgement para. 229.

in such circumstances took a grave risk in the light of the discontent and unhappiness of some of his colleagues at his ascension to the top position of leadership of the RUF after Foday Sankoh and after Bockarie abandoned the movement in December 1999.

63. In fact, I believe the statement of H.E. Alpha Konare, the former President of Mali in which he said,

> In contrast, there were some of the other Senior Commanders who did not want to disarm unless Sankoh was released from prison.

64. I also entirely attach credit to and believe the statement of the former SRSG Oluyemi Adeniji who reinforces the testimonial of Ex President Konare and also recognizes Sesay's contribution in the following words:

> As the peace process progressed to disarmament stage, Sesay showed that he was able to make promises and keep them. He was, undoubtedly directing a lot of his energies towards bringing the RUF to disarmament in the face of internal opposition[21]

65. I can indeed attest to the fact that the Chamber unanimous Decision on this issue was influenced by the testimonies of these two dignitaries.

66. In the light of the foregoing analysis, Sesay, in my opinion, more than deserves to be accorded mitigating circumstances on these score, for his positive involvement in the facilitation of the peace and reconciliation process in Sierra Leone that was championed and patronised by some Heads of State of the West African Region, including Ex President Alpha Konare of Mali.

67. There may well have been no peace if Sesay did not embrace the peace process and take the bold and risky initiative to encourage disarmament. If Sesay were not on board the peace process, peace would in any event, have certainly been achieved in Sierra Leone but, I dare say, at a renewed, continued, and bloody cost, which, we must admit, Sesay pre-empted and prevented.

68. In this regard, and to demonstrate that Sesay took a risk to facilitate the peace process even when Sankoh was still in detention I again entirely believe Sesay's evidence when in his testimony he told the Chamber of how he was rebuffed by Sankoh when he paid him a visit at a time he was hospitalized in the Choithram Hospital.

69. Accordingly, I, for my part, and in light of the foregoing, do clearly find and conclude that Sesay is entitled to benefit from mitigating circumstances in this sentencing judgment for his positive of contribution to the restoration of peace in Sierra Leone.

11. KALLON'S PLEA IN MITIGATION

[21] Sentencing Judgement, para. 237.

70. Kallon, the 2nd accused, makes a plea, amongst other grounds and reasons he has advanced, that mitigating circumstances be accorded to him under Article 6(4) of the Statute which provides as follows:

The fact that an Accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of Criminal responsibility but may be considered in mitigation or punishment if the Special Court determines that justice so requires.

71. The Chamber is accordingly empowered, if it so decides in the interests of justice, to accord Kallon, the mitigating circumstances he is soliciting.

72. On the Kallon submission and plea, I observe that an analysis of the evidence and the Command Structure of the RUF shows that even though Kallon, at the time of the UNAMSIL Personnel incident, was the Battle Group Commander, he was under the orders of Sesay who was the Battle Field Commander. In addition and on the other hand, he also received instructions at times directly from Foday Sankoh. Indeed, as we have learnt from the testimony of the Defence witnesses, Sankoh could communicate directly with any commander at whatever level and issue instructions to him directly without passing through his superior in hierarchy, and vice versa.

73. As I have mentioned in the Sesay analysis, all the RUF Commanders were not in favour of disarmament. Foday Sankoh himself who had earlier consented to disarmament was beginning to retract from the process.

74. What is in fact also established from the records is the fact that Kallon was quite closed and faithful to Sesay. He was in fact on his side during the RUF leadership race where Sesay faced opposition from formidable front line aspirants like Mike Lamin, who conditioned RUF disarmament to Sankoh's release from prison.[22]

75. In fact, from the communications between Sankoh and Officers on the ground like Kallon, it was clear, and I make that inference and conclusion from the surrounding circumstances and comportment of the Commanders on the grounds that he gave them instructions not to cooperate and longer in the process and that if they did, they would incur severe penalties.

76. Such instructions, coming from Sankoh, their leader who was described as being very erratic and who even executed close associates like Mobamed Tarawally[23] had to be taken seriously.

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[22] Testimony of Sesay – Transcript of IT system down

[23] Sentencing Judgment, para. 259.

77. From the build up of events from mid April 2000, it was clear, and I again make this conclusion through an inference from the facts and situation on the ground, that the RUF no longer wanted to continue with the disarmament process and that they had received instructions in this regards from the hierarchy to stop the process. The violent Gbao eruption and intrusion as we have found, in the DDR Camp, demanding the release of disarmed Child Soldiers, followed by the RUF attacks on UNAMSIL Staff in Makump, was as a result, in my considered opinion, of orders received from their superiors, which orders obliged to carry out under pain of severe penalties, not excluding that of his execution which in the circumstances and having regard to the command discipline in there movement, was not a strange phenomenon in the RUF Organisation.

78. It is therefore, my finding, and in so doing, I dissent from the Majority Chamber judgment rejecting it, that the plea for executing 'Executive Orders' put up by Kallon is very well founded and that he is further, in addition to the benefit that has been accorded to him for his expression of remorse which the Chamber has endorsed and found as sincere and credible, also entitled to take the benefit of further mitigating circumstances under Article 6(4) of the Statute, in the light of the argument advanced in this regard.

79. Very contrary to the Majority finding[24] that Kallon has not established on the balance of probabilities, that his life was under actual threat in the event that he failed to obey these Orders from which I, very respectfully dissents, I on the contrary, and from the above analysis, do find that he was acting under duress, and pursuant to superior orders and that he faced a real and indeed, a possible execution if he had not executed those orders.

80. I agree with our general approach in this judgment to highlight the gravity of some of the offences for which the Accused have been convicted by alluding to the scale of their commission and their impact on the victims, particularly on their vulnerability and their pain and suffering for purposes of determining the sentence to be imposed. As I have already mentioned however, extreme caution must be exercised to avoid "double Counting" because the gravity of these offences is, and relying on the jurisprudence of International Criminal Tribunal, clearly defined in the ingredients of the offence which we have found established and proven before arriving at a verdict of guilty.

12. GBAO DEFENCE SUBMISSION IN MITIGATION

81. In their submissions in mitigation of his sentence, Learned Lead Counsel for the Gbao Defence Team has made a passionate submission that his client be accorded mitigating

[24] Sentencing Judgment, paras 259-260.

circumstances because and *inter alia*, Gbao has been convicted without having fired a single shot or having ordered that a single shot be fired.

82. I do not want to understand this submission to mean that Learned Lead Counsel is, at this stage of the proceedings seeking to question the guilty verdict which the Chamber has entered against his client.

83. I take it rather, to mean that his client Gbao, not having, according to him, fired a shot or ordering that a shot be fired, was very deserving of a favourable consideration, and indeed, eligible for that reason, for taking the benefit of mitigating circumstances.

84. On this issue, the considerably minimal length of the sentence which the Chamber has imposed on Gbao as against the other 2 Convicts who were also sentenced on the same counts and received higher terms of imprisonment as participants in the same Joint Criminal Enterprise, sends a clear message.

85. I say this because Learned Lead Counsel Cammegh after all knows and appreciates perfectly well, that under the principles that governs liability under the Joint Criminal Enterprise concept, you could, depending on the facts and circumstances, be found guilty of an offence and convicted of it even without having fired the criminal shot or ordered that one be fired.

13. DIRECT AND INDIRECT PERPETRATORS IN A JOINT CRIMINAL ENTERPRISE.

86. In the submissions of the Defence Teams and in particular, those of the Gbao Defence Team, it has been argued to support their plea for mitigating circumstances that in our CDF decision, we admitted and validated the argument that the liability and penalty to be inflicted on indirect perpetrator, like was found in favour of Accused Persons in the CDF case, should indeed be less than that of the direct perpetrators of the crimes charged under the Joint Criminal Enterprise liability.

87. Paradoxically, I still have to use here, the recurring example of the horrendous crimes which were committed by Staff Alhaji and the insurgent rebel fighters who were under his control and command at the time of the commission, and which the Chamber has reflected and narrated in both the main and the sentencing judgment in the case and do relate the Staff Alhaji situation to the precedent of the CDF case.

88. I consider and am respectfully of the pinion that the same measure of mitigating should, in this regard, and on this score, be accorded to the three Convicts in this case.

14. GLOBAL OR SINGLE COUNT SENTENCING

89. Our Chamber Sentencing Judgement does not go into this detail. However, in their sentencing submissions, the Prosecution specifically requested the imposition of a global sentence and recommended a specific global sentence of 60 years for the first Accused Sesay, 60 years for the second Accused and 40 years for the third Accused. The Prosecution however, conceded that the nature of the sentencing was at the discretion of the Chamber.

90. The Defence Teams did not take any particular position on this issue. In sustaining their option for a global sentence, the Prosecution cites the ICTY Appeals Chamber Decision of the *Nahimana* Case paras 322-325 where the Chamber stated that where the crimes ascribed to the Accused regardless of their characterisation, form part of a single set of crimes committed in a given geographical region during a specific period of time, it is appropriate for a single sentence to be imposed on all convictions, if the Trial Chamber so decides.

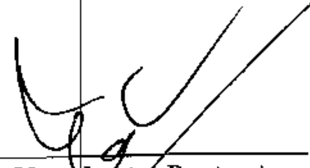
91. We, have in the exercise of our discretion in this regard, opted for a Count by Count sentencing and ordered the sentences to run concurrently with the time already served in custody, of course credited to each Accused. While I make no particular preference for one or the other sentencing method, this decision highlights the fact that it is an option to be left to the Chamber for a decision.

92. It now stands in the jurisprudence of International Criminal Tribunals, including that of the Appeals Chamber of the Special Court for Sierra Leone, the Chamber if it so decides can impose either a global sentence or a Count by Count sentence and order it to run either concurrently or consecutively.

Request for Indulgence

93. I would first of all crave the indulgence of any reader of this opinion for the absence or inaccurate footnoting which is necessary in the articulations of this text. This is due to the fact that at the time of filing this Judgement and Opinion today, the IT system is out of order. In view of the precipitated nature of this filing which is due to circumstances independent of my control, I imagine that a corrigendum on the footnoting and other minor editorial corrections will become necessary after the filing and publication of the Sentencing Judgement and this Separate Concurring and Partially Dissenting Opinion.

Done at Freetown, Sierra Leone, this 8th day of April 2009



Hon. Justice Benjamin
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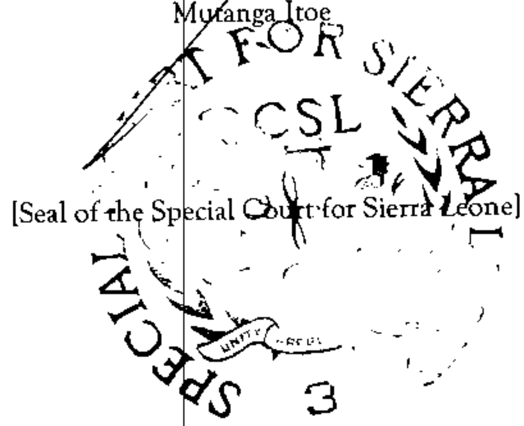

[Seal of the Special Court for Sierra Leone]

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ANNEX C: TABLE OF AUTHORITIES

1. Judgements and Decisions

1.1. Special Court for Sierra Leone

AFRC Case	
AFRC Trial Judgement	*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Judgement (TC), 20 June 2007
AFRC Appeals Judgement	*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-A, Judgment (AC), 22 February 2008

CDF Case	
CDF Trial Judgement	*Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, Judgement (TC), 2 August 2007
CDF Trial Jndgement	*Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, Sentencing Judgment (TC), 9 October 2007
CDF Appeals Judgement	*Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Judgment (AC), 28 May 2008

RUF Case	
Sesay Decision on Admissibility of Sesay's Statements	*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Written Reasons- Decision on Admissibility of Certain Prior Statements of the Accused Given to the Prosecution, 30 June 2008.

1.2. International Criminal Tribunal for Rwanda

Prosecutor v. Musema	
Musema Appeals Judgement	*Prosecutor v. Musema*, ICTR-96-13-A, Judgement (AC), 16 November 2001

Prosecutor v. Muhimana	
Muhimana Trial Judgement	*Prosecutor v. Muhimana*, ICTR-95-1B-T, Judgement (TC), 28 April 2005

Prosecutor v. Nahimana	
Nahimana Appeals Judgement	*Prosecutor v. Nahimana*, ICTR-99-52-A Judgement (AC), 28 November 2007

Prosecutor v. Ndindabahizi	
Ndindabahizi Appeals Judgement	*Prosecutor v. Ndindabahizi*, ICTR-01-71-A, Judgement (AC), 16 January 2007

Prosecutor v. Ntagerura, Bagambiki and Imanishimwe	
Ntagerura Appeals Judgement	*Prosecutor v. Ntagerura, Bagambiki and Imanishimwe*, ICTR-99-46-T, Judgement (TC), 25 February 2004

Prosecutor v. Seromba	
Seromba Appeals Judgement	*Prosecutor v. Seromba*, ICTR-01-66-A, Judgement (AC), 12 March 2008
Prosecutor v. Serushago	
Serushago Appeal Judgement	*Prosecutor v. Serushago*, ICTR-98-36-S, Sentencing Judgement (TC), 5 February 1999

Prosecutor v. Simba	
Simba Appeals Judgement	*Prosecutor v. Simba*, ICTR-01-76-A, Judgement (AC), 27 November 2007

1.3. International Criminal Tribunal for the former Yugoslavia

Prosecutor v. Aleksovski	
Aleksovski Appeals Judgement	*Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement (AC), 24 March 2000

Prosecutor v. Babic	
Babic Trial Judgement	*Prosecutor v. Babic*, IT-03-72S, Sentencing Judgement (TC), 29 June 2004
Babic Appeals Judgement	*Prosecutor v. Babic*, IT-03-72A, Judgement (AC), 18 July 2005

Prosecutor v. Blagojevic	
Blagojevic Appeals Judgement	*Prosecutor v. Blagojevic* IT-02-60-T, Judgement (TC), 17 January 2005

Prosecutor v. Blaskic	
Blaskic Appeals Judgement	*Prosecutor v. Blaskic*, IT-95-14-A, Judgement (AC), 29 July 2004

Prosecutor v. Brdjanin	
Brdjanin Appeals Judgement	*Prosecutor v. Brdjanin*, IT-99-36-A, Judgement (AC), 3 April 2007

Prosecutor v. Delalic, Mucic, Delic and Landzo (Celibici Case)	
Celibici Trial Judgement	*Prosecutor v. Delalic, Mucic, Delic and Landzo*, Judgement, IT-96-21-T, Judgement (TC), 16 November 1998
Celibici Appeals Judgement	*Prosecutor v. Delalic, Mucic, Delic and Landzo*, Judgement, IT-96-21-A, Judgement (AC), 20 February 2001

Prosecutor v. Deronjic	
Deronjic Appeals Judgement	*Prosecutor v. Deronjic*, IT-02-61-S, Sentencing Judgement (TC), 30 March 2004

Prosecutor v. Dragan	
Dragan Appeals Judgement	*Prosecutor v. Dragan*, IT-94-2-S, Sentencing Judgement (TC), 18 December 2003

Prosecutor v. Erdemovic	
Erdemovic Trial Judgement	*Prosecutor v. Erdemovic*, IT-96-22-T*bis*, Sentencing Judgement (TC), 5 March 1998

Prosecutor v. Furundzija	
Furundzija Appeals Judgement	*Prosecutor v. Furundzija*, IT-95-17/1-A, Judgement (AC), 21 July 2000

Prosecutor v. Hadzihasanovic, Alagic and Kubura	
Hadzihasanovic and Kubura Trial Judgement	*Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-A, Judgement (TC), 15 March 2006

Prosecutor v. Miodrag Jokic	
Jokic Sentencing Appeal	*Prosecutor v. Miodrag Jokic*, IT-01-42/1-A, Judgement on Sentencing Appeal, 30 August 2005

Prosecutor v. Kordic and Cerkez	
Kordic and Cerkez Appeals Judgement	*Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Judgement (AC), 17 December 2004

Prosecutor v. Krajisnik	
Krajisnik Trial Judgement	*Prosecutor v. Krajisnik*, IT-00-39-A, Judgement (AC), 17 March 2009

Prosecutor v. Kunarac, Kovac and Vukovic	
Kunarac et al. Trial Judgement	*Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23-T & IT-96-23/1-T, Judgement (TC), 22 February 2001
Kunarac et al. Appeals Judgement	*Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23-A & IT-96-23/1-A, Judgement (AC), 12 June 2002

Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic	
Kupreskic et al. Trial Judgement	*Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-T, Judgement (TC), 14 January 2000
Kupreskic et al. Appeals Judgement	*Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-A, Judgement (AC), 23 October 2001

Prosecutor v. Kvocka, Kos, Radic, Zigic and Prcac	
Kvocka et al. Appeals Judgement	*Prosecutor v Kvocka, Radic, Zigic and Prcac*, IT-98-30/1-A, Judgement (AC), 28 February 2005

Prosecutor v. Limaj, Bala and Musliu	
Limaj et al. Trial Judgement	*Prosecutor v. Limaj, Bala and Musliu*, IT-03-66-T, Judgement (TC), 30 November 2005

Prosecutor v. Martic	
Martic Appeals Judgement	*Prosecutor v. Martic*, IT-95-11-A, Judgement (AC), 8 October 2008
Prosecutor v. Obrenovic	
Obrenovic Appeals Judgement	*Prosecutor v. Obrenovic*, IT-02-60/2-S, Sentencing Judgement (TC), 10 December 2003

Prosecutor v. Oric	
Oric Trial Judgement	*Prosecutor v. Oric*, IT-03-68-T, Judgement (TC), 30 June 2006

Prosecutor v. Plavsic	
Plavsic Appeals Judgement	*Prosecutor v. Plavsic*, IT-00-39&40/1-T, Sentencing Judgement (TC), 27 February 2003
Prosecutor v. Cesic	

Cesic Trial Judgement	*Prosecutor v.* Cesic, IT-95-10/1-S, Sentencing Judgement (TC), 11 March 2004

Prosecutor v. Stakic	
***Stakic* Trial Judgement**	*Prosecutor v. Stakic*, IT-97-24-T, Judgement (TC), 31 July 2003
***Stakic* Appeals Judgement**	*Prosecutor v. Stakic*, IT-97-24-A, Judgement (AC), 22 March 2006

Prosecutor v. Tadic	
***Tadic* Appeals Judgement**	*Prosecutor v. Tadic*, IT-94-1-A, Judgement (AC), 26 January 2000

Prosecutor v. Todorovic	
***Todorovic* Appeals Judgement**	*Prosecutor v. Todorovic*, IT-95-9/1-S, Sentencing Judgement (TC), 31 July 2001

Prosecutor v. Vasiljevic	
***Vasiljevic* Appeals Judgement**	*Prosecutor v. Vasiljevic*, IT-98-32-A, Judgement (AC), 25 February 2004

1.4. Statutes

ICTY Statute	Update Statute of the International Tribunal for the Prosecution of Persons Responsible for serious Violation of the International Humanitarian Committed in the Territory of the Former Yugoslavia since, 1991, UNSC Res. 1660 (2006)
ICTR Statute	Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Neighbouring States, UNSC Res.955 (1994)
SCSL Statute	Statute of the Special Court for Sierra Leone, annexed to the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, UN and Sierra Leone, 16 January 2002, 2178 U.N.T.S. 138.

1.5. Secondary Sources

Bankole Thompson, Criminal Law of Sierra Leone	Bankole Thompson, The Criminal Law of Sierra Leone. (Lanham: University Press of American Inc. 1999)