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SCSL-04-16-T

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(22097 - 22625)

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR  
Freetown – Sierra Leone

Before: Hon. Justice Julia Sebutinde, Presiding  
Hon. Justice Teresa Doherty  
Hon. Justice Richard Lussick

Acting Registrar: Mr. Herman Von Hebel

Date filed: 28 June 2007

**THE PROSECUTOR**                      **Against**                      **Alex Tamba Brima**  
**Brima Bazzy Kamara**  
**Santigie Borbor Kanu**

Case No. SCSL-04-16-T

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**PUBLIC [WITH CONFIDENTIAL ANNEXES FILED SEPARATELY]  
PROSECUTION SUBMISSION PURSUANT TO RULE 100(A)  
OF THE RULES OF PROCEDURE AND EVIDENCE**

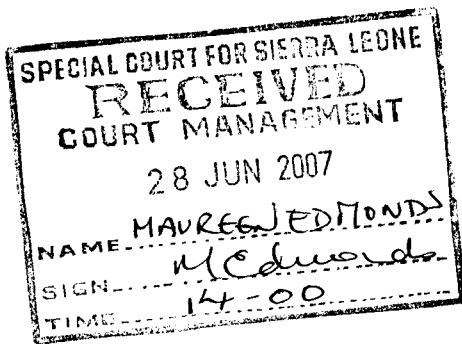
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## I. INTRODUCTION

1. On 20 June 2007, this Trial Chamber rendered its judgement in this case (the “**Trial Chamber’s Judgement**”).<sup>1</sup> All three Accused, Alex Tamba Brima (“**Brima**”), Brima Bazzy Kamara (“**Kamara**”) and Santigie Borbor Kanu (“**Kanu**”) were convicted on 11 of the 14 counts in the Indictment.<sup>2</sup>
2. Pursuant to Rule 100(A) of the Rules of Procedure and Evidence (“**Rules**”), the Prosecution now files this Sentencing Brief, setting out relevant information that may assist the Trial Chamber in determining the appropriate sentence. In addition to the submissions below, the Appendix and all Annexes to these Submissions contain information intending to assist the Trial Chamber in determining the appropriate sentence in the case of all three Accused.

## II. THE SPECIFIC CRIMINAL CONDUCT OF THE ACCUSED

3. The specific crimes of which each Accused was convicted, and the basis of each Accused’s criminal responsibility in respect of each of those crimes, are set out in the Appendix to this Submission.

## III. GENERAL SUBMISSIONS OF LAW: MATTERS WHICH THE TRIAL CHAMBER SHOULD CONSIDER IN SENTENCING

### A. INTRODUCTION

4. The Prosecution submits that in determining the appropriate sentence, the Trial Chamber must take into consideration:
  - (1) the objectives and purposes of sentencing (as to which, see paragraphs 5-20 below); and

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<sup>1</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T-613, “Judgement”, Trial Chamber, 20 June 2007 (the “**Trial Chamber’s Judgement**”).

<sup>2</sup> *Trial Chamber’s Judgement*, Part XIII, “Disposition” (paras 2112-2123).

- (2) the factors specified in Article 19(1) and (2) of the Statute, and Rule 101(B) of the Rules, and any other relevant sentencing factors (as to which, see paragraphs 21-75 below).

#### B. SENTENCING PURPOSES AND OBJECTIVES

5. As the ICTY Trial Chamber observed in the *Kunarac* case, “The Trial and Appeals Chambers of the International Tribunal generally consider what is variously and often interchangeably referred to, for example, as sentencing ‘objectives’, ‘purposes’, ‘principles’, ‘functions’ or ‘policy’ in the assessment of the term of actual imprisonment for convicted persons”<sup>3</sup>. As discussed below, these sentencing purposes or objectives include in particular deterrence and retribution.
6. The ICTY Trial Chamber in the *Kunarac* case went on to observe (apparently somewhat critically) that such purposes or objectives “are considered in addition to the gravity of the offence and mitigating and aggravating circumstances” and that “[W]hat appear to be justifications for imprisoning convicted persons, or theories of punishment, actually are treated as or resemble sentencing factors, in the sense that these considerations are consistently said to affect, usually in an unspecified manner, the length of imprisonment”.<sup>4</sup>
7. The Prosecution submits that considerations of the purposes of sentencing, such as deterrence and retribution, are not to be treated as sentencing factors as such, in the sense that they are required to be weighed with other factors in each individual case to determine the actual sentence to be imposed. Contrary to what is suggested in the *Kunarac* case, the Prosecution submits that Chambers of the ICTY and ICTR have not in fact treated such considerations as sentencing factors in this way.
8. The Prosecution submits that considerations of the purposes of sentencing, such as deterrence and retribution, are relevant in determining in a general way the levels of sentences that are appropriate for particular types of crimes. In national legal systems, the law normally prescribes maximum (and sometimes minimum) sentences for each particular crime, and the prescribed sentences will be different for different types of

<sup>3</sup> *Prosecutor v. Kunarac*, IT-96-23, “Trial Judgement”, Trial Chamber, 22 February 2001 (“*Kunarac Trial Judgement*”), para. 836.

<sup>4</sup> *Ibid.*

crimes. Thus, the crime of murder will in a national system typically carry a higher maximum penalty than a less serious crime, such as theft. The levels of penalty imposed under national law for a particular crime will take into account the purposes of sentencing, such as deterrence and retribution. In any national legal system, a maximum penalty of, say, one year's imprisonment for a crime such as murder would obviously be considered manifestly inadequate, on the ground that it would fail to give effect to the purposes of sentencing such as deterrence and retribution.

9. Under the Statute and Rules of the Special Court and of other international criminal courts, no minimum or maximum terms of imprisonment are prescribed for any of the crimes within its jurisdiction. It is therefore submitted that in determining the general range of sentencing that is appropriate for a particular type of crime, a Trial Chamber must of necessity have regard to considerations of the purposes of sentencing, such as deterrence and retribution. Sentencing factors such as the gravity of the offence, and aggravating and mitigating factors, will then be weighed by the Trial Chamber to determine the appropriate sentence within that general range in a specific case.
10. The case law of the ICTY and ICTR has consistently acknowledged that two of the main purposes of sentencing are deterrence and retribution.<sup>5</sup>
11. In relation to **deterrence**, the Appeals Chamber of the ICTY has observed that “[O]ne of the purposes of the Tribunal, in ‘bringing to justice’ individuals responsible for serious violations of international humanitarian law, is to deter future violations”.<sup>6</sup> As one Trial Chamber of the ICTY has said:

“As to deterrence, the penalties imposed by the Tribunal must, in general, have sufficient deterrent value to ensure that those who would consider committing similar crimes will be dissuaded from doing so. One of the main purposes of a sentence imposed by an international criminal 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

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<sup>5</sup> *Prosecutor v. Delalić et al.*, IT-96-21, “Appeals Judgement”, Appeals Chamber, 20 February 2001 (“**Čelebići Appeal Judgement**”), para. 806; *Prosecutor v. Nzabirinda*, ICTR-01-77-I, “Sentencing Judgement”, Trial Chamber, 23 February 2007, para. 49; *Prosecutor v. Todorović*, IT-95-9/1, “Sentencing Judgement”, Trial Chamber, 31 July 2001 (“**Todorović Sentencing Judgement**”), para. 28; *Prosecutor v. Nikolić-Dragan*, IT-94-2, “Sentencing Judgement”, Trial Chamber, 18 December 2003 (“**Nikolić-Dragan Sentencing Judgement**”), para. 132; *Prosecutor v. Plavšić*, IT-00-39&40/1, “Sentencing Judgement”, Trial Chamber, 27 February 2003 (“**Plavšić Sentencing Judgement**”), para. 22; *Kunarac* Trial Judgement, para. 838.

<sup>6</sup> *Čelebići* Appeal Judgement, para. 801.

enforced. Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody.”<sup>7</sup>

12. As another ICTY Trial Chamber has observed:

“[t]he greater the harm, the greater its weight in the balance of conflicting interests against the offender by way of punishment as a general deterrent. It must be made clear, both to the offender and others with similar impulses, that if they yield to them they will meet with severe punishment: “in all civilized countries, in all ages, that has been the main purpose of punishment and continues to be so”.<sup>8</sup>

13. The Appeals Chamber of the ICTY has consistently accepted the general importance of deterrence as a consideration in sentencing for international crimes, subject to a proviso that this factor must not be accorded *undue* prominence in the overall assessment of the sentences to be imposed on convicted persons.<sup>9</sup> It is not clear from the current case law what would amount to giving “undue” prominence to the importance of deterrence since the Prosecution is unaware of any case in which a sentence has been overturned by an Appeals Chamber on the ground that undue prominence was given to this factor. However, some explanation was given by a Trial Chamber of the ICTY which stated that:

“The deterrent effect aimed at through punishment consists in discouraging the commission of similar crimes. The main effect sought is to turn the perpetrator away from future wrongdoing (special deterrence) but it is assumed that punishment will also have the effect of

<sup>7</sup> *Prosecutor v. Brđanin*, IT-99-36-T, “Trial Judgement”, Trial Chamber, 1 September 2004 (***Brđanin Trial Judgement***”), para. 1091. See also *Prosecutor v. Jean Kambanda*, ICTR-97-23-S, “Judgement and Sentence”, Trial Chamber, 4 September 1998, (***Kambanda Trial Judgement***”), para. 28 (“it is clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed, on the one hand, at retribution of the said accused, who must see their crimes punished, and over and above that, on the other hand, at deterrence, namely *dissuading for good those who will attempt in future to perpetrate such atrocities* by showing them that the international community was not ready to tolerate the serious violations of international law and human rights” (emphasis added)); *Prosecutor v. Rutaganda*, ICTR-96-3, “Trial Judgement”, Trial Chamber, 6 December 1999, (***Rutaganda Trial Judgement***”) para. 456; *Plavšić Sentencing Judgement*, para. 24.

<sup>8</sup> *Prosecutor v. Deronjić*, IT-02-61, “Sentencing Judgement”, Trial Chamber, 30 March 2004 (***Deronjić Sentencing Judgement***”), para. 148, quoting *R v. Bloomfield* 1999 NTCCA 137 para. 19 (Australia: Northern Territory Court of Appeal).

<sup>9</sup> *Čelebići Appeal Judgement*, paras 799-803; *Prosecutor v. Aleksovski*, IT-95-14/1-A, “Judgement”, Appeals Chamber, 24 March 2000 (***Aleksovski Appeal Judgement***”), para. 185; *Prosecutor v. Tadić*, IT-94-1-A and IT-94-1-A-Bis, “Judgement in Sentencing Appeals”, Appeals Chamber, 26 January 2000 (***Tadić Sentencing Appeal Judgement***”), para. 48.

discouraging others from committing the same kind of crime that is, for the Tribunal, those described in the Statute (general deterrence).

In the instant case, the Trial Chamber considers the chance that the convicted person will commit the same kind of crime in the future to be small, which considerably reduces the relevance of special deterrence. With regard to general deterrence, imposing a punishment serves to strengthen the legal order, in which the type of conduct involved is defined as criminal, and to reassure society of the effectiveness of its penal provisions. Nonetheless, it would be unfair, and would ultimately weaken the respect for the legal order as a whole, to increase the punishment imposed on a person merely for the purpose of deterring others.”<sup>10</sup>

14. This passage suggests (and the Prosecution accepts) that in the context of crimes tried by international courts such as the Special Court for Sierra Leone, the emphasis must normally be on general deterrence rather than special deterrence. This passage also suggests (and the Prosecution again accepts) that it would not be appropriate to impose a sentence above and beyond what would otherwise be appropriate merely for the purpose of deterring others from committing the same crimes in the future. However, this passage does not detract from the general importance of deterrence in determining what *is* an appropriate general range of sentencing for a particular type of crime.<sup>11</sup> Put simply, the Prosecution accepts that in each individual case, the punishment must be made to fit the crimes of the individual convicted person,<sup>12</sup> who cannot be punished beyond his or her own actual criminal culpability. However, considerations of the principle of deterrence are relevant in determining, in a general sense, what level of

<sup>10</sup> Prosecutor v. *Jokić*, IT-01-42/1-S, “Sentencing Judgement”, Trial Chamber, 18 March 2004 (“*Jokić Sentencing Judgement*”), paras 33-34.

<sup>11</sup> The Prosecution notes that some Chambers have questioned the relevance of deterrence as a consideration in sentencing. For instance, in the *Kunarac* case, the Trial Chamber said: “Whether the Appeals Chamber considers special or general deterrence or both to be a main general sentencing factor is therefore not entirely clear. Given that uncertainty, this Trial Chamber considers it appropriate to express its view that special deterrence, as a general sentencing factor, is generally of little significance before this jurisdiction. The main reason is that the likelihood of persons convicted here ever again being faced with an opportunity to commit war crimes, crimes against humanity, genocide or grave breaches is so remote as to render its consideration in this way unreasonable and unfair. As to general deterrence, in line with the view of the Appeals Chamber, it is not to be accorded undue prominence in the assessment of an overall sentence to be imposed. The reason is that a sentence should in principle be imposed on an offender for *his* culpable conduct - it may be unfair to impose a sentence on an offender greater than is appropriate to that conduct solely in the *belief* that it will deter others.” (*Kunarac* Trial Judgement, para. 840.) The Prosecution submits that this is not inconsistent with the submissions made above. Considerations of deterrence, it is submitted, are relevant to determining the general level of the sentencing range for a particular crime, rather than to determining the specific sentence to be imposed on a particular accused.

<sup>12</sup> *Todorović* Sentencing Judgement, para. 29.

punishment *will* fit a particular crime, in the context of serious violations of international humanitarian law.

15. In considering the deterrent purpose of sentencing, it is submitted that the Trial Chamber should take into account that the cases which come before international criminal courts differ in many respects from those which ordinarily come before national courts, primarily because the crimes being prosecuted, are “serious violations of international humanitarian law”.<sup>13</sup> The reason why war crimes, crimes against humanity and certain other crimes are crimes under international law, rather than merely crimes under national law, is that these crimes “threaten the peace, security and well-being of the world”,<sup>14</sup> and that they are “the most serious crimes of concern to the international community.”<sup>15</sup> The punishment of perpetrators of such crimes is intended “to contribute to the prevention of such crimes”,<sup>16</sup> and sentences imposed for such crimes must be consistent with this aim of deterrence. If, for instance, the penalties imposed for murder or rape as a war crime or crime against humanity were less than those typically imposed in national legal systems for murder or rape under national law, this would send the signal to the international community that the killing or rape of a person as a war crime or crime against humanity is less serious and morally less reprehensible than an ordinary murder or rape under national law. The true position is the contrary, and this should be reflected in sentencing. The penalties imposed for war crimes and crimes against humanity must be commensurate with the seriousness with which they are regarded by the international community, and the need to “dissuade forever” those who might be tempted to commit such atrocities.<sup>17</sup> The ICTR Appeals Chamber has indicated that it is “precisely on account of their extreme gravity, genocide and crimes against humanity must be punished appropriately.”<sup>18</sup>
16. In relation to **retribution** as a purpose of sentencing, it has been said that:

“This is not to be understood as fulfilling a desire for revenge but as duly expressing the outrage of the international community at these crimes. ...

<sup>13</sup> *Čelebići Appeal Judgement*, para. 806.

<sup>14</sup> See Statute of the International Criminal Court, preamble paragraph 3.

<sup>15</sup> *Ibid.*, preamble paragraph 4.

<sup>16</sup> *Ibid.*, preamble paragraph 5.

<sup>17</sup> *Rutaganda Trial Judgement*, para. 456.

<sup>18</sup> *Prosecutor v. Akayesu*, ICTR-96-4, “Appeal Judgement”, Appeals Chamber, 1 June 2001 (“**Akayesu Appeal Judgement**”), para. 413.

Accordingly, a sentence of the International Tribunal should make plain the condemnation of the international community of the behaviour in question and show ‘that the international community was not ready to tolerate serious violations of international humanitarian law and human rights’.<sup>19</sup>

17. Other purposes of sentencing that have been identified in the jurisprudence of the ad hoc tribunals, in addition to deterrence and retribution, include the protection of society,<sup>20</sup> reprobation and stigmatization of the offender,<sup>21</sup> and reconciliation and the restoration of peace.<sup>22</sup>
18. As to the last of these purposes, reconciliation and the restoration of peace, it is noted that in United Nations Security Council Resolution 1315 (2000) of 14 August 2000, which requested the Secretary-General of the United Nations to negotiate an agreement with the Government of Sierra Leone for the establishment of the Special Court,<sup>23</sup> the Security Council recognized that:

“in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace”.<sup>24</sup>

The Prosecution submits that the Special Court’s purpose of providing “a credible system of justice and accountability” with a view to contributing “to the process of national reconciliation and to the restoration and maintenance of peace” cannot be achieved if the sentences imposed by the Special Court are not consistent with what the community would accept as a punishment fitting the crimes in question.

19. The Appeals Chamber of the ICTY has noted that unlike domestic jurisdictions, rehabilitation, although a relevant factor, cannot play a *predominant* role in the

<sup>19</sup> *Aleksovski* Appeal Judgement, para. 185.

<sup>20</sup> *Prosecutor v. Kayishema*, ICTR-95-1-T, “Sentencing Order”, Trial Chamber, 21 May 1999 (“*Kayishema Sentencing Order*”), paras 1-2.

<sup>21</sup> *Prosecutor v. Blaškić*, IT-95-14, “Appeals Judgement”, Appeals Chamber, 29 July 2004, (“*Blaškić Appeals Judgement*”) para. 678; *Prosecutor v. Furundžija*, IT-95-17/1-T, “Judgement”, Trial Chamber, 10 December 1998, (“*Furundžija Judgement*”), para. 289; *Prosecutor v. Jelisić*, IT-95-10-T, “Judgement”, Trial Chamber I, 14 December 1999, (“*Jelisić, Judgement*”) paras 117-118.

<sup>22</sup> See, for example, *Prosecutor v. Tadić*, IT-94-1-Tbis-R117, “Sentencing Judgement”, Trial Chamber, 11 November 1999 (“*Tadić Sentencing Judgement*”), paras 7-9 (referring to earlier case law of the ICTY and ICTR).

<sup>23</sup> United Nations Security Council Resolution 1315 (2000), operative paragraph 1.

<sup>24</sup> *Ibid.*, preambular paragraph 7.



decision-making process of a Trial Chamber of an international criminal court when imposing sentence.<sup>25</sup> The sentencing aims of national jurisdictions are different from the aims of international criminal tribunals because national criminal justice systems punish such a wide range of offences and offenders.<sup>26</sup>

20. In short, in order to fulfill the mandate of the Special Court, the Trial Chamber must ensure that those who bear the greatest responsibility are appropriately punished.

### C. SENTENCING FACTORS

#### (A). GENERAL

21. Article 19(1) and (2) of the Statute, and Rule 101(B) of the Rules, set out a non-exhaustive list of factors which the Trial Chamber, “shall, as appropriate, have recourse to” in imposing sentence. These factors are:
- i) the practice regarding prison sentences in the ICTR;<sup>27</sup>
  - ii) the practice regarding prison sentences in the national courts of Sierra Leone;<sup>28</sup>
  - iii) the gravity of the offences;<sup>29</sup>
  - iv) the individual circumstances of the convicted person;<sup>30</sup>
  - v) any aggravating circumstances;<sup>31</sup>
  - vi) any mitigating circumstances including the Accused’s substantial cooperation with the Prosecutor;<sup>32</sup> and
  - vii) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.<sup>33</sup>

<sup>25</sup> *Čelebići Appeal Judgement*, para. 806; *Prosecutor v. Deronjić*, IT-02-61-A, “Judgement on Sentencing Appeal”, Appeals Chamber (“**Deronjić Appeal Judgement**”), 20 July 2005, paras 136-137; *Kunarac Trial Judgement*, para. 844.

<sup>26</sup> *Prosecutor v. Erdemović*, IT-96-22, “Judgement”, Trial Chamber, 29 November 1996, (“**Erdemović Judgement**”) para. 62.

<sup>27</sup> Statute, Article 19(1).

<sup>28</sup> *Ibid.*

<sup>29</sup> Statute, Article 19(2).

<sup>30</sup> *Ibid.*

<sup>31</sup> Rule 101(B)(i).

<sup>32</sup> Rule 101(B)(ii).

<sup>33</sup> Rule 101(B)(iii).

22. These factors are not exhaustive, and it is within the discretion of the Trial Chamber to consider all relevant matters when determining the sentence to be imposed.<sup>34</sup> The general principle is that “[I]n sentencing a Trial Chamber is required to take into account and weigh the totality of an accused’s culpability”.<sup>35</sup> The sentence imposed in each case must be individualized, taking into account all of the particular circumstances of each particular convicted person.<sup>36</sup> It is settled case law before both the ICTR and the ICTY that the underlying principle is that a Trial Chamber must tailor the penalty to fit the individual circumstances of the accused and the gravity of the crime.<sup>37</sup>

### (B). PRACTICE REGARDING PRISON SENTENCES IN THE ICTR

23. Article 19(1) of the Statute directs the Trial Chamber to “as appropriate, have recourse to” the practice regarding prison sentences in the ICTR.
24. Despite this express direction in the Statute, the Prosecution submits that comparisons with sentences imposed by the ICTR are of limited value. First, most indictments in cases before the Trial Chamber in the ICTR charge the accused with genocide, which is not a crime within the jurisdiction of the Special Court. In many cases before the ICTR, the penalty imposed for genocide has been life imprisonment,<sup>38</sup> which is not a sentence that the Special Court has the power to impose.<sup>39</sup> Furthermore, comparisons with sentences imposed in other cases (whether cases before the same or a different international criminal tribunal) are of their nature of limited assistance. As has been observed by the Appeals Chamber of the ICTY:

<sup>34</sup> *Kambanda* Trial Judgement, paras 30-31; *Prosecutor v. Serushago*, ICTR-98-39-S, “Sentence”, Trial Chamber, 5 February 1999 (“*Serushago* Sentence”), paras 21-23; *Rutaganda*, Trial Judgement, paras 457-459.

<sup>35</sup> *Prosecutor v. Kupreškić et al.*, IT-95-16-A, “Appeal Judgement”, Appeals Chamber, 23 October 2001 (“*Kupreškić* Appeal Judgement”), para. 451.

<sup>36</sup> *Ibid.*, para. 445; *Furundžija* Appeal Judgement, paras 237, 249; *Čelebići* Appeals Judgement, paras 715-721.

<sup>37</sup> *Prosecutor v. Kamuhanda*, ICTR-95-54A-T, “Appeal Judgement”, Appeals Chamber, 19 September 2005 (“*Kamuhanda* Appeal Judgement”), para. 351.

<sup>38</sup> *Prosecutor v. Akayesu*, ICTR-96-4-T, “Judgement”, Trial Chamber (“*Akayesu* Trial Judgement”), 2 September 1998; *Prosecutor v. Gacumbitsi*, ICTR-2001-64-A, “Appeals Judgement”, Appeals Chamber, 7 July 2006 (“*Gacumbitsi* Appeal Judgement”), *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, “Trial Judgement”, Trial Chamber, 1 December 2003, (“*Kajelijeli* Judgement”) *Kambanda* Trial Judgement; *Prosecutor v. Kamuhanda*, ICTR-95-54A-T, “Trial Judgement”, Trial Chamber, 22 January 2004, (“*Kamuhanda* Judgement”); *Kayishema* Sentencing Order; *Prosecutor v. Musema*, ICTR-9-13-A, “Judgement and Sentence”, Trial Chamber, 27 January 2000 (“*Musema* Judgement and Sentence”); *Prosecutor v. Niyitegeka*, ICTR-96-14-T, “Judgement and Sentence”, Trial Chamber, 16 May 2003 (“*Niyitegeka* Judgement”); *Rutaganda* Trial Judgement.

<sup>39</sup> See paragraphs 158-159 below.

“As a general principle comparison with sentences imposed in other cases is often of limited assistance. While it is to be expected that two accused convicted of similar crimes in similar circumstances should not in practice receive very different sentences, often the differences are more significant than the similarities, and the mitigating and aggravating factors dictate different results.”<sup>40</sup>

25. Furthermore, Trial Chambers of the ICTR commonly impose a single, global sentence on Accused convicted of multiple crimes, making it difficult or impossible to discern what sentence would have been considered appropriate for any one of those crimes considered in isolation.<sup>41</sup> A sentence imposed on an Accused in a case before the ICTR would therefore provide a meaningful comparison to an Accused in the present case only where the convicted person had been convicted of exactly the same combination of crimes in both cases, and where the circumstances of the crimes and the personal circumstances of the convicted person were similar in both cases.
26. Nevertheless, the Prosecution makes the following observations in relation to the practice regarding prison sentences in the ICTR.
27. Although the Trial Chambers in the ICTR have indicated that genocide is “the crime of all crimes” and that offences against common Article 3 and Additional Protocol II are lesser crimes,<sup>42</sup> the Appeals Chamber of the ICTR has now held that there is no hierarchy of crimes under the ICTR Statute, and that all of the crimes within its jurisdiction are “serious violations of international humanitarian law”, capable of attracting the same sentence.<sup>43</sup> It is noted that the ICTY Appeals Chamber has also held that “there is no hierarchy of the crimes within the jurisdiction of the Tribunal and ... the sentence of life imprisonment can be imposed ... for any of the crimes under the Tribunal’s Statute.”<sup>44</sup>

<sup>40</sup> *Čelebići Appeals Judgement*, paras 715-721. See also *Kamuhanda Appeals Judgement*, para. 361.

<sup>41</sup> For instance, in the *Musema* case, Musema was convicted of one count of each genocide, extermination as a crime against humanity and rape as a crime against humanity and was sentenced to a single sentence of life imprisonment: *Musema Judgement and Sentence*.

<sup>42</sup> *Kambanda Trial Judgement*, para. 14; *Akayesu Trial Judgement*, paras 6-10; *Serushago Sentence*, para. 15; *Kayishema Sentencing Order*, para. 9.

<sup>43</sup> *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, “Judgement (Reasons)”, Appeals Chamber, 1 June 2001, para. 367 (“*Kayishema and Ruzindana Judgement (Reasons)*”).

<sup>44</sup> *Prosecutor v. Stakić*, IT-7-24-A, “Appeal Judgement”, Appeals Chamber, 22 March 2006 (“*Stakić Appeal Judgement*”), para. 375; *Tadić Sentencing Appeal Judgement*, para. 69.

28. In a number of cases, the ICTR has imposed separate sentences in respect of each of the several crimes of which an Accused was convicted.
29. In the *Akayesu* case, the accused was sentenced to a term of life imprisonment for convictions of genocide and extermination, to three terms of 15 years for three counts of murder, 10 years for torture, 15 years for rape and 10 years for other inhumane acts.<sup>45</sup> The Appeals Chamber found no errors in the Trial Chamber's analysis.<sup>46</sup> It is noted that these sentences were ordered to be served concurrently, leading to a single sentence of life imprisonment. As has been submitted above, where separate sentences are imposed for individual crimes, the aggregate sentence must be consistent with the overall culpability of the accused. For this reason, it is submitted that it cannot be assumed that the sentences for the crimes other than genocide (for which a life sentence was imposed) would necessarily have been ordered to be served concurrently if they were not to be served concurrently with the life sentence for genocide.
30. In the *Imanishimwe* case, the accused, in addition to being sentenced to two sentences of 15 years imprisonment for genocide and extermination, was sentenced to 10 years imprisonment for murder as a crime against humanity, 3 years for imprisonment as a crime against humanity, 10 years for torture as a crime against humanity, and 12 years for cruel treatment as a violation of Common Article 3.<sup>47</sup> These sentences were ordered to be served concurrently, but consecutively with the two 15 year sentences for genocide and extermination, resulting in a total sentence of 27 years imprisonment. Again, for the reasons given above, it cannot be assumed that the sentences for the crimes other than extermination and genocide would necessarily have been ordered to be served concurrently if they had not been ordered to be served consecutively with the sentences for genocide and extermination.
31. In the *Semanza* case, the accused was sentenced to significant terms of imprisonment for numerous counts of crimes against humanity: 7 years for rape, 10 years for torture,

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<sup>45</sup> *Prosecutor v. Akayesu*, ICTR-96-4-T, "Sentence", Trial Chamber, 2 October 1998, p. 8.

<sup>46</sup> *Akayesu* Appeal Judgement, para. 417.

<sup>47</sup> *Prosecutor v. Ntagerura et. al.*, ICTR-99-46-T, "Judgement and Sentence", Trial Chamber, 25 February 2004 ("**Ntagerura Judgement and Sentence**"), paras 822-827. The sentence in this case was reduced on appeal because the Appeals Chamber reversed some of the convictions entered by the Trial Chamber. However, the Appeals Chamber did not disturb the Trial Chamber's analysis of the way it imposed the sentence for the convictions as they stood at the original sentencing stage.

and two sentences of 10 years and 8 years for two counts of murder.<sup>48</sup> These sentences were ordered to be served concurrently, but consecutively with two 15 year sentences for genocide and extermination, resulting in a total sentence of 25 years imprisonment. On appeal, the conviction for genocide was increased to 25 years, making the total overall sentence 35 years. Again, it is submitted that it cannot be assumed that the sentences for the crimes other than extermination and genocide would necessarily have been ordered to be served concurrently if they were not to be served consecutively with the sentences for genocide and extermination.

32. The Prosecution submits that while the Trial Chamber should have regard to these examples from the ICTR, they are too few in number and insufficiently similar in their details to the present case, to be of any significant assistance. Nevertheless, in order to assist the Trial Chamber, Annexes A and B of these Submissions contain tables setting out various sentences imposed by Trial Chambers and Appeals Chambers in cases decided at the ICTR and ICTY respectively.

**(B). PRACTICE REGARDING PRISON SENTENCES IN THE NATIONAL COURTS OF SIERRA LEONE**

33. Article 19(1) of the Statute requires the Trial Chamber to “as appropriate, have recourse to” the practice regarding prison sentences in Sierra Leonean domestic courts. The ICTY and ICTR have similar provisions. In *Čelebići*, the Appeals Chamber held that the Trial Chamber shall “have recourse to” and should “take into account” the general practices regarding prison sentences in the former Yugoslavia, but they were not obliged to “conform to that practice.”<sup>49</sup> Similarly, the ICTR Trial Chambers have adopted the approach that although they are required to consider the Rwandan national law and practice, they are not bound by it.<sup>50</sup> The Trial Chamber will:

<sup>48</sup> *Prosecutor v. Semanza*, ICTR-97-20-T, “Judgement and Sentence”, Trial Chamber, 15 May 2003 (“*Semanza Trial Judgement*”), paras 586-288. Sentence to be served concurrently.

<sup>49</sup> *Čelebići* Appeal Judgement, para. 813. See also *Blaškić* Appeal Judgement, para. 681; *Prosecutor v. Kunarac et al*, IT-96-23, IT-96-23/1-A, “Judgement”, Appeals Chamber, 12 June 2002, (“*Kunarac Appeal Judgement*”) para. 349; *Kupreškić* Appeal Judgement, para. 418; *Stakić* Appeal Judgement, para. 398.

<sup>50</sup> *Prosecutor v. Semanza*, ICTR-97-20-A, “Appeal Judgement”, Appeals Chamber, 20 May 2005, (“*Semanza Appeal Judgement*”) paras 376-377, 393; *Prosecutor v. Serushago*, ICTR-98-39-A, “Appeals Judgment”, Appeals Chamber, 6 April 2000, (“*Serushago Appeal Judgement*”) para. 30; *Kambanda* Trial Judgement, para. 23; *Rutaganda* Trial Judgement, para. 454; *Serushago* Sentence, para. 18.

“lean more on its unfettered discretion each time that it has to pass sentence on persons found guilty of crimes falling within its jurisdiction, taking into account the circumstances of the case and the standing of the accused persons”<sup>51</sup>

34. The crimes for which the Accused in this case have been convicted, such as crimes against humanity and war crimes, are not covered under Sierra Leonean law, therefore, there is no specific guidance from the courts of Sierra Leone on the sentencing practice for these crimes. However, a general overview of the practice regarding prison sentences in Sierra Leone may be of some relevance.
35. The criminal law system of Sierra Leone is largely based on the English common law. The goals and objectives of criminal punishment in Sierra Leone refer back to the common law practice of sentencing under the English common law where judges act on the assumption that punishment must be proportionate to guilt. The applicable standard in determining what punishment is deserved in a particular case is the degree of revulsion felt by law abiding members of the community. Under the common law the key justification for criminal punishment is retribution.<sup>52</sup> (It is noted that retribution as a purpose of sentencing continues to be acknowledged in England, the Lord Chancellor of the United Kingdom having recently stated that society requires retribution if it is to have confidence in the criminal justice system, and that perpetrators of particularly heinous crimes should remain in prison for the rest of their natural lives.<sup>53</sup>)
36. In the Sierra Leonean case of *State v. Julius Pratt*, Kiiiza J. noted that by legislating a maximum fine of Le 30,000,000 or ten years imprisonment or both for the offence of misappropriation of funds:

“the legislature wanted to pass a message to people not to inflict loss on the scarce resources of the government. It is my considered view that the court must enforce such sentences as would pass on this message to would be offenders that no condonation should be expected from them.”<sup>54</sup>

<sup>51</sup> *Kambanda Trial Judgement*, para. 25.

<sup>52</sup> Bankole Thompson, “*The Criminal Law of Sierra Leone*”, University Press of America, 1999, p. 17.

<sup>53</sup> BBC News, “*Huntley should die behind bars*”, 18 March 2007. Attached at Annex J.

<sup>54</sup> *State v. Julius Pratt*, 17 November 2005. Case attached in Annex C.

37. Judges in Sierra Leonean courts have used the sentencing guidelines in the 1962 edition of *Archbold* which indicates, by way of example, the following maximum sentences for the following crimes:<sup>55</sup>
- (a) Murder: death penalty
  - (b) Attempt to murder: life imprisonment
  - (c) Manslaughter: life imprisonment
  - (d) Rape: life imprisonment
  - (e) Robbery (armed or with aggravation): life imprisonment
  - (f) Wounding with intent to maim: life imprisonment
  - (g) Malicious damage (causing explosion likely to injure life or property): life imprisonment
  - (h) Larceny (from the person or from a dwelling house): 14 years imprisonment
  - (i) Housebreaking (felony committed): 14 years imprisonment
  - (j) Forcibly or fraudulently taking away a child under 14: 5 years imprisonment
38. Under Sierra Leone law the types of sentences for the following crimes have been handed down in the recent past:
- (a) Murder: death by hanging<sup>56</sup>
  - (b) Rape/unlawful carnal knowledge: 15 years imprisonment<sup>57</sup>
  - (c) Assault causing grievous bodily harm: 8 years imprisonment,<sup>58</sup> and

<sup>55</sup> Archbold, "*Criminal Pleading Evidence and Practice*" (Sweet and Maxwell 35<sup>th</sup> edn 1962) ("*Archbold 1962*"), at pp.4301 to 4332, attached at Annex D. Statutes of England that predate 1880 are applicable in Sierra Leone, subject to amendment by Sierra Leonean legislation. Statutes of England that postdate 1880 are only of persuasive authority in Sierra Leone except unless they have been specifically adopted in Sierra Leone. The 1962 edition of Archbold is used for reference in Sierra Leone because subsequent editions deal with legislation that is not applicable in Sierra Leone.

<sup>56</sup> *The State. v. Vandi Johnson; The State vs. Tommy M'Bayoh & 3 Others*, attached in Annex C. The penalty for murder is based on the common law.

<sup>57</sup> Under the Prevention of Cruelty to Children Act 1960 (Sierra Leone), the maximum sentence for this crime is 15 years imprisonment. In *State v. Aiah Musa Mommoni*, High Court of Sierra Leone, 3 June 2004. Shuster J., in imposing the maximum sentence of 15 years, held that there were no mitigating factors. The victim in that case was nine years old and the accused was her uncle. The judge in passing sentence stated that, "there needs to be a clear message sent to everyone in this country, you do not abuse any child.... Sierra Leone was the 7<sup>th</sup> signatory to the Convention to the Rights of the Child. My Court will always protect the rights of children....he is lucky that the state did not charge him with the crime of rape because if they would have done so he would have gone to prison for much longer". Aggravating circumstances in this case were held to be that the convicted person had abused his position of trust and created a very dangerous situation by gagging the child's mouth. Case attached in Annex C.

(d) Conspiracy, shop-breaking and larceny: 10 years imprisonment.<sup>59</sup>

39. With respect to convictions for other serious criminal offences, the determination of sentence is largely left to the discretion of the judge based on the particular circumstances of the case taking into account any aggravating and mitigating factors. Judges in Sierra Leone impose significant terms of incarceration for a variety of offences largely because of the need to deter others from committing such crimes in the future.

### (C). GRAVITY OF THE OFFENCES

40. When determining sentence, the Trial Chamber must consider the gravity of the offence.<sup>60</sup> It has been held by the ICTY Appeals Chamber that the gravity of the offence of which an Accused is convicted is “[B]y far the most important consideration, which may be regarded as the litmus test for the appropriate sentence”.<sup>61</sup> It has similarly described the gravity of the offence as the “primary consideration”,<sup>62</sup> or the “starting point”.<sup>63</sup>
41. The determination of the gravity of a crime requires a consideration of the particular circumstances of the case, as well as the *form* and *degree* of the participation of the accused in the crime.<sup>64</sup> In other words, the main determinant of any evaluation of an appropriate sentence rests on the circumstances of the crime with which the accused has been found guilty and his role therein.<sup>65</sup> The fact that an accused is found guilty as an “indirect co-perpetrator” does not in itself entitle him to a lower sentence, since the role of “indirect co-perpetrators” can be very significant, particularly in cases of large

<sup>58</sup> Under the *Offences Against the Person Act 1861*, penalties range from five years imprisonment to life imprisonment. In *State v. Hassan Mahoi*, High Court of Sierra Leone, 8 November 2005, Shuster J. held that the fact that the victim was blinded because of the attack and that the accused was laying in wait for her after a court hearing were aggravating circumstances. Case attached in Annex C.

<sup>59</sup> See *State v. Amadu Macaully et. al.*, High Court of Sierra Leone, 25 October 2001. Case attached in Annex C.

<sup>60</sup> Statute, Article 19(2).

<sup>61</sup> *Čelebići* Appeal Judgement, para. 1225. See also *Prosecutor v. Nikolić*, IT-94-2-A, “Judgement on Sentencing Appeal”, Appeals Chamber, 4 February 2005 (“*Nikolić-Dragan Appeal Judgement*”), para 18 and *Stakić* Appeal Judgement, para. 375; *Blaškić* Appeal Judgement, para. 683 (using the expression “litmus test”).

<sup>62</sup> *Čelebići* Appeal Judgement, para. 731; *Brđanin* Trial Judgement, para. 1094.

<sup>63</sup> *Aleksovski* Appeal Judgement, para. 182.

<sup>64</sup> *Stakić* Appeal Judgement, para. 380; *Blaškić* Appeal Judgement, para. 683.

<sup>65</sup> *Kambanda* Trial Judgement, para. 25.



scale crimes which could not be committed without the help of the indirect co-perpetrators in such ways as planning, instigating, coordinating or organising.<sup>66</sup>

42. An ICTY Trial Chamber has held that: “because of their heinousness and magnitude [crimes against humanity] constitute egregious attacks on human dignity, on the very notion of humaneness.”<sup>67</sup>
43. The following factors, the Prosecution submits, should be considered in assessing the gravity of the offences in cases before the Special Court. These factors are not to be considered as aggravating circumstances, which are dealt with separately in this Brief, since factors used to determine the gravity of the offence may not also be factors considered in aggravation of the crimes: double-counting is impermissible.<sup>68</sup>

*(a) The number of victims*

44. The number of victims reflects the scale of the crimes will be considered in assessing the gravity of the offence.<sup>69</sup>

*(b) The impact of the crimes on the victim*

45. In determining the gravity of the crime, relevant considerations will always include the consequences of the crime upon the victim directly injured (that is, “the extent of the long-term physical, psychological and emotional suffering of the immediate victims”), and the effects of the crime on relatives of the immediate victims.<sup>70</sup>

*(c) The impact of the crimes on others*

46. Certain crimes of which Brima has been convicted, such as acts of terrorism, are of their nature crimes against an entire population, and the case of such crimes, the “direct” victim of the crime is the community as a whole that was the subject of that attack. In assessing the gravity of such large scale crimes, the Trial Chamber should

<sup>66</sup> *Stakić* Appeal Judgement, para. 380.

<sup>67</sup> *Prosecutor v. Obrenović*, IT-02-60/2, “Trial Judgement”, Trial Chamber, 10 December 2003 (“*Obrenović Trial Judgement*”), para. 65.

<sup>68</sup> *Deronjić* Appeal Judgement, paras 106-107; *Stakić* Appeal Judgement, paras 412-413, 694.

<sup>69</sup> *Prosecutor v. Babić*, IT-03-72-S, “Sentencing Judgement”, Trial Chamber, 29 June 2004 (“*Babić Sentencing Judgement*”), para. 47; *Prosecutor v. Češić*, IT-95-10/1, “Trial Judgement”, Trial Chamber, 11 March 2004, (“*Češić Judgement*”), para. 32.

<sup>70</sup> *Blaškić* Appeal Judgement, para. 683.

take into account the impact of the crime not only on those who were direct victims of violence committed in the course of the crime, but also the impact on other members of the community, such as survivors.<sup>71</sup>

47. Even in those cases where the direct victim of a crime was a particular individual (for instance, in the case of a murder or rape), it is permissible and appropriate for the Trial Chamber, in assessing the gravity of the crime, to consider also the impact of the crimes on others. The Appeals Chamber of the ICTY has held, reversing a contrary finding by the Trial Chamber, that the Trial Chamber is not required to limit its consideration to the impact on the immediate direct victim.<sup>72</sup> It stated that:

“... the case-law of some domestic courts shows that a trial chamber may still take into account the impact of a crime on a victim’s relatives when determining the appropriate punishment. The Appeals Chamber considers that, even where no blood relationships have been established, a trier of fact would be right to presume that the accused knew that his victim did not live cut off from the world but had established bonds with others. In this instance, no consideration was given to the effect of the crimes on these people.”<sup>73</sup>

This passage makes clear that the Trial Chamber should look at the impact of crimes on victims’ relatives, and also the impact on others to whom the victim is not related but with whom the victim has “established bonds”. The Prosecution submits that where a victim has “established bonds” with all members of his or her community, it is appropriate for the Trial Chamber to consider the impact on the community as a whole.

***(d) Multiple crimes under one count***

48. A conviction for multiple instances of a crime under one count adds to the gravity of the crimes committed.<sup>74</sup>

<sup>71</sup> Prosecutor v. *Nikolić-Momir*, IT-02-60/1-A, “Appeal Judgement”, Appeals Chamber, 8 March 2006, (“*Nikolić-Momir Appeal Judgement*”), paras. 64-66.

<sup>72</sup> *Krnojelac* Appeal Judgement, paras. 259-260.

<sup>73</sup> *Ibid.*, para. 260.

<sup>74</sup> *Češić* Judgement, para. 34.

*(e) The Accused's role and participation in the crime*

49. The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crimes.<sup>75</sup>
50. The Trial Chamber must consider the specific role played by the Accused in the commission of the crime,<sup>76</sup> including the functions and duties performed by the Accused and the manner in which those tasks and duties were carried out.<sup>77</sup>
51. Where an Accused is convicted on the basis of superior responsibility under Article 6(3), a consideration of the gravity of offences committed under Article 6(3) of the Statute involves, in addition to a consideration of the gravity of the conduct of the superior, a consideration of the seriousness of the underlying crimes.<sup>78</sup> In particular, an ongoing failure by a superior to exercise the duties to prevent or punish, with its implicit effect of encouraging subordinates to believe that they can commit further crimes with impunity, must be regarded as being of significantly greater gravity than isolated incidents of such a failure.<sup>79</sup> In the *Blaškić* case, the Trial Chamber went so far as to hold that if a commander “fails in his duty to prevent the crime or to punish the perpetrator thereof he should receive a heavier sentence than the subordinates who committed the crime insofar as the failing conveys some tolerance or even approval on the part of the commander towards the commission of crimes by his subordinates and thus contributes to encouraging the commission of new crimes. It would not in fact be consistent to punish a simple perpetrator with a sentence equal or greater to that of the commander”.<sup>80</sup> Although the Appeals Chamber significantly reduced the sentence in that case on appeal for various reasons, it did not suggest that this particular finding by the Trial Chamber was incorrect.<sup>81</sup>

<sup>75</sup> Quoted in *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, “Judgement”, Appeals Chamber, 17 December 2004 (“*Kordić and Čerkez Appeal Judgement*”), para. 1061.

<sup>76</sup> *Prosecutor v. Blagojević*, IT-02-60-I, “Trial Judgement”, Trial Chamber, 17 January 2005 (“*Blagojević Trial Judgement*”), para. 833; *Prosecutor v. Mrdja*, IT-02-59-S, “Sentencing Judgement”, Trial Chamber, 31 March 2004 (“*Mrdja Sentencing Judgement*”), para. 21; *Nikolić-Dragan Sentencing Judgement*, para. 114.

<sup>77</sup> *Nikolić-Dragan Sentencing Judgement*, para. 114.

<sup>78</sup> *Čelebići Appeal Judgement*, paras 732 and 741.

<sup>79</sup> *Ibid.*, para. 739.

<sup>80</sup> *Blaškić Trial Judgement*, para. 789.

<sup>81</sup> *Blaškić Appeal Judgement*, paras. 672-729.

**(D). INDIVIDUAL CIRCUMSTANCES OF THE CONVICTED PERSON**

52. Article 19(2) of the Statute directs the Trial Chamber, in imposing sentence, to have regard to the individual circumstances of the convicted person.
53. In relation to this sentencing factor, one Trial Chamber of the ICTR has said that:
- “The individualization of the sentence is not possible unless facts about the convicted person’s ‘personality’ are known, including his or her background, behaviour before, during and after the offence, motives of the offence, and demonstration or remorse thereafter.”<sup>82</sup>
54. Such circumstances have been held to include the age, antecedents and reputation of an accused,<sup>83</sup> the social pressures and hostile environment in which the convicted person was operating,<sup>84</sup> and the age and family situation of the convicted person.<sup>85</sup>
55. However, it has been held that in a case of gravity, no significance of weight can be given to considerations such as the accused’s age<sup>86</sup> or family background,<sup>87</sup> or the fact that an accused has no previous convictions,<sup>88</sup> or is the father of young children.<sup>89</sup> With regard to young age, at the ICTY in *Blaškić*, the Trial Chamber noted that “the ICTY considers accused aged between 19 and 23 at the time of the facts as being young, the ICTR selects ages from 32 to 37.”<sup>90</sup> In *Češić*, the Trial Chamber held “we are not aware of any domestic system where 27 years is treated as a young age and may be considered a mitigating factor.”<sup>91</sup> In *Mrdja*, the Trial Chamber said “we do not find the age of the accused, 25 years at the time of the crimes, to be such a young age that it would justify mitigation.”<sup>92</sup>

<sup>82</sup> *Kambanda* Trial Judgement, para. 34.

<sup>83</sup> *Čelebići* Trial Judgement, paras 1224-1227.

<sup>84</sup> *Čelebići* Trial Judgement, paras 1245-1248.

<sup>85</sup> For instance, *Serushago* Sentence, para. 39.

<sup>86</sup> *Jokić* Sentencing Judgement, para. 100. See also

<sup>87</sup> *Obrenović* Trial Judgement, paras 139-140; *Prosecutor v. Nikolić-Momir*, IT-02-60, Trial Chamber, “Sentencing Judgement”, 2 December 2003, (“*Nikolić-Momir Sentencing Judgement*”), para. 170. See also *Akayesu* Trial Judgement, p. 6-7; *Prosecutor v. Bisengimana*, ICTR-00-60, “Judgement and Sentence”, Trial Chamber, 13 April 2006, (“*Bisengimana Judgement and Sentence*”) para. 180; *Niyitegeka* Judgement, paras 491 and 500.

<sup>88</sup> *Furundžija* Judgement, para. 254; *Prosecutor v. Jelisić*, “Judgement”, Trial Chamber, IT-95-10-T, 14 December 1999, (“*Jelisić Judgement*”) para. 124; *Brđanin* Trial Judgement, para 1127.

<sup>89</sup> *Furundžija* Judgement, para. 254; *Jelisić*, Judgement, para. 124; *Serushago* Appeal Judgement, para 22.

<sup>90</sup> *Blaškić* Trial Judgement, para. 778.

<sup>91</sup> *Češić* Trial Judgement, para. 91.

<sup>92</sup> *Mrdja* Sentencing Judgement, para. 93.

56. The Appeals Chamber in *Čelebići* has said that evidence as to character of the accused has been considered in both mitigation and aggravation.<sup>93</sup> It has been suggested that the good background of an accused may aggravate more than mitigate, since for a person of good background to commit serious crimes “requires an even greater evil will on his part than that for lesser men”.<sup>94</sup> For similar reasons, the professional education and background of an accused may be an aggravating factor.<sup>95</sup> It is submitted that it is only in exceptional circumstances that previous good character can be considered as a factor in mitigation.<sup>96</sup>
57. It is only in exceptional or rare cases that ill health should be considered a mitigating factor<sup>97</sup>. For example, in *Simić*, the convicted was a wheelchair-bound paraplegic and in *Serugendo*, his sentence was reduced because he was suffering from a terminal disease.<sup>98</sup>

#### (E). AGGRAVATING CIRCUMSTANCES

58. The rules require the Trial Chamber to consider any aggravating circumstance in determining an appropriate sentence.<sup>99</sup> Only those circumstances directly related to the commission of the offence charged may be seen as aggravating.<sup>100</sup> To be taken into account by the Trial Chamber, aggravating factors must be proven beyond reasonable doubt.<sup>101</sup>
59. Aggravating factors have been held to include the following:
- (1) the status of victims as civilians, elderly, women, children, wounded, detainees and their position of vulnerability and helplessness;<sup>102</sup>
  - (2) the fact that the victims are young, especially where the victims are children;<sup>103</sup>

<sup>93</sup> *Čelebići* Trial Judgement, para. 788.

<sup>94</sup> *Tadić* Sentencing Judgement, para. 59.

<sup>95</sup> *Brđanin* Trial Judgement, para. 1114; *Prosecutor v. Simić et al*, IT-95-9, “Judgement”, Trial Chamber, 17 October 2003, (“**Simić Judgement**”) paras 1084, 1095, 1108.

<sup>96</sup> *Prosecutor v. Galić*, IT-98-29-A, “Appeal Judgment”, Appeals Chamber, 30 November 2006, para 51

<sup>97</sup> *Galić* Appeal Judgement, para. 436.

<sup>98</sup> *Prosecutor v. Serugendo*, ICTR-2005-84-1, “Trial Judgement”, Trial Chamber, 12 June 2006, paras 70-74, 92.

<sup>99</sup> Rule 101(B)(i).

<sup>100</sup> *Kunarac* Trial Judgement, para. 850; *Deronjić* Sentencing Judgement, para. 185.

<sup>101</sup> *Blaškić* Appeal Judgement, para. 696; *Prosecutor v. Naletilić and Martinović*, IT-94-38-A, “Appeals Judgement”, Appeals Chamber, 3 May 2006 (“**Naletilić and Martinović Appeal Judgement**”), para. 592.

<sup>102</sup> *Nikolić-Dragan* Appeal Judgement, para. 66; *Deronjić* Appeal Judgement, para. 124; *Kordić and Čerkez* Appeal Judgement, para. 1088; see also *Brđanin* Trial Judgement, para. 1104; *Nikolić-Dragan* Sentencing Judgement, para. 184; *Blagojević* Trial Judgement, para. 844; *Mrdja* Sentencing Judgement, para. 48.

- (3) “exacerbated humiliation and degradation, depravity and sadistic behaviour”,<sup>104</sup> or “total disregard for the sanctity of human life and dignity”;<sup>105</sup>
- (4) the duration of the criminal conduct, the aggravation being proportionate to the length of time over which the conduct was engaged in;<sup>106</sup>
- (5) premeditation (for instance, the fact that the accused voluntarily chose to participate in the crime,<sup>107</sup> or the fact that the accused initiated or aggravated a crime, as opposed to being merely a participant who was drawn into a maelstrom of violence);<sup>108</sup>
- (6) in the case of an accused convicted under Article 6(1) of the Statute, the fact that the accused could have not only refrained from participating but could have actually prevented the others from committing the crime;<sup>109</sup>
- (7) behaviour of the accused during trial, such as intimidation of witnesses or the passing of notes between co-accused relating to the merits of the case,<sup>110</sup> or smiling or laughing as survivors of crimes testify.<sup>111</sup>
60. Breach of a position of trust or authority is an additional aggravating factor,<sup>112</sup> for instance, where the accused was in a position which carried with it a duty to protect and defend the very victims of the crimes, such as a position of government official,<sup>113</sup> police chief<sup>114</sup> or commander.<sup>115</sup> Indeed, this has been regarded as an “overwhelmingly aggravating” factor.<sup>116</sup>

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<sup>103</sup> Prosecutor v. Kunarac, “Judgement”, IT-96-23/1-A, Appeals Chamber, 12 June 2002 (“*Kunarac Appeal Judgement*”), paras. 354-355, 381.

<sup>104</sup> Quoted in *Češić* Sentencing Judgement, para. 53. See also *Jelisić* Trial Judgement, paras. 130-131; *Prosecutor v. Bralo*, IT-95-17-S, “Sentencing Judgement”, Trial Chamber, 7 December 2005 (“*Bralo Sentencing Judgement*”), paras 33-35.

<sup>105</sup> *Čelebići* Trial Judgement, para. 1268.

<sup>106</sup> *Kunarac Appeal Judgement*, paras. 356, 382.

<sup>107</sup> *Akayesu* Trial Judgement, p. 7; *Kambanda* Trial Judgement, para. 61(B)(vi); *Serushago* Sentence, para. 30; *Kayishema* Sentencing Order, para. 13; *Prosecutor v. Tadić*, *Sentencing Judgement*, para. 55..

<sup>108</sup> *Prosecutor v. Krstić*, IT-98-33, “Trial Judgement”, Trial Chamber, 2 August 2001 (“*Krstić Trial Judgement*”), para. 711.

<sup>109</sup> See *Kordić and Čerkez* Trial Judgement, para. 853. However, in the case of an accused convicted under Article 6(3) for *failure to prevent* crimes committed by subordinates, this is an element of the offence and therefore cannot be taken into account as an aggravating factor.

<sup>110</sup> *Čelebići Appeal Judgement*, para. 789.

<sup>111</sup> *Kayishema* Sentencing Order, para. 17.

<sup>112</sup> *Kayishema* Sentencing Order, para. 15.

<sup>113</sup> *Rutağanda* Trial Judgement, para. 469; *Kambanda* Trial Judgement, para. 44, *Gacumbitsi Appeal Judgement*, para 193. *Niyitegeka* Judgement, para. 499.

<sup>114</sup> *Todorović* Sentencing Judgement, para. 61.

61. In the case of an accused convicted under 6(1) of the Statute, it is an aggravating circumstance that the Accused held a high ranking position.<sup>117</sup> In *Brđanin*, the Trial Chamber stated that the “consequences of a person’s acts are necessarily more serious if he is at the apex of a military or political hierarchy and uses his position to commit crimes.”<sup>118</sup> In *Obrenović*, the Trial Chamber noted that it is the actual authority exercised by the Accused and not necessarily the rank that is important – holding a middle-ranking position can also be considered aggravating.<sup>119</sup> The Trial Chamber, in *Blaškić*, added that command position must “systematically increase the sentence or at least lead the Trial Chamber to give less weight to the mitigating circumstances, independently of the issue of the form of participation in the crime.”<sup>120</sup>
62. In *Kamuhanda*, the Trial Chamber noted that “The high position...as a civil servant can be considered as an aggravating factor.”<sup>121</sup>
63. The Trial Chamber noted, in *Kordić and Čerkez*, that the fact that the accused was a leader aggravates the offences.<sup>122</sup>
64. The Appeals Chamber of the ICTR has accepted the principle, consistent with the case law of the ICTY, that “that the most senior members of a command structure, that is, the leaders and planners of a particular conflict, should bear heavier criminal responsibility than those lower down the scale, such as the foot soldiers carrying out the orders. But this principle is always subject to the crucial proviso that the gravity of the offence is the primary consideration of a Trial Chamber in imposing sentence.”<sup>123</sup>
65. Even where an accused held no position of authority, it has been held to be an aggravating factor that the accused held a position of prominence or trust and respect in

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<sup>115</sup> *Prosecutor v. Sikirica* IT-95-8, “Sentencing Judgement”, Trial Chamber, 13 November 2001, (“*Sikirica Sentencing Judgement*”) paras 139-140; *Ntagerura* Judgement and Sentence, para. 819.

<sup>95</sup> *Bisengimana* Judgement and Sentence, para. 182.

<sup>117</sup> *Krstić* Trial Judgement, para. 709; *Kupreškic* Appeal Judgement, para. 451; *Babić* Sentencing Judgement, para. 61; *Prosecutor v. Stakić*, IT-97-24-T, “Judgement”, Trial Chamber, 31 July 2003, (“*Stakić Judgement*”) para. 913.

<sup>118</sup> *Brđanin* Trial Judgement, para. 1099.

<sup>119</sup> *Obrenović* Trial Judgement, para. 99.

<sup>120</sup> *Prosecutor v. Blaškić*, IT-95-14, “Judgement”, Trial Chamber, 3 March 2000 (“*Blaškić Trial Judgement*”), para. 788.

<sup>121</sup> *Kamuhanda* Trial Judgement, para. 764.

<sup>122</sup> *Prosecutor v. Kordić and Čerkez*, IT-95-14/2, “Judgement”, Trial Chamber, 26 February 2001 (“*Kordić and Čerkez Trial Judgement*”), para. 853.

<sup>123</sup> *Musema* Appeal Judgement, para. 383.

- the community, such that it was likely that others would follow the accused's example.<sup>124</sup>
66. Where the Trial Chamber finds that both direct responsibility under Article 6(1) and superior responsibility under Article 6(3) are proved in respect of the same conduct, the Trial Chamber must, in its consideration of sentence, take into account the fact that both types of responsibility were proved. The Appeals Chamber of the ICTY has held that this may be considered by the Trial Chamber either (1) in terms of imposing punishment on the accused for two separate offences encompassed in the one count; or (2) in terms of the direct participation aggravating the Article 6(3) [=ICTY Article 7(3)] responsibility; or (3) in terms of the accused's seniority or position of authority aggravating his direct responsibility under Article 6(1) [=ICTY Article 7(1)].<sup>125</sup> In the present case, the Trial Chamber adopted the third of these possibilities, and decided that it would in such cases enter a conviction on Article 6(1) and take into account the Article 6(3) responsibility at the sentencing stage.<sup>126</sup>
67. In the case of an accused convicted under Article 6(3) in respect of a particular crime, the fact of "active participation by a superior in the criminal acts of subordinates" may be regarded as an aggravating factor.<sup>127</sup>
68. As noted above, factors used to determine the gravity of the offence may not also be factors considered in aggravation of the crimes, since double-counting is impermissible.<sup>128</sup> However, a consideration of the role of the accused in determining the gravity of the offence does not preclude considering abuse of authority as an aggravating circumstance.<sup>129</sup>

#### (F). MITIGATING CIRCUMSTANCES

<sup>124</sup> *Semanza* Trial Judgement, para. 573 ; *Prosecutor v. Kamuhanda*, ICTR-95-54A-T "Judgement", Trial Chamber, 22 January 2004 ("**Kamuhanda Trial Judgement**"), para. 764; *Kamuhanda* Appeal Judgement, para. 348.

<sup>125</sup> *Čelebići* Appeal Judgement, paras 745-746, *Brđanin* Trial Judgement, para. 285.

<sup>126</sup> Trial Chamber's Judgement, paras, 800, 2110-2111, referring to *Blaskić* Appeals Judgement, para. 91. See also, for instance *Prosecutor v. Kajelijeli* "Judgement", ICTR-98-44A-A, Appeals Chamber, 23 May 2005, ("**Kajelijeli Appeals Judgement**") para 82.

<sup>127</sup> *Čelebići* Appeal Judgement, para 736.

<sup>128</sup> *Deronjić* Appeal Judgement, paras 106-107; *Stakić* Appeal Judgement, paras 412-413, 694.

<sup>129</sup> *Nikolić-Dragan* Appeal Judgement, para. 61.



69. As is the case with aggravating factors, the Trial Chamber is required to consider and give appropriate weight to “any mitigating factors.”<sup>130</sup> The finding of mitigating circumstances may result in the reduction of a sentence that would otherwise have been imposed. Accepting the existence of mitigating factors in no way derogates from the gravity of the crime.<sup>131</sup> Mitigating factors need only be proven on the balance of probabilities.<sup>132</sup>
70. Pursuant to Rule 101(B), the only mitigating factor the Trial Chamber is specifically required to consider is the substantial cooperation of the Accused with the Prosecution.<sup>133</sup>
71. Matters that may be taken into account as mitigating factors include diminished mental responsibility,<sup>134</sup> involuntary intoxication (but not intoxication in general),<sup>135</sup> duress or superior orders,<sup>136</sup> or forced participation in the crime.<sup>137</sup> Article 6(4) of the Statute expressly provides that superior orders may be a mitigating factor, but they need not be treated as such if the superior orders were manifestly illegal and were complied with voluntarily by the accused when under no duress to do so.<sup>138</sup>
72. Other matters that may be taken into account as mitigating factors include admission of guilt or early guilty plea,<sup>139</sup> expressions of remorse,<sup>140</sup> voluntary surrender,<sup>141</sup> subsequent conduct demonstrating intentions to “make amends” or to atone for the crimes committed,<sup>142</sup> good behaviour while in detention,<sup>143</sup> and advanced age.
73. In *Brđanin*, the Trial Chamber took into account as credit the length of the Accused’s detention at the time of his sentencing but did not qualify it as a mitigating factor.<sup>144</sup> In

<sup>130</sup> Rule 101(B)(ii).

<sup>131</sup> *Brđanin* Trial Judgement, para 1117.

<sup>132</sup> *Naletilić and Martinović* Appeal Judgement, para. 592.

<sup>133</sup> Rule 101(B)ii.

<sup>134</sup> *Celebici* Appeal Judgement, para. 590.

<sup>135</sup> *Kvočka* Appeal Judgement, paras. 707-708.

<sup>136</sup> *Bralo* Sentencing Judgement, para. 53.

<sup>137</sup> *Krstić* Trial Judgement, para. 714.

<sup>138</sup> *Mrdja* Sentencing Judgement, paras 65-68.

<sup>139</sup> *Serushago* Sentence, para. 35; *Prosecutor v. Ruggiu*, ICTR-97-32-I, “Judgement and Sentence”, Trial Chamber, 1 June 2000, para. 55; *Todorović* Sentencing Judgement, para. 80.

<sup>140</sup> *Serushago* Sentence, paras 40-41.

<sup>141</sup> *Prosecutor v. Kupreškić et al*, IT-95-16, “Judgement”, Trial Chamber, 14 January 2000 (“*Kupreškić Judgement*”), para. 853.

<sup>142</sup> *Prosecutor v. Babić*, IT-03-72-A, “Judgement”, Appeals Chamber, 18 July 2005 (“*Babić Judgement*”), para. 55; *Obrenović* Trial Judgement, paras 144-146. See also *Babić* Sentencing Judgement, para. 94.

<sup>143</sup> *Kordić and Čerkez* Appeal Judgement, para. 1053.

*Nikolić*, the Trial Chamber stated that “the problem (of time lapse) has been discussed by the European Court of Human Rights, as well as in decisions of several national courts. Common to all leading decisions is that any disproportionate length of procedures may be considered as a mitigating factor in sentencing.”<sup>145</sup> It ruled however that neither the length of time between the criminal conduct (in the 1990s) and the judgement (2003), nor the time between arrest (2000) and judgement, could be considered as a mitigating factor.<sup>146</sup> In *Mrdja*, the court found that a period of 12 years between the commission of the crimes and sentencing proceedings was not so long as to consider it a factor for mitigation.<sup>147</sup>

74. The fact that the accused gave substantial assistance or protection to vulnerable individuals,<sup>148</sup> or saved lives,<sup>149</sup> might constitute a mitigating factor. However, the ICTY Appeals Chamber has made clear that “[S]elective assistance is less decisive when one notes that criminals frequently show compassion for some of their victims even when perpetrating the most heinous crimes.”<sup>150</sup> The jurisprudence on “selective assistance” is consistent: little if any weight should be given to this factor.
75. The chaotic situation at the time of commission of the crimes should not be considered as a mitigating factor. In the *Blaškić* case, the Appeals Chamber stated that “A finding that a chaotic context might be considered as a mitigating factor in circumstances of combat operations risks mitigating the criminal conduct of all personnel in a war zone. Conflict is by nature chaotic, and it is incumbent on the participants to reduce that chaos and to respect international humanitarian law. The Appeals Chamber sees no merit and no logic in recognizing the mere context of war itself as a factor to be considered in the mitigation of the criminal participants.”<sup>151</sup>

<sup>144</sup> *Brđanin* Trial Judgement, para. 1134.

<sup>145</sup> *Nikolić-Dragan* Sentencing Judgement, paras 269-270.

<sup>146</sup> *Ibid*, paras 271, 273.

<sup>147</sup> *Mrdja* Sentencing Judgement, para. 104.

<sup>148</sup> *Bralo* Sentencing Judgement, para. 59.

<sup>149</sup> *Češić* Trial Judgement, para. 78.

<sup>150</sup> *Prosecutor v. Kvočka* IT-98-30/1, “Appeals Judgement”, Appeals Chamber, 28 February 2005 (“*Kvočka Appeal Judgement*”), para. 693 quoting *Čelebići* Appeal Judgement para. 776, citing *Blaškić* Trial Judgement, para. 781.

<sup>151</sup> *Blaškić* Appeal Judgement, para 710-711, confirmed in *Bralo* Sentencing Judgement, para. 51 and *Prosecutor v. Banović*, IT-02-65/1, “Trial Judgement”, Trial Chamber, 28 October 2003, (“*Banović Judgement*”) paras 44, 48. See also *Kunarac* Appeal Judgement, para. 408.

#### IV. THE CASE OF BRIMA

##### A. PRACTICE REGARDING PRISON SENTENCES IN THE ICTR

76. The Prosecution refers to Annexes A and B of these Submissions. The limited utility of comparisons with sentences imposed by the ICTR and ICTY has been dealt with above. Nevertheless, the Prosecution submits that, when all relevant factors are considered, the crimes of which Brima was convicted would have been likely to have led to the imposition of a sentence of life imprisonment at the ICTR (a sentence which the Special Court does not have the power to impose<sup>152</sup>). The Prosecution submits that a consideration of this factor would lead to the result that the sentence imposed on Brima should have the practical effect of amounting to an approximation of life imprisonment.

##### B. PRACTICE REGARDING PRISON SENTENCES IN THE NATIONAL COURTS OF SIERRA LEONE

77. The crimes of which Brima has been convicted include, in addition to numerous other crimes, personally perpetrating the murders of 17 people.<sup>153</sup> The Prosecution submits that for these crimes alone, even without consideration of the other crimes of which he has been convicted, Brima would under the law and practice in Sierra Leone be sentenced to death, a sentence which might be commuted to life imprisonment. A comparable sentence imposed by the Special Court would be one which would ensure that Brima remained in prison for the remainder of his natural life.

##### C. GRAVITY OF THE OFFENCES

###### (A). *The number of victims*

<sup>152</sup> See paragraphs 158-159 below.

<sup>153</sup> Brima was found to have personally killed 12 civilians in mosque in Karina (the Imam, 6 men and 5 women) (Trial Chamber's Judgement, paras 1703-1709); to have personally murdered of 3 Nigerian civilians in State House (Trial Chamber's Judgement, para 1755), to have personally killed the wife of a soldier outside State House (Trial Chamber's Judgement, paras 1756-1760), and to have personally shot dead a nun in Freetown (Trial Chamber's Judgement, paras 1761-1764).

78. The crimes for which Brima was convicted involved a very large number of victims. Brima was found to have committed personally some 17 murders,<sup>154</sup> and to have personally amputated the hand of one victim.<sup>155</sup> He was found guilty of ordering numerous other crimes including killings, amputations, abductions, rapes, acts of terror and looting involving hundreds of victims. For instance, in Karina the Trial Chamber found that civilians were killed on a massive scale.<sup>156</sup> One witness estimated that at least 200 civilians were killed in the attack on Karina,<sup>157</sup> a figure corroborated by the totality of the evidence given, the massiveness of the attack on the village and the general destruction caused.<sup>158</sup> The violence inflicted on the civilian population in Freetown and the destruction of civilian property was extreme.<sup>159</sup> Similarly, the Trial Chamber described as “massive” the civilian casualties inflicted by the retreating AFRC forces.<sup>160</sup> Large scale numbers of civilians, including many young children, were enslaved and many of these young children forced to become child soldiers. The impact of the crimes affected all levels and sectors of Sierra Leonean society, including civilian men, women, children, government officials, police and religious leaders. Brima was also found to have superior responsibility under Article 6(3) of the Statute for all crimes in Bombali in which he did not personally participate,<sup>161</sup> and for all crimes committed in Freetown and the Western Area.<sup>162</sup>
79. Brima has been found to be criminally liable for the terrorization of the civilian population in incidents in Bombali District, and during the invasion of and retreat from Freetown. As all members of the civilian population who were so terrorized are direct victims of these crimes, the victims of these crimes for which Brima is responsible number in the tens or even hundreds of thousands.

**(B). *The impact of the crimes on the victims and others***

<sup>154</sup> See paragraph 77 above.

<sup>155</sup> Trial Chamber’s Judgement, paras. 1767-1769.

<sup>156</sup> Trial Chamber’s Judgement, para. 894.

<sup>157</sup> TF1-055, Transcript 12 July 2005, p. 80.

<sup>158</sup> Trial Chamber’s Judgement, para. 894.

<sup>159</sup> Trial Chamber’s Judgement, para. 418.

<sup>160</sup> Trial Chamber’s Judgement, para. 207.

<sup>161</sup> Trial Chamber’s Judgement, para. 1744.

<sup>162</sup> Trial Chamber’s Judgement, para. 1810.

80. Annex E of this Brief contains statements of witnesses who testified before the Trial Chamber explaining the impact which the crimes have had on their lives. Annex F to this Brief contains portions of transcripts of witnesses who suffered distress whilst giving evidence of the crimes of which they were victim and which they were forced to recall. The video recordings of the testimony of these witnesses has been retained as part of the trial record and is available for review by the Trial Chamber in the context of the sentencing hearing.
81. Annex G to these Submissions contains an expert report by Ms An Michels, Psychologist, entitled “On the Psychological Impact of War related crimes on Victims of the Sierra Leonean conflict”, which may assist the Trial Chamber in assessing this sentencing factor.
82. In order to obtain further information on the impact of the specific crimes of which Brima was convicted on the victims and others, the Prosecution requests the Trial Chamber to request Ms Susan Stepakoff (the clinical psychologist employed by the Special Court in the Victims and Witnesses Section (WVS) under the Registry), to prepare an expert report on this question, or to call Ms Stepakoff to testify as an expert witness at the sentencing hearing. The Prosecution had considered Ms Stepakoff as a Prosecution witness in relation to these matters, but decided in consultation with the Registry that it might not be considered appropriate for a staff member of the VWS to be called as a Prosecution witness. The Prosecution submits that it would be preferable for Ms Stepakoff to be called as an independent and impartial witness by the Trial Chamber itself.
83. Annex H to these Submissions contains various articles written on the impact of similar crimes to those committed on the victims in this case, which may assist the Trial Chamber in determining an appropriate sentence for Brima.
84. The Prosecution reserves its right, with the leave of the Trial Chamber, at any sentencing hearing, to call witnesses, submit documentation including Reports and give oral submissions on the impact of the crimes on the victims.<sup>163</sup>

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<sup>163</sup> *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T, Status Conference Transcript, 20 March 2007, p. 76 (line 21) to p. 77 (line 20).

**(D). Cumulative convictions**

85. The Trial Chamber should take into account in sentencing the fact that in relation to certain conduct, Brima satisfied the legal elements of more than one crime within the jurisdiction of the Special Court, and was therefore convicted cumulatively of more than one crime in respect of the same conduct.<sup>164</sup> A convicted person cannot be punished more than once in respect of the same conduct. However, conduct that satisfies the elements of more than one crime within the jurisdiction of the Special Court is graver than conduct which satisfies the elements of only one crime, and this should be reflected in sentencing.

**(E). The Accused's role and participation in the crime**

86. In addition to the crimes which Brima personally perpetrated, he was instrumental in the commission of all of the other crimes of which he was convicted. He led the attacks on Karina and the ultimate invasion of Freetown in January 1999. He specifically ordered the commission of crimes in Karina,<sup>165</sup> the terrorization of the civilian population around Rosos,<sup>166</sup> and the murder of civilians at Mateboi and Gbendembu.<sup>167</sup> In Freetown, as the overall commander of the AFRC troops involved in the attack, he ordered the commission of numerous crimes.<sup>168</sup> This included issuing general orders, as the overall commander, to the effect that Freetown should be looted and burned down and that anyone who opposed the troops should be considered a collaborator and killed,<sup>169</sup> that amputations should be committed,<sup>170</sup> that rapes should be committed,<sup>171</sup> and that the troops should "go as far as they could burning and killing people".<sup>172</sup> He was not an unwilling participant or someone who was simply caught up in the violence of the conflict. He was a primary initiator and aggravator of the violence.

<sup>164</sup> Trial Chamber's Judgement, paras. 2099-2111.

<sup>165</sup> Trial Chamber's Judgement, paras 1710-1711.

<sup>166</sup> Trial Chamber's Judgement, paras 1712-1713.

<sup>167</sup> Trial Chamber's Judgement, paras 1714-1716.

<sup>168</sup> Trial Chamber's Judgement, paras 1770-1783.

<sup>169</sup> Trial Chamber's Judgement, para. 1773; see also para. 1717.

<sup>170</sup> Trial Chamber's Judgement, para. 1771.

<sup>171</sup> Trial Chamber's Judgement, para. 1776.

<sup>172</sup> Trial Chamber's Judgement, para. 1775.

87. In relation to the crimes of enslavement (enslavement, sexual slavery and recruitment and use of child soldiers), the Trial Chamber found that Brima had the direct intent “to set up” a system of exploitation involving the three enslavement crimes,<sup>173</sup> and that Brima (alone or with others) “designed” the commission of these three crimes,<sup>174</sup> which required a substantial degree of planning and preparation,<sup>175</sup> and that he played a substantial role in the system of these crimes<sup>176</sup> and made a substantial contribution to the planning and execution of these crimes.<sup>177</sup>

#### D. INDIVIDUAL CIRCUMSTANCES OF THE CONVICTED PERSON

88. The Prosecution submits that there is nothing in the personal circumstances of Brima that would point to any mitigation of his sentence, and that if anything, his personal circumstances go to aggravation of sentences.
89. Brima regards himself as a reasonably well educated man.<sup>178</sup> Prior to the May 1997 coup, he was a professional soldier who by his own admission knew that it was wrong to commit crimes against the civilian population.<sup>179</sup> He knew that his crimes were wrong, and he was educated enough to understand the consequences of his actions. For instance, the Trial Chamber was satisfied that the Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed.<sup>180</sup> In view of the fact that he was aged 27 and 28 years at the time when the crimes were committed, he cannot plead young age in terms of mitigation, especially as he was a trained professional soldier with extensive combat experience prior to the commission of the crimes.
90. The Prosecution is not aware of Brima having any pressing personal circumstances or family concerns so as to justify mitigation. His father is dead and he has four living brothers and numerous sisters who would be in a position to care for both his mother and his own family members as is the tradition in Sierra Leone. Furthermore, his wife

<sup>173</sup> Trial Chamber’s Judgement, para. 1834.

<sup>174</sup> Trial Chamber’s Judgement, para. 1827.

<sup>175</sup> Trial Chamber’s Judgement, para. 1826.

<sup>176</sup> Trial Chamber’s Judgement, para. 1828.

<sup>177</sup> Trial Chamber’s Judgement, para. 1830.

<sup>178</sup> Transcript 28 June 2006, pp.3 to 4.

<sup>179</sup> Transcript 28 June 2006, pp.34 to 35 , 40 to 44 and Transcript 29 June 2006, pp. 7 to 13

<sup>180</sup> Trial Chamber’s Judgement, para. 1780

will be able to care for Brima's children for which she has the benefit of Brima's military pension. Little if any weight should therefore be given to Brima's family circumstances.

#### E. AGGRAVATING CIRCUMSTANCES

91. The Prosecution submits that there are significant aggravating circumstances in Brima's case.
92. Many of the victims of the crimes were vulnerable civilians, including young children and pregnant women.<sup>181</sup>
93. The fact that the victims of sexual slavery included significant numbers of young girls<sup>182</sup> is aggravating in the utmost extreme.<sup>183</sup> Other victims of murders which Brima personally committed included an Imam and a nun.
94. Crimes of which Brima was convicted were committed with the primary purpose of spreading terror amongst the civilian population and imposing collective punishment on the civilian population.<sup>184</sup> In the case of the crimes committed in Bombali District, the Trial Chamber found expressly that the civilian victims of the crimes did not present any threat to the AFRC, and there was no discernible military advantage to the AFRC from the attacks in which these crimes were committed.<sup>185</sup> It is submitted that the same is true in relation to Freetown.
95. The crimes committed were of a particularly heinous nature. In ordering AFRC troops in Karina to burn down the town, capture strong males and amputate civilians, the Trial Chamber found that Brima deliberately intended to "shock 'the whole country'".<sup>186</sup> Some of the crimes committed there were found to be of a "particularly brutal nature", including the splitting open of the stomach of a pregnant woman and removal of the foetus, and the burning of civilians alive.<sup>187</sup> In the same incident, two children were burnt to death when they were placed under a mattress which was set on fire. An

<sup>181</sup> Trial Chamber's Judgement, para. 1570.

<sup>182</sup> Trial Chamber's Judgement, para. 1832.

<sup>183</sup> In relation to the crime of recruitment and use of child soldiers, the fact that the victims were all under the age of 15 is an essential element of the offence, and therefore this cannot be taken into account as an aggravating factor.

<sup>184</sup> Trial Chamber's Judgement, para. 1571-1572, 1610-1611.

<sup>185</sup> Trial Chamber's Judgement, para. 1568.

<sup>186</sup> Trial Chamber's Judgement, para. 1710.

<sup>187</sup> Trial Chamber's Judgement, para. 1570.



unspecified number of other civilians were killed during the course of the attack.<sup>188 189</sup> In the case of the rapes, an extremely aggravating factor is that many were brutal gang rapes, resulting in vaginal injuries.<sup>190</sup> Some of the crimes committed during the attack on and retreat from Freetown were also found to have been “particularly brutal”, including the repeated amputations of “a great number” of protected persons which was intended to serve as “a grotesque public warning to civilians not to interfere with the AFRC troops”.<sup>191</sup>

96. The enslavement crimes were committed with a “depraved indifference towards human life”.<sup>192</sup> Children were forced to watch family members being executed, young girls were treated as war booty, abducted from their homes and repeatedly raped, and young children who were taken as child soldiers were terrorized, drugged, and forced to commit crimes against other civilians.<sup>193</sup> This is a factor of utmost aggravation.
97. Overall, Brima’s deliberate targeting of civilians during attacks on undefended civilian populations shows a total disregard for the sanctity of human life and dignity which must be regarded as a significant aggravating factor.
98. The continuous repetition of the crimes for which Brima was convicted, and his repeated issuance of orders to commit crimes, as well as the fact that he was one of the “designers” of the system of enslavement crimes, clearly establishes that all of the acts of Brima on which his criminal liability was based were premeditated.
99. In relation to the crimes of which Brima was convicted, but of which he was not the immediate perpetrator, it is an aggravating factor that he used coercive means to ensure that these crimes were committed by others, in particular by means of his infamous phrase, “minus you, plus you”.<sup>194</sup> In ordering civilians to be executed in Karina, Brima threatened to take disciplinary action against any soldier who brought a civilian back to the camp.<sup>195</sup>

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<sup>188</sup> Trial Chamber’s Judgement, para. 884, *supra*.

<sup>189</sup> Trial Chamber’s Judgement, para. 1555

<sup>190</sup> Trial Chamber’s Judgement, paras 1031-1041

<sup>191</sup> Trial Chamber’s Judgement, para. 1609.

<sup>192</sup> Trial Chamber’s Judgement, para. 1832.

<sup>193</sup> Trial Chamber’s Judgement, para. 1832.

<sup>194</sup> Trial Chamber’s Judgement, paras. 592-593.

<sup>195</sup> Trial Chamber’s Judgement, para. 1712.

100. It is an aggravating factor that Brima held a senior government position prior to the commission of the crimes of which he was convicted. During the Junta period, he was one of 17 coup plotters who held the title “Honorable”,<sup>196</sup> and was a member of the Supreme Council of the AFRC government and a Principal Liaison Officer with responsibility for certain ministries and parastatal enterprises.<sup>197</sup>
101. It is an aggravating factor that Brima was such a senior commander at the time of the commission of the crimes. He was the overall commander of the AFRC advance team that traveled from Mansofinia to Camp Rosos,<sup>198</sup> and was not subject to higher level supervision during this period.<sup>199</sup> Following the death of SAJ Musa, Brima became the overall commander of the AFRC troops in the advance on Freetown,<sup>200</sup> and remained in that position throughout the invasion and retreat from Freetown.<sup>201</sup>
102. In respect of counts on which Brima was convicted under Article 6(1) of the Statute, the Trial Chamber found that his responsibility under Article 6(3) was also established. Although convictions were entered under Article 6(1) only, the additional Article 6(3) responsibility should be reflected in sentencing as an aggravating factor. The Prosecution submits that the case of Brima is clearly one in which his ongoing failure as a superior to exercise his duties to prevent or punish, with its implicit effect of encouraging subordinates to believe that they can commit further crimes with impunity, led to the crimes being committed on the scale that they were. The Prosecution submits that the Article 6(3) liability alone, considered in isolation, would merit a heavier sentence than the subordinates who were the direct perpetrators of the crimes.<sup>202</sup>

#### F. MITIGATING CIRCUMSTANCES

103. The Prosecution submits that there are no mitigating circumstances in Brima’s case. In particular, for purposes of the application of Rule 101(B)(ii), he has not, at any time, co-operated in any way with the Prosecution.

<sup>196</sup> Trial Chamber’s Judgement, paras. 296-299, 319.

<sup>197</sup> Trial Chamber’s Judgement, paras. 295, 318, 321, 324.

<sup>198</sup> Trial Chamber’s Judgement, para. 378.

<sup>199</sup> Trial Chamber’s Judgement, para. 383.

<sup>200</sup> Trial Chamber’s Judgement, paras. 391, 420.

<sup>201</sup> Trial Chamber’s Judgement, para. 420.

<sup>202</sup> See paragraph 51 above.

104. There is no evidence that Brima committed his crimes under duress, or that he was not a voluntary or willing perpetrator of the crimes. Indeed, he was a prime mover of their commission.<sup>203</sup>
105. Brima has never expressed remorse for his crimes. Brima was allegedly a member of the Commission for the Consolidation of Peace. However, no evidence was led at trial to show what that body actually did and what role Brima played in its functions. In the absence of such evidence, any such activities cannot be regarded as conduct demonstrating an attempt to “make amends” or to atone for his crimes. In any event, given the gravity of the crimes of which Brima was convicted, any such activities should be accorded very little, if any, weight in mitigation.
106. It is submitted that Brima cannot plead good behaviour while in the detention of the Special Court as a mitigating factor. He was responsible for various outbursts in court during the course of the trial which on one occasion lead to the court adjourning the proceedings and leaving the bench.<sup>204</sup> Brima also did not always behave well whilst he was in detention.<sup>205</sup>
107. Brima has claimed in his evidence that he suffered from chronic ill health throughout the period of the Indictment and this was one of the reasons why he was not in a position to commit any of the crimes for which he has been convicted. By convicting Brima the Trial Chamber has rejected his alleged illness as a lie or at least as being of any major significance.<sup>206</sup> It may be that Brima now suffers from hypertension and high blood pressure; however, such ailments are not uncommon and are rarely life threatening provided that the proper medication is available (as it has been whilst Brima has been in detention and there is no reason to doubt that it would not continue to be whilst he serves his sentence). Even if Brima’s ill health can be regarded as a mitigating factor it should be given very little, if any, weight. Such weight (if any) would be far outweighed by the gravity of the offences for which Brima has been convicted.

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<sup>203</sup> See paragraphs 86-87, 99 above.

<sup>204</sup> TF 1-184 27/09/05 p.56 and Trial Chambers Observations 14/09/06 P.29 to 30.

<sup>205</sup> Discipline Record for Brima (See Annex I(a) Evidence of Brima’s Conduct in Detention)

<sup>206</sup> See for instance Trial Chamber’s Judgement, para. 325.

## V. THE CASE OF KAMARA

### A. PRACTICE REGARDING PRISON SENTENCES IN THE ICTR

108. The Prosecution refers to Annexes A and B of these Submissions, and paragraphs 23-32 and 76 above. Kamara has been found guilty of numerous crimes against humanity including extermination and murder. The Prosecution submits that, when all relevant factors are considered, the crimes of which Kamara was convicted would have been likely to have led to the imposition of a sentence of life imprisonment at the ICTR. Consideration of this factor would lead to the result that the sentence imposed on Kamara should have the practical effect of amounting to an approximation of life imprisonment.

### B. PRACTICE REGARDING PRISON SENTENCES IN THE NATIONAL COURTS OF SIERRA LEONE

109. Kamara has not been convicted of “committing” any crime under Article 6(1) of the Statute; rather his criminal responsibility is based on other modes of liability under Article 6(1) and under Article 6(3). Meaningful comparisons with sentencing practices in Sierra Leone are therefore difficult to draw on the available evidence.

110. It is, however, noted that Kamara was convicted for instance of ordering the killing of five girls in Karina.<sup>207</sup> In the legal system of Sierra Leone, this would make Kamara guilty of either aiding and abetting the crime (if he was present at the time that the crime was committed)<sup>208</sup> or of procuring the crime (if he was not present at the time that the crime was committed).<sup>209</sup> In the former case, he would be liable as a principal in the second degree.<sup>210</sup> In the latter case, he would be liable as an accessory before the fact.<sup>211</sup> In either case he would be punishable in the same manner as the principal

<sup>207</sup> Trial Chamber’s Judgement, paras 1915-1916.

<sup>208</sup> See Archbold 1962, para. 4141. Attached at Annex D.

<sup>209</sup> Ibid., paras. 4141-4142.

<sup>210</sup> Ibid., paras. 4123 and 4141.

<sup>211</sup> Ibid., paras. 4141-4142.

offender who committed the murder.<sup>212</sup> The Prosecution therefore submits that for this crime alone, even without consideration of the other crimes of which he has been convicted, Kamara would under the law and practice in Sierra Leone be liable to be sentenced to death, a sentence which might be commuted to life imprisonment. A comparable sentence imposed by the Special Court would be one which would ensure that Kamara remained in prison for the remainder of his natural life.

### C. GRAVITY OF THE OFFENCES

#### (A). *The number of victims*

111. On each of the counts on which Kamara was convicted under Article 6(1) of the Statute, the Trial Chamber found that his responsibility under Article 6(3) was also established. Although convictions were entered under Article 6(1) only, the Trial Chamber acknowledged that the additional Article 6(3) responsibility should be reflected in sentencing.<sup>213</sup>
112. In the case of Kamara, this is an especially important consideration, since the liability of Kamara under Article 6(3) in respect of each count on which he was convicted is much broader in scope than his liability under Article 6(1). As noted above, the overriding principle in sentencing is that the sentence imposed must reflect the gravity of the offences and the overall culpability of the offender. Thus, the full extent of Kamara's liability under Article 6(3), as found in the Trial Chamber's Judgement, must be reflected in the sentence, even in relation to counts where a formal conviction was entered under Article 6(1) only. Although the additional Article 6(3) liability is to be treated as an "aggravating factor", in the case of Kamara, it is an especially important consideration in determining sentence. The Prosecution submits that the case of Kamara is clearly one in which his ongoing failure as a superior to exercise his duties to

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<sup>212</sup> See the Offences Against the Person Act 1861, section 67 (quoted in Archbold 1962, para. 2464): "In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable". The effect of this provision was amended in England by the Homicide Act 1957, section 5(2) (quoted in Archbold 1962, para. 2453). However, as the Homicide Act 1957 postdates 1880, it is not applicable in Sierra Leone. In any event, the effect of the Homicide Act 1957 would be that a principal in the second degree or accessory before the fact to murder is punishable by *life imprisonment* (see Homicide Act 1957, section 9(1) (quoted in Archbold 1962, para. 2457).

<sup>213</sup> Trial Chamber's Judgement, para. 800, 2111, and see para. 66 above.

prevent or punish, with its implicit effect of encouraging subordinates to believe that they can commit further crimes with impunity, led to the crimes being committed on the scale that they were.

113. The crimes for which Kamara was convicted involved a very large number of victims. The Prosecution refers to the Appendix to these Submissions. In addition to the specific incidents in respect of which the Trial Chamber found Kamara to be liable under Article 6(1), he was found to be liable under Article 6(3) for *all* crimes committed in the Freetown area<sup>214</sup> and for *all* crimes committed in Bombali District.<sup>215</sup> In relation to the crimes committed in Bombali District and Freetown, the Prosecution refers also to paragraphs 78-79 above. In addition, Kamara was found to be liable under Article 6(3) for the crimes committed in Tombodu in Kono District, one of the worst crime sites in the conflict in which the AFRC was found to have unlawfully killed a minimum of 265 victims,<sup>216</sup> and for the crimes committed in Manaarma in Port Loko District, in which an unknown number of civilians were unlawfully killed by AFRC troops.<sup>217</sup> He was also found liable under Article 6(3) for the crimes of enslavement in Kono District.<sup>218</sup>

**(B). *The impact of the crimes on the victims and others***

114. The Prosecution refers to paragraphs 80-84 above.

**(D). *Cumulative convictions***

115. The Prosecution refers to paragraph 85 above.

**(E). *The Accused's role and participation in the crime***

116. Kamara was the overall commander of the AFRC forces based in Kono District at the times material to the crimes of which he was convicted there.<sup>219</sup> At the time material to the crimes committed in Bombali District, he was the deputy commander of the AFRC

<sup>214</sup> Trial Chamber's Judgement, para. 1950.

<sup>215</sup> Trial Chamber's Judgement, para. 1928.

<sup>216</sup> Trial Chamber's Judgement, para. 857.

<sup>217</sup> Trial Chamber's Judgement, para. 965.

<sup>218</sup> Trial Chamber's Judgement, para. 1976.

<sup>219</sup> Trial Chamber's Judgement, para. 461.

fighting forces (Brima being the commander).<sup>220</sup> Kamara was also the deputy commander of forces that invaded Freetown and remained in that position throughout, the Trial Chamber being satisfied that he had a significant degree of authority.<sup>221</sup> The Trial Chamber further found that he was subsequently the overall commander of the AFRC forces in Port Loko district, at the time material to the crimes committed there.<sup>222</sup>

#### **D. INDIVIDUAL CIRCUMSTANCES OF THE CONVICTED PERSON**

117. The Prosecution submits that there is nothing in the personal circumstances of Brima that would point to any mitigation of his sentence, and if anything, his personal circumstances go to aggravation of sentences.
118. Kamara was a professional soldier and had attained the rank of Sergeant.<sup>223</sup> Having served for 6 years in the Army prior to the coup, including active combat against the RUF, he must have known that it was wrong to commit crimes against the civilian population.
119. Kamara was aged between 29 and 31 years<sup>224</sup> at the time when the crimes were committed, and this cannot be considered a young age in terms of mitigation. This is more so since Kamara was a trained professional soldier with extensive combat experience prior to the commission of the crimes.
120. The Prosecution is not aware of Brima having any pressing personal circumstances or family concerns so as to justify mitigation. Kamara is married with two children and his wife is likely to have the support of other family members as well as the benefit of Kamara's military pension.

#### **E. AGGRAVATING CIRCUMSTANCES**

121. The Prosecution submits that there are significant aggravating circumstances in Kamara's case.

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<sup>220</sup> Trial Chamber's Judgement, para. 468.

<sup>221</sup> Trial Chamber's Judgement, para. 474.

<sup>222</sup> Trial Chamber's Judgement, para. 500.

<sup>223</sup> Trial Chamber's Judgement, para. 427

<sup>224</sup> Ibid.

122. Many of the victims of the crimes were vulnerable civilians, including young children and pregnant women.<sup>225</sup>
123. Crimes in respect of which Kamara was found liable were committed with the primary purpose of spreading terror amongst the civilian population and imposing collective punishment on the civilian population.<sup>226</sup> Reference is made to paragraph 94 above.
124. The crimes committed were of a particularly heinous nature. Relevant reference is made to paragraphs 95 to 98 above. For instance, in Karina, Kamara ordered that the five girls be locked in a house and that the house then be set on fire, resulting in their deaths.<sup>227</sup> In one incident in Tombodu for which Kamara was found liable under Article 6(3), 15 civilians were locked in a house which was set it on fire, again leading to the deaths of the victims.<sup>228</sup>
125. Overall, Kamara's failure to take the necessary steps to discharge his duty to prevent or punish crimes by his subordinates who were deliberately targeting civilians during attacks on undefended civilian villages shows a total disregard for the sanctity of human life and dignity which must be regarded as a significant aggravating factor.
126. It is an aggravating factor that Kamara held a senior government position prior to the commission of the crimes of which he was convicted. During the Junta period, he was one of 17 coup plotters who held the title "Honorable",<sup>229</sup> and was a member of the Supreme Council of the AFRC government and a Principal Liaison Officer with responsibility for certain ministries and state authorities.<sup>230</sup>
127. It is an aggravating factor that Kamara was such a senior commander at the time of the commission of the crimes. Relevant reference is made to paragraphs 86-87, 99 and 101-102 above.

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<sup>225</sup> Trial Chamber's Judgement, para. 1570; see also for example paras 886-888, 956, 1106, 1628.

<sup>226</sup> Trial Chamber's Judgement, para. 1571-1572, 1610-1611.

<sup>227</sup> Trial Chamber's Judgement, paras 1915-1916.

<sup>228</sup> Trial Chamber's Judgement, para. 849.

<sup>229</sup> Trial Chamber's Judgement, paras 296-299, 438.

<sup>230</sup> Trial Chamber's Judgement, paras 434-439.



**F. MITIGATING CIRCUMSTANCES**

128. The Prosecution submits that there are no mitigating circumstances in Kamara's case. In particular, for purposes of the application of Rule 101(B)(ii), he has not, at any time, co-operated in any way with the Prosecution.
129. There is no evidence that Kamara committed his crimes under duress, or that acts upon which his convictions are based were not voluntary or willing. He has never expressed remorse for his crimes.

**VI. THE CASE OF KANU**

**A. PRACTICE REGARDING PRISON SENTENCES IN THE ICTR**

130. The Prosecution refers to Annexes A and B of these Submissions, and paragraphs 22-32, 76 and 108 above. Kanu has been found guilty of numerous crimes against humanity including extermination and murder. The Prosecution submits that, when all relevant factors are considered, the crimes of which Kanu was convicted would have been likely to have led to the imposition of a sentence of imprisonment at the ICTR at the high level of the available range. Consideration of this factor would lead to the result that the sentence imposed on Kanu would indicate a very long sentence of imprisonment.

**B. PRACTICE REGARDING PRISON SENTENCES IN THE NATIONAL COURTS OF SIERRA LEONE**

131. In addition to numerous other crimes, Kanu was convicted of ordering the killing of 14-16 captive ECOMOG soldiers at State House.<sup>231</sup>
132. For the reasons given in paragraph 110 above, the Prosecution submits that for this crime alone, even without the consideration of the other crimes of which he has been convicted, Kanu would under the law and practice of Sierra Leone be liable to be sentenced to death, a sentence which might be commuted to life imprisonment.

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<sup>231</sup> Trial Chamber's Judgement, paras 2058.

**C. GRAVITY OF THE OFFENCES**

**(A). *The number of victims***

133. The Trial Chamber found that Kanu was criminally responsible under Article 6(1) in that he:

- (1) personally executed one of about 14 or 16 ECOMOG-Nigerian soldiers and then asked his subordinates to execute the rest;<sup>232</sup>
- (2) reissued Brima's order to execute an unknown number of civilians at a mosque;<sup>233</sup>
- (3) instigated AFRC troops to kill civilians in Freetown: an instance of this prompting occurred in a meeting on the eve of the 6 January 1999 invasion of Freetown, at which Kanu reminded troops about the orders to burn down police stations and to kill 'targeted persons/collaborators', following which a number of civilians were subsequently killed;<sup>234</sup>
- (4) aided and abetted another murder;<sup>235</sup>
- (5) Ordered amputations; and personally committed five amputations in three separate incidents;<sup>236</sup>
- (6) personally looted at least one vehicle in Freetown;<sup>237</sup>

134. He was further found to have planned, organized and implemented the system of enslavement in Bombali and the Western Area,<sup>238</sup> to have planned sexual slavery and the child soldier crimes in Bombali and the Western Area.<sup>239</sup>

135. On various counts on which Kanu was convicted under Article 6(1) of the Statute, the Trial Chamber found that his responsibility under Article 6(3) was also established. The significance of this is dealt with in paragraphs 78-79, 111-112 above. Kanu's

<sup>232</sup> Trial Chamber's Judgement, para. 2058.

<sup>233</sup> Trial Chamber's Judgement, para. 2059.

<sup>234</sup> Trial Chamber's Judgement, para 2063.

<sup>235</sup> Trial Chamber's Judgement, paras 2048-2049.

<sup>236</sup> Trial Chamber's Judgement, paras 2050, 2053-2055, 2060-2061.

<sup>237</sup> Trial Chamber's Judgement, para 2057.

<sup>238</sup> Trial Chamber's Judgement, para 2095, 2098.

<sup>239</sup> Trial Chamber's Judgement, paras 2096-2097.

criminal responsibility under Article 6(3) is particularly significant for purposes of sentencing, as he was found to be responsible under Article 6(3) for all crimes in Bombali<sup>240</sup> and for all crimes in the Western Area.<sup>241</sup> The scale of those crimes has been dealt with above. The Prosecution submits that the case of Kanu is clearly one in which his ongoing failure as a superior to exercise his duties to prevent or punish, with its implicit effect of encouraging subordinates to believe that they can commit further crimes with impunity, led to the crimes being committed on the scale that they were.

**(B). *The impact of the crimes on the victims and others***

136. The Prosecution refers to paragraphs 80-84 above.

**(D). *Cumulative convictions***

137. The Prosecution refers to paragraph 85 above.

**(E). *The Accused's role and participation in the crime***

138. The Trial Chamber found that Kanu was a senior commander of the AFRC fighting force in charge of abducted civilians including women and children.<sup>242</sup> This was a key position since the AFRC depended upon those abducted civilians for a multitude of tasks.<sup>243</sup> He was in charge of forced military training of abducted civilians; and those forced to undergo such training included children under 15.<sup>244</sup> He was also responsible for the distribution of enslaved women to soldiers, and for discipline of enslaved women. "Discipline" included ordering one enslaved woman "to be given a dozen lashes and locked in the box".<sup>245</sup> He was active in the position of Chief of Staff, and committed and ordered the commission of crimes.<sup>246</sup> His orders were obeyed.<sup>247</sup> He was almost always at Brima's side during the Freetown invasion and retreat.<sup>248</sup> The

<sup>240</sup> Trial Chamber's Judgement, para. 2044.

<sup>241</sup> Trial Chamber's Judgement, para. 2080.

<sup>242</sup> Trial Chamber's Judgement, paras 526, 535.

<sup>243</sup> Trial Chamber's Judgement, para. 2091.

<sup>244</sup> Trial Chamber's Judgement, paras 2034, 2093.

<sup>245</sup> Trial Chamber's Judgement, para 2092

<sup>246</sup> Trial Chamber's Judgement, paras 532-535.

<sup>247</sup> Trial Chamber's Judgement, para. 534.

<sup>248</sup> Trial Chamber's Judgement, para. 534.

Trial Chamber found that he had direct intent to establish and implement the system of exploitation involving the three enslavement crimes: sexual slavery, conscription and use of children under 15 for military purposes, and abductions and forced labour.<sup>249</sup>

#### **D. INDIVIDUAL CIRCUMSTANCES OF THE CONVICTED PERSON**

139. The Prosecution submits that there is nothing in the personal circumstances of Kanu that would point to any mitigation of his sentence, and if anything, his personal circumstances go to aggravation of sentences.
140. Kanu was a professional soldier and had attained the rank of Corporal.<sup>250</sup> Having served for 6 years in the Army prior to the coup,<sup>251</sup> he must have known that it was wrong to commit crimes against the civilian population.
141. Kanu was aged in his thirties<sup>252</sup> at the time when the crimes were committed, and this cannot be considered a young age in terms of mitigation. This is more so since Kanu was a trained professional soldier with extensive combat experience prior to the commission of the crimes.
142. The Prosecution is not aware of Kanu having any pressing personal circumstances or family concerns so as to justify mitigation.

#### **E. AGGRAVATING CIRCUMSTANCES**

143. The Prosecution submits that there are significant aggravating circumstances in Kanu's case.
144. Many of the victims of the crimes were vulnerable civilians, including young children and pregnant women.<sup>253</sup>
145. Crimes in respect of which Kanu was found liable were committed with the primary purpose of spreading terror amongst the civilian population and imposing collective

<sup>249</sup> Trial Chamber's Judgement, para 2095.

<sup>250</sup> Trial Chamber's Judgement, para. 503.

<sup>251</sup> Trial Chamber's Judgement, para. 503.

<sup>252</sup> Trial Chamber's Judgement, para. 503.

<sup>253</sup> Trial Chamber's Judgement, para. 1570; see also for example paras 886-888, 956, 1106, 1628.

- punishment on the civilian population.<sup>254</sup> Relevant reference is made to paragraph 94 above.
146. The crimes committed were of a particularly heinous nature. Relevant reference is made to paragraphs 95-98 above. Particularly heinous conduct of Kanu was the commission of amputations in order to demonstrate to others how this was to be done. In the incident near Kissy Old Road, he explained that there were two types of amputation—the “long sleeve” and the “short sleeve”.<sup>255</sup> When demonstrating amputations at Uppgun<sup>256</sup> he told the victims to go to President Kabbah and ask for new hands.<sup>257</sup> Amputations constitute a singular unique feature of the brutality and inhumanity of the Sierra Leone conflict, and his role as a leading figure in demonstrating such conduct to others is clearly aggravating.
147. Overall, Kanu’s failure to take the necessary steps to discharge his duty to prevent or punish crimes by his subordinates who were deliberately targeting civilians during attacks on undefended civilian villages shows a total disregard for the sanctity of human life and dignity which must be regarded as a significant aggravating factor.
148. It is a particularly aggravating factor that one of the crimes he committed involved the killing of civilian refugees at a place of worship.<sup>258</sup>
149. It is an aggravating factor that Kanu held a senior government position prior to the commission of the crimes of which he was convicted. During the Junta period, he was one of 17 coup plotters who held the title “Honorable”,<sup>259</sup> and was a member of the Supreme Council of the AFRC government.<sup>260</sup>
150. It is an aggravating factor that Kanu was a senior commander at the time of the commission of the crimes. Reference is made to paragraphs 86-87, 99 and 101-102

<sup>254</sup> Trial Chamber’s Judgement, paras 1571-1572, 1610-1611. The Trial Chamber found that the intention to spread terror is an element of the crimes charged in Count 1 of the Indictment (Trial Chamber’s Judgement, para. 667). Therefore, in cases where the Accused has been convicted on both Count 1 and another Count in respect of the same conduct, the intention to spread terror cannot be taken into account as an aggravating factor in relation to the other count, since double counting is impermissible. However, even in such cases, the overall sentence imposed in respect of the specific conduct in question must reflect the element of terror in Count 1, and this requires a higher sentence than if the Accused had only been convicted on the other Count.

<sup>255</sup> Trial Chamber’s Judgement, para. 2050.

<sup>256</sup> Trial Chamber’s Judgement, paras. 2053 and 2060.

<sup>257</sup> Trial Chamber’s Judgement, para. 2061.

<sup>258</sup> Trial Chamber’s Judgement, para. 2059.

<sup>259</sup> Trial Chamber’s Judgement, paras. 296-299, 509.

<sup>260</sup> Trial Chamber’s Judgement, paras. 509.

above. In view of his exalted position within the Junta which made him a role model to the followers of that Junta, his personal and direct implication in these crimes, served as an encouragement and exemplar to the rank and file. He was someone whose actions in the theatre of conflict were likely to be emulated.

#### F. MITIGATING CIRCUMSTANCES

151. The Prosecution submits that there are no mitigating circumstances in Kanu's case. In particular, for purposes of the application of Rule 101(B)(ii), he has not, at any time, co-operated in any way with the Prosecution.
152. There is no evidence that Kanu committed his crimes under duress, or that acts upon which his convictions are based were not voluntary or willing. He has never expressed remorse for his crimes.

### VI. GENERAL SUBMISSIONS ON THE SENTENCING IN THIS CASE

#### A. THE POSSIBILITY OF IMPOSING A SINGLE, GLOBAL SENTENCE ON AN ACCUSED

153. Rule 101(C) provides that "The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently". It is thus open to the Trial Chamber to impose separate sentences on a convicted person in respect of each of the crimes for which that person has been convicted, and then to order that the various sentences are to run concurrently, consecutively or both.<sup>261</sup> However, as the common practice of the ICTY and ICTR demonstrates, it is also open to the Trial Chamber, in its discretion, to impose one single, global sentence on a convicted person for all of the various crimes for which that person has been convicted.
154. It is a matter within the Trial Chamber's discretion whether to impose a single, global sentence, or multiple consecutive or concurrent sentences. In either case the governing criterion is that the final or aggregate sentence should reflect the totality of the culpable conduct (the "totality" principle), or generally, that it should reflect the gravity of the

<sup>261</sup> *Čelebići* Appeal Judgement, paras 429; *Blaškić* Appeal Judgement, para. 717.

offences and the overall culpability of the offender so that it is both just and appropriate.<sup>262</sup>

155. Consistent with the common recent practice of the ICTY and ICTR, the Prosecution submits that in this case it would be appropriate for the Trial Chamber to impose on each Accused a single, global sentence in respect of all of the crimes of which the Accused has been convicted. The Prosecution submits that the practice of imposing separate sentences in respect of each crime, and then ordering that they be served either consecutively or concurrently, makes it more difficult to ensure that the sentence ultimately served will reflect the overall totality of the convicted person's culpability.
156. As a general principle, a person who is convicted of many crimes should, in practice, serve a longer sentence than a person in like circumstances who commits only one of those crimes.<sup>263</sup> If a single crime merited a sentence of say, 20 years' imprisonment, then a person who commits ten such crimes should not be sentenced to ten terms of 20 years' imprisonment to be served concurrently, as in practice this would mean that the person would serve the same sentence that he or she would have served if only one of those crimes had been committed. On the other hand, to order that the ten sentences be served consecutively, so that the convicted person would be sentenced to 200 years' imprisonment, might well be considered by the Trial Chamber to be excessive. The imposition of a single, global sentence in respect of all ten crimes would, on the other hand, give the Trial Chamber complete flexibility in determining an actual sentence which it, in its discretion, considers appropriate to the overall criminal culpability of the convicted person.
157. In the event that the Trial Chamber chose not to impose one global sentence and instead decided to impose separate sentences for each crime for which the Accused was convicted, it is the submission of the Prosecution that the Trial Chamber should order each sentence for each crime for which the Accused is convicted to run consecutively. This would ensure that the overall sentence to be served by the Accused would adequately reflect the gravity of the totality of the crimes committed.

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<sup>262</sup> *Čelebići* Appeal Judgement, paras 429-430.

<sup>263</sup> *Ibid.*, para. 770.

**B. THE REQUIREMENT THAT THE SENTENCE MUST BE FOR A SPECIFIED NUMBER OF YEARS**

158. Article 19(1) of the Statute of the Special Court for Sierra Leone (“**Statute**”) provides that “The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years”. The Statute thus excludes other forms of punishment such as the death sentence or a fine.<sup>264</sup>
159. Unlike the case of the ICTY and ICTR, the Statute and Rules of the Special Court do not in terms confer upon the Trial Chamber the power to sentence a convicted person to imprisonment “for a term up to and including the remainder of the convicted person’s life”.<sup>265</sup> Rather, the Statute of the Special Court requires the Trial Chamber to impose a sentence of imprisonment “for a specified number of years”.<sup>266</sup> The Prosecution submits that it is not open to the Trial Chamber to impose a sentence of imprisonment “for the remainder of the convicted person’s life”,<sup>267</sup> and that the sentence imposed in this case must specify a fixed number of years of imprisonment.

**C. CREDIT FOR TIME SERVED**

160. Pursuant to Rule 101(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”. To give effect to this provision, it is submitted that the Trial Chamber should order that each Accused is entitled to credit for periods spent in the Detention Facility of the Special Court to date, together with such additional time he may spend in the Detention Facility (including any time pending the determination of any appeal) prior to his transfer to the authorities of the State in which he is to serve his sentence.
161. Rule 101(B)(vii) is not applicable as no penalty has been imposed by a court of any State on any of the Accused for the same act for which he has been convicted in this case, as referred to in Article 9(3) of the Statute.

<sup>264</sup> *Kambanda* Trial Judgement, para. 10; *Rutaganda*, Trial Judgement, para. 448.

<sup>265</sup> Rules of Procedure and Evidence of the ICTY (“**RPE**”), Rule 101(A); RPE of the ICTR, Rule 101(A).

<sup>266</sup> Statute of the Special Court for Sierra Leone, (“**Statute**”) Article 19(1).

<sup>267</sup> Compare, in the case of the ICTY and ICTR, *Prosecutor v. Jelisić*, IT-95-10-A, “Judgement”, Appeals Chamber, 5 July 2001, para. 100; *Furundžija* Appeal Judgement, para. 250; *Kayishema* Sentencing Order, para. 31.



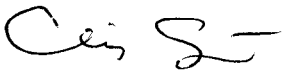
**VII. FINAL SUBMISSION**

162. For all of the reasons above, the Prosecution submits:

- (1) that the appropriate sentence to be imposed on Brima would be imprisonment for 60 years;
- (2) that the appropriate sentence to be imposed on Kamara would be imprisonment for 60 years;
- (3) that the appropriate sentence to be imposed on Kanu would be imprisonment for 50 years.

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Filed in Freetown,  
28 June 2007  
For the Prosecution,



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Christopher Staker  
Deputy Prosecutor



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Karim Agha  
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## INDEX OF AUTHORITIES

### SCSL:

1. *Prosecutor v Brima, Kamara, Kanu*, SCSL-2004-16-T, Trial Judgement, Trial Chamber, 20 June 2007.
2. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T, Status Conference Transcript, 20 March 2007

### ICTR:

3. *Prosecutor v. Kambanda*, ICTR-97-23-S, “Judgement and Sentence”, Trial Chamber, 4 September 1998.  
<http://69.94.11.53/ENGLISH/cases/Kambanda/judgement/kambanda.html>
4. *Prosecutor v. Rutaganda*, ICTR-96-3-T, “Judgement and Sentence”, Trial Chamber, 6 December 1999.  
<http://69.94.11.53/ENGLISH/cases/Rutaganda/judgement/index.htm>
5. *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, “Judgement – Sentencing Order”, Trial Chamber, 21 May 1999.  
<http://69.94.11.53/ENGLISH/cases/KayRuz/judgement/sentence.htm>
6. *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, “Judgement (Reasons)”, Appeals Chamber, 1 June 2001.  
<http://69.94.11.53/ENGLISH/cases/KayRuz/appeal/index.htm>
7. *Prosecutor v. Serushago*, ICTR-98-39-S, “Sentence”, Trial Chamber, 5 February 1999.  
<http://69.94.11.53/ENGLISH/cases/Serushago/judgement/os1.htm>
8. *Prosecutor v. Serushago*, ICTR-98-39-A, “Appeals Judgment”, Appeals Trial Chamber, 6 April 2000.  
<http://69.94.11.53/ENGLISH/cases/Serushago/decisions/app20000406.htm>
9. *Prosecutor v. Semanza*, ICTR-97-20-T, “Judgment and Sentence”, Trial Chamber, 15 May 2003.  
<http://69.94.11.53/ENGLISH/cases/Semanza/judgement/index.htm>
10. *Prosecutor v. Semanza*, ICTR-97-20-A, “Appeal Judgement”, Appeals Chamber, 20 May 2005.  
<http://69.94.11.53/ENGLISH/cases/Semanza/judgement/appealsjudgement/index.pdf>
11. *Prosecutor v. Kamuhanda*, ICTR-95-54A-T, “Judgement”, Trial Chamber, 22 January 2004.

- <http://69.94.11.53/ENGLISH/cases/Kamuhanda/judgement/220104.htm>
12. *Prosecutor v. Kamuhanda*, ICTR-95-54A-T, “Appeal Judgement”, Appeals Chamber, 19 September 2005.  
<http://69.94.11.53/ENGLISH/cases/Kamuhanda/judgement/Appeals%20Judgement/Kamuhanda190905.pdf>
  13. *Prosecutor v. Nzabirinda*, ICTR-01-77-I, “Sentencing Judgement”, Trial Chamber, 23 February 2007.  
<http://69.94.11.53/ENGLISH/cases/Nzabirinda/judgement.htm>
  14. *Prosecutor v. Akayesu*, ICTR-96-4-T, “Trial Judgement”, Trial Chamber, 2 September 1998.  
<http://69.94.11.53/ENGLISH/cases/Akayesu/judgement/akay001.htm>
  15. *Prosecutor v. Akayesu*, ICTR-96-4-T, “Sentence”, Trial Chamber, 2 October 1998.  
<http://69.94.11.53/ENGLISH/cases/Akayesu/judgement/ak81002e.html>
  16. *Prosecutor v. Akayesu*, ICTR-96-4, “Appeal Judgement”, Appeals Chamber, 1 June 2001.  
<http://69.94.11.53/ENGLISH/cases/Akayesu/judgement/Arret/index.htm>
  17. *Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, “Judgement”, Trial Chamber, 17 June 2004.  
<http://69.94.11.53/ENGLISH/cases/Gachumbitsi/judgement/Table%20of%20Contents.htm>
  18. *Prosecutor v. Gacumbitsi*, ICTR-20001-64-A, “Appeals Judgement”, Appeals Chamber, 7 July 2006.  
[http://69.94.11.53/ENGLISH/cases/Gachumbitsi/judgement/judgement\\_appeals\\_070706.pdf](http://69.94.11.53/ENGLISH/cases/Gachumbitsi/judgement/judgement_appeals_070706.pdf)
  19. *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, “Trial Judgement”, Trial Chamber, 1 December 2003.  
[http://69.94.11.53/ENGLISH/cases/Kajelijeli/judgement/031201-TC2-J-ICTR-98-44A-T-JUDGEMENT%20AND%20SENTENCE-EN\\_.pdf](http://69.94.11.53/ENGLISH/cases/Kajelijeli/judgement/031201-TC2-J-ICTR-98-44A-T-JUDGEMENT%20AND%20SENTENCE-EN_.pdf)
  20. *Prosecutor v. Kajelijeli*, ICTR-98-44A-A, “Judgement”, Appeals Chamber, 23 May 2005.  
<http://69.94.11.53/ENGLISH/cases/Kajelijeli/appealchamber.htm>
  21. *Prosecutor v. Musema*, ICTR-9-13-A, “Judgement and Sentence”, Trial Chamber 1, 27 January 2000.  
<http://69.94.11.53/ENGLISH/cases/Musema/judgement/index.htm>
  22. *Prosecutor v. Musema*, ICTR-96-13-A, “Appeals Judgment”, Appeals Chamber, 16 November 2001.  
<http://69.94.11.53/ENGLISH/cases/Musema/judgement/Arret/index.htm>

23. *Prosecutor v. Niyitegeka*, ICTR-96-14-T, “Judgement and Sentence”, Trial Chamber I, 16 May 2003.  
<http://69.94.11.53/ENGLISH/cases/Niyitegeka/judgement/index.htm>
24. *Prosecutor v. Ntagerura*, ICTR-99-46-T, “Judgment and Sentence”, Trial Chamber III, 25 February 2004.  
<http://69.94.11.53/ENGLISH/cases/Imanishimwe/judgement/judgment-en.pdf>
25. *Prosecutor v. Ntakirutimana*, ICTR-96-10; 2: ICTR-96-17, “Judgement and Sentence”, Trial Chamber, 21 February 2003.  
<http://69.94.11.53/ENGLISH/cases/NtakirutimanaE/judgement/index.htm>
26. *Prosecutor v. Ruggiu*, ICTR-97-32-I, “Judgement and Sentence”, Trial Chamber, 1 June 2000.  
<http://69.94.11.53/ENGLISH/cases/Ruggiu/judgement/rug010600.htm>
27. *Prosecutor v. Bisengimana*, ICTR-00-60-T, “Judgement and Sentence”, Trial Chamber 2, 13 April 2006.  
<http://69.94.11.53/ENGLISH/cases/Bisengimana/judgement/060413.pdf>

#### ICTY:

28. *Prosecutor v. Jelisić*, IT-95-10-T, “Judgement”, Trial Chamber I, 14 December 1999.  
<http://www.un.org/icty/jelistic/trialc1/judgement/index.htm>
29. *Prosecutor v. Jelisić*, IT-95-10-A, “Judgement”, Appeals Chamber, 5 July 2001.  
<http://www.un.org/icty/jelistic/appeal/judgement/index.htm>
30. *Prosecutor v. Furundžija*, IT-95-17/1-A, “Judgement”, Appeals Chamber, 21 July 2000.  
<http://www.un.org/icty/furundzija/appeal/judgement/index.htm>
31. *Prosecutor v. Furundžija*, IT-95-17/1-T, “Judgement” Trial Chamber II, 10 December 1998.  
<http://www.un.org/icty/furundzija/trialc2/judgement/index.htm>
32. *Prosecutor v. Kupreškić et al.*, IT-95-16, “Judgement”, Trial Chamber II, 14 January 2000.  
<http://www.un.org/icty/kupreskic/trialc2/judgement/index.htm>
33. *Prosecutor v. Kupreškić et al.*, IT-95-16-A, “Appeal Judgement”, Appeals Chamber, 23 October 2001.  
<http://www.un.org/icty/kupreskic/appeal/judgement/index.htm>
34. *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, “Judgement”, Appeals Chamber, 20 February 2001.

- <http://www.un.org/icty/celebici/appeal/judgement/XIV>
35. *Prosecutor v. Blaškić*, IT-95-14, “Judgement”, Trial Chamber, 3 March 2000.  
<http://www.un.org/icty/Blaškić/trialc1/judgement/index.htm>
36. *Prosecutor v. Blaškić*, IT-95-14-A, “Appeal Judgement”, Appeals Chamber, 29 July 2004.  
<http://www.un.org/icty/Blaškić/appeal/judgement/XIIB2>
37. *Prosecutor v. Kunarac* IT-96-23, “Trial Judgement”, Trial Chamber, 22 February 2001.  
<http://www.un.org/icty/kunarac/trialc2/judgement/VI>
38. *Prosecutor v. Todorović*, IT-95-9/1, “Sentencing Judgement”, Trial Chamber, 31 July 2001.  
<http://www.un.org/icty/Todorović/judgement/index.htm>
39. *Prosecutor v. Nikolić-Dragan*, IT-94-2, “Sentencing Judgement”, Trial Chamber, 18 December 2003.  
<http://www.un.org/icty/Nikolić/trialc/judgement/index.htm>
40. *Prosecutor v. Nikolić-Dragan*, IT-94-2-A, “Judgment on Sentencing Appeal”, Appeals Chamber, 4 February 2005.  
<http://www.un.org/icty/Nikolić/appeal/judgement/index.htm>
48. *Prosecutor v. Nikolić-Momir*, IT-02-60/1, “Sentencing Judgement”, Trial Chamber, 2 December 2003.  
<http://www.un.org/icty/mNikolić/trialc/judgement/index.htm>
41. *Prosecutor v. Plavšić* IT-00-39&40/1, “Sentencing Judgement”, Trial Chamber, 27 February 2003.  
<http://www.un.org/icty/Plavšić/trialc/judgement/index.htm>
42. *Prosecutor v. Brđanin*, IT-99-36-T, “Trial Judgement”, Trial Chamber, 1 September 2004.  
<http://www.un.org/icty/Brđanin/trialc/judgement/index.htm>
43. *Prosecutor v. Tadić*, IT-94-1-A and IT-94-1-Abis, “Judgement in Sentencing Appeals”, Appeals Chamber, 26 January 2000.  
[http://www.un.org/icty/tadic/appeal/judgement/index\\_2.htm](http://www.un.org/icty/tadic/appeal/judgement/index_2.htm)
44. *Prosecutor v. Jokić*, IT-01-42/1-S, “Sentencing Judgement”, Trial Chamber, 18 March 2004.  
<http://www.un.org/icty/jokic/trialc/judgement/index.htm>
45. *Prosecutor v. Deronjić*, IT-02-61, “Sentencing Judgement”, Trial Chamber, 30 March 2004.  
<http://www.un.org/icty/Deronjić/trialc/judgement/index.htm>

46. *Prosecutor v. Deronjić*, IT-02-61-A, “Appeal Judgement”, Appeals Chamber, 20 July 2005.  
<http://www.un.org/icty/Deronjić/appeal/judgement/index.htm>
47. *Prosecutor v. Erdemović*, IT-96-22, “Judgement”, Trial Chamber, 29 November 1996.  
<http://www.un.org/icty/Erdemović/trialc/judgement/erd-tsj961129e.htm>
48. *Prosecutor v. Stakić*, IT-97-24-T, “Judgement”, Trial Chamber II, 31 July 2003.  
<http://www.un.org/icty/Stakić/trialc/judgement/index.htm>
49. *Prosecutor v. Stakić*, IT-7-24-A, “Judgment”, Appeals Chamber, 22 March 2006.  
<http://www.un.org/icty/Stakić/appeal/judgement/index.htm>
50. *Prosecutor v. Aleksovski*, IT-95-14/1-A, “Judgement”, Appeals Chamber, 24 March 2000.  
<http://www.un.org/icty/aleksovski/appeal/judgement/index.htm>
51. *Prosecutor v. Babić*, IT-03-72-S, “Sentencing Judgement”, Trial Chamber I, 29 June 2004.  
<http://www.un.org/icty/Babić/trialc/judgement/index.htm>
52. *Prosecutor v. Babić*, IT-03-72-A, “Judgement”, Appeals Chamber, 18 July 2005.  
<http://www.un.org/icty/Babić/appeal/judgement/index.htm>
53. *Prosecutor v. Češić*, IT-95-10/1-S, “Sentencing Judgement”, Trial Chamber I, 11 March 2004.  
<http://www.un.org/icty/Češić/trialc/judgement/index.htm>
54. *Prosecutor v. Kordić and Čerkez*, IT-95-14/2, “Judgement”, Trial Chamber, 26 February 2001.  
<http://www.un.org/icty/Kordić/trialc/judgement/index.htm>
55. *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, “Judgement”, Appeals Chamber, 17 December 2004.  
<http://www.un.org/icty/Kordić/appeal/judgement/index.htm>
56. *Prosecutor v. Blagojević*, IT-02-60-I, “Trial Judgement”, Trial Chamber I, 17 January 2005.  
<http://www.un.org/icty/Blagojević/trialc/judgement/index.htm>
57. *Prosecutor Mrdja*, IT-02-59-S, “Sentencing Judgement”, Trial Chamber I, 31 March 2004.  
<http://www.un.org/icty/mrdja/trialc/judgement/index.htm>

58. *Prosecutor v. Bralo*, IT-95-17-S, “Sentencing Judgement”, Trial Chamber, 7 December 2005.  
<http://www.un.org/icty/bralo/trialc/judgement/index.htm>
59. *Prosecutor v. Naletilić and Martinović*, IT-94-38-A, “Appeals Judgment”, Appeals Chamber, 3 May 2006.  
<http://www.un.org/icty/Naletilić/appeal/judgement/index.htm>
60. *Prosecutor v. Krstić*, IT-98-33, “Trial Judgment”, Trial Chamber, 2 August 2001.  
<http://www.un.org/icty/krstic/TrialC1/judgement/index.htm>
61. *Prosecutor v. Sikirica*, IT-95-8, “Sentencing Judgment”, Trial Chamber, 13 November 2001.  
[http://www.un.org/icty/sikirica/judgement/index\\_2.htm](http://www.un.org/icty/sikirica/judgement/index_2.htm)
62. *Prosecutor v. Kvočka*, IT-98-30/1, “Appeals Judgment”, Appeals Chamber, 28 February 2005.  
<http://www.un.org/icty/Kvočka/appeal/judgement/index.htm>
63. *Prosecutor v. Banović*, IT-02-65/1, “Trial Judgment”, Trial Chamber, 28 October 2003.  
<http://www.un.org/icty/Banović65-1/trialc/judgement/ban-sj031028e.htm>
64. *Prosecutor v. Obrenović*, IT-02-60/2, “Trial Judgment”, Trial Chamber I, 10 December 2003.  
<http://www.un.org/icty/obrenovic/trialc/judgement/index.htm>

#### **SIERRA LEONEAN CASES:**

65. *State v. Julius Pratt*, 17 November 2005. (Case attached in Annex C.)
66. *State v. Vandi Johnson*; (Case attached in Annex C.)
67. *State vs. Tommy M'Bayoh & 3 Others*, (Case attached in Annex C.)
68. *State v. Aiah Musa Mommoni*, High Court of Sierra Leone, 3 June 2004 (Case attached in Annex C.)
69. *State v. Hassan Mahoi*, High Court of Sierra Leone, 8 November 2005 (Case attached in Annex C.)
70. *State v. Amadu Macaully et. al.* (Case attached in Annex C.)

#### **OTHER:**

71. ICTY Rules of Procedure and Evidence.



<http://www.un.org/icty/legaldoc-e/basic/rpe/IT032Rev39e.pdf>

72. ICTR Rules of Procedure and Evidence.  
<http://69.94.11.53/ENGLISH/rules/101106/rop101106.pdf>
73. Rome Statute of ICC.  
[http://www.icc-cpi.int/library/about/officialjournal/Rome\\_Statute\\_120704-EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_120704-EN.pdf)
74. Human Rights Watch, “Genocide War Crimes, Crimes Against Humanity: A Topical Digest of the Case Law of the International Criminal Tribunal of the Former Yugoslavia”, 2006.
75. Bankole Thompson, “The Criminal Law of Sierra Leone”, University Press of America 1999.
76. BBC News, “Huntley should die behind bars”, 18 March 2007  
[http://news.bbc.co.uk/2/hi/uk\\_news/6463337.stm](http://news.bbc.co.uk/2/hi/uk_news/6463337.stm)
77. Archbold, “*Criminal Pleading Evidence and Practice*” (Sweet and Maxwell 35<sup>th</sup> edn 1962), at pp.4301 to 4332, (Attached at Annex D.)

#### **LEGISLATION:**

78. *Prevention of Cruelty to Children Act*, Cap 31 of the Laws of Sierra Leone 1960. [Reproduced in Archbold 1962] (Attached at Annex D.)
79. *Offences Against the Person Act*, 1861 [Reproduced in Archbold 1962] (Attached at Annex D.)
80. *Homicide Act*, 1957 [Reproduced in Archbold 1962] (Attached at Annex D.)

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## **APPENDIX**

### **SYNOPSIS OF INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED**

## APPENDIX

### SYNOPSIS OF INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED

The present appendix summarizes, for each of the Accused, the findings of the Trial Chamber (TC) regarding:

- the specific crime bases for which the Accused was convicted,
- the type of crimes that were perpetrated,
- the number of victims (when available),
- and the specific role of the Accused under Article 6(1) and/or 6 (3).

The paragraphs indicated refer to the Trial Judgement.

## BRIMA

### I. BOMBALI DISTRICT

#### A. Type of Crimes

*Count 1: Acts of Terrorism*

*Count 2: Collective Punishment*

Crime base established. (1710; 1568-1573)

The Trial Chamber noted the particularly brutal nature of acts of violence, against particularly vulnerable persons (children and women, including splitting open of the stomach of a pregnant woman and removal of the foetus, and burning of civilians alive). (1570) Civilians were hacked to death. (884)

#### 1. Number of Victims

Unknown

After Brima banned civilians from the area surrounding Camp Rosos an AFRC commander executed 6 civilians in a village near Mateboi (1714);

At Kamagbengbe, prior to arrival at Rosos, a number of civilians attempted to escape, were recaptured, brought before Brima who ordered to immediately execute them. (1725)

#### 2. Role of the Accused Brima

The Accused was found liable of Counts 1 and 2 under 6(1) and 6(3) of the Statute.

6(1):

##### **Ordering**

The Accused:

Ordered that civilians should be cleared from area of Rosos, June 1998 (1568; 1712);

Ordered that civilians should be executed rather than brought to Camp Rosos, June 1998 (1568; 1712), and added he would take disciplinary action against any soldier who brought a civilian to the camp (1712), and named this action "Operation Clear the Area"; (1712)

Ordered the surrounding villages should be burnt and looted in Rosos, June 1998; (1568; 1712)

Ordered AFRC troops to attack Karina; (1710; 1727)

Ordered AFRC troops to burn down Karina; (1710)

Ordered AFRC troops to capture strong male civilians; (1710)

Ordered AFRC troops to amputate civilians; (1710)

Ordered that women should be stripped naked and raped during attack on Karina; (1710) and neighboring town Bornoya (1710).

### **6(3):**

"...AFRC troops [...] terrorized the civilian population, as charged in Count 1 and committed collective punishment, as charged under Count 2." (1700 and 1911)

Brima as a superior, bears individual criminal responsibility under 6(3) for the crimes committed by his subordinates in Bombali District between 1 May 1998 and 30 November 1998 in which he did not directly participated. (1744)

## **B. Type of Crimes**

Count 3: Extermination

Count 4: Murder

Count 5: Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Murder

Crime base established. (897)

These crimes were perpetrated with particularly horrendous *modus operandi*. (884; 895)

### **1. Number of Victims**

Unknown

An unknown number of victims were killed during the attack of Bornoya (883; 884; 888)

Civilians were killed on a massive scale in Karina. (at least 200) (894)

25 civilians were killed in the attack of Gbendembu. (896)

There is an element of massiveness. (898)

A pregnant woman was killed and her stomach was then slit open to remove the foetus. (884)

2 Women were assaulted and injured and later died. (884)

2 Children were killed. (884)

A Chief of Mateboi had his head decapitated. (895)

### **2. Role of the Accused Brima**

The Accused was found liable of Counts 3, 4, 5 under 6(1) and 6(3) of the Statute.

### **6(1):**

**Ordering, committing**

The Accused:

Ordered his troop to target Karina, at Kamagbengbe (886);

Ordered to burn down Karina; (1710)

All three accused participated in the attack on Karina; (886)

Was present at the mosque when civilians were killed in Karina; (891)

Shot and killed the Imam, along with six men and five women; (893; 1703; 1705);

Therefore committed on a large scale a massacre of civilians at this mosque in Karina, and thus committed the crime of extermination, murder and violence to life; (1709)

Ordered the attack of Gbendembu; (896)

Ordered the ban of civilians from area surrounding camp Rosos, and following this order 6 civilians were executed by an AFRC commander in a village near Mateboi; (1714)

Ordered 2 AFRC commanders to attack Gbendembu where 25 civilians were killed (1715), and thus ordered the murder of civilians in the village of Mateboi and Gbendembu (1716).

**6(3):**

Brima as a superior, bears individual criminal responsibility under 6(3) for the crimes committed by his subordinates in Bombali District between 1 May 1998 and 30 November 1998 in which he did not directly participate. (1744)

**C. Type of Crimes****Count 6 : Rape**

Crime base established. (1040-1041).

The TC describes instances of gang rapes (1031-1041), notably:

A woman was captured by rebels and raped by three rebels. One of the rebels had a gun, another had a knife. After the rape, the woman was cut in the back of the neck. The same woman was obliged to take a rebel's penis in her mouth and then he tried to rape her vaginally. The woman was then brought to another group of armed rebels. (1032). The woman was hit by a rebel and has a scar. The witness was then raped twice more.

Altogether, the witness was raped by five rebels. (1032)

Another woman was kicked, her clothes were torn and she was brutally raped by four rebels, under threat of death. The witness testified that the rape was particularly painful, as if "my guts were coming out". (1035)

Another woman was raped by two rebels and as a result was bleeding from her vagina. (1036)

**1. Number of Victims**

Unknown (1040-1041)

**2. Role of the Accused Brima**

The Accused was found liable of Count 6 under 6(3) of the Statute.

**6(3):**

The AFRC troops in Bombali District inflicted sexual and physical violence on

civilians as charged under Counts 6 through 9 and 10 respectively. (1038; 1041; 1911)  
 Brima as a superior, bears individual criminal responsibility under 6(3) for  
 the crimes committed by his subordinates in Bombali District between 1 May 1998  
 and 30 November 1998 in which he did not directly participate. (1744)

#### **D. Type of Crimes**

##### **Count 9: Outrages upon personal dignity**

Crime base established (1041; 1145; 1188).

The Trial Chamber found that the acts of rape and sexual slavery are encompassed by the  
 definition of outrages on personal dignity. (1069)

Sexual slavery was systemic amongst perpetrators. (1823-1835)

The TC noted the continuous nature of these crimes. (1820)

See indications *supra* Brima I. D.

#### **1. Number of Victims**

Unknown. (1823-1835)

The magnitude of commission of the three enslavement crimes by AFRC troops indicated  
 their systemic nature.(1824)

These crimes were committed on a large scale.(1824)

#### **2. Role of the Accused Brima**

The Accused was found liable of Count 9 under 6(1) and 6(3).

##### **6(1):**

##### **Planning, Ordering**

“[T]he Accused planned, ordered, organised and implemented the system to abduct and  
 enslave civilians which was in fact committed by AFRC troops in Bombali and Western  
 Area.”; (1834)

“a substantial degree of planning and preparation were required to commit the crimes”;  
 (1826);

“[T]he Accused Brima, alone or with others, designed the commission of the three  
 crimes (enslavement, sexual slavery, and recruitment and use of child soldiers), and  
 that...his contribution was substantial.”; (1827)

“The Accused [Brima] played a substantial role in the system of exploitation and  
 cruelty.”;(1828)

“As an overall commander, the Accused Brima was substantially involved planning the  
 various operations in these Districts.”; (1828)

“[T]he Accused Brima publicly addressed the troop and advocated criminal conduct”;  
 (1829)

“The Accused Brima also directly participated in and made a substantial contribution to  
 the planning and execution of the said crimes.”; (1830)

“Upon completion of civilian military training at Camp Rosos, the trainees were  
 addressed by both the Accused Kanu and the Accused Brima. Brima then ordered that the  
 boys should be distributed to the various companies, while the women were sent back to  
 the soldiers and commanders who had taken them as their “wives”. (1830)

**6(3):**

Brima as a superior, bears individual criminal responsibility under 6(3) for the crimes committed by his subordinates in Bombali District between 1 May 1998 and 30 November 1998 in which he did not directly participate. (1744)

**E. Type of Crimes****Count 12: Conscription or enlisting of Child Soldiers under the age of 15**

Crime base established (1275-1276-1277-1278; 1821-1822), in the Republic of Sierra Leone at all times material to the Indictment.

“[T]he only method of recruitment described in the evidence is abduction, a particularly egregious form of conscription.” (1275; 1276).

“The Trial Chamber is of the view that AFRC fighting faction used children as combatants because they were easy to manipulate and program, and resilient in battle.” (1275)

Child soldiers were forced into hard labour, military training, and sent into battle often on the frontlines, and were often beaten, forced to watch the commission of crimes against their own family members, injected with narcotics to make them fearless, compelled to commit crimes including rape, amputation and abduction, used as human shields and threatened with death if they tried to escape or refused to obey orders (1275).

Ex-child soldiers testified that they were abducted, witnessed the commission of numerous crimes by their abductors (1254; 1256) and were systematically exploited and abused, (1254) forced to carry goods for the troops and to undergo military training. (1254; 1256)

A witness testified that children as young as 8 were assigned to Small Boys Units (SBUs) and were used to amputate limbs of civilians. (1270)

The magnitude of commission of the three enslavement crimes by AFRC troops indicated their systemic nature. (1824)

**1. Number of Victims**

Unknown

These crimes were committed on a large scale. (1824)

“Although the trial chamber is unable to make a finding on the total number of civilians abducted and forced to undergo military training, the example provided by Colonel Iron that one battalion at “Colonel Eddie Town” consisted of approximately 150 trained soldiers supplemented by approximately abducted civilians corroborates the evidence of fact-based witnesses that these crimes were committed on a large scale. (1824)

A witness testified that hundreds of civilians were abducted by AFRC troops during the trek from Mansofinia to Camp Rosos, including men, women and children. (1271)

A witness testified that he had seen “many child soldiers at the AFRC soldiers at “Colonel Eddie Town””. (1271)

Another witness testified that approximately 300 abducted civilians were taken by the fighters from Freetown to Benguema. Among those captured were many small boys, including some as young as nine years old. (1272)



A UN Report released in January 1999 stated that “a significant number of rebel combatants were children”. (1274).

## **2. Role of the Accused Brima**

The Accused was found liable of Count 12 under 6(1) and 6(3) of the Statute.

“The Trial Chamber is...satisfied that incidents of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities were linked to the Accused in this case in the district of Bombali and Freetown and the Western Area.” (1278)

### **6(1):**

#### **Ordering and Planning**

The TC found that:

“the Accused Brima ordered the abduction of children under the age of 15 years for military purposes”, at Rosos; (1719).

“a substantial degree of planning and preparation were required to commit the crimes”; (1820; 1826)

“ the Trial Chamber is further satisfied that the Accused Brima, alone or with others, designed the commission of the three crimes (enslavement, sexual slavery, and recruitment and use of child soldiers), and that...his contribution was substantial.”; (1827)

“The Accused [Brima] played a substantial role in the system of exploitation and cruelty”; (1828)

“As an overall commander, the Accused Brima was substantially involved planning the various operations in these Districts”; (1828)

“the Accused Brima publicly addressed the troop and advocated criminal conduct”; (1829)

“The Accused Brima also directly participated in and made a substantial contribution to the planning and execution of the said crimes”; (1830)

“ During the attack on Karina, Bombali District, Brima ordered the distribution of captured children captured among the commanders”; (1830)

“Upon completion of civilian military training at Camp Rosos, the trainees were addressed by both the Accused Kanu and the Accused Brima. Brima then ordered that the boys should be distributed to the various companies, while the women were sent back to the soldiers and commanders who had taken them as their “wives””; (1830)

“The Trial Chamber is satisfied that the Accused planned, ordered, organised and implemented the system to abduct and enslave civilians which was in fact committed by AFRC troops in Bombali and Western Area.” (1834)

### **6(3):**

Brima, as a superior, bears individual criminal responsibility under 6(3) for crimes committed by his subordinates in Bombali District between 1 May 1998 and 30 November 1998 in which he did not directly participate. (1744)

It can further be noted that a witness testified that following the 1999 retreat from

Freetown, “they met with officials from UNAMSIL and Archbishop Ganda who asked the fighters to release children in order to help secure ceasefire. “Gullit” responded that he would consider the proposal but no children were released.” (1273)

## **F. Type of Crime**

### **Count 13: Enslavement**

Crime base established. (1363)

Civilians were abducted and used as forced labour, as well as forced to undergo military training, by AFRC troops in various locations in Bombali District; (1363)

A witness testified that the abducted civilians with him were forced to carry goods and the women to follow behind. All of the women were naked, except for one who was wearing a loincloth. Armed men accompanied the civilians; (1357)

A witness testified that military trainees who attempted to escape were killed. (1361)

#### **1. Number of Victims**

Unknown

A witness testified that around 35 women were abducted in Karina and stripped naked. (1358)

Witness Johnson estimated that approximately 520 civilians, including both adults and children were trained at Rosos. (1361)

The magnitude of commission of the three enslavement crimes by AFRC troops indicated their systemic nature. (1824)

These crimes were committed on a large scale. (1824)

#### **2. Role of the Accused Brima**

The Accused was found liable of Count 13 under 6(1) and 6 (3) of the Statute.

Brima ordered his troops to abduct civilians to “attract the attention of the international community”. (1831) He planned, organized, implemented and ordered a whole system to abduct and enslave civilians in the Western Area, and to use those abducted civilians for forced labour, sexual slavery and underage conscription.

#### **6(1):**

##### **Ordering and Planning**

The TC found that:

“a substantial degree of planning and preparation were required to commit the crimes”. (1820; 1826)

“the Accused Brima, alone or with others, designed the commission of the three crimes (enslavement, sexual slavery, and recruitment and use of child soldiers), and that...his contribution was substantial.” (1827)

“The Accused [Brima] played a substantial role in the system of exploitation and cruelty.”(1828)

“As an overall commander, the Accused Brima was substantially involved planning the various operations in these Districts.” (1828)

“the Accused Brima publicly addressed the troop and advocated criminal conduct” (1829)

“The Accused Brima also directly participated in and made a substantial contribution to the planning and execution of the said crimes.” (1830)

“ During the attack on Karina, Bombali District, Brima ordered the distribution of captured children captured among the commanders”. (1830)

“Accused Brima ordered his troops to begin abducting civilians, saying that this would attract the attention of the international community.” (1831)

“[T]he Accused Brima is individually criminally responsible under Article 6(1) of the Statute for enslavement in Bombali District and the Western Area.” (1837)

“The Trial Chamber is satisfied that the Accused planned, ordered, organized and implemented the system to abduct and enslave civilians which was in fact committed by AFRC troops in Bombali and Western Area. It is further satisfied that the Accused had the direct intent to set up and implement the system of exploitation involving the three enslavement crimes, namely, sexual slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour.” (1834)

### **6(3):**

Brima as a superior, bears individual criminal responsibility under 6(3) for the crimes committed by his subordinates in Bombali District between 1 May 1998 and 30 November 1998 in which he did not directly participate. (1744)

## **II. FREETOWN AND THE WESTERN AREA**

### **A. Type of Crimes**

*Count 1: Acts of Terrorism*

*Count 2: Collective Punishment*

Crime bases established (1609-1610; 1611-1612).

Protected persons were specifically targeted.(1609) The TC noted the particularly brutal nature of some of the acts of violence. Members of the AFRC repeatedly amputated the hands of a great number of people. A great number of protected persons were deliberately killed by members of the AFRC in targeted attacks or through indiscriminate shooting. (1609)

#### **1. Number of Victims**

Unknown

#### **2. Role of the Accused Brima**

The Accused was found liable of Counts 1 and 2 6(1) and 6(3) of the Statute. (1838)

### **6(1):**

**Ordering**

Brima ordered the perpetration of mass amputations with the intention of terrorizing the civilian population (1773) and in retaliation for the civilians' alleged votes for Kabbah. (1776; 1929) Some of the hands were collected in a bag. (1771)

**6(3):**

"[C]ivilians throughout Freetown, during the January 1999 invasion... had their hands amputated by members of the AFRC"(1461) The civilians were told to ask President Kabbah for new hands. AFRC soldiers repeatedly expressed that the violence they were committing against civilians was in retaliation for the civilians' alleged support of President Kabbah. (1609; 1929)

It has been established that Brima holds command responsibility for AFRC crimes committed in Freetown and the Western Area during the Indictment period. (1810)

**B. Type of Crimes**

Count 3: Extermination

Count 4: Murder as a Crime Against Humanity

Count 5: Murder as a War Crime

Crime base established. (951) Large scale killings of civilians, including women and children, with element of massiveness. (951)

**1. Number of Victims**

Personally murdered 4 persons at State House.

Personally murdered 1 nun at Kissy Mental Home, and ordered his subordinates to kill 3-8 other nuns.

Ordered, aided and abetted civilian killings at Fourah Bay.

Ordered civilian killings at Rogbalan Mosque (estimated by witnesses as 70-71 civilians killed).

Ordered the killing of 14 Nigerian soldiers at the Statehouse. (1780)

Large scale killings with element of massiveness. (951)

**2. Role of the Accused Brima**

The Accused was found liable of Counts 3, 4, 5 under 6(1) and 6(3).

**6(1):****Committing**

Brima personally murdered three civilian Nigerian men (1755) and a soldier's wife (1760, 485) at the State House Area.

Brima personally murdered a nun in the Kissy Mental Home/Portee Area. (1761-1764)

**Ordering**

The Accused

Ordered the killing of 14 captive Nigerian ECOMOG soldiers in the State House Area.

Ordered the killing of between three and eight nuns at Kissy Mental Home. (1780)

Ordered the killing of civilians at Rogbalan Mosque; witnesses estimate 70-71 were killed. (1782)

Ordered the killing of an unknown number of civilians in the Fourah Bay area. (1770)

### **Aiding and Abetting**

Brima's presence at Fourah Bay, as commander, during the commission of the murder of civilians and the burning of houses by his subordinates, aided and abetted the commission of those crimes. (1785-1786)

### **6(3):**

"The AFRC were... responsible for massive civilian casualties" in Freetown in January and February of 1999. (207) "[B]etween 6 January and 28 February 1999, AFRC forces killed at least 145 civilian men, women and children in the city of Freetown and... in the Western Area, as charged under Counts 4 and 5." (951) It has been established that Brima holds command responsibility for AFRC crimes committed in Freetown and the Western Area during the Indictment period. (1810)

## **C. Type of Crimes**

### **Count 6: Rape**

Crime based established (1068)

#### **1. Number of Victims**

unknown

Numerous girls and women were raped (1048; 1063; 1064)

#### **2. Role of the Accused Brima**

The Accused was found liable of Count 6 under 6(1) and 6(3) under the Statute. (1776)

### **6(1):**

#### **Ordering**

"The Accused ordered his men to commit atrocities against the civilian population as they were retreating. As a result of the order, girls and women were raped by the fighters... The Trial Chamber finds that ...the Prosecution has proven beyond reasonable doubt that the Accused Brima is individually responsible for ordering his subordinates to commit these crimes..." (1776)

### **6(3):**

"AFRC troops... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively." (1929) It has been established that Brima holds command responsibility for AFRC crimes committed in Freetown and the Western Area during the Indictment period. (1810)

## **D. Type of Crimes**

### **Count 9: Outrages upon Personal Dignity**

Crime base established. (1188)

The TC noted the continuous nature of these crimes. (1820)

The sexual slavery was systemic amongst perpetrators. (1823-1835)  
See indications *supra* Brima I. D.

**1. Number of Victims**

Not specified

**2. Role of the Accused Brima**

The Accused was found liable of Count 9 under 6(1) and 6(3).

**6(1):**

**Planning**

Brima is guilty of planning the commission of the crime of outrages on personal dignity in Freetown and the Western Area. (1835)

**6(3):**

“AFRC troops... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.” (1929) It has been established that Brima holds command responsibility for AFRC crimes committed in Freetown and the Western Area during the Indictment period. (1810)

**E. Type of Crimes**

**Count 10: Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Mutilation**

Crime base established. (1243) Numerous instances of amputations of the limbs of civilians, mostly the hands, with machetes and cutlasses as a retaliation for lack of support. (1243)

**1. Number of victims**

Unknown

At least 237 civilians and one soldier amputated (1243) generally of their hands. The victims included very young children. (1242)

**2. Role of the Accused Brima**

The Accused was found liable of Count 10 under 6(1) and 6(3).

**6(1) :**

**Committing, Ordering**

Brima personally amputated one civilian at Shell Company, Old Road, in January 1999. (1769)

In addition, the Trial Chamber found that an AFRC soldier “amputated an unknown number of civilians pursuant to the order issued by the Accused Brima.”, when he said “the hand that they are pointing at us, the fingers that they are pointing at us, we shall ensure that all their hands are amputated.” (1239)

**6(3):**

“AFRC troops... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.” (1929) “[C]ivilians throughout Freetown, during the January 1999 invasion... had their hands amputated by members of the AFRC”. (1461) It has been established that Brima holds command responsibility for AFRC crimes committed in Freetown and the Western Area during the Indictment period. (1810)

## **F. Type of Crimes**

### **Count 12: Conscription and Enlisting of Children Under the Age of 15**

Crime base established (1275-1276-1277-1278; 1821-1822), in the Republic of Sierra Leone at all times material to the Indictment.

See indications *supra* Brima I. E.

#### **1. Number of Victims**

witness testified that approximately 300 abducted civilians were taken by the fighters from Freetown to Benguema. Among those captured were many small boys, including some as young as nine years old. (1272).

A UN Report released in January 1999 stated that “a significant number of rebel combatants were children”. (1274).

#### **2. Role of the Accused Brima**

The Accused was found liable of Count 12 under 6(1) and 6(3).

##### **6(1):**

##### **Ordering, Planning**

Brima ordered the conscription of child soldiers, who were then “brutalized, trained, and often forced to ingest illicit substances” before being “forced to perform a number of military functions”. (1821)

“On Brima’s orders, the young boys under the age of fifteen years were later trained as Small Boy Units”. (1783; 1449)

“Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of conscription of children under the age of 15 into the armed group for using them to participate actively in hostilities in Bombali District and the Western Area.” (1836)

“The Accused had the direct intent to set up and implement the system of exploitation involving the three enslavement crimes, namely, sexual slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour.”(1834)

##### **6(3):**

“AFRC troops... used children illegally recruited for military purposes in the attack on Freetown, as charged under” Count 12. (1929, p 527) It has been established that Brima holds command responsibility for AFRC crimes committed in Freetown and the Western Area during the Indictment period. (1810, p 499)

## **G. Type of Crimes**

Count 13: Enslavement

Crime base established (1389).

**1. Number of Victims**

Unknown

**2. Role of the Accused Brima**

The Accused was found liable of Count 13 under 6(1) and 6(3).

Brima ordered his troops to abduct civilians to “attract the attention of the international community”. (1831) He planned, organized, implemented and ordered a whole system to abduct and enslave civilians in the Western Area, and to exploit those abducted civilians for forced labour, sexual slavery and underage conscription. (1821-1823)

**6(1):****Ordering and Planning**

“[T]he Accused Brima is individually criminally responsible under Article 6(1) of the Statute for enslavement in Bombali District and the Western Area.” (1837) “Accused Brima ordered his troops to begin abducting civilians, saying that this would attract the attention of the international community.” (1831) “The Trial Chamber is satisfied that the Accused planned, ordered, organized and implemented the system to abduct and enslave civilians which was in fact committed by AFRC troops in Bombali and Western Area. It is further satisfied that the Accused had the direct intent to set up and implement the system of exploitation involving the three enslavement crimes, namely, sexual slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour.” (1834)

**6(3):**

“AFRC troops also abducted civilians and used them as forced labour... in the attack on Freetown, as charged under Count 13”. (1929) It has been established that Brima holds command responsibility for AFRC crimes committed in Freetown and the Western Area during the Indictment period. (1810)

**H. Type of Crimes**Count 14: Pillage

Crime base established. (1429)

**1. Number of Victims**

Unknown

**2. Role of the Accused Brima**

The Accused was found liable of Count 14 under 6(1) and 6(3).



Brima ordered his troops to collect their salaries by looting the civilians in Freetown and the Western Area, and he ordered the troops to loot UN vehicles for AFRC use.

**6(1):**

**Ordering**

Brima informed his troops that as he did “not have the means to pay them they were free to loot from the civilian population.” (1778)

Brima ordered his troops to steal UN vehicles and bring them to the State House. (1778)

**6(3):**

“AFRC troops engaged in widespread looting” in Freetown. (1929)

It has been established that Brima holds command responsibility for AFRC crimes committed in Freetown and the Western Area during the Indictment period. (1810)

## **KAMARA**

### **I. KONO DISTRICT**

#### **A. Type of Crimes**

*Count 1: Acts of Terrorism*

*Count 2: Collective punishment*

Crime base established. (1525-1527)

The TC noted “[t]he sustained duration of the attacks, the particularly brutal nature of some of the attacks including civilians who were burn alive when locked in houses with were set on fire; the great number of repeated mutilations of civilians whose missing hands were left as a grotesque and lingering public reminder of the attacks; the widespread destruction of civilian property in Tombodu.” (1525)

#### **1. Number of Victims**

Unknown:

“civilians were repeatedly targeted and a great number were deliberately killed”. (1525)

“...great number of repeated mutilations...” (1525)

“...15 civilians locked into a house in Tombodu”, then set ablaze by Savage. (849)

“Another 47 people were beheaded by “Savage” and “Guitar Boy” and then thrown into a diamond pit. (849)

Witness Johnson corroborated this evidence testifying that “Savage” killed more than 150 people who were then thrown into a pit, all killed by machete. (849)

“...massive killings took place at the hands of AFRC/RUF fighters; (849)

“[T]he AFRC unlawfully killed a minimum of 265 civilians in Tombodu, Kono District.” (857)

#### **2. Role of the Accused Kamara**

Kamara was found liable under 6(3) of the Statute for Count 1 and Count 2.

In Kono, Kamara presided over AFRC troops as they terrorized and collectively punished the civilian population, and he watched as his troops burned civilians alive.

**6(3):**

“AFRC/RUF troops... terrorized the civilian population, as charged under Count 1”. (1856) “AFRC/RUF troops... committed collective punishments, as charged under Count 2.” (1856) “In the presence of AFRC commanders including the Accused Kamara and Kanu, many civilians were burned alive as they were locked up in houses which were then set on fire”. (850) Kamara’s command responsibility for crimes committed by the AFRC in Kono is established. (1893)

**B. Type of Crimes**

Count 3: Extermination (CAH)

Count 4: Murder (CAH)

Count 5: Violence to life (art 3 common)

Crime base established. (857)

The AFRC engaged in “large scale killings” in an “indiscriminate manner.” (857) “February through June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3 through 5.” (1856)

**1. Number of Victims**

at least 265 killed in Tombodu, Kono (857)

**2. Role of the Accused Kamara**

Kamara was found liable under 6(3) for Count 3, Count 4 and Count 5.

**6(3):**

“AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3 through 5.” (1856) “[T]hese large scale killings satisfy the element of massiveness for the crime of extermination charged under Count 3 of the Indictment.” (857) ‘Savage’ and his soldiers killed civilians by machete and threw their bodies in a pit at Tombodu, because they believed the civilians were celebrating ECOMOG successes. (1876-1877) Some were also killed by fire, as when ‘Savage’ locked 15 civilians in a house in Tombodu, set it on fire, and all the civilians died. (849)

Kamara’s command responsibility for crimes committed by the AFRC in Kono is established (1893) and Kamara’s specific command control over Savage is also established. (1875, 1884-1885).

**C. Type of Crimes**

Count 9: Outrages Upon Personal Dignity

Crime base established. (1188)

The TC found that the acts of rape and sexual slavery are encompassed by the definition of outrages on personal dignity. (1069)

See indications *supra* Brima I. D.

**1. Number of Victims**

The TC heard that sexual slavery was systemic amongst perpetrators (1823-1835).  
The magnitude of commission of the three enslavement crimes by AFRC troops indicated their systemic nature. (1824)  
These crimes were committed on a large scale. (1824)

**2. Role of the Accused Kamara**

Kamara was found liable under 6(3) of the Statute for Count 9 of the Statute.

**6(3):**

“February through June 1998, AFRC/RUF troops in Kono District unlawfully... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10”. (1856; 1973) Kamara’s command responsibility for crimes committed by the AFRC in Kono is established. (1893; 1973-1976)

**D. Type of Crimes**

Count 10: Violence to Life, Health and Physical or Mental Well-being of Persons, in Particular Mutilation

Crime base established. (1213)

**1. Number of Victims**

Unknown.  
At least 16 victims amputated by Savage,  
AFRC/RUF carved initials on 18 victims (1213).

**2. Role of the Accused Kamara**

Kamara was found liable for Count 10 under Article 6(3) of the Statute.

**6(3):**

“February through June 1998, AFRC/RUF troops in Kono District unlawfully... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10”. (1856) Kamara’s command responsibility for crimes committed by his subordinates in Kono (including physical violence) is established. (1893; 1973-1976)

**E. Type of Crimes**

Count 12: Conscription or Enlisting Children Under the Age of 15

Crime base established (1275-1276-1277-1278; 1821-1822), in the Republic of Sierra Leone at all times material to the Indictment.

See indications *supra* Brima I. E.

**1. Number of Victims**

Unknown.

## **2. Role of the Accused Kamara**

Kamara was found liable for Count 12 under Article 6(3) of the Statute.

### **6(3):**

“February through June 1998, AFRC/RUF troops in Kono District... used illegally recruited children for military purposes, as charged under count 12.” (1856)  
Kamara’s general command responsibility for crimes committed by the AFRC in Kono is established. (1893)

“The Trial Chamber accordingly finds the Accused Kamara liable as a superior under Article 6(3) for the crime of enslavement in Kono District.” (1976)

## **F. Type of Crimes**

### **Count 13: Enslavement**

Crime base established (1333)

### **1. Number of Victims**

Unknown

### **2. Role of the Accused Kamara**

Kamara was found liable for Count 13, Enslavement, under Article 6(3) of the Statute.

### **6(3):**

“AFRC/RUF troops... abducted civilians and used them as forced labour, as charged under Count 13.” (1856) Specifically, the AFRC/RUF captured civilians in Kono District in March 1998 for enslavement in Tombodu. (1976) They were used for forced labour or sexual slavery. (1973-1974)

Kamara’s general command responsibility for crimes committed by the AFRC in Kono is established (1893), and Kamara’s command responsibility specifically for the crime of enslavement is also separately established. (1976)

## **G. Type of Crimes**

### **Count 14: Pillage**

Crime base established. (1415)

### **1. Number of Victims**

Unknown

### **2. Role of the Accused Kamara**

Kamara was found liable for Count 14, Pillage, under Article 6(3) of the Statute. Kamara presided over his AFRC troops as they engaged in widespread looting and pillage.

### **6(3):**

AFRC/RUF troops engaged in widespread looting, as charged under Count 14”. (1856)  
 Kamara’s command responsibility for AFRC crimes in Kono is established. (1893).  
 Savage committed pillage. (1413-1415)

## II. BOMBALI DISTRICT

### A. Type of Crimes

Count 1: Acts of Terrorism (1568-1573)

Count 2: Collective Punishment (1572-1573)

Crime base established. (1710; 1568-1573)

The TC noted the particularly brutal nature of acts of violence, against particularly vulnerable persons (children and women, including splitting open of the stomach of a pregnant woman and removal of the foetus, and burning of civilians alive) (1570)

#### 1. Number of Victims

Unknown:

5 girls killed after a specific order of Kamara. (1915-1916)

#### 2. Role of the Accused Kamara

Kamara was found liable for Count 1, Acts of Terrorism, and Count 2, Collective Punishment, under Article 6(1) and 6(3) of the Statute. Kamara personally ordered the killing of five girls by fire, and presided over his troops as they terrorized and collectively punished the civilian population in Bombali.

#### 6(1):

##### **Ordering**

Kamara ordered the killing of 5 girls. (1915-1916)

#### 6(3):

“[T]he AFRC troops in Bombali District... terrorized the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.” (1911)  
 Kamara’s command responsibility for all crimes committed by the AFRC in Bombali is established (1928).

### B. Type of Crimes

Count 3: Extermination

Count 4: Murder

Count 5: Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Murder

Crime base established. (857)

“[T]he AFRC troops in Bombali District... terrorized the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.” (1911)

“...large scale killings...element of massiveness...indiscriminate manner in which the victims were targeted...” (857, 898)

### **1. Number of Victims**

Unknown:

An unknown number of victims were killed during the attack of Bornoya (883; 884; 888)

Civilians were killed on a massive scale in Karina (894); TC found that the figure of 200 civilians killed in Karina is corroborated by the totality of the evidence given. (894)

25 civilians killed in the attack of Gbendembu. (896)

5 girls killed after a specific order of Kamara (1915-1916).

### **2. Role of Accused Kamara**

Kamara was found liable for Count 3, Count 4, and Count 5, under Article 6(1) and Article 6(3) of the Statute. Kamara personally ordered the killing of 5 girls in a burning house, and presided over his troops as they murdered hundreds of other civilians in Bombali.

**6(1):**

#### **Ordering**

Kamara ordered the killing of 5 girls (1915-1916)

**6(3):**

Kamara’s command responsibility for all crimes committed by the AFRC in Bombali is established. (1928)

### **C. Type of Crimes**

#### **Count 6: Rape**

Crime base established (1040-1041).

The AFRC troops in Bombali District... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively. (1038; 1041; 1911)

The TC describes instances of gang rapes (1031-1041):

A woman was captured by rebels and raped by three rebels. One of the rebels had a gun, another had a knife. After the rape, woman was cut in the back of the neck. The same woman was obliged to take a rebel’s penis in her mouth and then he tried to rape her vaginally. The woman was then brought to another group of armed rebels. (1032) The woman was hit by a rebel and has a scar. The witness was then raped twice more.

Altogether, the witness was raped by five rebels. (1032) Another woman was kicked, her clothes were torn and she was brutally raped by four rebels, under threat of death.

Witness testified that the rape was particularly painful, as if “my guts were coming out” (1035). Another woman was raped by two rebels and as a result was bleeding from her vagina. (1036)

### **1. Number of Victims**

Unknown (1040; 1041)

## **2. Role of the Accused Kamara**

Kamara was in control of his troops as they inflicted sexual violence on civilians in Bombali, including rape and gang rape.

### **6(3):**

“[T]he AFRC troops in Bombali District... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively” (1911).

Kamara’s command responsibility for crimes committed by the AFRC in Bombali is established (1928).

## **2. Type of Crimes**

### **Count 9: Outrages Upon Personal Dignity**

Crime base established in Bombali. (1188)

The TC found that the acts of rape and sexual slavery are encompassed by the definition of outrages on personal dignity. (1069) The TC heard that sexual slavery was systemic amongst perpetrators. (1823-1835) The magnitude of commission of the three enslavement crimes by AFRC troops indicated their systemic nature. (1824) These crimes were committed on a large scale. (1824)

See indications *supra* Brima I. D.

## **3. Role of the Accused Kamara**

Kamara was found liable for Count 9 under Article 6(3) of the Statute.

### **6(3):**

“[T]he AFRC troops in Bombali District... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively” (1911).

Kamara’s command responsibility for crimes committed by the AFRC in Bombali is established. (1928)

## **D. Type of Crimes**

### **Count 12: Conscription or Enlisting Children under the Age of 15**

Crime base established (1275-1276-1277-1278; 1821-1822), in the Republic of Sierra Leone at all times material to the Indictment.

See indications *supra* Brima I. E.

## **1. Number of Victims**

Unknown

## **2. Role of the Accused Kamara**

Kamara was found liable for Count 12, Conscription or Enlisting Children under the Age of 15, under Article 6(3) of the Statute.

### **6(3):**

“[T]he AFRC troops in Bombali District... abducted civilians and used them as forced labour and used children illegally recruited for military purposes, as charged under Counts 13 and 12, respectively.” (1911)

Kamara’s command responsibility for crimes committed by the AFRC in Bombali is established. (1928)

#### **E. Type of Crimes**

##### **Count 13: Enslavement**

Crime base established (1363)

#### **1. Number of Victims**

Unknown

#### **2. Role of the Accused Kamara**

Kamara was found liable for Count 13 under Article 6(3) of the Statute.

##### **6(3):**

“[T]he AFRC troops in Bombali District... abducted civilians and used them as forced labour... as charged under Counts 13.” (1911)

Kamara’s command responsibility for crimes committed by the AFRC in Bombali is established (1928).

### **III. FREETOWN AND THE WESTERN AREA**

#### **A. Type of Crimes**

##### **Count 1: Acts of Terrorism**

##### **Count 2 Collective Punishment**

Crime base established. (1609-1610; 1611-1612)

“[C]ivilians throughout Freetown, during the January 1999 invasion also had their hands amputated by members of the AFRC” (1461). “[S]uch amputations were used by the AFRC with the primary purpose to spread terror among the civilian population... carried out primarily against unarmed civilians.” (1462) “AFRC troops... terrorized the civilian population, as charged under Count 1” in Freetown. (1929)

AFRC soldiers repeatedly expressed that the violence they were committing against civilians was in retaliation for the civilians’ alleged support of President Kabbah. (1609) “The Trial Chamber is satisfied that these crimes... served as a punishment against protected persons” (1611). “AFRC troops... committed collective punishments, as charged under Count 2” in Freetown. (1929)

#### **1. Number of Victims**

Unknown

“[T]he AFRC troops killed an unknown number of civilians at Fourah Bay in retaliation for an alleged murder of an AFRC soldier during the 1999 attack on Freetown.” (1934)



## **2. Role of the Accused Kamara**

Kamara was found liable for Count 1 and Count 2 under Article 6(1) and Article 6(3) of the Statute.

### **6(1):**

#### **Aiding and Abetting**

“Kamara’s presence at the scene gave moral support which had a substantial effect on the perpetration of the crime... Kamara was aware of the substantial likelihood that his presence would assist the commission of the crime.” (1940)

### **6(3):**

Kamara is “liable as a superior under Article 6(3) for crimes committed in Freetown.” (1950)

## **B. Type of Crimes**

### Count 3 Extermination

### Count 4: Murder, as a Crime against Humanity

### Count 5: Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Murder

Crime base established. “The AFRC were... responsible for massive civilian casualties” in Freetown in January and February of 1999. (207)

### **1. Number of Victims**

“[B]etween 6 January and 28 February 1999, AFRC forces killed at least 145 civilian men, women and children in the city of Freetown and... in the Western Area, as charged under Counts 4 and 5... [T]hese large scale killings satisfy the element of massiveness for the crime of extermination charged under Count 3.” (951)

Examples of specific findings include: “[A]t least four persons *hors de combat* were executed by AFRC soldiers who were acting furtherance of the armed conflict” in the State House Area. (951) “The Trial Chamber finds the elements in relation to Counts 4 and 5 have been established beyond reasonable doubt in respect of the shooting by ‘juntas’ at the house of ‘Pa Zubay’.” (930)

## **2. Role of the Accused Kamara**

Kamara is found liable for Count 3, Count 4, and Count 5, under Article 6(1) and Article 6(3) of the Statute.

### **6(1):**

#### **Aiding and Abetting**

“[T]he AFRC troops killed an unknown number of civilians at Fourah Bay in retaliation for an alleged murder of an AFRC soldier during the 1999 attack on Freetown.” (1934)

“Kamara’s presence at the scene gave moral support which had a substantial effect on the

perpetration of the crime... Kamara was aware of the substantial likelihood that his presence would assist the commission of the crime". (1934-1935; 1939-1940<sup>1</sup>).

**6(3):**

Kamara is "liable as a superior under Article 6(3) for crimes committed in Freetown." (1950).

**C. Type of Crimes**

Count 6: Rape

Crime base established (1068)

**1. Number of Victims**

Unknown

**2. Role of the Accused Kamara**

Kamara is found liable for Count 6, Rape, under Article 6(3) of the Statute.

**6(3):**

"AFRC troops... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively." (1929)

Kamara is "liable as a superior under Article 6(3) for crimes committed in Freetown." (1950).

**D. Type of Crimes**

Count 9: Outrages upon Personal Dignity

Crime base established (1188)

See indications *supra* Brima I. D.

**1. Number of Victims**

Unknown

**2. Role of the Accused Kamara**

Kamara was found liable for Count 9 under Article 6(3) of the Statute.

**6(3):**

"AFRC troops... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively." (1929).

Kamara is "liable as a superior under Article 6(3) for crimes committed in Freetown." (1950).

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<sup>1</sup> While Kamara is found guilty of aiding and abetting these murders, no specific count is identified in the "Responsibility of the Accused" section of the decision. Therefore, the aiding and abetting of these civilian deaths is assumed to satisfy counts 3-5.

**E. Type of Crimes****Count 10: Violence to Life, Health and Physical or Mental well-being of Persons, in Particular Mutilation**

Crime base established. (1243)

**1. Number of Victims**

Unknown

**2. Role of the Accused Kamara**

Kamara was found liable for Count 10 under Article 6(1) and 6(3) of the Statute. Kamara led a mission to steal machetes from the World Food Program, with the awareness that these machetes would be used later that same day to amputate civilians. (1941)

**6(1):****Aiding and Abetting**

“The Accused Kamara led a mission to loot machetes from the World Food Program... they (were) used that day in “Operation Cut Hand”... to amputate civilians... Kamara was aware of the substantial likelihood that the use of the machetes would assist in the commission of these crimes. The Trial Chamber therefore finds the Accused Kamara liable for aiding and abetting physical violence.” (1941).

**6(3):**

“AFRC troops... inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.” (1929) “[C]ivilians throughout Freetown, during the January 1999 invasion... had their hands amputated by members of the AFRC.”(1461) Kamara is “liable as a superior under Article 6(3) for crimes committed in Freetown.” (1950)

**F. Type of Crimes****Count 12: Conscripting or Enlisting Children under the Age of 15**

Crime base established (1275-1278; 1821-1822)

See indications *supra* Brima I. E.

**1. Number of Victims**

Unknown

**2. Role of the Accused Kamara**

Kamara was found liable for Count 12 under Article 6(3) of the Statute.

**6(3):**

“AFRC troops... used children illegally recruited for military purposes in the attack on Freetown, as charged under... Count 12”. (1929) Kamara is “liable as a superior under Article 6(3) for crimes committed in Freetown.” (1950).

**G. Type of Crimes****Count 13: Enslavement**

Crime base established. (1389)

**1. Number of Victims**

Unknown

**2. Role of the Accused Kamara**

Kamara was found liable for Count 13, Enslavement, under Article 6(3) of the Statute.

**6(3):**

“AFRC troops also abducted civilians and used them as forced labour... in the attack on Freetown, as charged under Count 13”. (1929) Kamara is “liable as a superior under Article 6(3) for crimes committed in Freetown.” (1950).

**H. Type of Crimes****Count 14 Pillage**

Crime base established (1429)

**1. Number of Victims**

Unknown

**2. Role of the Accused Kamara****6(3):**

“AFRC troops engaged in widespread looting” in Freetown. (1929) Kamara is “liable as a superior under Article 6(3) for crimes committed in Freetown.” (1950).

**IV. PORT LOKO DISTRICT (MANAARMA ONLY)****A. Type of Crimes****Count 4: Murder****Count 5: Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Murder**

Crime base is established in Manaarma. (965)

**1. Number of Victims**

Unknown number killed. (965)

**2. Role of the Accused Kamara**

Kamara was found liable for Count 4 and Count 5 under Article 6(3) of the Statute.

**6(3):**

“The Trial Chamber has found that AFRC/RUF troops unlawfully killed a number of civilians in Port Loko District as charged under Counts 3 through 5.” (1951). Some of the unlawful killings and amputations took place in Manaarma. (1966)  
Kamara’s responsibility as a superior for crimes committed by the AFRC in Manaarma, Port Loko District, has been established. (1969)

## **B. Type of Crimes**

### **Count 9: Outrages Upon Personal Dignity**

Crime base established. (1187-1188)  
See indications *supra* Brima I. D.

#### **1. Number of victims**

Unknown

#### **2. Role of the Accused Kamara**

Kamara was found liable for Count 9 under Article 6(3) of the Statute.

#### **6(3):**

“Kamara is liable as a superior under Article 6(3) for crimes committed in Manaarma in Port Loko District. (1969), (1952; 1969)

## **KANU**

### **I. FREETOWN AND THE WESTERN AREA**

#### **A. Type of Crimes**

*Count 1: Acts of Terrorism*

*Count 2: Collective Punishment*

Crime bases established. (1609-1610; 1611-1612)

#### **1. Number of Victims**

Personally Amputated:

1 civilian at Kissy/ Old Road, as an instructional demonstration

2 civilians at Uppun, as an instructional demonstration

Ordered to amputate:

An unknown number of civilians between Fourah Bay and Ross Road

200 civilians in Eastern Freetown

Performed by AFRC in Freetown and the Western Area:

at least 237 civilians and one soldier

#### **2. Role of the Accused Kanu**

Kanu was found liable of Count 1 and Count 2 under Article 6(1) and Article 6(3) of the Statute. Not only did Kanu personally amputate the arms of civilians, he performed these amputations as demonstrations for his troops, establishing a method and nomenclature for these crimes. (2050) Before an audience of his subordinates, Kanu explained and demonstrated that a 'long sleeve' is the amputation of the hand, while a 'short sleeve' is the amputation of the arm around the bicep. (1588)

**6(1):**

**Committing**

Kanu gave a demonstration on amputation of civilians to AFRC troops in the Kissy Old Road area. (1588, 2050)

At Uppun, "Kanu told his commanders... that it was time for amputations to begin, and that he would begin by demonstrating. Later two civilians were captured and Kanu amputated their arms." "He then told the victims that they should go to President Kabbah to ask for new hands". His method of amputation, and the direction that victims should ask Kabbah for replacement hands, was mimicked later by Kanu's subordinates, as they too amputated civilians. (2061)

**Ordering**

Kanu "told the troops that Brima had said that the civilians should be taught a lesson." Kanu then ordered that any civilians seen between Ross Road and Fourah Bay Road should be amputated and killed and the entire area should be burned down." (1589)

Kanu "ordered his fighters to go to Eastern Freetown and amputate 200 civilians and send them to ferry junction". The troops left and returned "with severed arms and blood covered machetes". (2060)

**Instigating**

"Kanu prompted the perpetrators to kill civilians in Freetown." (2063)

**6(3):**

AFRC troops committed collective punishments and acts of terrorism against the civilian population in Freetown.(2045)

Between January 6, 1999 and February 28, 1999 "AFRC fighting forces mutilated at least 237 civilians and one soldier by cutting off their limbs in various areas of Freetown and in Kissy and Wellington in the Western Area." (1243)

The Accused is responsible for all crimes committed in the Western Area. (2080)

**B. Type of Crime**

Count 3: Extermination

Count 4: Murder as a Crime against Humanity

Count 5: Murder as a War Crime

Crime base established. (951)

### **1. Number of Victims**

Kanu ordered the killings of:

An unknown number of civilian “collaborators” (2063)

14-16 captive ECOMOG Soldiers (2058)

An unknown number of civilians in a mosque near Kissy Mental Home (2059)

The AFRC killed:

At least 145 civilians in Freetown and the Western Area

### **2. Role of the Accused Kanu**

Kanu was found liable for Count 3, Count 4, and Count 5, under Article 6(1) and Article 6(3) of the Statute. Kanu ordered his troops in Freetown to kill civilians, and the orders were obeyed.

#### **6(1):**

##### **Ordering**

On the eve of the January 6, 1999 invasion of Freetown Kanu “reminded the AFRC troops present about orders to burn down police stations and kill “targeted persons”/collaborators.” The Trial Chamber is satisfied that Kanu prompted the perpetrators to kill civilians in Freetown. (2063)

“Brima ordered the execution of 14-16 captive ECOMOG soldiers at the State House and Kanu then took the soldiers outside, killed one ECOMOG soldier himself and ordered his soldiers to execute the remaining soldiers, ordering the commission of the crime in full awareness that the crime would likely be committed”. (2058)

Kanu reissued an order to massacre civilians given by Brima the day after troops withdrew from Kissy Mental Home and an unknown number of civilians at a mosque were killed. (2059)

##### **Instigating**

“Kanu prompted the perpetrators to kill civilians in Freetown.” (2063)

#### **6(3):**

The Accused is responsible for all crimes committed in the Western Area (2080). Between January 6 and February 28, 1999, “AFRC forces killed at least 145 civilian men, women and children in the city of Freetown and in Kissy, Wellington and Calaba Town in the Western Area, as charged under counts 4 and 5... These large scale killings satisfy the element of massiveness for the crime of extermination charged under Count 3 in the indictment.”(951, 2045)

### **C. Type of Crimes**

#### **Count 6: Rape**

Crime base established. (1068)

**1. Number of Victims**

Unknown

**2. Role of the Accused Kanu**

**6(3):**

The Accused is responsible for all crimes committed in the Western Area (2080). AFRC troops inflicted physical and sexual violence on civilians as charged under counts 6 through 9 and 10 respectively. (2045, 1170)

**D. Type of Crimes**

Count 9: Outrages against Personal Dignity

Crime base established (1187-1188)

See indications *supra* Brima I. D.

**1. Number of Victims**

Unknown

**2. Role of the Accused Kanu**

Kanu designed, implemented and maintained a system to use abducted women and girls as slave properties to be distributed to soldiers for sexual abuse and exploitation. (2092) His system involved the cruel treatment of the abducted women, including punishments involving lashes and confinement within locked boxes. (2092) Kanu was found liable for Count 6 and Count 9, under Article 6(1) and 6(3) of the Statute.

**6(1):**

**Planning**

Kanu planned “the commission of the crime of sexual slavery in Bombali district and the Western Area”. (2096)

Kanu designed and implemented a system to control abducted girls and women, and all abducted girls and women were placed in his control. Any soldier who wanted an abducted girl or woman as a “wife” had to “sign for her.” Kanu issued an order instructing any woman caught with another woman’s husband to be beaten and locked in a box. TF1-334 observed a sergeant report to Kanu that he suspected his wife of misbehaving. Kanu called the woman before him, found her guilty and ordered she be sent to Mammy Queen to be given a dozen lashes, and locked in the box. (2092)

**6(3):**

The Accused is responsible for all crimes committed in the Western Area. (2080) AFRC troops inflicted physical and sexual violence on civilians as charged under counts 6 through 9 and 10 respectively. (2045, 1170)



**E. Type of Crimes:****Count 10: Physical Violence (Mutilation)**

Crime base established. (1243)

**1. Number of Victims**

Unknown

Personally Amputated:

1 civilian at Kissy/ Old Road, as an instructional demonstration;

2 civilians at Uppun, as an instructional demonstration;

Ordered to Amputate:

An unknown number of civilians between Fourah Bay and Ross Road;

200 civilians in Eastern Freetown.

**2. Role of the Accused Kanu**

Not only did Kanu personally amputate the arms of civilians, he performed these amputations as demonstrations for his troops, establishing a method and nomenclature for these crimes. (2050) Before an audience of his subordinates, Kanu explained and demonstrated that a 'long sleeve' is the amputation of the hand, while a 'short sleeve' is the amputation of the arm around the bicep area. (1588) Kanu was found liable for Count 10 under Article 6(1) and 6(3) of the Statute.

**6(1):****Ordering**

When AFRC troops arrived at Kissy Mental home, Kanu ordered his fighters to go to Eastern Freetown and amputate 200 civilians and send them to ferry junction. Witness George Johnson was present when the order was given, saw the troops leave and return "with severed arms and blood covered machetes". Trial Chamber is satisfied that the accused ordered the crime in full awareness that it would likely be carried out. (2060)

**6(3):**

The Accused is responsible for all crimes committed in the Western Area (2080). Between January 6, 1999 and February 28, 1999 "AFRC fighting forces mutilated at least 237 civilians and one soldier by cutting off their limbs in various areas of Freetown and in Kissy and Wellington in the Western Area." This establishes the elements for Count 10. (1243)

**F. Type of Crimes****Count 12: Conscription or Enlisting Children under the Age of 15**

Crime base established. (1275-1278; 1821-1822)

See indications *supra* Brima I. E.

**1. Number of Victims**

unknown

## **2. Role of the Accused Kanu**

Kanu planned the abduction and conscription of children, under the age of 15, into his armed group, presided over Camp Rosos, where the children were forced to train, and assigned child soldiers to military duties in Benguema. Kanu was found liable for Count 12 under Article 6(1) and Article 6(3) of the Statute.

### **6(1):**

#### **Planning**

The TC finds that Kanu is individually criminally responsible under Article 6(1) for planning the commission of the conscription of children under age 15 into the armed group or using them to participate actively in hostilities in Bombali District and the Western Area. (2097)

Kanu planned, organized and implemented a system to abduct and enslave children, which was committed by AFRC troops in Bombali and the Western Area. Kanu “had direct intent to establish and implement the system of exploitation involving the three enslavement crimes, namely sexual slavery, conscription and use of children under 15 for military purposes, and abductions and forced labour”. (2095)

#### **Committing**

Kanu was in charge of the forced military training camp of civilians at Camp Rosos, where children under 15 were forced to train. (2093)

Kanu had approximately 10 children combatants in charge in Benguema following the retreat from Freetown. (2094)

### **6(3):**

The Accused is responsible for all crimes committed in the Western Area (2080). AFRC troops abducted and used children illegally recruited for military purposes in the attack on Freetown, as charged under Counts 12 and 13. (2045, 2076)

## **G. Type of Crimes:**

### **Count 13: Enslavement**

Crime base established. (1389)

#### **1. Number of Victims**

Unknown

“large numbers of civilians” (1389)

#### **2. Role of the Accused Kanu**

Kanu planned, organized and implemented a whole system of abduction and enslavement of children, women, girls, and other civilians. Kanu was found liable for Count 13 under Article 6(1) and 6(3) of the Statute.

### **6(1):**

**Planning**

Kanu planned, organized and implemented a system to abduct and enslave children, which was committed by AFRC troops in Bombali and the Western Area. Kanu “had direct intent to establish and implement the system of exploitation involving the three enslavement crimes, namely sexual slavery, conscription and use of children under 15 for military purposes, and abductions and forced labour”. (2095)

**6(3):**

The Accused is responsible for all crimes committed in the Western Area (2080). Between January 6, 1999, and February 28, 1999, “members of the AFRC abducted large numbers of civilians from locations including Freetown, Kissy, Calaba Town and Kola Tree and used these civilians as forced labour in locations including Benguema and Newton in the Western Area.” (1389)

**H. Type of Crimes****Count 14: Pillage**

Crime base established. (1429)

**1. Number of Victims**

Unknown

**2. Role of the Accused Kanu**

Kanu commanded a force that looted widely in Freetown and the Western Area, and he himself looted at least one vehicle. Kanu was found liable for Count 14 under Article 6(1) and 6(3) of the Statute.

**6(1):****Committing**

Kanu committed the act of pillage for looting at least one vehicle at the State House. Accordingly, the Trial Chamber finds Kanu individually criminally responsible for committing the act of pillage. (2057)

**6(3):**

The Accused is responsible for all crimes committed in the Western Area (2080). AFRC troops engaged in widespread looting, as charged under count 14. (2045, 2076) “[B]etween 6 January 1999 and 28 February 1999, AFRC forces engaged in looting in State House in Freetown and Kissy in the Western Area. (1429).

**II. BOMBALI DISTRICT****A. Type of Crimes****Count 1: Acts of Terrorism****Count 2: Collective Punishment**

Crime base established (1568-1573; 1710)

The Trial Chamber noted the particularly brutal nature of acts of violence, against particularly vulnerable persons (children and women, including splitting open of the stomach of a pregnant woman and removal of the foetus, and burning of civilians alive) (1570). Civilians were hacked to death. (884)

**1. Number of Victims**

Unknown

**2. Role of the Accused Kanu**

“The factual findings demonstrate that the Accused Kanu presided over a system that institutionalised serious abuse of civilians”. (2042) He controlled AFRC forces as they terrorized and collectively punished the civilians in Bombali. Kanu was found liable for Count 1 and Count 2 under Article 6(3) of the Statute.

**6(3):**

AFRC troops terrorized the population in Bombali. (1911)

AFRC troops committed collective punishments in Bombali. (1911)

Kanu is liable as a superior under Article 6(3) for crimes committed in Bombali District. (2040)

**B. Type of Crimes**

Count 3: Extermination

Count 4: Murder as a Crime against Humanity

Count 5: Murder as a War Crime

Crime base established. (897)

The crimes were perpetrated with particularly horrendous *modus operandi*. (884; 895)

**1. Number of Victims**

Unknown

**2. Role of the Accused Kanu**

Kanu presided over AFRC forces as they “unlawfully killed an unknown number of civilians in Bornoys, Mateboi, and Gbendembu in Bombali District.” (897) Kanu was found liable for Count 3, Count 4, and Count 5 under Article 6(3) of the Statute.

**6(3):**

The Accused is responsible for all crimes committed in the Bombali District (2040).

Between May 1, 1998 and November 20, 1998, “members of the AFRC unlawfully killed an unknown number of civilians in Bornoys, Mateboi, and Gbendembu in Bombali District. Consequently, the Trial Chamber finds that the material elements in relation to Counts 4 and 5 have been established.” (897) AFRC troops engaged in unlawful killings as charged under counts 3 and 5. (2025)

**C. Type of Crimes****Count 6: Rape**

Crime base established (1041)

**1. Number of Victims**

Unknown

**2. Role of the Accused Kanu****6(3)**

AFRC troops inflicted sexual and physical violence on civilians as charged under counts 6, 9, 10 and 11. (1911, 2025)

Kanu is liable as a superior under Article 6(3) for crimes committed in Bombali District. (2040)

**D. Type of Crime****Count 9: Outrages against Personal Dignity**

Crime base established. (1040;1041;1145)

The TC describes instances of gang rapes. (1031-1041)

See indications *supra* Brima I. D.

**1. Number of Victims**

Unknown

**2. Role of the Accused Kanu**

Kanu designed and implemented a system for abducting civilians, and for using them as sexual slaves. Kanu had ultimate control over the distribution of women and girls as property, and ordered harsh punishments of the abductees, involving lashes and confinement within boxes. Kanu is found liable for Count 6, Rape, and Count 9, Outrages against Personal Dignity, under Article 6(1) and 6(3) of the Statute.

**6(1):****Planning**

Trial Chamber finds Kanu individually criminally responsible under Article 6(1) for planning the commission of the crime of sexual slavery in Bombali district and the Western Area. (2096)

Kanu designed and implemented a system to control abducted girls and women, and all abducted girls and women were placed in his control. Any soldier who wanted an abducted girl or woman as a “wife” had to “sign for her.” Kanu issued and order instructing any woman caught with another woman’s husband to be beaten and locked in a box. TF1-334 observed a sergeant report to Kanu that he suspected his wife of misbehaving. “Kanu called the woman before him, found her guilty and ordered she be sent to Mammy Queen to be given a dozen lashes, and locked in the box”. (2092)

**6(3):**

The acts of AFRC members satisfied the elements for outrages upon personal dignity through sexual slavery in Bombali District. (1145) AFRC troops inflicted sexual and physical violence on civilians as charged under counts 6, 9, 10 and 11. (1911, 2025) Kanu is liable as a superior under Article 6(3) for crimes committed in Bombali District. (2040)

**E. Type of Crimes****Count 12: Conscription or Enlisting Children under the Age of 15**

Crime base established. (1275-1278; 1821-1822)

See indications *supra* Brima I. E.

**1. Number of Victims**

Unknown

**2. Role of the Accused Kanu**

Kanu planned the abduction of children and their use as child soldiers. He presided over their forced military duties in Bombali. Kanu was found liable for Count 12 under Article 6(1) and 6(3) of the Statute.

**6(1):****Planning**

The TC finds that Kanu is individually criminally responsible under Article 6(1) for planning the commission of the conscription of children under age 15 into the armed group or using them to participate actively in hostilities in Bombali District and the Western Area. (2097)

Trial Chamber found that Kanu planned, organized and implemented a system to abduct and enslave children, which was committed by AFRC troops in Bombali and the Western Area. The Trial Chamber also found that Kanu has direct intent to establish and implement the system of exploitation involving the three enslavement crimes, namely sexual slavery, conscription and use of children under 15 for military purposes, and abductions and forced labour. (2095)

**6(3):**

AFRC troops abducted civilians and used them as forced labour and used children illegally recruited for military purposes, as charged under counts 12 and 13. (2025, 1911) Kanu is liable as a superior under Article 6(3) for crimes committed in Bombali District. (2040)

**F. Type of Crimes****Count 13: Enslavement**

Crime base established. (1363)

An unknown number of civilians were abducted and used as forced labour, as well as forced to undergo military training, by AFRC troops in various locations in Bombali District. (1363)

The magnitude of commission of the three enslavement crimes by AFRC troops indicated their systemic nature. (1824)

These crimes were committed on a large scale. (1824)

A witness testified that the abducted civilians with him were forced to carry goods and the women to follow behind. All of the women were naked, except for one who was wearing a loincloth. Armed men accompanied the civilians. (1357)

A witness testified that military trainees who attempted to escape were killed. (1361)

### **1. Number of Victims**

Unknown

### **2. Role of the Accused Kanu**

Kanu planned the abduction of civilians for enslavement, he implemented his plans, and he presided over systems of enslavement that forced children to become soldiers, women to become sexual slaves, and civilians to engage in forced labour generally. Kanu was found liable for Count 12 under Article 6(1) and 6(3) of the Statute.

#### **6(1):**

##### **Planning**

Kanu is “individually criminally responsible under Article 6(1) for enslavement in Bombali District and the Western Area”. (2098) Kanu “planned, organized and implemented a system to abduct and enslave children, which was committed by AFRC troops in Bombali and the Western Area”. (2095)

Kanu “had direct intent to establish and implement the system of exploitation involving the three enslavement crimes, namely sexual slavery, conscription and use of children under 15 for military purposes, and abductions and forced labour”. (2095)

#### **6(3):**

Between May 1, 1998 and November 30, 1998, “an unknown number of civilians were abducted and used as forced labour, as well as being forced to undergo military training, by AFRC troops in various locations in Bombali District including Bornoya, Kamagbengbeh, Karina, Daraya, Moyogbo, Kagbemneh, Kamatelun, Kamabai, Rosos and Gbendembu. The Trial Chamber accordingly finds...that the elements in relation to Count 13 have been established in Bombali District. (1911, 1363)

Kanu is liable as a superior under Article 6(3) for crimes committed in Bombali District. (2040)

ANNEX A

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**ICTR Sentencing Chart**



## ICTR Sentencing Chart

Name	Position	Convicted of	Sentenced	Consecutive/ Concurrent	Aggravating Factors	Mitigating Factors	Judge Comments
Akayesu, Jean-Paul	Bourgneestre of Taba Commune, Prefecture of Gitarma, in Rwanda	1.Genocide 2.Direct and public incitement to commit genocide 3.Crime against humanity- extermination 4.Crime against humanity- murder(3 counts) 5.Crime against humanity-torture 6.Crime against humanity-rape 7.Crime against humanity-other inhumane acts  2 October 1998	1.life(tc) 2.life(tc)  3.life(tc)  4.15 years(for each count)(tc) 5.10 years(tc)  6.15 years(tc)  7.10 years(tc)	concurrent	1.position of authority and duty to protect population and ensure security; 2.betrayal of confidence of the people and use of municipal police under his responsibility to commit crimes; 3.motivated by genocide and acted with premeditation; 4.criminal conduct was sustained and lasted for almost three months	1.opposition to the killings, risked his own life to protect the population; 2.only had 8 communal policemen at his disposal and compared to others he had limited powers and resources; 3.cooperated with the Prosecutor and Tribunal in that he was available, disciplined and never obstructed or attempted to evade the judicial process 4.public expression of sympathy for the victims and regret that he was not able to live up to his duty to protect; 5.up to April 1994, he made efforts to prevent massacres.	<u>Aggravating</u> 1.consciously chose to participate in government killings 2.most senior gov. minister in the area 3.incited and supported crimes through his presence  <u>Mitigating</u> 1.father of five children 2.not a very high official in the government
Barayagwiza, Jean Bosco	Founder of RTML radio station, director of political affairs	1.Conspiracy to Commit Genocide 2.Genocide 3.Direct and	Life imprisonme nt(tc) 35 years(ac)	Single			

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Bisengimana, Paul	bourgmestre	Public Incitement to Commit Genocide 4.Crime against Humanity- extermination 5.Crime against Humanity- persecution December 3, 2003 1.Crime against humanity- extermination 13 April 2006	1. 15 years(tc)	Single	1.the gravity and heinous nature of extermination and murder as crimes against humanity and their absolute prohibition render their commission inherently aggravating; 2.the magnitude of the crimes; 3.the official position of the Accused as bourgmestre and his duty and authority to protect the population, prevent or punish illegal acts. This position meant	1.guilty plea and publicly expressed remorse 2.personal and family situation (he is married with 10 children; his social, professional and family background) 3.good character before 1994; 4.assistance given to victims; 5.lack of prior criminal convictions and good conduct in Detention; 6.ill health (diabetes and hepatitis B) and age (57); and 7.lack of personal participation in offences	<u>Aggravating</u> 1.participation in aiding and abetting 2.official position of the Accused  <u>Mitigating</u> 1.guilty plea 2.personal and family situation 3.good character 4.good conduct in Detention 5.ill health and age

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Gachumbitsi, Sylvestre	Bourgestre	1.Genocide 2.Crimes against humanity- extermination 3.Crimes against humanity-rape  17 June 2004	30 years(tc) Life(ac)	Single	<p>he was under a duty to uphold a higher degree of morality than is usually demanded;</p> <p>4. his education enabled him to be aware of the value of human life and the need for a peaceful co-existence between communities</p> <p>5. he took no active steps to protect but instead stood aside and watched</p>	<p>1.some Tutsi were saved because of the Accused's intervention</p> <p>2.his family situation</p> <p>3.no prior criminal record;</p> <p>4.good reputation</p> <p>5.he was an exemplary bourgestre, had Tutsi friends and the peace in Rusumo in the week following the attack is evidence of the type of bourgestre he was; and</p> <p>6.people from neighbouring communes took refuge in Rusumo and when disturbances were reported,</p>	<p><u>Aggravating</u></p> <p>1.position of authority</p> <p>2.seriousness of the crimes</p> <p><u>Mitigating</u></p> <p>1.good conduct prior to crimes</p> <p>2.not involved over long period of time</p>

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Imanishimwe, Samuel	Lieutenant in Far	1. Genocide 2. Crimes against humanity-extermination 3. Crime against humanity-murder 4. Crime against humanity-imprisonment 5. Crime against humanity-torture 6. Violation of	1. 15 years(tc) 2. 15 years(tc) 3. 10 years(tc) 4. 3 year(tc)	Consecutive and concurrent (total of 27 years)	did not protect people, he did not disassociate himself from government genocidal policies; 6. participated in crimes voluntarily 7. crimes were committed methodically and the Accused played a role in that regard 8. Accused never punished perpetrators nor prevented their commission 9. Accused had superior responsibility for the crimes committed.	he had the perpetrators arrested.	
					1. the Accused was a commander and abused his position as a trained military officer; 2. he was in a position to exert effective control over the soldiers under his command because he was respected by his subordinates;	1. background	Aggravating 1. role as a commander of a military camp

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		laws/customs of War-cruel treatment 15 February 2004	5.10 years(tc) 6.12 years(tc)		3.he could have prevented crimes, but instead he aided and abetted		
Kajelijeli, Juvenal	Bourgmestre of Mukingo commune	1. Genocide 2.Direct and public Incitement to Commit genocide 3.Crime against Humanity- extermination 1 December 2003	1.Life(tc) 2.15 years(tc) 3.Life(tc)	Concurrent	1.genocide constitutes the "crime of crimes"; 2.the crimes were heinous; 3.he was central in organizing hundreds of perpetrators to murder defenceless civilian Tutsis; 4.he was a leader of the Interahamwe; 5.he was a former public officer and was a prominent figure within the community; 6.as a civic leader and member of the government's territorial administration he was duty bound to uphold public order and he failed; 8.he failed to renounce, prevent or	1.Tutsi witnesses testified that they owed their lives to Kajelijeli; 2.he sheltered Tutsis at the home of his second wife; 3.assisted in the evacuation of a Tutsi family.	<u>Aggravating</u> 1.considerable influence as a bridge between the military and civilian spheres 2.saw that the weapons were provided 3.he directed and participated in the killings  <u>Mitigating</u> 1.assistance in evacuation of Tutsi family(ac)

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Kambanda, Jean	Prime Minister	1.Genocide 2.Conspiracy to Commit Genocide 3.Direct and public incitement to commit genocide 4.Complicity to genocide 5.Crime against humanity-murder 6.Crime against humanity-extermination 4 September 1998	Life(tc)	single	punish the crimes around him; 9.he showed no remorse 1.the heinous nature of the crime of genocide makes its commission inherently aggravating; 2.the magnitude of the crimes (killing 500,00 within 100 days) 3.the Accused was Prime Minister and he and his government were responsible for maintaining peace and security; 4.the Accused abused his position of authority and the trust of the civilian population; 5.personally participated by distributing arms, making speeches, presiding over cabinet and meetings; 6.failed to take	1.guilty plea; 2.remorse; 3.cooperation with the Prosecutor's office; 4.the Accused was only a "puppet controlled by certain military authorities and his power was consequently limited." 5.Prosecution agreed that substantial cooperation and invaluable information, as well as future cooperation when the Accused testifies in other trials, is a significant mitigating factor	Aggravating 1.intrinsic gravity of the crimes 2.accused committed the crimes knowingly and with premeditation 3.was entrusted with duty and authority to protect as Prime Minister Mitigating 1.cooperation 2.guilty

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Kamuhanda, Jean de Dieu	Minister for Culture and Education	1. Genocide 2. Crime against Humanity- extermination 22 January 2004	1. Life(tc) 2. Life(tc)	Concurrently	necessary measures to prevent subordinates from committing crimes.  1. top civil servant (Minister in Charge of the Ministry of Higher Education and Scientific Research) and prominent figure within society 2. popular and renowned; 3. his high position placed him under a duty to espouse the principles laid out in the constitution and to uphold a higher degree of morality; instead he supported genocide		<b>Aggravating</b> 1. high position accused held as a civil servant 2. accused was respectful 3. accused instigated and led an attack to kill people sheltered at a church
Kayishema, Clement	Prefect	1. Genocide(4 separate counts) 21 May 1999	1. Life (for each count of genocide)(tc )	concurrent	1. disregard of his obligation to protect the Rwandan people and maintain peace and order and the use of his position to effectuate crimes; 2. zeal with which he	1. explosion of the rule of law in Rwanda; 2. Kayishema was overwhelmed by the events and the mob or crowd psychology 3. he is a loyal and honest person	<b>Aggravating</b> 1. disregard of his obligation to protect the Rwandan people and maintain peace and order and the use of his position to effectuate crimes; 2. zeal with which he executed his crimes;

<sup>1</sup> Ibid.

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Mikaeli, Muhimana	Conseiller of Gishyita Secteur	1.Genocide 2.Crime against Humanity-Rape 3.Crime against Humanity- Murder April 28, 2005	1.Life imprisonme nt(tc) 2. Life imprisonme nt(tc) 3. Life imprisonme nt(tc)	Concurrent	executed his crimes; 3.methodical and systematic execution of crimes; 4.behavior after the criminal act, notably his inaction to punish the perpetrators		3.methodical and systematic execution of crimes; 4.behavior after the criminal act, notably his inaction to punish the perpetrators 5.Voluntarily committed and participated in the offence 6.harm suffered by victims and their families  <u>Aggravating</u> 1.position of influence 2.participated in attacks on civilians seeking refuge 3. victim under 16 years of age 4. accused assisted by others to commit crime 5.crime caused serious harm to the victim's health 6.degrading manner of crimes
Musema, Alfred	Director of Tea Factory in Gisovu	1.Genocide 2.Crime against humanity- extermination  27 January 2000	Life(tc)	Single	1.was known in society; criminal participation extended to all levels; 2.was committed to genocidal program and seized the occasion to promote personal ambitions; 3.abused his position as Director by diverting workers and property to further unlawful acts;	1.deeply regrets that factory facilities were used by perpetrators and he was unable to prevent this 2.publicly admitted the genocide and expressed his distress about the deaths of so many innocent people; 3.cooperated with the Prosecutor by admitting facts	<u>Aggravating</u> 1.offences are extremely serious 2.led the attackers and took no steps to prevent attacks 3.position of power <u>Mitigation</u> 1.expressed distress about deaths of innocent people 2.admitted facts



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Muvunyi, Tharcisse	Lieutenant-Colonel in army	1.Genocide 2.Direct and Public Incitement to Commit Genocide 3.Crimes against Humanity-Other Inhumane Acts  September 12, 2006	25 years(tc)	Single	4.the way the crimes were committed; 5.did nothing to punish the perpetrators and was one of the main perpetrators; 6.lied before the Chamber when dealing with defence of alibi; 7.showed no remorse with respect to the role he played  1.inherently grave offenses 2. duty to protect civilians 3.abused position of power 3.incited the population to commit crimes	1. good moral character	<u>Aggravating</u> 1.leader of the community 2.killing of orphan children 3.chastised a bourgmestre for hiding a Tutsi man <u>Mitigating</u> 1.good character
Nahimana, Ferdinand	Owner of radio station	1.Conspiracy to Commit Genocide 2.Genocide 3.Direct and Public Incitement to	Life(tc)	Single			<u>Aggravating</u> 1.position of influence

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Ndingabahizi , Emmanuel	Minister of Finance	Commit Genocide 4.Crimes against Humanity- persecution 5.Crime against Humanity- extermination  December 3, 2003	Life(tc)	Single	1.involvement of the population in the commission of crimes		Aggravating 1.trust of population in this official 2.supported genocide as govt. official 3.actively influenced others to commit crimes
Hassan Ngeze	Editor-in-Chief of newspaper <i>Kangura</i>	1. Conspiracy to Commit Genocide 2.Genocide 3.Direct and Public Incitement to Commit Genocide 4.Crimes against Humanity- persecution 5.Crimes against Humanity- Extermination	Life imprisonment (tc)	Single			Aggravating 1.abuse of position of trust

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Niyitegeka, Eliezer	Minister of Information	December 3, 2003 1. Genocide 2. Conspiracy to commit genocide 3. direct and public incitement to commit genocide 4. Crime against humanity-murder 5. crime against humanity-extermination 6. crime against humanity-other inhumane acts 16 May 2003	Life(tc)	Single	1. was a well-known person and was Minister of Information; 2. as such he was under an obligation to espouse principles laid down in the Constitution and uphold a degree of morality and instead he supported the campaign against Tutsis and actively engaged in killing and inciting others to kill.	1. the trial was completed in record time due to the cooperation of the Accused 2. has a wife, children and grandchildren.	<u>Aggravating</u> 1. well-known individual who abused his trust 2. held an official position 3. callous nature of the murders 4. prolonged nature of participation in attacks against civilians  <u>Mitigating</u> 1. cooperation with the prosecution
Ntakirutimana, Elizaphan	Pastor (7 <sup>th</sup> Day Adventist)	1. Genocide 2. Crime against Humanity-extermination 21 February 2003	10 years(tc)	Single	1. was the overall head of the Mugonero complex and was respected as an intermediary between the people and God 2. personally ferried attackers into the complex and fled Rwanda and failed to perform burials or hold a	1. good character; 2. life's work was dedicated to saving souls, healing and saving life; 3. not in a position to prevent the massacres.	<u>Aggravating</u> 1. he wielded the authority and abused the trust 2. failed to protect persons in his care 3. associated with attackers and approved of their activities 4. association with place considered a safe haven  <u>Mitigating</u> 1. a person of good character 2. family situation

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Ntakirutiman a, Gerard	Medical doctor	1. Genocide 2. Crime against Humanity- murder 3. Crime against Humanity- extermination 21 February 2003	25 Years(tc)	Single	remembrance service  1. was defacto head of Mugonero Hospital; 2. was a respected person in the community; 3. took part in meeting to plan the attack; 4. procured weapons for the attack; 5. personally took part in the attack; 6. fled Rwanda after the attacks and failed to perform burials or hold a remembrance service	1.44 years old, married with 3 children; 2. did not show ethnic bias before 1994; 3. returned to Rwanda in 1993 to contribute to development and promote peace; 4. he provided shelter for some Tutsis.2	3. did not play a leading role in the attacks nor personally participated in the killings 4. age and ill health  <u>Aggravating</u> 1. prior role as a doctor 2. abused the trust placed in him 3. led attackers to Tutsi refugees 4. committed crimes with zeal over lengthy period of time
Nzabirinda, Joseph	Managing Director of SECOBE	Crime against Humanity- murder	7 years(tc)	single	1. presence of accused at murders as an approving spectator	1. remorse 2. cooperation with prosecution 3. assisting Tutsis 4. family situation 5. lack of personal participation 6. attitude towards Tutsis 7. circumstances of necessity	<u>Aggravating</u> 1. Abuse of influence  <u>Mitigating</u> 1. remorse 2. assisting Tutsis 3. family situation 4. no history of discrimination
Ruggiu, Joseph	Journalist,	1. Direct and	1.12	concurrently			<u>Aggravating</u>

<sup>2</sup> Ibid., para. 909.

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Georges	RTML	<ul style="list-style-type: none"> <li>1. public incitement to commit genocide</li> <li>2. Crime against humanity-persecution</li> </ul>	<ul style="list-style-type: none"> <li>years(tc)</li> <li>2.12 years(tc)</li> </ul>				<p>1. the gravity of the offence (genocide and CAH are inherently aggravating because they are heinous in nature)</p> <p>2. the role of the Accused in the commission of the offences in that through his radio broadcasts he played a crucial role in the incitement of ethnic hatred and violence which led to the massacres. He knew that the broadcasts were inciting violence and yet chose to continue</p> <p><u>Mitigating</u></p> <ul style="list-style-type: none"> <li>1. guilty plea;</li> <li>2. cooperation with the Prosecutor;</li> <li>3. absence of a criminal record.</li> </ul>
Rutaganda, Georges	Businessman & 2nd V.P. of Interahamwe	<ul style="list-style-type: none"> <li>1. Genocide</li> <li>2. Crime against Humanity-extermination</li> <li>3. Crime against Humanity-Murder</li> </ul> <p>26 May 2006</p>	Life(tc)	Single	<ul style="list-style-type: none"> <li>1. was known in society as the second vice-president of the Interahamwe, he was also a rich business man</li> <li>2. his criminal participation extended to all levels, he killed and he incited others to kill;</li> <li>3. he ordered the Interahamwe to kill</li> </ul>	<ul style="list-style-type: none"> <li>1. expression of sorrow over what happened in Rwanda</li> <li>2. ill health</li> </ul>	<p><u>Aggravating</u></p> <ul style="list-style-type: none"> <li>1. gravity of the offence</li> <li>2. abused role of high position</li> <li>3. important role of the execution of the crimes</li> </ul> <p><u>Mitigating</u></p> <ul style="list-style-type: none"> <li>1. helped save some people</li> <li>2. poor health</li> </ul>

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Rutaganira, Vincent	Councillor of Mubuga, Gishyita Commune	1. Crime against humanity- extermination 14 March 2005	6 years(tc)	Single	victims with various blunt objects and had complete disregard for the suffering of individual victims; 4. he failed to punish the perpetrators 1. prominent member of his community 2. high level of education	1. voluntarily surrendered to Tribunal 2. former good relations with Tutsi 3. good behavior in detention 4. ill health	<u>Aggravating</u> 1. crime consisted of killing women and children in church  <u>Mitigating</u> 1. Voluntary surrender 2. Former good relations with Tutsi 3. good behavior in detention 4. ill health 5. Remorse 6. Assistance to certain victims 7. guilty plea
Ruzindana, Obed	Businessman in Kigali	1. Genocide 21 May 1999	1.25 years(tc)	Single	1. behaviour after the criminal act 2. the accused smiled or laughed when survivors testified		<u>Aggravating</u> 1. Voluntarily committed and participated in the offence 2. heinous means by which the accused committed the killings  <u>Mitigating</u> 1. the fact that the accused was not a de jure official
Semanza, Laurent	Bourgmestre of Bicumbi	1. Genocide 2. Crime Against Humanity- Extermination 3. Crime against	1.15 years(tc) 2.15 years(tc)	Concurrently and Consecutively (total of 25	1. number of victims was very high 2. defence was conducted in a rather abusive fashion, in	1. Accused's detention caused grave prejudice to his family 2. he was also a victim of 1994 in that he lost property	<u>Aggravating</u> 1. number of victims killed 2. influence and relative importance of the Accused

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		Humanity-Rape 4.Crime against Humanity-torture 5.Crime Against Humanity- Murder 6.Crime Against Humanity- murder 15 May 2003	3.7 years(tc)  4.10 years(tc)  5.10 years(tc)  6.8 years(tc) (total of 25 years)		particular that Defence Expert Witness perpetrated dangerous stereotypes by testifying that Tutsi culture was based on lying	and 2 of his daughters 3.detention has affected his health 4.good prior character and 20 years of development efforts prior to the genocide 5.low level of command.	<u>Mitigating</u> 1.prior character and accomplishments
Seromba, Athanese	Former priest in Kivumu commune	1.Genocide 2.Crime against humanity- extermination 13 December 2006	15 years(tc)	Single			<u>Aggravating</u> 1.authority as a respected Catholic priest 2.trust from Tutsi refugees that he abused  <u>Mitigating</u> 1.prior good reputation 2.relatively young 3.Voluntary surrender
Serugendo, Joseph	Member of the <i>Comité d'Initiative</i> , the steering committee of RTLM, Member of the National Committee of the Interahamwe	1.Direct and public incitement to commit Genocide 2.Crime against humanity- persecution	6 years(tc)	Single	1.the innate gravity and absolute prohibition against direct and public incitement to commit genocide and persecution render their commission	1.early guilty plea; 2.ill health; 3.cooperation with Prosecutor; 4.good character; 5.no previous criminal record	<u>Aggravating</u> 1.position as a member of managerial staff of radio station 2.position of authority  <u>Mitigating</u> 1.guilty plea 2remorse

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		12 June 2006			<p>inherently aggravating;                      2.his position and authority as a radio technical advisor;                      3.his actions helped ensure broadcasting continued uninterrupted during this period and his actions contributed to dissemination of information resulting in the killing of hundreds of thousands.</p>		<p>3.cooperation with Prosecution                      4.no prior criminal record                      5.ill health                      6.personal circumstances</p>
Serushago, Omar	Businessman and <i>Interahamwe</i> leader in Gisenyi prefecture	<p>1.Genocide                      2.Crime against humanity-extermination                      3.Crime against humanity-murder                      4.Crime against humanity-torture                      5 February 1999</p>	15 years(tc)	Single	<p>1.gravity of the offence                      2.played a leading role and was a de facto leader of the <i>Interahamwe</i>;                      3.he gave orders which were followed and enjoyed a definite authority in his region                      4.committed the crimes knowingly and willingly</p>	<p>1.cooperation with the Prosecutor was substantial                      2.cooperation led to the arrest of high ranking persons;                      3.agreed to testify for the prosecution in other trials;                      4.voluntarily surrendered himself to authorities;                      5.entered a guilty plea;                      6.prior to the crimes he lived in a highly politicized milieu                      7.never received any military training                      8.assistance was given to</p>	<p>Court says that the exceptional circumstances in mitigation may afford him some clemency</p>



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Aloys Simba	Retired lieutenant colonel and former member of parliament	1. Genocide 2. Crime against Humanity-extermination	25 years(tc)	single		some Tutsi victims 9. family obligations 10 expressed his remorse	<p><u>Aggravating</u></p> <p>1. stature in Rwandan society 2. number of victims</p> <p><u>Mitigating</u></p> <p>1. past political service 2. family situation</p>

**ANNEX B**

**ICTY Sentencing Chart**

### ICTY Sentencing Chart

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Aleksovski, Zlatko	commander of the prison facility	1. Violation of the Laws or Customs of War-outrages upon personal dignity 25 June 1999	2.5 years(tc) 7 years(ac)	single	1.Repeated Malice		<u>Mitigating:</u> 1. good behavior 2. no previous convictions 3. two young children  <u>Aggravating</u> 1. position as commander(ac)
Babic, Milan	Commander-in-chief of armed forces in Croatia	1. Crime Against Humanity- Persecution 29 June 2004	13 years(tc) (ac) affirms	single	1. leadership	1. substantial and continued cooperation w/the prosecution 2. voluntary appearance before Tribunal 3. guilty plea 4. remorse 5. conduct subsequent to crime 6. family circumstances	<u>Aggravating</u> 1. leadership role  <u>Mitigating</u> 1. cooperation with prosecution 2. voluntary appearance before Tribunal 3. guilty plea 4. remorse
Bala, Haradin	Guard at prison camp	1. Violation of laws/customs of War-torture	13 years(tc)	single	1. discriminatory intent 2. length of time of crime		<u>Aggravating</u> 1. Vulnerability of

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Banovic, Predrag		2. Violatio of laws/customs of war-cruel treatment 3. Violation of laws/customs of war-murder 25 May 2005			3.active and direct criminal participation 4.premeditation 5.violent and humiliating nature of acts 6.vulnerability/youth of witnesses 7.lack of remorse	2.poor health	victim <u>Mitigating</u> 1.family situation 2.poor health
Banovic, Predrag	guard at the Keraterm camp	1.Crime against Humanity-Persecution(murder, beatings, confinement) 29 June 2004	8 years(tc)		1.vulnerability of the victims 2.abuse of position of power	1.guilty plea 2.remorse 3.subordinate position 4.personal circumstances/character 5.behavior in detention	<u>Aggravating</u> 1.abuse of position of power
Blagojevic, Vidoje	Colonel in JNA	1.Complicity to Commit Genocide 2.Crime Against Humanity-murder 3.Crime Against Humanity-persecution, 4.Crime Against Humanity-inhumane acts(forcible transfer) 5.Violation of the law or customs of war-murder 17 January 2005	18 years (total, not divided for different crimes)(tc)	Single	1.Number of Victims 2.Status/vulnerability of victims 3.Educational background of the Accused 4.position of authority 5.Voluntary participation and prolonged nature	1.Behavior after commission of the crimes	<u>Mitigating</u> 1. Behavior after commission of the crimes
Blaskic, Tihomir	commander of the HVO	1.Violation of laws/customs of war-cruel treatment	45 years(tc) 9 years(ac)	Single			<u>Aggravating</u> 1.how the crime

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	armed forces in headquarters in central Bosnia	2. Grave Breach/Geneva Convention-inhuman treatment 3 March 2000					was committed 2. effect on victims 3. command responsibility <u>Mitigating</u> 1. behavior during trial
Bralo, Miroslav	Soldier within HVO	1. Crime Against Humanity-persecution 2. Violation of law/custom of war-murder 3. Violation of law/custom of war-torture or inhuman treatment 4. Violation of law/custom of war-rape 5. Geneva Convention/Grave Breach-torture 6. Geneva Convention/Grave Breach-unlawful confinement 7. Geneva Convention/Grave Breach-inhumane treatment 7 December 2005	20 years(tc) (ac) affirms	single	1. large number of victims 2. the youth of the victims 3. exacerbated humiliation and degradation of Witness A	1. the prior good character of Bralo 2. the immediate background to the commission of the offences 3. the use of Bralo by his superiors 4. the time period covered by the Indictment 5. the sheltering of others by Bralo 6. his steps towards rehabilitation; 7. his voluntary surrender; his guilty	<u>Aggravating</u> 1. nature of the crime 2. youth of the victims 3. exacerbated humiliation and degradation 4. number of victims <u>Mitigating</u> 1. family and personal circumstances 2. guilty plea before trial 3. remorse 4. voluntary surrender 5. co-operation with prosecution 6. good behavior in detention

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Brdjanin, Radoslav	President of the ARK War Presidency	1. Crime Against Humanity-persecution(deportation, inhumane acts) 3. Violation of law/custom of war-destruction of religious institutions 4. Grave Breach/Geneva Convention-willful killing 1 September 2004	32 years(tc) 30 years(ac)	Single Sentence	1. Senior position and abuse of authority 2. Scale and scope of crime 3. Number of victims 4. Status/vulnerability of victims 5. Willingness of the accused's participation 6. educational background 7. duration of the criminal conduct	1. Benevolent treatment of population 2. fair and equal treatment of all population 3. public pronouncements calling for law/order 4. lack of prior violent criminal acts 5. personal circumstances 6. lack of personal gain to profit 7. general attitude towards	Aggravating 1. Senior position and abuse of authority 2. status/vulnerability of victims 3. willingness of the accused's participation 4. duration of the criminal conduct 5. educational background of the accused  Mitigating 1. contributing to the decision to provide shelter to Bosnian Muslims 2. equal treatment 3. participating in

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Cerkez, Mario	Commander of the Viteska Brigade	<ol style="list-style-type: none"> <li>1. Crime against humanity-persecution</li> <li>2. Crime against humanity-imprisonment</li> <li>3. Grave Breach/Geneva convention-unlawful confinement of civilians</li> </ol> <p>26 February 2001</p>	<p>15 years(tc) 6 years(ac)</p>	Single		<p>proceedings</p> <p>8. Remorse</p>	<p>the decision to arrest members of the Mice group</p> <ol style="list-style-type: none"> <li>4. voicing concern about paramilitaries</li> <li>5. family status and age</li> <li>6. speeches against profiteering</li> <li>7. respectful conduct</li> <li>8. remorse</li> </ol> <p><u>Aggravating</u></p> <ol style="list-style-type: none"> <li>1. Role as a commander</li> </ol>
Cesic, Ranko	member of the Bosnian Serb Police Reserve unit	<ol style="list-style-type: none"> <li>1. Crime Against Humanity-murder</li> <li>2. Crime Against Humanity-rape</li> <li>3. Violation of law/customs of war-humiliating and degrading treatment</li> <li>4. Violation of law/customs of war-murder</li> </ol> <p>11 March 2004</p>	18 years(tc)	Single	<ol style="list-style-type: none"> <li>1. vulnerability of victims</li> <li>2. purposefully cruel conduct</li> <li>3. humiliating depravity</li> <li>4. abuse of position</li> <li>5. recurrence of criminal conduct over a period</li> </ol>	<ol style="list-style-type: none"> <li>1. guilty plea</li> <li>2. remorse</li> <li>3. good character</li> <li>4. exemplary behavior</li> <li>5. age</li> <li>6. stress and indoctrination</li> <li>7. was executing orders</li> </ol>	<p><u>Aggravating</u></p> <ol style="list-style-type: none"> <li>1. cruelty and depravity</li> </ol> <p><u>Mitigating</u></p> <ol style="list-style-type: none"> <li>1. guilty plea</li> <li>2. co-operation with prosecution</li> <li>3. remorse</li> </ol>

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Delic, Hazim	Deputy commander of Celebici prison camp	1. Grave Breach/Geneva Convention-willful killing 2. Grave Breach/Geneva Convention-willfully causing great suffering 3. Grave Breach/Geneva Convention-torture 4. Grave Breach/Geneva Convention-inhumane treatment 9 October 2001	18 years(tc) (ac) confirms	Single			<u>Aggravating</u> 1. Sadistic nature 2. abuse of power <u>Mitigating</u> 1. providing comforts to detainees 2. personal circumstances
Deronjic, Miroslav	President of the Bratunac Municipal Board of the Serbian Democratic Party of Bosnia and Herzegovina	1. Crime Against Humanity- persecution(attack of village, killing of civilians, forcible displacement, destruction of religious institution, destruction of civilian property 30 March 2004	10 years(tc) (ac) affirms	single	1. Superior position as political leader 2. vulnerable and helpless situation of the victims	1. guilty plea 2. substantial co-operation 3. contribution to prevention of revisionism of crimes 4. remorse 5. no opportunity for voluntary surrender 6. good behavior	<u>Aggravating</u> 1. large number of civilians killed 2. metiulous planned attack 3. abuse of power 4. additional burning of house following attack 5. exacerbating the vulnerability of the victims <u>Mitigating</u> 1. remorse 2. contribution to prevention of revisionism of crimes 3. substantial co-operation 4. guilty plea



Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Dosen, Damir	shift leader at the Keraterm camp	1. Crime against Humanity-persecution 3 November 2001	5 years(tc)	Single			<u>Aggravating</u> 1. superior position  <u>Mitigating</u> 1. ameliorated the terrible conditions 2. guilty plea 3. remorse
Erdemovic, Drazen	sergeant	Violation of the law or customs of war	5 years(tc)	Single			<u>Mitigating Factors</u> 1) young age 2) family and background 3) no criminal record 4) remorse 5) cooperation with OTP 6) Duress
Furndzija, Anto	Local commander of special unit of military police of the HVO	1. Violation of law/custom of war-torture 2. Violation of law/custom of war-rape 10 December 1998	1. ten years(tc) 2. eight years(tc)	Concurrently			<u>Aggravating</u> 1. horrifying nature of attack 2. role as commander 3. nature of victim  <u>Mitigating</u> Young age
Galic, Stanislav	SRK Corps Commander	1. Crime Against Humanity-inhumane acts 2. Crime Against Humanity-murder 3. Violation of law/customs of war-act of violence to spread terror	20 years(tc) Life imprisonment(ac)	Single	1. respect accused was held by his subordinates	1. cooperation w/authorities 2. respectful of other people's nationality and religion	<u>Aggravating</u> 1. breach of public duty while holding senior position  <u>Mitigating</u> 1. respect for

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Hadzihasanovic, Enver	Chief and Deputy Commander of the ABiH Supreme Command Staff	5 December 2003 1. Violations of the laws/customs of war-murder, cruel treatment 15 March 2006	5 years				<u>Tribunal</u>  <u>Aggravating</u> 1. Duration of crime 2. number of victims 3. character of crime  <u>Mitigating</u> 1. Cooperation 2. family circumstance 3. good character
Jelusic, Goran	Commander of Luka Camp	Violations of the laws/customs of war-plunder Violations of the laws/customs of war-cruel treatment Violation of law/customs of war-murder  Crime against Humanity-inhumane acts Crime Against Humanity-murder  14 December 1999	40 years(tc)	single		1. age of accused 2. never convicted a violent crime 3. family situation 4. mental illness 5. acted under orders 6. remorse	<u>Aggravating</u> 1. sadistic nature of behavior  <u>Mitigating</u> 1. age of accused 2. never convicted a violent crime 3. family situation
Jokic, Dragon	Major in the JNA	1. Crime Against Humanity-extermination 2. Crime Against Humanity-persecution 3. Violation of law/custom of war-murder	9 years(tc)	Single	1. Number of Victims 2. Status/vulnerability of victims 3. Educational background of the Accused	1. good character 2. family circumstances 3. voluntary surrender/cooperation	<u>Mitigating</u> 1. use of good character 2. voluntary/surrender/cooperation 3. behavior after commission of

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Jokic, Miodrag	commander of the Ninth Naval Sector (VPS)	18 March 2006 1. violation of law/custom of war-murder 2. violation of law/custom of war-cruel treatment 3. violation of law/custom of war-devastation not justified by military necessity 4. violation of law/custom of war-unlawful attack on civilians 5. violation of law/custom of war-unlawful attack on civilian objects 6. violation of law/custom of war-destruction of institutions	7 years(tc)	Single	1. Leadership Position 2. Vulnerability of the victims 3. Special status of the Old Town of Dubrovnik	4. behavior after commission of crimes 1. Voluntary Surrender 2. Guilty plea 3. Remorse 4. Cooperation with the prosecution 5. Personal circumstances	crimes  Aggravating 1. leadership position  Mitigating 1. voluntary surrender 2. guilty plea 3. remorse 4. cooperation with the prosecution 5. personal circumstances
Kolundzija, Dragan	shift leader at the Keraterm camp	18 March 2004 1. Crime against Humanity-persecution 13 November 2001	3 years(tc)	Single			Aggravating 1. Abusing power of trust  Mitigating 1. guilty plea 2. favorable treatment of detainees

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Kordic, Dario	Co-ordinator of the Travnik Regional Community of the HDZ-BiH	<ol style="list-style-type: none"> <li>1. Crime against Humanity-persecution</li> <li>2. Crime against humanity-murder</li> <li>3. Grave Breach/Geneva Convention-willful killing</li> <li>4. Violation of the laws/customs of war-unlawful attack on civilians</li> <li>5. Violation of the laws/customs of war-wanton destruction not justified by military necessity</li> <li>6. Violation of the laws/customs of war-plunder of property</li> </ol> <p>26 February 2001</p>	25 years(tc)				<p><u>Aggravating</u></p> <ol style="list-style-type: none"> <li>1. role as a leader</li> </ol>
Kovac, Radomir	Member of a military unit	<ol style="list-style-type: none"> <li>1. Crime against humanity-enslavement</li> <li>2. Crime against humanity-rape</li> <li>3. Violation of the laws/customs of war-rape</li> <li>4. Violation of the laws/customs of war-outrages upon personal dignity</li> </ol> <p>2 November 2001</p>	20 years(tc)	single	<ol style="list-style-type: none"> <li>1. age of victims</li> <li>2. sadistic nature</li> <li>3. vulnerability of witness</li> </ol>		<p><u>Aggravating</u></p> <ol style="list-style-type: none"> <li>1. age of victims</li> </ol> <p><u>Mitigating</u></p> <ol style="list-style-type: none"> <li>2. vulnerability of witnesses</li> <li>3. involvement of more than one victim in his offence</li> </ol> <p>Mitigating</p>
Krajisnik, Momcilo	a member of the expanded	<ol style="list-style-type: none"> <li>1. Crime against Humanity-persecution</li> </ol>	27 years(tc)	single			<p><u>Aggravating</u></p> <ol style="list-style-type: none"> <li>1. brutality</li> </ol>

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
	Presidency of the Bosnian Serb Republic	2. Crime against Humanity-extermination 3. Crime against Humanity-murder 4. Crime against humanity-deportation 5. Crime against humanity-inhumane act  27 September 2006					2. duration of crimes 3. role in Bosnian-Serb leadership  <u>Mitigation</u> 1. lack of prior convictions 2. good conduct during detention 3. relatively long time in detention 4. efforts to help non-Serbs 5. age 6. family situation
Krnjelac, Milorad	Commander of the the Foca Kazneno-Popravni Dom ("KP Dom"), a prison	1. Crime against humanity-persecution 2. Crime of humanity-torture 3. Crime against humanity-murder 4. Violation of law/custom of war-cruel treatment 5. Violation of law/custom of war-torture 6. Violation of law/custom of war-murder 7. Violation of law/custom of war -persecution  15 March 2002	7.5 years(tc) 15 years(ac)	Single	1. acted for personal gain 2. guilty of abuse of his authority 3. gravity of the offense	1. conformist personality	<u>Aggravating</u> 1. gravity of the offense  <u>Mitigating</u> 1. helping some of the detainees 2. cooperation 3. age
Krstic, Radislav	Commander of the Drina Corps, a	1. Crime against Humanity-extermination 2. Crime against Humanity-	46 years(tc) 35 years(ac)	Single	1. criminal participation 2. premeditation	1. cooperation 2. poor health	<u>Aggravating</u> 1. premeditation <u>Mitigating</u>

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
	formation of VRS	persecution(murders, cruel and inhumane treatment, terrorising the civilian population, forcible transfer and destruction of personal property of Bosnian Muslim civilians) 3. Violation of Law/Customs of War-murder					1. poor health
Kubura, Amir	Chief of Staff and Deputy Commander of the 7 <sup>th</sup> Brigade(ABiH )	2 August 2001 1. violations of laws/customs of war-pillage	2.5 years	Single			<u>Aggravating</u> 1. systematic nature of pillage <u>Mitigating</u> 1. cooperation 2. family situation
Kunarac, Dragoljub	Leader of reconnaissance group	1. Crime against humanity- torture 2. Crime against humanity- rape 3. Crime against humanity- rape 4. Crime against humanity- enslavement 5. Crime against humanity- rape 6. Violation of the laws/customs of war-torture 7. Violation of law/custom of war-rape 22 February 2001	28 years(tc)	Single			<u>Aggravating</u> 1. responsibility as a commander 2. youthful age of victims 3. duration of crime 4. discriminatory nature 5. vulnerable nature of victims <u>Mitigating</u> 1. cooperation and voluntary surrender 2. remorse

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Josipovic, Drago	Village guard in the HVO	1. Crime against Humanity- murder 2. Crime against Humanity- other inhumane acts 3. Crime against Humanity- persecution 14 January 2000	1. 12 years(ac) 15 years(tc) 2. 10 years(tc) 3. 10 years(tc)	Concurrent			<u>Aggravating</u> 1. Nature of Crime  <u>Mitigating</u> 1. lent army vest to victim 2. stopped soldiers from killing victims 3. voluntarily surrendered to Tribunal
Kos, Milojica	Shift leader of guards at Omarska Camp	1. Crimes against humanity- persecution for murder, torture, and beating, sexual assault, humiliation 2. Violation of the laws/customs of war-murder 3. Violations of the laws/customs of war-torture 2 November 2001	6 years(tc)	Single			<u>Aggravating</u> 1. number of victims 2. vulnerability of victims 3. personal gain <u>Mitigating</u> 1. lack of police training
Kvočka, Miroslav	Commander and deputy commander of Omarska Camp	1. Crimes against humanity- persecution for murder, torture, and beating, sexual assault, humiliation 2. Violation of the laws/customs of war-murder 3. Violations of the laws/customs of war-torture 2 November 2001	7 years(tc)	Single			<u>Aggravating</u> 1. number of victims 2. vulnerability of victims 3. abuse of authority  <u>Mitigating</u> 1. cooperation 2. good character
Landzo, Esad	Guard at Celebici prison camp	1. Grave Breach/Geneva Convention-willful killing 3. Grave Breach/Geneva	15 years(ac) 1. 15 years(tc) 2. 15 years(tc)	Single			<u>Aggravating</u> 1. substantial pain inflicted on

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
		Convention-willful killing 4. Grave Breach/Geneva convention-willful killing 5. Grave Breach of Geneva Convention-willful killing 6. Grave Breach/Geneva Convention-serious injury treatment 7. Grave Breach of Geneva convention-torture 8. Grave Breach/Geneva Conventin-torture 9. Grave Breach/Geneva Convention-torture 10. Grave Breach/Geneva Convention-serious injury 11. Grave Breach/Geneva Convention-serious injury	3. 15 years(tc) 4. 15 years(tc) 5. 15 years(tc) 6. 5 years(tc) 7. 7 years(tc) 8. 7 years(tc) 9. 7 years(tc) 10. 5 years(tc) 11. 5 years(tc)				individuals  <u>Mitigating</u> 1. relativ youth 2. family background
Martinovic, Vinko	commander	9 October 2001 1. Crime against Humanity-persecution 2. Crime against Humanity-inhuman acts 3. Crime against Humanity-murder 4. Grave Breach/Geneva Convention-inhuman treatment 5. Grave Breach/Geneva Convention-willfully causing great suffering 6. Grave Breach/Geneva Convention-willful killing	18 years(tc)	Single			



Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Mrdja, Darko	member of the Prijedor Police "Intervention Squad"	7. Grave Breach/Geneva Convention-unlawful transfer of a civilian 8. Violation of law/customs of war-plunder 31 March 2003 1. Violation of the laws/customs of war-murder 2. Crime against Humanity-inhumane acts 31 March 2004	17 years(tc)	Single	1. vulnerability of victims 2. authority as a policeman 3. impact of the crimes upon the victims	1. guilty plea 2. expression of remorse 3. cooperation 4. personal circumstances 5. duress 6. following orders 7. lapse of time since crime occurred 8. serving sentence in foreign country	<u>Aggravating</u> 1. cruelty 2. vulnerability of victims 3. abuse of authority <u>Mitigating</u> 1. guilty plea 2. expression of remorse 3. cooperation 4. personal circumstances
Mucic, Zdravko	Commander of Celebici prison camp	1. Grave Breach/Geneva Convention-willful killing 2. Grave Breach/Geneva Convention-torture 3. Grave Breach/Geneva Convention-willfully causing serious injury 4. Grave Breach/Geneva Convention-inhuman treatment 5. Grave Breach/Geneva	9 years(tc)	Single			<u>Aggravating</u> 1. defiant attitude and lack of respect for judicial process 2. threatening of witnesses <u>Mitigating</u> 1. Saving life of detainee

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Naletilic Mladen	Commander of KB	Convention-unlawful confinement  9 October 2001 1. Violation of law/custom of war-unlawful labor 2. Violation of law/custom of war-wanton destruction not justified by necessity 3. Violation of law/custom of war-plunder of property 4. Crime against Humanity- torture 5. Grave Breach/General Convention-torture 6. Grave Breach/Geneva Convention-unlawful transfer of civilians	20 years(tc)	Single			
Nikolic, Dragan	commander in Susica detention camp	31 March 2003 1. Crime against Humanity- persecution 2. Crime against Humanity- murder 3. Crime Against Humanity- rape 4. Crime against Humanity- torture  18 December 2003	23 years(tc)	Single	1. position as commander 2. vulnerability of the victims 3. depravity of the crimes 4. fact that there were multiple victims 5. victims were known by the accused	1. guilty plea 2. remorse 3. reconciliation 4. cooperation 5. character 6. length of proceedings	Aggravating 1. position of authority 2. vulnerability of the victims 3. depravity of the crime 4. high number of victims 5. personal gain 6. vulnerability of the victims  <u>Mitigating</u>

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Nikolic, Momir	Assistant Commander and Chief of Security and Intelligence of the Bratunac Brigade of the VRS	1. Crime against Humanity- persecution (murder, cruel and inhumane treatment, terrorizing the civilian population, destruction of personal property, forcible transfer) 2 December 2003	27 years(tc) 20 years(ac)	Single	1. position of authority 2. vulnerability of victims 3. depravity of the crimes	1. guilty plea 2. co-operation with the prosecution 3. remorse 4. character 5. no opportunity for voluntary surrender 6. comporment in the UNDU 7. prsonal circumstances	1. guilty plea 2. remorse 3. reconciliation 4. disclosing of additional information  <u>Aggravating</u> 1. position of authority 2. depravity of the crimes  <u>Mitigating</u> 1. guilty plea 2. co-operation with prosecution 3. remorse 4. character 5. comporment in the UNDU 6. personal circumstances
Obrenovic, Dragan	Chief of Staff and Deputy Commander at the Zvornik Brigade	1. Crime against Humanity- persecution 10 December 2003	17 years(tc)	Single	1. position of leadership 2. vulnerability of victims 3. depravity of the crimes	1. guilty plea 2. remorse 3. co-operation with the prosecution 4. character 5. no opportunity for voluntary surrender 6. Comporteme nt in the	<u>Aggravating</u> 1. Vulnerability of victims  <u>Mitigating</u> 1. guilty plea 2. acceptance of responsibility 3. remorse 4. character 5. cooperation 6. offer of voluntary

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Plavsic, Biljana	acting President of the Serbian Republic of Bosnia and Herzegovina	1. Crime against Humanity- persecution 27 February 2003	11 years(tc)	Single	1. the leadership position of the accused 2. the vulnerability of the victims 3. the depravity of the crimes to which the victims were subjected	UNDU 7. personal circumstances  1. guilty plea 2. voluntary surrender 3. post-conflict conduct 4. age 5. cooperation	surrender 7. comportment at the UNDU 8. personal circumstances  <u>Aggravating</u> 1. leadership position  <u>Mitigating</u> 1. guilty plea 2. voluntary surrender 3. post-conflict conduct 4. age
Prcac, Dragoljub	Deputy Commander of Omarska Camp	1. Crimes against humanity- persecution for murder, torture, and beating, sexual assault, humiliation 2. Violation of the laws/customs of war-murder 3. Violations of the laws/customs of war-torture 2 November 2001	5 years(tc)	Single			<u>Aggravating</u> 1. number of victims 2. vulnerability of victims  <u>Mitigating</u> 1. cooperation 2. age 3. family situation
Radic, Mladjo	Policeman at Omarska Camp	1. Crimes against humanity- persecution for murder, torture, and beating, sexual assault, humiliation 2. Violation of the laws/customs of war-murder 3. Violations of the	20 years(tc)	Single			<u>Aggravating</u> 1. large number of victims 2. vulnerability of victims 3. abuse of power for personal gain

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Rajic, Ivica	Commander of the Second Operational Group	laws/customs of war-torture 2 November 2001	12 years(tc)	Single	1.position of authority 2.vulnerability of victims 3.participation in cover-up	1.guilty plea 2.remorse 3.cooperation with the prosecution 4.personal circumstances	4.excessive and deliberate cruelty <u>Mitigating</u> 1.cooperation with Tribunal <u>Aggravating</u> 1.special vulnerability of victims <u>Mitigating</u> 1.guilty plea 2.remorse 3.cooperation with the prosecution 4.personal circumstances
Santic, Vladimir	Commander of the 1st Company of the 4th Battalion of the Military Police, Commander of the Jokers	8 May 2006 1.Violation of law/custom of war-murder 2.Violation of law/custom of war-cruel treatment 3.Crime against Humanity-murder 4.Crime against Humanity-persecution 5.Crime against Humanity-inhumane acts 14 January 2000	3.15 years(tc) 4.18 years(ac) 25 years(tc) 5.10 years(tc)	Concurrent			<u>Mitigating</u> 1.Voluntarily surrendered to Tribunal

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Sikirica, Dusko	Commander of Security at the Keraterm camp	1. Crime against humanity- persecution 13 November 2001	15 years(tc)	Single			<u>Aggravating</u> 1. failure in his duty 2. position of authority  <u>Mitigating</u> 1. guilty plea 2. remorse
Simic, Blagoje	president of the Serbian Democratic Party (SDS) in Bosanski Samac	1. Crime against Humanity- persecution 17 October 2002	17 years(tc)	Single			
Simic, Milan	President of the Executive Board of the Bosanski Samac Assembly	1. Crime against Humanity- torture 2. Crime against Humanity- inhumane acts 17 October 2002	1.5 years(tc) 2.5 years(tc)	Concurrently			<u>Aggravating</u> 1. Manner in which the crimes were committed 2. position of authority 3. status of the victims 4. repeated and separate offences 5. discriminatory intent  <u>Mitigating</u> 1. plea of guilty 2. remorse 3. health 4. age, character, family circumstances

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Stakic, Milomir	vice-president of the SDS Municipal Board	1. Crime against Humanity-extermination 2. Violation of the laws/customs of War-murder 3. Crime against Humanity-persecution(murder, deportation) 4. Crime against Humanity-other inhumane acts(ac) 31 July 2003	life sentence(tc) 40 years(ac)	Single			5. voluntary surrender to the tribunal 6. no prior criminal conviction 7. compoment in the UNDU <u>Aggravating</u> 1. role as superior position 2. education <u>Mitigating</u> 1. cooperation 2. personal situation
Strugar, Pavle	commander of the Second Operational Group	1. Violation of the laws/customs of war-attack on civilians 2. Violation of laws/customs of war-damage to institutions 31 January 2005	8 years(tc)	Single			<u>Mitigating</u> 1. voluntary surrender 2. poor health 3. good character
Tadic, Dusko	SDS leader(town of Kozarac) and member of the paramilitary forces	1. Grave Breach/Geneva Convention-inhuman treatment 2. Grave Breach/Geneva Convention-suffering to body or health 3. Grave Breach/Geneva Conventions-serious injury to health	1.9 years(tc) 2.9 years(tc) 3.6 years(tc)	Concurrent			<u>Aggravating</u> 1. enthusiasm 2. brutal treatment <u>Mitigating</u> 1. personal circumstances

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
		4. Grave Breach/Geneva Convention-serious injury to health 5. Grave Breach/Geneva Convention-serious injury to health 6. Grave Breach/Geneva Convention-willful killing 7. Violation of the laws/customs of war-murder 8. Crime against humanity-murder 9. Grave Breach/Geneva convention-great suffering to body	4. 6 years(tc) 5. 6 years(tc) 6. 24 years(tc) 20 years(ac) 7. 24 years(tc) 20 years(ac) 8. 25 years(tc) 20 years(ac) 9. 9 years(tc)				
Tadic, Miroslav	Chairman of the Bosanski Samac "Exchange Commission"	11 November 1999 1. Crime against Humanity-persecution 17 October 2002	8 years(tc)	Single			Aggravating 1. manner in which the crime was committed 2. status of victims 3. previous education Mitigating 1. Benevolent acts 2. voluntary surrender 3. remorse 4. personal circumstances 5. no-prior criminal conviction



Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Todorovic, Stevan	Chief of Police for Bosanski Samac municipality	1. Crime against Humanity- persecution 31 July 2001	10 years(tc)	Single	1. the gravity of the offence 2. how the crime was committed 3. the effect of the crime on the victims 4. the position of the defendant as a superior officer	1. remorse 2. guilty plea 3. cooperation with the prosecution	6. compoartment in the UNDU <u>Aggravating</u> 1. position of superiority 2. particular cruelty <u>Mitigation</u> 1. guilty plea 2. substantial cooperation 3. remorse
Vasiljevic, Mitar	Member of paramilitary group	1. Crime against Humanity- persecution 2. Violation of the laws/customs of war-murder 29 November 2002	20 years(tc) 15 years(ac)	Single			<u>Aggravating</u> 1. discriminatory state of mind 2. cold blooded nature 3. victims were known to the accusor
Zaric, Simo	Chief of National Security Service" for Bosanski Samac	1. Crime against humanity- persecution 17 October 2002	6 years(tc)	Single			<u>Aggravating</u> 1. manner in which the offences were committed 2. status of the victims 3. personal circumstances <u>Mitigating</u> 1. benevolent acts 2. voluntary surrender 3. remorse

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
Vukovic, Zoran	Member of a military unit	1. Crime against humanity- torture 2. Crime against Humanity- rape 3. Violation of the laws/customs of war-torture 4. Violation of the laws/customs of war-rape	12 years(tc)	Single			4. personal circumstances 5. no prior criminal conviction 6. compoartment in the UNDU <u>Aggravating</u> 1. youthful age of victim 2. vulnerability of victim
Zigic, Zoran	Guard at Camp	1. Crimes against humanity- persecution for murder, torture, and beating, sexual assault, humiliation 2. Violation of the laws/customs of war-murder 3. Violations of the laws/customs of war-torture 4. Violations of law/customs of war-cruel treatment	25 years(tc)	Single			<u>Aggravating</u> 1. extreme gravity of the crime Mitigating
Martic, Milan	President of RSK	2 November 2001 Crimes Against Humanity - Persecutions - Murder - Imprisonment - Torture - Inhumane Acts - Forcible Transfer	35 years (tc)	Single			<u>Aggravating</u> 1. Senior Leadership position 2. Widespread conduct over 4 years <u>Mitigating</u>

Name	Position	Conviction	Sentence	Consec/Concur	Aggravating	Mitigating	Judge Comments
		Violations of Laws and Customs of War - Murder - Torture - Cruel treatment - Wanton destruction of villages - Plunder					1. Expulsion of Martić family (limited weight)

**ANNEX C**

**Cases from National Courts of Sierra Leone**

**ANNEX C****Cases from National Courts of Sierra Leone**

**C (i) State v. Julius Pratt, 17 November 2005**

**C (ii) State v. Vandi Johnson**

**C (iii) State v. Tommy M'Bayoh & 3 Others**

**C (iv) State v. Aiah Musa Mommoni, High Court of Sierra Leone, 3  
June 2004**

**C (v) State v. Hassan Mahoi, High Court of Sierra Leone, 8 November  
2005**

**C (vi) State v. Amadu Macaully et. Al**

22237

**C (i) State v. Julius Pratt, 17 November 2005**

JUDGEMENT

The accused person stand indicted for misappropriation of public funds contrary to Section 12 (1) of the Anti Corruption Act, 2000 as amended.

Particulars whereof are that Mr. Julius Pratt who is an Accounts Clerk with the Sierra Leone Library Board, on or about the 26<sup>th</sup> day of May, 2004, in Freetown in the Western Area misappropriated a sum of Le3, 001,477.26 being an amount from a Public Fund, by which said Act or misappropriation the Government of Sierra Leone was deprived of the said funds. The accused person denied the offence.

In most criminal cases, the burden of proof is upon the prosecution to prove the allegations levied against him. And the burden of proof is usually beyond reasonable doubt, whereby if the court finds any doubt about the accused person it has no alternative but to acquit him (See Woolministon Vs. The D.P.P. 1935 Act. 462.

In the premises an accused person has no duty to prove his innocency, except in a few instance, where the burden of proof shifts.

The instant case in my view does not fall in such category of cases.

The offence with which the accused person is indicted with is created by the Anti Corruption Act., 2000 as amended. The relevant section is Section 12.

Section 12 (1) enacts as follows:-

12 (1) "Any person who misappropriate Public Revenue, Public Funds or property is guilty of an offence.

Section 12 (2) defines what misappropriation under S. 12 (1) means:-

12 (2) A person misappropriates public revenue, public funds or property if he willfully commits an act whether by himself with or through another person by which the Government a public corporation or a local authority in deprived of revenue funds, or other financial interest or property belonging or due to the Government, the public corporation or local authority.

In my view the ingredients of the offence would include the following:-

- (a) The money or property deprived must be public money or property.
- (b) His actions must be of willful nature.

In a bid to prove the case against the accused person the prosecution called a total of 8 witnesses. The accused person on his part denied the offence and appears to suggest as I understood him that he was only obeying orders from above and that had passed on the extra money to his bosses, and himself never benefited at all.

This is echoed by his learned Counsel, Mr. Thompson who submitted to the effect that even if the accused knew that the instructions he got from his superiors to prepare cheques over and above the amounts, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6 were getting per month he is not responsible for his actions, but that his bosses, (P.W.1, Chairman of the Board and P.W.8) should be the ones responsible as his client handed over the extra money to them. I will later on in my judgment examine whether an offender Under S. 12 (1) of the Anti Corruption Act, must benefit from his actions before he is found guilty or not.

I will now examine the evidence adduced by both sides, in light of the ingredients of the offence.

I would however, first point out the undisputed facts.

These include the following that the accused person was employed as a public officer as an Accounts Clerk/Assistant by the Sierra Leone Library Board, which is a public body and operates under the Ministry of Education.

That at the time of the alleged misappropriation of the funds, the accused person was working under P.W.8 and was inter alia in charge of the preparations of salary vouchers and salary cheques on behalf of the Sierra Leone library Board. These included P.W.3, P.W.4, P.W.5, and P.W.6.

It is also common knowledge that the exhibited cheques (Exhibits B, C, D and E and F) were for the month of May, 2004. It is also not in dispute that the amount of money which appears on the face of each cheque as exhibited is well above the regular and true salary of the payees.



which appears on the face of each cheque as exhibited is well above the regular and true salary of the payees.

The normal salary structure of some of the Sierra Leone library Board employees, for the month of May, 2004 is indicated in voucher for that month (Exhibit A

It is also common ground that apart from the accused person, P.W.3, P.W.4, P.W.5 and P.W.6 received their usual salary from the accused person.

What on the other hand is in dispute including whether the accused person forged or altered the cheques to read a higher amount rather than the approved salary of each recipient.

Secondly on whose instructions were the cheques prepared? Who took the extra cash after cashing the cheques? Finally, who is criminally responsible for what happened?

As to whether there was any forgery regarding the cheques in questions. There is no doubt in my mind that, there was no any forgery proved as evidence from both sides indicate that both P.W.1, and the Chairman of the Library Board duly authenticated the cheques by signing them twice each, before the bank honored them by paying the cash as indicated on their faces.

Hence in my view the cheques never told a lie on their faces. Both the Library Board top bosses approved them and cleared them for payment.

Hence in my considered view there was no forgery of the cheques. In any case as Mr. Thompson pointed out, the accused person is not indicted for forgery but misappropriation of funds.

The second question to ask is upon whose instructions did the accused prepare the cheques? The prosecution appears to suggest that it was the accused idea to inflate the amounts on the 6 cheques and that he is the one who took the extra cash. They rely on P.W.1 and P.W.8 testimonies in which both alleges that, the accused person had accepted responsibility and promised to refund the money but has failed to do so hence these charges against him. On the other hand the accused person testified to the effect that he had got both verbal and written instructions from his superiors including the

approval of P.W.8, P.W.1 and the Board Chairman that's why the last two had signed the cheques, and the bank had honoured them as genuine.

From the above evidences it is my considered view that the accused person did not and could not have acted alone. It is obvious from the evidences from P.W.1, P.W.8 and the accused person that it could have been impossible for the accused to have the cheque approved and subsequent honoured by the Bank without the actual or tacit approval of his bosses. P.W.1 told court that he checked all cheques and vouchers before they paid. Actually he does the checking twice before the same are typed and passed on to the Chairman of the Board for signature before he also counter signs. P.W.8 told court that the two sets of signatures by both the Chairman and P.W.1 were genuine as he was well familiar with them that apart from approving the cheques they also appended their second set of their signatures thereby authorizing the bank to pay cash, instead of by allow payee only.

This in my considered view eliminates the prosecutions contention that the brain child of the accused person alone to steal government money if this was the case, it would have been impossible for him to succeed without the participation and approval of both P.W.1 and the Board Chairman as signatories of all cheques from the Library Board.

In my view it was a syndicate perpetuated by both the accused and the senior officers of the Library Board, including the Board Chairman, P.W.1, and P.W.8. However the prosecution for reasons best known to themselves chose to prosecute only the accused person.

The next question is who took the extra cash from each cheque? The prosecution alleges that it was the accused person alone and that he had promised to refund it which he had failed to do. The accused persons on the other hand maintained that he passed on the extra cash to P.W.8.

In exhibit H which is a reply from the accused person, in response to exhibit G whereby the accused was queried by his Bosses. The accused appears to acknowledge the receipt of Le730, 297.36. Then he writes the following words.

"After I received my cheque from the bank I noticed (six) there was a mistake in my cheque. I cross check with vouchers only to find out that there was an error.

My apology for not returned (six) this (six) extra amount back to the bank"

Yours faithfully,  
Julius Pratt

This letter leave no doubt in my mind that the accused person at least benefited from the extra cash (See exhibit "F" the two cheques add to Le730, 297.30) Mentioned in both letters. There is no any other evidence before me to indicate otherwise. AS to whether or not the extra cash was refunded, it is my considered view that, it does not matter as the offence would be still stand. Any refund could be the one of the remedies in case an accused person is subsequently convicted (See S. 54 (2) (C.P.A.) Be it as it may, it appears it is not necessary for the prosecution to prove that the accused person charged with S. 12 (1) of the Anti Corruption Act, benefited from his action, provided it can prove that his action were willful and resulted in the government, a public corporation or a local authority to suffer loss or to be deprived of any revenue funds or other financial interest or property belonging or due to the government, a public corporation or a local authority. The word "willfully" in section 12 (2) of the Act, is the operative word or key word unfortunately the Act, does not define it. However the word "willfully" has been a subject of interpretation by courts in various English cases.

According to ARCH Bold (1998 Edition) Para 17 - 47 & 48) in absence of any specific decision on a specific Statutory provision to the contrary it was proper that any provision containing the word "willfully" in the definition of a crime should be construed in accordance with the case of R.Vs SHERPPARD (1981) AC. 394, HL.

In the SHERPPARD Case a parent was charged with willfully failing to provide adequate medical attention for his child contrary to a certain provision in the children and young persons Act, of 1935. Their Lordships of the house of Lords by majority, held to the effect that a man "willfully fails to provide adequate medical attention to his child if he either (a) deliberately does so, knowing that there is some risk that the child's health "may suffer unless he receives such medical attention or (b) does so because he does not

care whether the child may need the medical treatment or not. That is to say the accused's mental element is material in proving willfulness on the part of the accused. LORD KEITH stated to the effect that willful is a deliberate act which he equated to common law recklessness.

Some legal Authors like CATHERINE ELLIOTT AND FRANCES QUINN (criminal Law – Pearson long man – Fifty Edition) reviewed various cases including RVS Sherpard above and those which came after it, and had the following to say on recklessness (at Page 18)

"A person will be reckless where:-

- (a) He/She does an act which in fact creates a serious risk that property would be destroyed or damaged and
- (b) Either (i) when he or she does the act, he or she has not given any thought to the possibility of the other being any such risk and the risk was in fact obvious

OR

(ii) has actually recognized that there was some risk of that kind involved and has nevertheless gone ahead to do it. My understanding of the divided cases is that "willfully" entails deliberate act as of a person while knowing and appreciating his actions would risk someone or body to suffer loss.

Such person does something because he does not care whether there is a risk of loss or not. Turning now to the fact before us, it is the prosecution case that the accused person willfully/deliberately recklessly made the government of Sierra Leone to lose funds up to the tune of 3,001,477.26 Leones. The defence as I understand it, appears to suggest that the accused person was not the beneficiary of the extra funds but that, he had passed on the same to his superior including P.W.8.

I have carefully considered all the evidence before me and I have critically analyzed the deminours of all the prosecutions witnesses and that of the accused person. It is clear to me that from the accused persons evidence and his letter to the Library Board Authorize Exhibit 'H;) that he is a ware of at least two cheques amounted to Le730,297.36 Exhibit 'F')

His defence is that he never benefited from the misappropriation funds, as he had passed it on to his bosses. That they were the ones who had in the first place given him instructions to prepare the cheque with the inflated figures. Hence in his view he cannot be held criminally responsible for the loss to the Government with all due respect to him and his Learned Counsel Mr. Thompson, I do not agree with this contention. It is clear that in criminal matter there is no doctrine by vicarious liability as the case in Civil Matters. In absence of compulsion and there is no evidence to this effect before me the accused must face his responsibility as an adult individual.

Having found as I have already pointed out above, it is clear tome that the accused person prepared all the six cheques for the month of May, 2004 in respect of P.W.3, P.W.4, P.W.5 and P.,W.8, plus himself sent the cheques to the bank for encashment, money was brought back to him. Then, he called the beneficiaries of each cheque, accused paid them in accordance with the normal salary structure as indicates in Exhibit 'A' the salary voucher for May, 2004, He however maintained that, he had passed on the extra cash to his superior through P.W.8.

Section 12 (2) of the Anti corruption Act, 2000,as Amended, gives the definition of misappropriation. It states, inter alia, that a person misappropriates funds if he 'Willfully' commits an act, whether by himself, with or through another

This means that, it does not matter whether the acts of resulting with loss was caused by the accused alone or with others. This section in my view makes all participants in the loss to the government, as principal offenders. .

The evidence indicates that he actively participated in the misappropriation of the funds of the government of Sierra Leone. According to P.W.8 & P.W.1 the funds had come from the consolidated funds, through the Ministry of Education. The definition Section

of the Act, defines Public Funds, as "Any moneys paid from funds appropriated by Parliament from the consolidated fund .....

As I have already pointed hereinabove, it does not matter whether he took the money himself or he gave it to the superiors. Act of them in my view can be held responsible as principal offenders. This is more so in light of the judgment and definition by the word 'willfully' by both Lord Deplode and Lord Keith in the case of R Vs. SHERPARD already cited above.

Secondly the element of benefiting from the misappropriated funds were not made a necessary ingredient by the legislation, while passing the Anti Corporation Act, hence it is immaterial whether the accused person personally benefited from the misappropriated funds or not. He would be held guilty if his actions falls within the definition of the word 'willfully' as per section 12 (2) of the act.

All in all and after carefully reviewing the evidence and after applying both Statutory and case law, I find that the prosecution has proved the case of misappropriation of Public Funds against the accused beyond reasonable doubt and I find him guilty of the same and he is accordingly convicted.

(Sgd) Kiiza J.

17/11/05

17/11/05

accused present

Tumwesgye for the State

Thompson for accused person

Court:- Judgment read in open court.

Prosecution: - No record of previous conviction. Sentence is the maximum of 10 years or a fine not exceeding 30 Million Leones. The offences are repugnant in Sierra Leone. I pray for a stiff sentence.

## ALLOCUTUS

Thompson on behalf of the accused states according to the findings of the court, it was not only the accused who perpetrated the offence, but also his superiors; he is the most junior in this department

I believe that's why he was made to pay for crimes. Accused is a young man, who has just started life and he wanted to get married in 6 months time. We pray for mercy and not to consider a custodian Sentence. I so pray.

(Sgd) Kiiza J.

Court sentence and reasons thereof. Accused is allegedly a first offender. He has prayed for mercy through his Learned Counsel.

He appears repentant & He is also a young man.

However, the offence with which he has been convicted is a serious offence. The maximum sentence is up to a fine of 30,000,000 or 10 years imprisonment or both. This no doubt, shows that the legislature wanted to pass a message to people not to inflict loss on the scarce resources of the government.

It is my considered view that the court must enforce such sentences as would pass on this message to would be offenders that no condonation should be expected from them.

Putting everything with consideration

I pass a sentence of 2 years (two) imprisonment as sentence and proper

He is also to refund the funds lost by the Government in the sum of 3,001,417 Under S. 54 (2) C.P.A. This would be at the end of serving his sentence.

He would pay it in equal installments of 100,000 Leones per Month, order accordingly.

Right of Appeal explained.

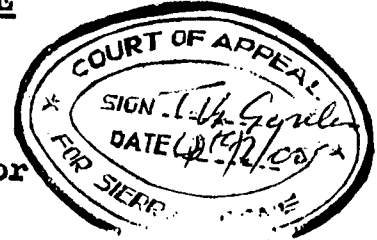
(Sgd) Kiiza J.

IN THE COURT OF APPEAL OF SIERRA LEONE

NOTICE OF APPLICATION FOR LEAVE TO APPEAL  
AGAINST SENTENCE

TO:

The Registrar of the Court of Appeal for  
Sierra Leone:



I, JULIUS PRATT having been convicted of the offence of Misappropriation of Public Funds contrary to section 12 (1) of the Anti-Corruption Act. 2000 (as amended), and being prisoner in the State's Prison at Pademba Road, Freetown hereby give you notice that I desire to apply to the Court for leave to appeal against the sentence.

COUNT 1                      2 years

UPON me for the said offence on the following ground:

That on the facts of the case the sentence was too severe.

.....  
APPLICANT.

PARTICULARS OF TRIAL AND CONVICTION

1. Date when sentence passed.
2. IN WHAT COURT: High Court holden at Freetown.

I desire to be present when the Court considers my application for leave to appeal against sentence.

- (a) I am legally represented by Counsel.
- (b) I wish my appeal to be argued and presented orally by my Counsel.



35

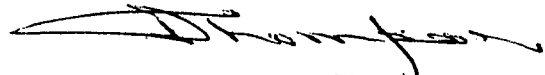
22249

(c) I desire to be present at the final hearing of my appeal.

DATED THE

DAY OF DECEMBER, 2005.

This Notice of Application for leave to Appeal against sentence is filed by DAVID G. THOMPSON of No. 19, Regent Road, Freetown Solicitor for the Applicant.



David G. Thompson  
Solicitor for the Appellant/  
Applicant.

22250

**C (ii) State v. Vandi Johnson**

## SUMMING UP

The charge against the  
accused is as follows -  
Statement of Offence  
Murder Contrary to Law

### Particulars of Offence

Vandi Johnson on the 21<sup>st</sup>  
day of July, 2002 at Tongo  
Fields in the Eastern Province  
of Sierra Leone murdered  
Gene Kamara.

Foreman, Members of the  
Jury this trial is Criminal  
for which the burden is on  
the prosecution to prove the  
guilt of the accused beyond  
reasonable doubt. Where  
the pros succeeds the accused  
must be found guilty and  
convicted. Where the pros  
fails on the basis of the  
evidence led the accused  
must be found not guilty and  
acquitted and discharged;  
Similarly if a reasonable  
doubt is created on the  
evidence led the doubt must  
be resolved in favour of the  
accused and he must be  
acquitted and discharged.

The accused is here charged with Murder. What is Murder in law? Murder is defined thus: "where a person of sound memory and discretion unlawfully kills any reasonable creature in being and under the President's peace with Malice aforethought either express or implied with death following within a year and a day." In order to amount to Murder the killing must be done with Malice aforethought and aforethought here does not mean premeditation but rather it implies foresight that death would or might be caused. Malice here can be either express or implied. "Express Malice" may be said to mean either of the following states of mind preceding or co-existing with the act or omission by which death is caused and it may exist even where the act is ~~not~~ unpremeditated - (a) An intention to ~~kill~~ cause death of, or grievous bodily harm to any person whether such person is the person actually killed

or not; (b) Knowledge that the act which causes ~~the~~ the death of, or grievous bodily harm to, some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.

"Implied Malice" occurs where no express malice is shown or openly indicated the law will imply it from a deliberate cruel act committed by one person against another it may be implied where death occurs as a result of a voluntary act of the accused which is (i) unintentional and (ii) unprovoked.

Malice aforethought in law therefore means an intention to kill or an intention to cause grievous bodily harm. Member of the jury the evidence as it is reviewed will reveal the intentions of the accused which will be proved as it unfolds.

The pros must prove —

- (a) The death of the deceased Sone Kamara.
- (b) That it was the acts and

omissions of the accid that caused the death of Sonie Kamara the deceased.

- (c) Malice aforethought as already explained earlier;
- (d) That Sonie Kamara the deceased died within a year and a day.

What evidence did the accid lead to prove its case against the accid beyond reasonable doubt? If the evidence is briefly reviewed this can be answered. ~~Acc~~ According to P.W. Mahamed Bangura he stated that he recognises the accid and recalls 21/7/02. He knows Sonie Kamara at his friends place where they were seated together. Later he and them went to his business place at the market. Later the sister of the deceased came and called him telling him that he was fighting with the accid. He went there and met them on the fight. He tried to separate them in which case they succeeded in separating them. They then went their separate ways. He was trying to collect the goods they scattered

whilst fighting on the table. Whilst looking he saw the accused collect a stick which he used to hit the late Sorie Kamara on his head. The stick had a nail on it. The late Sorie Kamara fell to the ground and shouted in Krio: "A you don kill me". The accused wanted to run away but he was held. The late Sorie Kamara became unconscious with blood flowing from the head. The accused was arrested and taken to Tongo Police Station where a report was made. He was given a medical report and they took late Sorie Kamara to the Kenema Govt. Hospital where he was admitted. Later he died and was buried at the Kenema Cemetery. He later identified a stick with a nail which the accused used to hit the deceased. On Xx) he said he was not present when the fight started and it was one Panta that went to call him. That it was when he raised his head that he saw the accused hit the deceased on his head and that he was about 5 to 6 ft. when he saw

the accid hit the deceased on the head. He cannot tell from where the accid got the stick. The accid wanted to run away but he was held.

Dr. David Fatta Sosay a medical officer attached to the Kenema Brort. Hospital who narrated his duties. He recalls 21/7/02 when he performed a post mortem examination on the Corpse of a man he cannot now recollect the name. He tendered his report as Exh. A. By deep laceration he meant a big wound caused by a sharp object and the consequences of such a wound on the skull is that it will cause blood to enter the brain resulting in death. Necrotic is when the tissues have become black and this is as a result of the sharp object which poisons the blood and the tissues become black. Pierced is a slight opening into the body which may be caused by a nail and this was found on the skull. The brain damage was due to contusion on the brain and this stops its functions. As



soon as the brain stops functioning it results in death and since the brain cannot send messages to the heart there is cardiac failure resulting in death.

Patrick Kobba DPC 2146 narrated how he received a case and Enquiry file from Tongo Police Station including a stick with a nail attached to it. He also received an information that Serie Kamara has died at the Kenema Govt Hospital on 22/7/02. He tendered in evidence the Voluntary Confession Statement of the accused as Exh. B, an additional voluntary Confession Statement of the accused as Exh. C and the charged statement of the accused as Exh. D.

Alfred Paul Michael Sandy tendered a stick with a nail attached to it as Exh. E. At this stage the pres closed its case and the accused relied on his statements to the police (Exhs B and C) as his defence and called no witnesses which is his right.

At this stage let me

Let me remind you again that it is for the pros to prove the guilt of the a/cd beyond reasonable doubt. Where they succeed the a/cd must be found guilty, where they fail the a/cd must be found not guilty and acquitted and discharged; Similarly where there is a reasonable not firmy doubt is created on the basis of the evidence it must be resolved in favour of the a/cd and he must be acquitted and discharged. The state of the a/cd (Exhs C and D) on which the a/cd has relied is also part of the case for the pros. I shall read very carefully these two statements of the a/cd. I shall read it very slowly.

The a/cd in his statement spoke of a fighting between himself and the deceased, and there is a law on fighting for which the a/cd should be found guilty of the alternative of Manslaughter, but the condition is that there must be no cooling

period during the fight. In the case of the ~~accid~~ ~~the~~ evidence of P.W. was that they were separated with the ~~accid~~ going his way and the ~~deceased~~ his own way when the ~~accid~~ ~~then~~ later took a stick and hit the ~~deceased~~ on the head. The ~~accid~~ in using the stick to hit the ~~deceased~~ is a cruel act from which implied malice can be implied.

foreman, members of the jury you have heard the evidence and I have ever read the statements of the ~~accid~~ which is his defence. It is for you as reasonable men and women to now consider your verdict.

Jury Retires at 11.10 a.m.

Jury Returns at 11.25 a.m.

VERDICT

UNANIMOUSLY GUILTY of  
MURDER

Ms. Martyn in mitigation that the penalty is fixed by

law and cannot say much  
in mitigation.

~~Sentence~~

1. death by hanging

for ~~murder~~

22261

**C (iii) State v. Tommy M'Bayoh & 3 Others**

VS.

TOMMY M'BAYOH & 3 OTHERS

JUDGMENT/SUMMING UP

The accused persons are charged as follows:-

5.

STATEMENT OF OFFENCE

MURDER

PARTICULARS OF OFFENCE

10. TOMMY M'BAYOH, TUI CHARLEY, PIEH YENGEH and JONES BATTOR on the 24th day of November, 1998 at Bakie in the Couthern Province of Sierra Leone murdered KONI JARTU EPANA.

15. Foreman and members of the Jury the charge of the accused persons has been read over to you to which they pleaded not Guilty and it is my duty to remind you that you are the judges of facts and I am the judge of the law and it is my duty to direct you on the law whilst you as judges of the facts must carefully listen as I narate the facts to you in due course.

20. In the same vain it is my duty to remind you that all you are concerned with is the evidence as led in this court and not on what you may have heard outside this court and this must in no way affect the verdict you may have to return against each of the accused persons.

25. Let me hasten to remind you that the burden of proving the guilt of each accused persons rests on the prosecution to prove it beyond reasonable doubt. not on a flimsy doubt and it is not the duty of the accused person to prove their innocence since the burden of proof throughout rest on the shoulders of the prosecution.

On this question of burden of proof and standard of proof I hope to direct you further in this my summing up.

30.

- The offence of Murder is defined thus - Murder is defined or described by Lord Coke thus "Where a person of sound memory and discretion unlawfully killeth, any reasonable creature in being and under the President's peace with Malice aforethought, either express or implied, the death following within a year and a day. Murder must be committed by a person of sound memory and discretion. It cannot be committed by an idiot, lunatic or infant. The accused in this case is presumed to be a man of sound memory as he is not an idiot lunatic or an infant.
- 5.
10. The deceased must be under the peace of the President of Sierra Leone and from the evidence there is nothing contrary shown to this court. It must be done with malice aforethought which must be expressed or implied. Malice in this case does not mean malice in the sense of not being in talking terms. Malice in the law of murder is totally different and to amount to murder the killing must be committed with malice aforethought.
15. "Aforethought" here does not mean premeditation but rather implies forethought that death would or might be caused. Malice is either expressed or implied.
20. Express malice may be said to mean either of the following states of mind prededing or co-existing with the act or omission by which death is caused and it may exist where the act is unpremeditated:-
- (a) An intention to cause death of, or grievous bodily harm to, any person, whether such person is the person actually killed or not.
25. (b) Knowledge that the act which cause death of, or grievous bodily harm to, some person, whether such person is the person actually killed or not although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.
- 30.

Malice is where no malice is expressed or openly indicated, the law will imply it from a deliberate cruel act committed by one person against another. It may be implied where death occurs as the result of a voluntary act of the accused persons which was (i)

5. intentional or (ii) unprovoked.

Let me remind you that the expression "Malice aforethought" is an intention to kill or an intention to cause grievous bodily harm and not malice as used in the ordinary common sense.

10. It is the evidence that you must carefully look into in order to arrive at a reasonable and sound decision. In this regard therefore I shall very briefly review the entire evidence led by the prosecution and the defence.

P.P.1 Yema Tiengay stated that Koni Jartu Kpana is her mother and recognise all four accused persons.

15. On 24.11.98 she left her mother at home and went to remove weed from their cassava farm and on her return she did not meet her mother. She then went by the river side to call her since she thought she had gone to collect water. She then informed her sister Mary that she did not see their mother. Mary and herself then went into the bush to search for their mother but did not see her. They then went by a road where they met her clothes on top of a stick by the road.

20. She then came to the Town Chief and made a report. The chief is called Kpana. She narrated to him that she left her mother at home and came later but she <sup>was</sup> not in and on searching she saw her dress on a tree by the road side. The chief then collected some people to go in search of her mother. They searched but did not see and later got an information that she was seen around the beach.

25. 30.



22265

It was the Kamajors who brought this information.

5. She went with the Kamajors and identified her as her mother. At the time she saw her she was dead with the tongue cut off, the breast was missing, the two knee caps were removed and her private parts were missing. The chiefs were then informed and the Kamajors took the body to the town and they were later taken to the Bonthe Police station where she made a statement.

10. Mary Sesay (P.W.2) stated that she knows Koni Jartu Kpana who is her mother but is now dead. She recognises all accused and recalls 24.11.98 when in the morning on the beach which is far from the town. Before going to fish she left her mother Koni Jartu Kpana on the veranda of their house. She left her together with the 1st accused. She came in the evening but did not see her mother. The 1st accused was in the house. She asked her sister (P.W.1) about their mother but she was told she has not seen her she told her they should search for her in the bush as she likes to collect wood in the bush. They searched but did not see her. They reported to the Town Chief that they have not seen their mother. The Town Chief alarmed that nobody should go out. They then searched but did not see her. Later they were informed that she has been seen around the beach by Kamajors. They were later called to see her. They went and found her dead with some parts of the body missing such as the breast, the knee caps the private parts. They then sent for the Paramount Chief to come and see. He came and saw the body. The Paramount Chief then took them to Bonthe Police Station where she made a statement. The corpse was later handed over to them for burial. She said she knows Sirbeh <sup>u</sup>atta who was around when the incident took place and was also taken to Bonthe and he was left in cells when they returned and since that time she has not seen him nor knows his whereabouts.

Her answer to that she said she was put in cells because she was asked where was she when her mother escaped from her. She went fishing that day and 1st accused was with her. On her return the 1st accused was at home.

5. She did not ask the 1st accused about her mother.

I Recall she said she was never charged to court. That 1st accused told her he was in the house and can't tell where their mother went to.

Abdul Sesay (P.W.3) stated that he knows Koni Jartu Kpana who is now dead.

10. He recognises all accused persons and recalls 24.11.98.

In the morning he went out fishing with his brothers. They got no fish and so came home and one Pa Ansu who is his father and Town Chief called him and told him there was a problem. He told him Koni Jartu Kpana went out to the bush and has not been seen and so asked

15. him to help search for her. They left and when he got by the beach he then went to toilet by the beach which is partly sandy and bushy. After he finished he saw 1st accused coming and running towards him with a cutlass. He then took cover and on getting towards him he got out and greeted him but he did not answer.

20. The cutlass he saw with 1st accused had blood on it while blood was on the handle.

He never said anything to him when he said he would pay him same money not to say he saw him with a cutlass with blood on it.

25. He said he would give him Le3,000.00. When he saw him with the blood on the cutlass he asked him but he told him not to ask him. He then told him that he will report in town that he saw him with a cutlass with blood on it. He begged him not to report in town and it was at this time he promised him Le3,000.00 but he told him he would not accept it and would report. He came to town and told his fellow

30.

- Kamajors that he saw the 1st accused with a cutlass with blood on it and that he offered him Le3000,000. He then told them that the 1st accused is a bad man and should be arrested and taken to the authorities. They were taken to the Chief and later to Bonthe Police Station where he made a statement. At the time he saw the 1st accused on he was cutting the flesh of the woman Koni Jartu Kpana but he did not see him. In answer to Xrd he said that at the time he saw the 1st accused he was cutting the flesh of the woman Koni Jartu Kpana. He went out fishing the whole day and came home in the evening.

- When he came home from fishing his father told him about the problem in the village. The chief did tell them not to go out. A team of search party was arranged and they were many. His party went by the sea. He came home from fishing at about 5.30 p.m. and they went out in search at about 7.30 p.m. They were showing the name of the woman one by one and there was no noise. The beach is a long stretch and there were a lot of trees around. He went to the toilet inside the bush alone whilst the rest of the party went ahead. The 1st accused was running along the beach. The search party went along the bush whilst he was in the toilet.

- That it is true when he saw 1st accused coming he took cover. When the 1st accused passed him he called him and was now alone with the 1st accused. It was dark and he was about 60 yards away from 1st accused and it was this distance he saw the blood on the cutlass. He said it is possible for him to see the blood. The 1st accused told him he had killed a human being. It was at this distance he offered him the Le3000,000. It was after the search party that he went to the village. That he is saying the truth.

In Kaxd he said he saw the accused cut the forehead, the elbow, the breast, the knee and the leg. At the time he was with 1st accused it was dark but not too dark and at that time he could see for a distance of 60 yards.

5. P.W.4 Samuel Goerge Kain Ngabay III who is the Paramount Chief of Ndiama Chiefdom, Bonthe District stated he knows Koni Jartu Kpana now dead and recognises all accused persons. He recalls 24.11.98. He narrated that he was in Bo and got on to his place at Tisama when he received a call from Bakai Town from the Section Chief and the Kamajors. He went there and the section chief told him that one Koni Jartu Kpana was missing and when they searched her body was seen by the beach near the ocean. They went there with the Town Chief, Section Chief and the Kamajors and saw the woman by the beach already dead. He saw her wounded. She was wounded by the knee, 15. a wound by the bobby, a cut by the left ear. Koni is a woman. He saw a wound by her private part. He then tried to investigate. He enquired from 1st, 2nd, 3rd and 4th accused and put series of questions to them to which they all replied. Following their various 20. answer they were taken to Bonthe Police Station for further investigations and then made a statement. He know Sorbeh Katta very well and he was there during the incident. He did not investigate him and can't now tell his whereabouts. He is not at Barkai and has not seen him.

25. In Kxd he <sup>said</sup> he investigated the accused persons before he took them to the police station. He took them there for further investigations.

30. P.W.4 was recalled by the State Counsel and stated that he did further investigations as regards the 1st accused in the presence of some Kamajors and told him he got an information that he killed the

woman who is his mother in law. He asked him the question who told  
replied  
you and he replied that it was his friends who found him dragging a  
boat to where the body was found. He further asked him about the boat  
he drove that night but he replied No at first. He then told him

5. that 2nd accused saw him and he then answered that he did so. He  
then put it to him that since he drag the boat to where the body was  
found he knew about the death. He answered carelessly that if they  
said he killed the woman then he cannot deny. He asked him to view  
the body which he did and then shook his head.

10. He asked why he shook his head but he never said anything. He  
stated that when he answered him carelessly he knew that he killed  
the woman.

At this stage on an application by the State Counsel the 4th  
accused was then acquitted and discharged. He was then called by the  
15. prosecution as P.W.5. I shall in this summing up direct you in one  
course what position this witness must be viewed by you.

He stated he knows Koni Jartu Kpana now dead. That on 24.11.98  
he was at Barkie in the morning hours and went out to sea and came in  
the evening. The 1st accused then called on him and asked him to  
20. follow him. He asked where? He then went with him and met the 2nd  
and 3rd accused in the bush. On entering the bush he saw an old  
Woman seating. The 1st accused took a stick and hit her and he  
shouted. He told him after the shout it must stop there. The  
woman later died. After she died the 1st accused took a knife from  
25. his pocket and cut under the breast. He later cut the forehead, the  
knees and the private parts. He told 1st accused he had done bad.  
The 1st accused told him that if he says it in town he will lie just  
like the old woman.

30.

The old woman is Koni Jartu Kpana. The 2nd and 3rd accused did not touch her but they stood by. He then left and went to town. On his arrival the town chief raised an alarm that Koni Jartu Kpana went to the bush to get wood and has not been seen but she was later seen

5. at the beach. The children were called and they later identified the body. P.W.4 the Paramount Chief then invited them to Bonthe. He was afraid to say it in Bonthe because the 1st accused told him he would kill him. He did make a statement to the police.

George Ngegbai (P.W.6) who is Det P/Sgt792 stated that he was on

10. duty when he received a report of the murder of Koni Jartu Kpana from P.W.4 the Paramount Chief who came with the corpse and the accused persons. He took over the investigation and issued a post mortem request form to the District Medical Officer. Dr. T.T. Samba who has gone abroad and cannot tell his whereabouts. A post mortem was done

15. by the Doctor in his presence and that of the accused persons.

He tendered in evidence the voluntary cautioned statements of the accused persons as Exhs. A, B and C. He also tendered the charged statements of all accused as Exhs. D, E and F.

The State Counsel M.M. Sesay Esq then tendered the Committal

20. Warrant in respect of all the accused persons as Exhs G1, 2 and 3 and then made an application under section 148 (1) C.P.A. 1965 (Act No.32 of 1965) to delete witness No.4 Sorbah Katta from the back of the indictment which application was granted.

The prosecution then closed its case and each accused then

25. elected to make an unsworn statement from the dock. The 1st accused stated that he knows the deceased who is his mother in law and stated that he has heard all what was said in court in the evidence led and that he did make a statement to the police and told the C.I.D.

that the deceased went out to look for wood and that Tiangay went to look for cassava and came back later and asked for her mother. He replied he does not know where she has gone to. She then asked their small child whether she can tell whether their mother went to and she replied

5. that she has gone in search of wood and whenever she goes for wood she does not stay too long. He went on to say that where the clothes (dress) of the woman was found was done by a socerer. He was then implicated and they came to Bonthe where he told the police he knew nothing about it,

The 2nd and 3rd accused now stated they wish to rely on their

10. statements they made to the police which were tendered in court and are calling no witnesses.

The defence then closed its case and we then proceeded to address.

Foreman and members of the Jury let me again remind you that as judges of facts it is the duty of the prosecution to prove its case

15. beyond reasonable doubt and not for the accused persons to prove their innocence. Where the prosecution does succeed the accused persons must be found guilty and convicted; where the prosecution fails the accused persons must be found not guilty and acquitted and discharged; similarly where there is a reasonable doubt created on the basis of the

20. evidence so led it must be resolved in favour of the accused on whom that doubt falls.

However despite all these rules the version of each accused person ought to be considered in order to arrive at a sound and reasonable conclusion.

25. The 1st accused in his statement from the dock denied killing the deceased Koni Jartu Kpana and similarly in his statement to the police still denied killing the deceased.

The 2nd accused in his statement denied killing the deceased but went on to say he was present when 1st accused hit the deceased until she

30. died and removed some parts from the body whilst he stood by and did

nothing and did not even touch the accused.

The 3rd accused too in his statement gave a similar narration as that of the 2nd accused.

- The 2nd and 3rd accused must be carefully considered as the
5. evidence against them does not reveal the charge of murder against them and I must so direct you. Secondly there raises this issue of a common design but if one looks at the evidence there is no proof of a common design but if one looks at the evidence there is no proof of a common design. The charge that would have been brought against them is that
10. being an accessory to the fact of murder and this is not an alternative to the charge of murder.

Counsel for the State M.M. Sosay Esq., rightly did admit that he has not led evidence against the 2nd and 3rd accused and I will direct that you acquit and discharge them.

15. As regards the 1st accused Foreman and Members of the Jury, the evidence of the prosecution witnesses which I have reviewed has one on which I must carefully direct you on and that is the evidence of P.W.5 who is in law an accomplice. It is my duty to inform you that you may convict on the evidence of such an accomplice.

20. However the law requires that a conviction based on the evidence of such an accomplice is completely unsafe. There must be what the law calls "Corroboration" i.e. an independent evidence supporting the evidence of the accomplice i.e. P.W.5 in some material particular.

- The evidence need not be totally the same in all respects but that
25. it can be shown to be so in some material areas. The evidence of P.W.3 who said he saw 1st accused cutting parts of the deceased and also said he saw 1st accused who ran towards him with a blood stained machet which is the blood of Koni Jartu Kpnana. Even the admissions of the accused can amount to corroboration.

30.



The evidence of P.W.3 and P.W.4 are independent evidence with corroboration in some material particulars to the evidence of P.W.5.

Foreman and Members of the Jury I must also direct you on the fact that there was no medical report tendered as to the cause of death.

5. Let me hasten to warn you that the medical report does not disclose who caused the death i.e. any of the accused persons but as to the cause of death of the deceased person in this case Koni Jartu Kp'na.

10. It is my duty to inform you that on a charge of Murder the fact of death can be proved by circumstantial evidence notwithstanding that neit neither the body nor any trace of the body can be found and the accused has even made no confession as to his participation in the act. It is clear that death was proved by the prosecution in circumstances which makes its commission certain as in this case very convincing. The absence of a death certificate does not create any differences as to 15. the fact that death of Koni Jartu Kpana did occur when the evidence of P.W.3, P.W.4 and P.W.5 are carefully considered.

Foreman, Members of the Jury, you may now retire and consider your verdict.

VERDICT

- 20. Murder: Unanimously Guilty
- Miss. C. Martyn in mitigation that she has nothing to say as sentence is fixed by law.
- Allocutus: Accused begs for mercy
- Sentence: Death by hanging
- 25. Court: Accused informed of his right to appeal within 21 days
- Court: All the jurors are discharged.

(Sgd) P.O. Hamilton, J.

22274

**C (iv) State v. Aiah Musa Mommoni, High Court of Sierra Leone,  
3 June 2004**

IN THE HIGH COURT OF SIERRA LEONE  
Holden at Freetown  
Criminal Division

STATE

v

AIAH MUSA MOMMONI

JUDGMENT

Corum Shuster J

Miss Palmer Prosecuting Counsel

Mr. H. H. Sandy Defence Counsel

1. The accused was charged with an offence alleging on 13th March 2003, at Freetown in the Western Area of Sierra Leone, he unlawfully and carnally knew **Aminata Bah a child under 13 years of age to wit 9**. He first appeared in the Freetown Magistrates Court on the 21st March 2003. On that date the complainant was also present in Court. The Magistrate adjourned the case to the 23rd March 2003 for a preliminary enquiry, and remanded the defendant in custody.
2. The brief facts On the date in question, the complainant alleges the accused forced her to have Unlawful Carnal Knowledge in his room. Her mother PW1 came into the Accused's home and found the child, still in the room lying on his bed, she had blood and semen visible on her vagina. On being discovered the accused wanted to sort the matter out, then and there. There was a confrontation between PW1 and the accused. The matter was reported to the police. The accused was arrested, he denied the offence. The child stated to the police and this court she was gagged by the accused, to prevent her screaming, which allegation, if proved is in my view an aggravating feature in such a case, because it is an inherently dangerous act, to gag a young child during the course of a felony.
3. On 3rd April 2003 the accused again appeared in the Freetown Magistrate's Court, appearing from custody. The Magistrate commenced a Preliminary enquiry into the matter as required by law. He recorded the unsworn evidence of the complainant by way of deposition evidence. Deposition evidence given in the

lower court is extremely important, as it forms the basis of a initial charge preferred by the police and, the charge with which the accused was committed to stand his trial The offence of UCK, is contrary to section 6 of the Prevention of Cruelty to Children Act Cap 31 of the Laws of Sierra Leone 1960 as amended. The charge carries a maximum sentence of 15 years imprisonment upon conviction.

4. On subsequent dates the Magistrate continued with his Preliminary enquiry. The Accused was committed to stand trial in the High Court on the 2nd May 2003. I note from the Magistrate's Court record there were eight [8] adjournments in the lower court from the time of arrest, to the date of subsequent Committal. In my view it is high time a much more speedy system of transfer of child abuse cases to the High Court from the Magistrate's Court is introduced in this country; in order to expedite Child Abuse hearings, and provide a defendant with a speedy trial as is required by the terms of the Constitution of the Republic of Sierra Leone. This would be in the interest of justice to all the parties in sensitive cases of Child Abuse. Justice delayed is not justice at all, in my respectful view.
5. I note, from perusing the lower court's Deposition records that on the 3rd April 2003 the Magistrate failed to record an entry on the court record as to whether he questioned the child, if she knew the importance of telling the truth in Preliminary Court Proceedings. Such **enquiry must of necessity be fully recorded in writing on the face of the deposition** and, be certified by the Magistrate [or JP] in **ANY future cases of sexual abuse**, involving young children. It would also be very sensible for a Magistrate/JP to include a Piggott warning to a young child in order to protect all parties in sexual abuse cases.
6. On 15th March 2004 the Attorney General's Department prepared an indictment against the accused, alleging a single count of Unlawful Carnal knowledge against the accused. The accused appeared in the High Court on the 25<sup>th</sup> March 2004 having failed to appear on the 22nd March when his case was originally called and after he had been served with a copy of the Indictment. On 25th march 2004 he was arraigned, he pleaded not guilty to the charge of Unlawful Carnal Knowledge, as is his right. He has been kept in custody since that date in view of the nature and seriousness of the offence.
7. Unlawful Carnal Knowledge is an offence contrary to section 6 of the Prevention of Cruelty to Children's Act Cap 31 of the Laws of Sierra Leone 1960 on conviction it carries a maximum sentence of 15 years imprisonment. At the conclusion of a trial for Unlawful Carnal Knowledge a court may as an alternative verdict, convict an accused person of Indecent Assault. Indecent Assault remains an alternative verdict to a charge of Unlawful Carnal Knowledge in this, and in many other Common Law jurisdictions.
8. In accordance with my duty, and as required by law, I remind myself an accused is innocent until he is proven guilty, beyond any reasonable doubt, so that I am

sure he committed the crime with which he is charged. The accused does not have to prove anything in his defence.

9. I heard evidence from a number of witnesses for the Prosecution during the course of this trial. I heard detailed medical evidence from Doctor Matilda King. I have studied all the exhibits and re read the unsworn statement of the Accused. I have re read my notes, consulted case law and, the writers of Archbold in coming to my judgment. For the record any Crime of Unlawful Carnal Knowledge is serious, more particularly so if the offence is alleged to have been committed against a child of tender years. The age of the child is important as is alleged the child was 9 years of age at the date of this allegation. **Unlawful Carnal Knowledge** [in layman's terms] is unlawful sexual intercourse without consent i.e. when a man places his penis into a woman [or girls] vagina without her consent. There does not have to be full penetration of her vagina, neither does there need to be proof of the emission of seed and as previously stated if UCK is not proved an accused can still be convicted of the crime of Indecent Assault.
10. To prove the elements of the offence of Indecent Assault [Alternative Charge] the prosecution needs to prove there was an assault, which was accompanied or surrounded by an indecent act. Indecent may be defined as being overtly sexual. It is trite law that if a man inserts his finger into the vagina of a woman or girl without consent that is indecent assault. In the case of **Rolfe Lord Goddard CJ** said in delivering the Judgment of the court. "An assault can be committed without touching a person. One always thinks about an assault as the giving of a blow to somebody, but that is not necessary. An assault may be constituted by a threat, or a hostile act. So if a man exposes himself and then walks towards a woman making any gesture he could be convicted of indecent assault." In other words the Chief Justice said indecent assault covers a wide range of acts, it is for a court to decide on hearing the evidence what constituted the indecent act.
11. **The Issue of Consent.** In law a child aged nine years cannot consent to an act of Unlawful Carnal Knowledge or Indecent assault. **Finding.** I find as a fact, upon hearing the evidence of the complainant, her mother and upon listening to the Doctor that; Aminata Bah at the time of this alleged offence was a female person, moreover she is a child; and further that she was aged Nine years, on the 13th March 2003 when this crime was alleged.
12. **Corroboration.** In order to convict a person of the crime of Indecent assault, or any other sexual crime, the court requires corroboration, in other words the court must look at some corroboration of the evidence of the complainant, and a judge [or jury] must be warned of the danger of acting without it [corroboration] This is true in all cases of sexual offences irrespective of the age, or the sex of the complainant or other party involved. This is so even if the only issue is that of the identity of the person alleged to have committed the offence. **R v Gammon 1959 43 CAR** evidence of a complaint made by a girl or a woman made shortly afterwards in a sexual case is not in law corroboration, since it did not come from

an independent source. *R v Evans 1925 18 CAR*. In a charge of Unlawful Carnal Knowledge as is alleged here, the corroborative evidence must confirm in some material particular that intercourse has taken place, and, that it took place without the woman's consent, and also that it was the man charged who committed the crime. *Jones v R 1971 55 CAR 299*.

13. **Medical evidence.** Medical evidence is capable of corroborating an allegation of Unlawful Carnal Knowledge, this because it is independent evidence gathered by another; and is given by an independent source in court. Dr. Matilda King a child abuse specialist gave evidence that she examined the victim she produced a medical form EXH. A1-3 to the court. Doctor King examined the alleged victim on the 13<sup>th</sup> March 2003 [the same day as the alleged offence] she described her examination of the child as follows. She indicated the Childs private parts were difficult to examine due to prolapsed tissue and bleeding. The child's vulva was normal, with some bloodstains and something else, semen. The enteritis and hymen [the tissue which covers the hymen] were swollen and prolapsed. She testified the hymen was ruptured outwards from the centre, going towards the outer wall. The main part of the ruptured hymen pointed downwards. It was very painful for the child. She indicated the rupture of the hymen was in the 7 o'clock positions. She described the injury as a typical injury due to a blunt instrument; in this case the Doctor used the words "a penis." The Doctor went on to say the injury to the vagina; that is the anterior vaginal wall was also typical of an injury involving a blunt forced object a penis. The Doctor was cross-examined by the accused who suggested she was not there. The court takes note of the fact the child showed no other physical signs of injury on her person.
14. **The Childs evidence.** The child, Aminata Bah impressed me in the way she gave unsworn evidence in the High Court. It can never be easy for any young child or person to come to court and describe in detail what may have happened to her many months after an event. The child testified the accused took her into his room on the date in question, undressed her and put his penis [private] right inside her. She testified she was shouting and so the accused put a sponge inside her mouth. She testified the accused went up and down on her, with him inside her. If accepted this is clear evidence of the performance of the sex act. The child maintained her allegation despite cross-examination, and she impressed me as a witness who told me the truth. At the start of her evidence she was given a Piggott warning by me. I was fully satisfied she knew the difference between right and wrong and that she knew the importance of telling the truth in court. **Findings.** I believe the child when she told me she was taken into her uncles room, put on the bed and was undressed by her uncle. I believe her when she told me the accused put his penis into her vagina, and had UCK with her. I find as a fact the child was gagged by her uncle to prevent her from screaming. She told me she was screaming when he was on top of her and I believe her. I believe her when she told me she saw blood on her vagina and white stuff. [Semen]
15. **Early complaint.** It is often the case that a young child who might be

traumatised or frightened in some way or other will not find it easy to tell other people what happened; or, they might delay doing so; perhaps this is because of fear, or guilt on their behalf. The evidence in this trial reveals the child told her mother and the authorities immediately what she said had happened in the presence of the accused, her uncle. It is the child's testimony in court, which concerns me in this case, and will lead me to find either the guilt or innocence of the accused. **Finding.** I find as a fact the child [with her mother] made an early complaint of sexual assault to the police by the child's uncle. They attended a clinic the same day the 13<sup>th</sup> March 2003 for medical treatment at the Rainbow Centre.

16. **Identification.** The victim and the child's mother identified and recognised the accused as her **UNCLE** and as someone who lived in the same compound as her. They knew him. She recognised him and named him. She told me it was the accused assaulted her on the date in question. **Finding** In this trial the victim clearly identified Aiah Musa Momoni as the defendant in this case and she knew him as her uncle. In accordance with my duty to the court, I certify I have reminded myself of the dangers surrounding Identification evidence. I take into account the well-established Turnbull guidelines and apply them in this case in arriving at my judgment. This is a case of both identification and recognition evidence.
17. **Conclusion.** I have listened carefully to all the evidence. I reviewed the contents of the Deposition from the lower court and looked at all the Exhibits in this case. The child always maintained her uncle the accused had Unlawful Carnal Knowledge with her on the 13th March 2003. There is very scant reporting of the evidence contained in the Magistrates Court's Depositions taken over a year ago. I certify I believe the child when she told me in testimony in the High Court that the accused took her to his room, that he undressed her and put his penis into her vagina. I believe the child when she told me that he went up and down on top of her. In my view that evidence, or explanation can only lead me to the inevitable conclusion, the accused was committing an unlawful sexual act towards the child [i.e.] he was committing Unlawful Carnal Knowledge with her. I believe the child when she told me he put a sponge in her mouth, to stop her screaming. I believe her when she told me she struggled with him on top of her. Medical evidence observed on the same day as the allegation, corroborates the victim's allegation and complaint of Unlawful Carnal Knowledge. The other evidence which also corroborates the child's version of events is the evidence of PW1 her mother, who gave evidence of the presence of blood and semen on the child's private parts legs and thighs, which she observed at the locus in quo. PW1's evidence corroborates the child's unsworn evidence. I can find no reason to disbelieve PW1 in any way shape or form. Upon hearing the evidence of Doctor King, and on listening to the evidence of the child, and after reviewing the medical report; **EXHIBIT A1-3.** I find as a fact the Medical evidence given by Dr King fully supports the allegation the accused unlawfully and carnally knew PW4. [A child aged 9] Medical evidence is capable of corroborating the child's victim's story, as it is independent

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evidence. Medical evidence reveals tearing of the child's hymen in the 7 o'clock positions. That tear was described by the Doctor as the sign of a typical rape injury. It is clear to me, primarily because I accept the doctor's evidence; that the child's hymen was ruptured by a penis and in this case it was the penis of the child's uncle, the accused. The medical evidence clearly corroborates the Child's version. The injuries are serious to this young child. I fully accept the evidence of the complainant Aminata Bah. I reject the unsworn evidence of the defendant. I convict the accused of the crime of Unlawful Carnal Knowledge with a child aged 9 years. The prosecution has proved its case beyond any reasonable doubt; so that I am sure the accused committed this offence. **Accordingly I find the accused Guilty as Charged.**



**Shuster J**  
**Judge of the High Court for Criminal Cases**  
**Freetown**  
**June 3rd 2004**



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22281

IN THE HIGH COURT OF SIERRA LEONE  
Holden at Freetown  
Criminal Division

STATE

v

AIAH MUSA MOMMONI

SENTENCE

Corum Shuster J  
Miss Palmer Prosecuting Counsel  
Mr. H. H. Sandy Defence Counsel

1. The accused was charged with an offence alleging on 13th March 2003, at Freetown in the Western Area of Sierra Leone, he unlawfully and carnally knew **Aminata Bah a child under 13 years of age to wit 9**. He was convicted of the crime of UCK on what can only be described as overwhelming evidence.
2. I heard his mitigation. There was no excuse for what this man did. He was the child's uncle; as such he was in a position of trust towards her. He is also much older than she is in other words there is a wide disparity of age between them. The evidence reveals the accused lured the child into his room and had UCK with her. On being discovered he wanted to settle the matter when confronted by the child's mother. Of significant concern is the fact he also gagged the child's mouth to prevent her from screaming, that in my view is an inherently dangerous act and deserves a tough deterrent sentence.
3. There needs to be sent a clear message to everyone in this country, you do not abuse any child. This is what this case is all about; a clear case of child abuse of the worst kind. Sierra Leone was the seventh signatory to the Convention of the Rights of the Child. My court will always protect the Rights of Children. I sentence the accused to 15 years in prison. He is lucky that the State did not charge him with the crime of rape because if they had done so, he would have gone to prison for much longer. any time he spent on remand is to be counted towards his sentence



Shuster J  
Judge of the High Court for Criminal Cases  
Freetown  
June 3rd 2004

22282

**C (v) State v. Hassan Mahoi, High Court of Sierra Leone,  
8 November 2005**

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22283

**IN THE HIGH COURT OF SIERRA LEONE**

Holden at Freetown  
Criminal Division

**STATE**

**V**

**HASSAN MAHOI**

**Coram**

**Shuster J**

Mr. G Soyel Prosecuting Counsel

Mr. D J Thompson for the Accused

Judgment delivered orally on 8th November 2005

**JUDGMENT**

1. The accused was charged with three serious offences, of assault alleging that on 15<sup>th</sup> April 2003, at Freetown in the Western Area of Sierra Leone, [1] He unlawfully and maliciously wounded **KAIDIATU WESTON** with intent to do her grievous bodily harm, or [2] caused her grievous bodily harm. These two offences are contrary to section 18 of the Offences against the Persons Act 1861 and carry a penalty of life imprisonment, if convicted. There is a further alternate offence [3] of wounding, contrary to section 20 of the Offences against the Person Act 1861 which carries a penalty of five years imprisonment. These charges are extremely serious in nature and, if convicted the accused would inevitably receive a custodial sentence in accordance with current sentencing practices.

2. To prove the accused is guilty of one or more of the offences charged, the prosecution needs to prove that when the defendant did the act[s] alleged; he intended it, as the first two crimes of section 18 of the Offences against the Persons Act 1861 are crimes of specific intent. In other words the prosecution say the accused intended to either cause grievous bodily harm to Mrs Weston, or, that he wounded her and that he intended to do so. In this case the prosecution say the accused assaulted her unlawfully, by throwing a stone directly at her and; which the prosecution say hit the complainant on

her face. As a result the complainant suffered injuries, unfortunately the injury resulting in blindness in her right eye. That is the prosecution's allegation simply put. If it is true the accused picked up a stone and threw it at the complainant and caused the injuries described; then he is guilty as charged, as that would be an unlawful act of assault.

3 Grievous bodily harm means really serious bodily harm. It requires no further definition. GBH need not be permanent. The law says to constitute a wound the whole of the skin must be broken, that is to say there must be a wound to a person's body, and both the dermis and epidermis must be broken. The wound, or the grievous bodily harm must be done unlawfully and not be as a result of an accident. There is case law to say that blinding does not constitute a wound, but it is more likely than not if blindness is inflicted as is indicated here, by the accused's deliberate act of throwing of a stone at the victim, then the accused would be guilty of causing her Grievous Bodily Harm. i.e. really serious bodily harm, blindness.

4 In accordance with my duty, and as required by law, I remind myself the accused is innocent until he is proven guilty, beyond any reasonable doubt, so that I am sure he committed the crime with which he is charged. The accused does not have to prove anything in his defence. I heard evidence from a number of witnesses both for the Prosecution and the Defence during the course of this trial. I certify I have carefully read the detailed medical evidence for both the victim and the accused which is before me

5. I also confirm I have studied all the exhibits and read and re-read the unsworn statement of the Accused. I have read my notes, consulted case law and, the writers of Archbold in coming to this my judgment.

6. The issue in this case is whether this accused caused the injury as described by Mrs Weston [and her husband] when they testified on oath, and whether the accused did this act alleged unlawfully, and the stone throwing was not by itself an accident.

7. The Medical evidence is clear; it indicates there was a wound caused on the 15<sup>th</sup> April 2003 to Mrs Weston the complainant in this case. The medical report indicates she bled and she has also lost the sight in her eye and will be permanently blind in her right eye.

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8. I heard evidence from the victim that early that same day the accused and the complainant were at the Magistrates Court in Freetown, and they quarrelled as a result of a case before that court. On hearing the evidence I fully accept the complainant's version, that there was an altercation on the 15<sup>th</sup> April 2003, outside the Magistrates Court, and find as a fact that as a result of that altercation the complainant and her husband did not go straight home. I find as a fact they delayed going to Allen town until later that afternoon.
9. The defendant puts forward as his sole defence; the defence of alibi. The defendant says that he was not at the scene of the crime when it was said to have been committed on the 15th April 2003. As the prosecution has to prove his guilt so that I am sure of it and the accused does not have to prove he was elsewhere at the time. On the contrary the prosecution must disprove the alibi.
10. Even if I were to conclude the alibi was false that does not by itself entitle me to convict the defendant, it is only a matter which I might take into account. I am entitle to bear in mind that an alibi is sometimes invented to bolster a genuine defence. Per Archbold 2003 4-383 page 467.
11. I heard in detail the evidence of both the victim, and her husband, together with the accused and his partner DW2. If I prefer to believe the version of the complainant and her husband then accordingly I would have to reject the alibi defence of the accused and the testimony of **DW2**
12. In accordance with my duty I have directed myself that his case does depend to a certain extent on Identification evidence and accordingly I have reminded myself of the danger of convicting on Identification evidence alone. This case is stronger however because it also involves Recognition evidence if I accept the evidence of PW1 and PW2 that they identified and recognised the accused at the locus in quo who were long standing relatives.
13. R. v. Turnbull. The following guidelines, are to be observed by trial judges when "identity" is an issue, and which were laid down by the Court of Appeal (a full court) in R. v. Turnbull and others [1977] Q.B. 224 at 228-231, 63 Cr.App.R. 132 at 137-140. In the view of the court, they involved changes of practice, but not of law (see pp. 228, 137). "First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be

mistaken, the judge should warn the jury [or himself] of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not use any particular form of words. I certify, I have directed myself accordingly.

14. Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? He must ask the question in what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? How long elapsed between the original observation and the subsequent identification to the police? Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence. I again certify I have done so.

15. This case also depends upon recognition evidence and who I care to believe. Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made. All these matters go to the quality of identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger. Here however we are talking about close relatives.

16. Alibi witnesses can make genuine mistakes about dates and occasions, like any other witnesses can. It is only when the jury is satisfied that the sole reason for the fabrication was to deceive them and there is no other explanation for its being put forward can fabrication provide any support for identification evidence. The jury should be reminded that proving the accused has told lies about where he was at the material time does not by itself prove that he was where the identifying witness says he was

17. In R. v. Tyler and others, 96 Cr.App.R. 332, CA, it was said that identification by two witnesses carries more weight than by one alone. This,

it is submitted, is common sense: honest witnesses do not tend to make the same mistake, especially if the identification procedures (designed to provide a fair test) are properly carried out and there has been no opportunity for innocent contamination

18. In this case the parties had known each other for many years, or where the person identified was at the scene. Even here, it is advisable to alert the jury to the possibility of honest mistake and to the dangers, and the reasons why such dangers exist in identification evidence

19. Lies told by a defendant may provide support for identification evidence if the jury are satisfied that the lies are deliberate and relate to that issue. The jury must be given a direction along the general lines indicated in R. v. Lucas, 73 Cr.App.R. 159 at 162, CA: R. v. Goodway, 98 Cr.App.R. 11, CA, ante, § 4-402.

20. CONCLUSION.

I have carefully considered all the above facts before me in accordance with my duty. I find as a fact PW 1 and PW2 were honest witnesses who gave truthful and cogent evidence before this court, their evidence was unshaken in cross examination. I believe the version put forward by PW1 and PW2 in its entirety. I further accept on hearing their evidence that the complainant and her husband were present sometime in the late afternoon of that day, and I find as a fact that they were accosted by the accused and his sister in the street which is a public place in Allen Town. I find as a fact that on the date in question the accused picked up a stone and used it as a weapon which is an aggravating feature in any assault. I find as a fact the accused threw a stone intentionally at the person of Mrs Weston. I find as a fact the stone connected with her body. I find as a fact that the throwing of the stone was an unlawful act and that as a result of that unlawful action; Mrs Weston was blinded in her right eye.

21. The facts revealed the accused had a strong grudge against the complainant as he was involved in a long standing court case involving a property dispute in the Magistrates Court, with the complainant and her family. I do find as a fact abusive words were said outside the Freetown Magistrate's court, and the evidence reveals animosity and a grudge continued for the whole of that day, that is the 15th April 2003.

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22. In my view the evidence before this court is strong that the accused deliberately with premeditated malice, waited for the complainant after a long standing court case was adjourned on the 15<sup>th</sup> April 2003. When the accused saw the complainant in the street with her husband, he injured the complainant in the manner she and her husband described to the court, by deliberately throwing a stone at her and injuring her. I find as a fact that unlawful act was planned and premeditated.

23. In my Judgment the prosecution has proved its case beyond any reasonable doubt so that I am sure the accused committed this dangerous act. His alibi fails. I reject the evidence of both DW1 and DW2 together with all the documents. The fact the accused may have been assaulted by someone else is irrelevant to the issue in this case; which is, did he throw a stone at the complainant and injure her or not? Well I find as a fact he did.

24. I have no hesitation in convicting the accused of causing GBH with intent and; I find him guilty. He was the prime aggressor in this incident and I convict him on count 1 of the Indictment of Causing GBH with intent contrary to section 18 of the Offences against the Persons Act 1861.

25. The other two offences I make no findings on the facts of those offences, in view of my convicting him of count one.

**Shuster J**  
**Judge of the High Court for Criminal Cases**  
**Freetown**  
**8<sup>th</sup> November 2005**

Mitigation M/Thompson. Please temper justice with mercy.

Sentence 8 years  
Because of (1) Blinding someone (2) Laying in wait for her after a court hearing an aggravating feature.

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# 51



MONDAY 25TH  
OCTOBER, 2001

BEFORE THE HON. MR. JUSTICE  
P.O. HAMILTON, J.

Case Called

All four Accused Present  
M.M. Sesay for the State  
All Accused unrepresented

Mr. Sesay states that on the 2nd count the 3rd accused has been sentenced in the Magistrate for the 3rd count and sentenced to 18 months imprisonment. On that fact I therefore offer no evidence on count 3.

Bench: The 3rd accused is discharged on Count 3.

Charges Read.

COUNT 1.

1ST Accused pleads NOT GUILTY  
2ND Accused Pleads NOT GUILTY  
3RD Accused pleads NOT GUILTY  
4TH Accused pleads NOT GUILTY

COUNT 2.

1ST Accused pleads NOT GUILTY  
2ND Accused Pleads NOT GUILTY  
3RD Accused Pleads NOT GUILTY  
4TH Accused Pleads NOT GUILTY

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JURORS

- 1. Jane Kenhy - S.O.B.
- 2. Seray Banya - S.O.B.
- 3. Moses Cole - S.O.B.
- 4. Mohamed James - S.O.B.
- 5. Joseph S. Bahinga - S.O.B.
- 6. Daniel P. James - S.O.B.
- 7. Nancy Moriba - S.O.B.
- 8. Thomas Shiaka - S.O.B.
- 9. Moses Josiah - S.O.B.
- 10. Alfred Momoh Josie - S.O.B.
- 11. Joseph Munda Fallay - S.O.B.
- 12. William J. Bayoh - S.O.B.

FPREMIUM

William J. Bayoh

Mr. Sesay seeks leave to dispense with opening address

BENCH: Application granted

P.W. 1, S.O.B. - I am a A. Kebuso

Martin. I live at No.5 Mac Robert Street, Eo. I am a businessman. I deal in Electronics and electrical parts. I carry on tje business at No. 32, Damballa road, Eo which is a shop. I recognise all four accused persons. I do recalled 23/2/04. On th~~at~~at day, I went to my shop and did business the whole day and Locked my shop at 10 P.M. with three padlocks and two 6 turn lockers. I went home.

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On the following day 24/2/04 I came to my shop at about 8 a.m. and met the shop opened. The padlocks were damaged and removed since I did not see them. The shop was partially opened. I opened and looked in and saw every thing upside down. I did not enter the shop. I went and drew the attention of my landlord Alhaji Sara Shaikay. He went there saw the shop and advised me to go to the police. I went to the police and reported. I was given two police men and one photographer. We went to the shop opened it and entered with the police. On entering I saw a lot of things removed. Some of them were VCD machines valued at Le150,000.00 each, One Samsung 3 player V C D machine valued Le350,000.00, One Canon Camera valued Le1,000,000.00, One Yachica Camera valued Le850,000.00, 3 cameras valued at Le750,000.00 each, 3 speakers valued Le120,000.00 One satellite receiver valued Le450,000.00. On V C D Deck valued at Le375,000.00, 15 florescent bulbs valued at Le25,000.00 each, one sharp T.V. REMOTE CONTROL VALUED Le20,000.00 , One VCD remote valued Le15,000.00, one video deck valued Le280,000.00. One Tiger Generator valued Le3000,000.00. This is all I can remember.

After I discovered we took a list of the missing items and I made a Statement. I went to my shop after the police had taken a photograph of my shop.

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On the next day 25/2/04 I was at my shop when one technician who works for me named Mr. Melvin came and told me there is a VCD brought to him for repairs which he has worked for me and has removed the lens. He asked me to go and inspect it. I went to his workshop and inspected and discovered it was mine. He told the people who took it to him to go and come by 12 noon so he could inspect the tape properly. I went to the police and informed them. They gave me two police and informed them. They gave me two police men who hanged by the workshop a cinema at Damballa Road. I was there when the 1st accused came with the person he wanted to send the tape to. The value of the tape is Le370,000.00 but 1st accused was selling at Le40,000.00. Police then arrested the 1st accused and was taken to the police station where he named his colleagues. The Colleagues were 2nd ,3rd and 4th accused as the person he went with to my shop and they broke my shop and stole my shop and stole from it. When we went to arrest the 2nd accused we met the sattalite receiver at his place and it was and it was my sattalite receiver which was stolen. The 2nd accused when asked admitted he took it from my shop and that was all the 1st and 4th accused gave to him.

The 2nd accused gave us information that the main goods were with 3rd and 4th accused. During the investigation I gained an information from a neighbour, and

22293

recall giving evidence on 25/10/04 and spoke of two items recovered which were one deck and one sattallite receiver. If I do see them I can recognise them. This is the VDD deck recovered from 1st accused identified as Z. This is the sattalite receiver got from 2nd a accused identified as Y.

XXD. by 1st Accused - N O N E

XXD. BY 2nd accused - This sattelite receiver was got from your hand.

XXD. by 3rd Accused - I have never known you before

XXD. by 3rd Accused - I have never known you before this incident.

Rexxed. - I knew the 3rd accused after the incident

XXD. by Jury - NONE

All accused are Remanded in custody

Adjourned: 28 - 10-2004

(Sgd) P.O. HAMILTON - J

THURSDAY 28TH  
OCTOBER, 2004

BEFORE THE HON MR. JUSTICE  
P.O. HAMILTON - J.

Case called,

All (4) Accused Present

M.M. Sesay for the State

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A.J. Bockarie for 2nd Accused, 1st & 3rd Accused unrepresented P.W. 2 S.O.B. - I am Melvin Jesse Sesay. I live at No.30 Tucker Street, Bo. I am an Electronics Mechanic. I do know P.W.1. He is a Businessman. He is also my friend. I work for him as a Technician. I have worked for him for over a year. He deals in VCD'S Videos, Cameras and Electrical Materials. He sells at No.32 Damballa Road Bo. I recognise the accused persons. I recall 24/2/04. On that day I came to my workshop to work at 10. a.m. When I came on my way I was told of a theft in the place of P.W.1. I went to check at the shop of P.W.1. On arrival I saw the doors wide open. I saw Chike who told me there was a theft in their shop last night. I saw the door wide open and then asked for one of the items I was working on but got to know it was also stolen.

I went back to my shop to work. The next day I came to my shop to work when I saw two people one of whom I can't identify but the 1st accused was the other one. They came with a bag something in it. Then open and took out a set which I recognise I had worked on belonging to P.W.1. It is a VCD SET. I told them to pay for an inspection fee which was Le5,000.00. I told them to go and check me at 12 noon. They left and I went to P.W.1 and told him I have seen a set I used to maintain. Chike then went with me to the shop. I opened the tape set and saw it was the set. He went and called P.W.1 and

22295.

and they reported to the police. This is the tape I had worked on which 1st accused took to me - Z re identified. Later the police came and arrested the 1st accused and the unknown man and took them to the police where I made a statement.

XXD. By 1st Accused - NONE

XXD. By Bockarie for 2nd Accused - NONE

XXD. By 3rd Accused - NONE

XXD. By 4th Accused - NONE

Rexxd. - NONE

XXD BY Jury - NONE

P.W. 3 S.O.B: I am Chike Ezedama.

Mr. Sesay applies to amend the back of the indictment Pursuant to Section 148 (1) CPA 1965. It is to amend witness to read "Chika" not "Chula". This defect is only patent i.e.. Typographical as it does not affect the merit of the case. This amendment will cause no injustice to the accused.

Mr. Bockarie has no objection

BENCH: Application granted.

P.W.3 Continued: I live at No5 Mac Robert Street, Bo. I am a Businessman. I trade in electrical and electronic goods. I do know P.W.1. He is my brother. I recognise the accused persons. I recalled 23/2/04. On that day in the evening after finishing business at 10.20 p.m. We locked the shop and went to sleep. In the morning

22296.

I saw my brother who came and said they broke the shop and taken away some items. I rushed to the shop and saw the door opened. I opened the shop and found most of the items missing. The shop was closed with 3 padlocks and 2 six turn locks. The locks were not seen. I saw most of the items missing such as VCD generator, sattellits receiver, Cameras VCD REMOTE CONTROLS ETC.

Later one Mr. Melvin came to the shop and I told what had happened and that one of the VCD HE worked on two weeks ago has been stolen. He is a VCD Technician and has worked for me. On 25/2/04 in the morning Melvin came and told me somebody brought the VCD to his shop which he had worked on and has told the people to come at 12 noon. I went to his workshop and he showed me the VCD. He opened it and I identified it as one of the items stolen. I then went and told P.W.1 who later informed the police. Later the two boys who brought the VCD to P.W.2 were arrested and that was the 1st accused since the other one cannot be identified. They were arrested and I went back to my shop. This is the VCD set - Z further re identified. I later made a statement to the police.

XXD. By 1st Accused - NOON.

XXD. by Bockarie for 2nd accused - I do not know whether the shop is insured. I am always in that shop. It is



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my brother that takes stock. I do not know whether P.W.1 does take stocks. This brand of VCD is not popular in the market. I am a seller and not a supplier of this brand of VCD. I do not know whether my shop alone sells this brand of VCD in Bo.

XXD. by 3rd Accused: I do not know you

XXD. by 4th accused - I do not know you

Rexxd. - I knew 3rd accused during this investigation I know 4th accused during this investigation.

XXD. by Jury NONE

P.W.4 S.O.B: I am John Morgan Koroma. I live at No.41 Old Police Barracks Bo. I am DPC 3728 attached Bo Police Station. I do recognise all 4 accused persons. I recalled 24/2/04. On that day in the morning hours I was on duty. Whilst on duty a case of shop breaking and Larceny was reported by P.W.1.

Myself, DP/Sgt 3532 now an Inspector, DPC 478 Gbandagbela visited the scene. On arrival I observed the shop door partly opened and P.W.1 told me the locks were also taken away by the thieves. Inside the shop it was ransacked. I then came back to Bo police station and obtained statements from P.W.1 and his witness.

On 25/2/04 P.W.1 informed me that he has seen one of his stolen items. He then invited to a certain work-

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shop along Damballa Road where I went with my colleagues and arrested 1st accused and another who had wanted to buy the VCD tape. The 1st accused and exhibit were brought to the station where I cautioned him in Krio and he made statement in Krio which I recorded in English. At the end I read and explained in Krio and he admitted it to be true and correct. He signed by affixing his R.H.T.P. BY DPC 7680 Ballay and I signed as recorder. This is the statement - Tendered as Exhibit. A.

After obtaining statement from 1st accused who disclosed his fellow thieves my self and my other colleagues named went in search of these people. Reaching at 3rd accused residence his wife disclosed to us that on 24/2/04 at night she saw the 3rd accused with a bag called "Ghana must go bag" which she saw in their room but 3rd accused failed to explain to her its contents which appeared to be stolen and on the said day 3rd accused had travelled to Jorru behind Kenema with the said bag. I obtained statement from the wife.

On the same day 2nd accused was brought to the police with a stolen item he met with 2nd accused. I cautioned the 2nd accused in Krio he made statement in Krio which I recorded in English. At the end I read and I read and explained to him in Krio which he admitted to be true and correct. He signed it by affixing R.H.T.P.

22299

witnessed by DPC 478 Bandagbla and I signed as recorded  
This is the statement. Tendered as Exhibit "B".

The following day myself and my colleagues travelled  
to Joru back of Kenema and arrested 3rd accused. On  
arrival at Bo Police station I cautioned him in krio  
he made statement in krio which I recorded in English.  
At the end I read and explained in Krio and he admitted  
it to be true and correct. He affixed H.R.T.P. Witnessed  
by DPC 478 Gbanda Gbla and I signed as recorder. This  
is the statement- Tendered as Exhibit C.

After this statement from 3rd accused the following  
day a team of youths arrested the 4th accused and brought  
him to the station. On his arrival I cautioned him in  
Krio he made statement to me in Krio which I recorded  
in English. AT the end I read and explained in Krio  
and he admitted it as true and correct. He affixed  
H RTP witnessed by DPC 478 Gbanda Gbla and I signed as  
recorder. This is the statement - Tendered as Exh. D.

On 1/3/04, I charged the 1st accused with the  
offence of Conspiracy and shop breaking and larceny.  
I cautioned him in Krio he made statement in Krio which  
I recorded in English. At the end I read and explained  
in Krio and he admitted it as true and correct. He aff-  
ixed H RTP witnessed by DPC 478 Banda Gbla and I signed  
as recorder. This is the statement - Tendered as Exh.E.

223<sup>00</sup>SUMMING UP

The charge against the accused persons are thus:-

COUNT 1.Statement of Offence

Conspiracy to commit a Felony contrary to Law.

PARTICULARS OF OFFENCE

Amadu Macaully, Eshmael Ben-Kallon (Alias Ben Loko) Shaika Kallon (Alias Mualim) and Daddy Cummings (Alias Alhaji Gbondor) On the 24th day of February 2004 at Bo in the Southern Province of Sierra Leone conspired together with other persons unknown to commit a felony to wit, Shop-breaking and Larceny.

COUNT 2Statement of Offence

Shop-Breaking and Larceny contrary to section 26 (1) of the Larceny Act, 1916.

PARTICULARS OF OFFENCE.

Amadu Macaully, Ishmael Ben-Kallon (Alias Ben Loko) Shiaka Kallon (Alias Mualim) and Daddy Cummings (Alias Alhaji Gbondor) on the 24th day of February 2004-at Bo in the Southern Province of Sierra Leone Broke and entered the shop of Ikebuso Martin and stole therein Sixteen VCD Sets valued Le2,400,000.00. One Sharp Video set valued Le280,000.00, One Samsung VCD set valued Le350,000.00 One sattalite receiver valued Le350,000.00,

22301

ONE Deck machine valued Le200,000.00, one Tiger Generator valued Le300,000/00, two speakers valued Le120,000/00/ 15 Florescent bulbs valued Le375,000/00 one Canon Camera Valued Le1,000,000/00, one Yastiza Camera valued Le850,000/00, three Rico Cameras valued Le2,250,000/00, one VCD Tape and radio set valued Le375,000/00, one Sharp Television remote control valued Le20,000/00 and one VCD remote control valued Le15,000/00 all to the total value of Le8,985,000/00 property of the said Akebusu Martin.

COUNT 3.

Statement offence

Escape from lawful custody contrary to law

PARTICULARS OF OFFENCE

Shaika Kallon (Alias Nualim) On the 30th day of April, 2004 at Bo whilst in Remand at the Bo Prisons and was been escorted to hospital for treatment escaped from custody.

On this third Count Counsel for the stated offered no evidence as the accused has already been convicted at the Magistrate Court and sentenced as such can't be punished twice. The 3rd accused was therein discharged.

On Counts 1 and 2 all accused persons pleaded NOT GUILTY.

22302

Members of the Jury before proceeding to direct you on the law in relation to both Counts let me inform you that this is a Criminal trial for which the burden of proof is on the prosecution to prove the guilt of each accused beyond reasonable doubt. Where the prosecution does succeed the accused persons must be found guilty and convicted. Where the prosecution fails the accused persons must be found not guilty and acquitted and discharged.

The law on both Counts must now be explained to you the jury so that you can be fully acquainted of what the prosecution must prove in order to gain a conviction. Conspiracy in law is the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means, and unless into persons are found to have combined there can be no conviction. Where two agree to carry it into effect the very plot is an act itself, and the act of each of the parties, promise against promise, "actus centra actum" capable of being enforced if lawful. You should note as laymen, members of the jury that the offence cannot exist without the consent of two or more persons. The prosecution must prove the agreement which is to do an unlawful act relying on acts and declarations and overt acts proved against some of the accused persons may be looked at as against all of them to show the nature and object of the

22303

Conspiracy. This is as regards count One.

In relation to Count 2: Shop breaking and Larceny contrary to section 26 (1) of L.A. 1916 it provides - "Every person who breaks and enters.. any shop..... and commits any felony therein shall be guilty of felony....." The prosecution must prove a breaking actual or constructive. Larceny as defined under the L.A.1916 which is that" a person steals who without the consent of the owner fraudulently and without a claim of right made in good faith takes and carries away anything capable of being stolen with int, at the time of such taking permanently to deprive the owner of it."

What evidence did the prosecution lead against against the accused persons? This can be briefly reviewed in order that you may come to a sound and reasonable conclusion.

The first witness(P.W.1) stated that he deals in electronics and electrical parts and recalls 23/2/04. He went to his shop did business for the whole day and closed his shop at 10 p.m. with three padlocks and two 6 turn lockers. He went home and on the following 24/2/04 he came to his shop at 8a.m. met the shop opened. The padlocks were damaged and removed as he met the opened and did not see the padlocks. He peeped in and saw everything upside

22304

down but never entered the shop. He drew the attention of his landlord and then went to the police where he made a report. He went with the police and a photographer. They entered the shop wherein he saw a lot of things missing. He listed some he could recollect and their prices. On the next day his technician who works for him by the name of Melvin came to him and gave him an information of a VCD brought to him for repairs since he has worked on it by removing the lens. He went and inspected it and discovered that it was his property. He then went to the police and gave them the information who gave him two policemen to hang around. The 1st accused then came into the person he wanted to sell the V.C.D. to, The 1st accused was arrested and he named the 2nd 3rd and 4th accused as the persons he went with to his shop and broke into it. When they went to arrest the 2nd accused they met the satellite receiver which was stolen at his place. When questioned the 2nd accused did admit he took it from his shop and that was what the 1st and 4th accused gave to him. The 2nd accused then gave him an information that the main goods were with the 3rd and 4th accused. During the investigation he gained an information from a neighbour and his wife that 3rd accused came home with a big bag called "Ghana must go bag". WHICH information his wife confirmed. He was told he has travelled with the bag to Kenema and with the



22305.

help of his wife and C.I.D. men he was traced to a village behind Kenema but on arrival he had disposed of the bag but was arrested and taken to Bo Police Station. The 4th accused was later arrested and taken to Bo Police Station. The witness then identified the V.C.D. deck retrieved from 1st accused and the satellite receiver was found in his hands.

Melvin Jesse Sesay (P.W.2) stated that he knows P.W.1 who is his friend and a business<sup>man</sup> and that he works for him as an Electronics mechanic that P.W.1 deals in electronics goods such as V.C.D.s, Cameras, Videos ect at No.32 Damballa Road Bo. On 24/2/4 he came to work at his workshop at 10 a.m. but on his way he heard of a theft in the shop of P.W.1 and so went there and found the door wide open. He asked for one of the items he was working on but was told it was been stolen. The next day he saw two people of which the 1st accused was one of them with a bag containig<sup>1</sup> some thin. They took out a set and saw that it was a V.C.D. set. He charged an inspection fee of Le5000 and told them to go and come at 12 noon. When they left he went to P.W.1 and told him he has seen the set he used to repair for him. He went with Chike and opened the set and went to P.W.1 who reported to the police. The 1st accused came and he was then arrested together with the unknown man and taken to the police Station.

Chike Ezedama (P.W.3) STATED HE KNOWS p.w.1 who is his brother. On 23/2/04 after finishing their

22306

business at about 10.30 P.M. They locked the shop and went to sleep and in the morning his brother came to him and told him their shop had been broken into and items taken away. He rushed to the shop and found the shop door opened. He opened the shop and found some items missing. The shop was closed with three padlocks and two six turn locks. Later one Mr. Melvin came and he told him the V.C.D. he worked on has been stolen. On 26/2/04 Melvin came and held him that somebody took the V.C.D. set to his shop but told the people to come at 12 noon. He went to the workshop saw the V.C.D. SET AND IDENTIFIED it as one of the stolen items. Later the two boys who brought the set were arrested and one was the 1st accused. In XXD from Mr. Bockarie he stated he does not know whether the shop is insured. He is always in the shop and it is his brother that takes stocks That the brand of V.C.D. is not popular in the market and that he is a seller not a supplier of the brand of V.C.D. He does not know whether his shop alone sells the brand of V.C.D. in Bo.

John Morgan Koroma (P.N.4) DPC 3728 tendered in evidence the statement of 1st accused as Exhibit A, the Statement of 2nd accused as Exhibit B, the voluntary cautioned statement of 3rd accused as Exhibit C, the statement of 4th accused as Exhibit D and the charge statements of all accused as Exhibits E, F, G and H.

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IN answer to questions from 3rd accused he stated that that when he went to arrest him he was not at home. When he searched his place he saw no exhibits. That he arrested him at Joru Village and cannot now re collect what he was arrested with. That he was arrested for conspiracy and shop breaking and that his wife never told him what was in the bag but she said they were items but can't tell what.

The prosecution then closed its case and the accused persons all relied on their statements which was tendered as their defence. The 1st, 2nd and 4th accused elected not to call witnesses. The 3rd accused states that he is calling 1st accused as his witness but 1st accused refuses to give evidence which 3rd accused later on accepted. This ended the case for the defence.

Foreman and members of the jury, let me again remind you that this is a criminal trial for which the burden is on the prosecution to prove the guilt of the accused person beyond reasonable doubt. Where the prosecution succeeds the accused persons ought to be found guilty. Where the prosecution fails the accused persons ought to be found not guilty and acquitted and discharged, similarly where there is a reasonable doubt created on the basis of the evidence that reasonable doubt must be resolved in favour of the accused on whom it fall and he must be acquitted and discharged. You would realise that this is a case

22308

involving four accused persons otherwise referred to as plurality of accused persons. Let me warn you that that the evidence led mut connedt each accused persons seperately but I shall in considering the offence of conspiracy and dealing with acts and declarations put to you clearly how the acts and declarations of one act can be imputed to affect the other accused persons.

Members of the jury let me read to you the statement made by each accused person which is their defence and is also part of the case for the prosecutions.

On the charge of conspiracy the statement of 1st accused clearly showed how 2nd accused agreed with him to go and steal from complainants shop whilst then 1st accused played the rule of a watchman for any passer by. The 3rd accused denied agreeing to foin the others. The 4th accused at first denied any involvement in any agreement to steal or even stole from shop of P.W.1 but later on admitted he slept with 1st 2nd and 3rd accused on the night of the incident.

Members of the jury the conspiracy or agreement in itself is an offence and it is immaterial whether anything has been done in pursuance of it. The overt acts proved as against 1st and 2nd accused may be broke at as against the other accused persons or all of them to show the nature and object of the conspiracy.

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On Count 2 which is shop breaking and Larceny, the evidence of P.W.1 P.W.3 are clear as to the breakage P.W.2 did give evidence as to how 1st accused took to him a V.C.D. THAT was stolen from the shop of P.W.1 which set he always repaired. The sattalite receiver was got from the 2nd accused. Members of the jury it is for you to ask yourselves, how did the 1st and 2nd accused. Members of the jury it is for you to ask yourselves, how did the 1st and 2nd accused get these two items which were in the shop of P.W.1 ? These are issue for you to answer and to arrive at a sound decision

Foreman, members of the jury you may retire if you so desire.

Jury does not wish to retire.

VERDICT.

COUNT 1:- All Accused persons unanimously GUILTY.

COUNT 2:- All Accused persons unanimously GUILTY

ALLOCUTUS: All Accused persons beg for mercy.

SENTENCE

Count 1:- Each Accused to serve a term of 10 years imprisonment

223<sup>10</sup>

COUNT 2:- Each Accused to serve a term of 10 years  
imprisonment.

BENCH;§ Sentences to run concurrently.

(Sgd) P.O. HAMILTON. J.

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**ANNEX D**

**Archbold Criminal Pleading Evidence and Practice**  
**Table of Principal Indictable Offences and other Excerpts**

APPENDIX

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TABLE OF PRINCIPAL INDICTABLE OFFENCES

22312



Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this book where dealt with
<b>ASSAULT</b>					
common .....	Common law	M. 1 yr. (24 & 25 Vict. c. 100, s. 47)	Yes		2631, 2635
indecent (see <b>INDECENT ASSAULT</b> ).					
occasioning actual bodily harm	24 & 25 Vict. c. 100, s. 47	M. 5 yrs.	Yes	Common assault	2636
on gamekeeper by poachers ..	9 Geo. 4, c. 69, s. 2	M. 7 yrs.	Yes		2722
on officer saving wreck .....	24 & 25 Vict. c. 100, s. 37	M. 7 yrs.	Yes		2695
on peace officer in execution of his duty .....	24 & 25 Vict. c. 100, s. 38	M. 2 yrs.	Yes	Common assault	2711
with intent to commit buggery	4 & 5 Eliz. 2, c. 69, ss. 16, 37 & Sched. II (19)	M. 10 yrs.	Yes		2979
with intent to commit felony	24 & 25 Vict. c. 100, s. 38	M. 2 yrs.	Yes	Common assault	2711
with intent to rob .....	6 & 7 Geo. 5, c. 50, s. 23 (3)	F. 5 yrs.	Yes		1761
armed or with aggravation..	6 & 7 Geo. 5, c. 50, s. 23(1) (a)	F. Life	No		1761
<b>4302. ATTEMPTS</b>					
to commit rape .....	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (1) (b)	7 yrs.	Yes		2876
to have intercourse with a girl under 13 .....	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (2) (b)	2 yrs.	No		2900
to commit buggery .....	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (3) (b)	10 yrs.	Yes		2977
to procure a woman by threats	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (7) (b)	2 yrs.	No		2953
to have intercourse with a girl 13-16 .....	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (10) (b)	2 yrs.	No		2908
to have intercourse with a defective .....	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (11) (b)	2 yrs.	No		2958
to procure a defective .....	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (13) (b)	2 yrs.	No		2961
to commit incest .....	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (14) (b), (15) (b)	2 yrs.	No		2889, 2892
with a girl under 13 .....	8 & 9 Eliz. 2, c. 33, s. 2	7 yrs.	No		2889
to procure an act of gross indecency with a man .....	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (16) (b)	2 yrs.	Yes		2992
to cause prostitution of a woman .....	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (23) (b)	2 yrs.	No		2952
to procure a girl under 21 for sexual intercourse .....	4 & 5 Eliz. 2, c. 69, s. 37 & Sched. II (24) (b)	2 yrs.	No		2950
to murder .....	24 & 25 Vict. c. 100, ss. 14 & 15	F. Life	No		2562, 2576
to choke, etc. ....	24 & 25 Vict. c. 100, s. 21	F. Life	No		2668
to commit crime generally ....	Common law	M. Fine or imprisonment or both	Yes		4101 et seq.
<b>BANKRUPTCY</b>					
as to disclosure of property ..	4 & 5 Geo. 5, c. 59, s. 154	M. 2 yrs., paras. 1-12, 16; 5 yrs., paras. 13-15	Yes		3662
bankrupt absconding with property of value of £20 .....	4 & 5 Geo. 5, c. 59, s. 159	F. 2 yrs.	Yes		3668
concealing or removing property ....	4 & 5 Geo. 5, c. 59, s. 156 (c)	M. 1 yr.	Yes		3664
failing to keep proper accounts .....	16 & 17 Geo. 5, c. 7, s. 7	M. 2 yrs.	Yes		3667
gambling .....	4 & 5 Geo. 5, c. 59, s. 157	M. 2 yrs.	Yes		3666
making gift, etc., of property .....	4 & 5 Geo. 5, c. 59, s. 156 (b)	M. 1 yr.	Yes		3664

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§ 4301

APPENDIX

TABLE OF PRINCIPAL INDICABLE OFFENCES

§ 4302

Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
<b>BANKRUPTCY—cont.</b>					
obtaining credit under false pretences or by other fraud .....	4 & 5 Geo. 5, c. 59, s. 156 (a)	M. 1 yr.	Yes		3664
false claim by creditor .....	4 & 5 Geo. 5, c. 59, s. 160	M. 1 yr.	Yes		3668
undischarged bankrupt obtaining credit to £10 or trading in another name without disclosure of bankruptcy ....	4 & 5 Geo. 5, c. 59, s. 155	M. 2 yrs.	Yes		3664
<b>4303. BETTING</b>					
keeping betting house .....	8 & 9 Eliz. 2, c. 60, s. 1	M. Fine or imprisonment or both	Yes		3872
offences against sections 1, 2, 3, 11 of Betting and Lotteries Act, 1934 .....	24 & 25 Geo. 5, c. 58	M. Fine £500 first conviction; 1 yr. or fine £750 or both for second or subsequent conviction.	Yes		3884, 3885, 3886
street, in case of third or subsequent offence .....	8 & 9 Eliz. 2, c. 60, s. 6	M. Fine of £200 and/or 3 mths.	Yes		3876
offences against section 8 of the Pool Betting Act, 1954	2 & 3 Eliz. 2, c. 33	M. Fine £500 first conviction; 1 yr. or fine £750 or both for second or subsequent conviction	Yes		3901

<b>BIGAMY</b> .....	24 & 25 Vict. c. 100, s. 57	F. 7 yrs.	No		3761
<b>BLASPHEMY</b> .....	Common law	M. Fine or imprisonment or both	No		3401
<b>BREAKING PRISON</b> .....	Common law	M. Fine or imprisonment or both	Yes		3434
<b>BRIBERY</b>					
at elections .....	12 & 13 Geo. 6, c. 68, ss. 99, 146	M. 1 yr. or fine £200	No		3960, 3963
of public official .....	Common law	M. Fine or imprisonment or both	No		3483
<b>4304. BROTHEL</b>					
allowing child 4-16 to frequent or reside in .....	23 Geo. 5, c. 12, s. 3	M. 6 mths. or fine or both	Yes		2741
keeping .....	4 & 5 Eliz. 2, c. 69, ss. 33, 37 & Sched. II (33)	M. After previous conviction 6 mths. or fine £250 or both	Yes		3855
letting premises for use as ..	4 & 5 Eliz. 2, c. 69, ss. 34, 37, Sched. II (34)	M. After previous conviction 6 mths. or fine £250 or both	Yes		3855
tenant permitting premises to be used as .....	4 & 5 Eliz. 2, c. 69, ss. 35, 37, Sched. II (35)	M. After previous conviction 6 mths. or fine £250 or both	Yes		3855
tenant permitting premises to be used for prostitution ....	4 & 5 Eliz. 2, c. 69, ss. 36, 37, Sched. II (36)	M. After previous conviction 6 mths. or fine £250 or both	Yes		3855

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Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
BUGGERY .....	4 & 5 Eliz. 2, c. 69, ss. 12, 37 & Sched. II (3) (a)	F. Life	No		2969, 2970
assault with intent to commit attempt (see ATTEMPTS)	4 & 5 Eliz. 2, c. 69, ss. 16, 37, Sched. II (19)	M. 10 yrs.	Yes		2979, 2980
BUILDING					
being found by night in, with intent to commit a felony ..	6 & 7 Geo. 5, c. 50, s. 28	M. 5 yrs. A.P.C.F. (a) 10 yrs.	Yes		1846
BURGLARY .....	6 & 7 Geo. 5, c. 50, s. 25	F. Life	Yes	Entering dwelling-house in the night with intent to commit a felony; Housebreaking Larceny in dwelling-house to value of £5 (if stealing is alleged and property stolen is alleged to be of the value of £5) Simple larceny (if stealing alleged)	1791
other offences connected with ..	6 & 7 Geo. 5, c. 50, s. 28	M. 5 yrs. A.P.C.F. (a) 10 yrs.	Yes		1846
4305. CARNAL KNOWLEDGE (See SEXUAL INTERCOURSE)					
CAUSING GRIEVOUS BODILY HARM					
unlawful .....	24 & 25 Vict. c. 100, s. 20	M. 5 yrs.	Yes	Common assault	2664
with intent to maim, etc. ..	24 & 25 Vict. c. 100, s. 18	F. Life	No		2652
CHEATING					
at games .....	8 & 9 Vict. c. 109, s. 17	M. 5 yrs.	Yes		2004, 2011
generally .....	Common law	M. Fine or imprisonment or both	Yes		2001
CHILD DESTRUCTION .....	19 & 20 Geo. 5, c. 34	F. Life	No	Administering drugs, etc., to procure miscarriage	2601
4306. CHILDREN					
abandonment or exposure of child under 2 .....	24 & 25 Vict. c. 100, s. 27	M. 5 yrs.	Yes		2736
allowing child 4-16 to reside in or frequent a brothel .....	23 Geo. 5, c. 12, s. 3	M. Fine £25 or 6 mths. or both	Yes		2741
cruelty to .....	{ 23 Geo. 5, c. 12, s. 1 (1)	M. 2 yrs.	Yes		2739
forcibly or fraudulently taking away child under 14 .....	{ 23 Geo. 5, c. 12, s. 1 (5)	M. 5 yrs.	Yes		2767
sexual intercourse with (see SEXUAL INTERCOURSE)	24 & 25 Vict. c. 100, s. 56	F. 7 yrs.	Yes		2945
4307. COINAGE					
buying or selling counterfeit coin for lower value than its denomination .....	26 Geo. 5 & 1 Edw. 8, c. 16, s. 6	F. Life (if gold or silver) F. 7 yrs. (if copper)	Yes** } Yes }		3113
conveying coining tools out of the Mint .....	26 Geo. 5 & 1 Edw. 8, c. 16, s. 10	F. Life	No		3125
defacing current coin .....	26 Geo. 5 & 1 Edw. 8, c. 16, s. 4	M. 1 yr.	Yes		3110
exporting counterfeit coin ....	26 Geo. 5 & 1 Edw. 8, c. 16, s. 7 (1) (b)	M. 14 yrs.	Yes		3116
gilding, etc., coin .....	26 Geo. 5 & 1 Edw. 8, c. 16, s. 2	F. Life	No		3104
impairing gold or silver coin	26 Geo. 5 & 1 Edw. 8, c. 16, s. 3	F. 14 yrs.	Yes		3107
importing counterfeit coin ...	26 Geo. 5 & 1 Edw. 8, c. 16, s. 7 (1) (a)	F. 14 yrs.	Yes		3116

(a) A.P.C.F. = After a previous conviction for felony or any such misdemeanor.

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APPENDIX

TABLE OF PRINCIPAL INDICTABLE OFFENCES

§ 4307

Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this book where dealt with
<b>COINAGE—cont.</b>					
making counterfeit current coin .....	26 Geo. 5 & 1 Edw. 8, c. 16, s. 1	F. Life (if gold or silver) F. 7 yrs. (if copper)	No Yes		3101
making, etc., coining implements .....	26 Geo. 5 & 1 Edw. 8, c. 16, s. 9	F. Life	No		3120
making, etc., medals resembling current coin .....	26 Geo. 5 & 1 Edw. 8, c. 16, s. 8	M. 1 yr.	Yes		3119
possessing three or more counterfeit coin resembling gold or silver coin .....	26 Geo. 5 & 1 Edw. 8, c. 16, s. 5 (3)	M. 5 yrs.	Yes		3135
resembling copper coin ..	26 Geo. 5 & 1 Edw. 8, c. 16, s. 5 (4)	M. 1 yr.	Yes		
uttering counterfeit coin ....	26 Geo. 5 & 1 Edw. 8, c. 16, s. 5	M. 1 yr.; 2 yrs. if possesses other counterfeit coin or utters other counterfeit coin within 10 days	Yes		3128
<b>4308. COMPOUNDING OFFENCES .....</b>					
corruptly taking money for recovery of stolen dog .....	Common law	Fine or imprisonment or both	Yes		3461
	6 & 7 Geo. 5, c. 50, s. 5 (3)	M. 18 mths.	Yes		3466
corruptly taking reward for restoring stolen property ..	6 & 7 Geo. 5, c. 50, s. 34	F. 7 yrs.	Yes		3466
<b>CONCEALMENT OF BIRTH ..</b>	24 & 25 Vict. c. 100, s. 60	M. 2 yrs.	Yes**		2605
<b>CONSPIRACY .....</b>	Common law	M. Fine or imprisonment or both	No (subject to exceptions stated below)		4051
to cause explosion .....	40 & 47 Vict. c. 3, s. 3	F. 20 yrs.	No		2303
to cheat and defraud .....	Common law	M. Fine or imprisonment or both	Yes		4057
to commit offence punishable summarily .....	Common law	M. Fine or imprisonment or both	Yes**		4080
to commit offence triable by quarter sessions if committed by one person .....	Common law	M. Fine or imprisonment or both	Yes		4065
to murder .....	24 & 25 Vict. c. 100, s. 4	M. 10 yrs.	No		2551
<b>CORROSIVES</b>					
throwing, etc. ....	24 & 25 Vict. c. 100, s. 29	F. Life	No		2677
<b>4309. CORRUPTION</b>					
by or of agents .....	6 Edw. 7, c. 34, s. 1	M. 2 yrs.	No		3996
when H.M. Government is concerned .....	6 & 7 Geo. 5, c. 64, s. 1	M. 7 yrs.	No		3997
by or of members or servants of public bodies .....	52 & 53 Vict. c. 69, s. 1	M. 2 yrs.	Yes		3992
corrupt practices at elections, other than personation ....	12 & 13 Geo. 6, c. 68, s. 146, (2)	M. 1 yr. or fine £200	Yes		3963
personation (see PERSONATION).					
corrupt withdrawal of election petition .....	12 & 13 Geo. 6, c. 68, s. 129	M. 1 yr. or fine £200 or both	Yes		3965

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APPENDIX

TABLE OF PRINCIPAL INDICTABLE OFFENCES

§ 4308

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1651

Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
<b>CORRUPTION—cont.</b> offence relating to service declaration at election .....	12 & 13 Geo. 6, c. 68, s. 49	M. Fine or 6 mths. or both	Yes		3966
<b>DANGEROUS DRUGS</b> acting in contravention of Dangerous Drugs Acts ....	14 & 15 Geo. 6, c. 48, s. 15	M. Fine or 10 yrs. or both	Yes		3367
<b>DREDGING FOR OYSTERS ..</b>	24 & 25 Vict. c. 96, s. 26	M. 3 mths.	Yes		1558
<b>DRUGS</b> administering— with intent to commit offence with intent to endanger life, etc. ....	24 & 25 Vict. c. 100, s. 22	F. Life	No	Misdemeanor under s. 24	2670
with intent to injure, etc. ..	24 & 25 Vict. c. 100, s. 23	F. 10 yrs.	Yes		2673
with intent to procure abortion .....	24 & 25 Vict. c. 100, s. 24	M. 5 yrs.	Yes		2673
to females with view to carnal knowledge .....	24 & 25 Vict. c. 100, s. 58	F. Life	No	Child destruction	2621
<b>4310. EMBEZZLEMENT</b> by officer of P.O. of valuables	4 & 5 Eliz. 2, c. 69, ss. 4, 37, Sched. II (8)	M. 2 yrs.	No		2953
by officer of P.O. of other things	6 & 7 Geo. 5, c. 50, s. 18 (a) and 1 & 2 Eliz. 2, c. 36, s. 57	F. Life	Yes		1605, 1607
by clerk or servant .....	6 & 7 Geo. 5, c. 50, s. 18 (b) and 1 & 2 Eliz. 2, c. 36, s. 57	F. 7 yrs.	Yes		1605, 1607
by officer of Bank of England	6 & 7 Geo. 5, c. 50, s. 17	F. 14 yrs.	Yes	Larceny	1701
	6 & 7 Geo. 5, c. 50, s. 19	F. Life	No		1702
<b>ESCAPE</b> assisting prisoners to .....	9 & 10 Eliz. 2, c. 39, s. 22	F. 5 yrs.	Yes		3426

<b>EXPLOSIVES</b> causing bodily injury by ....	24 & 25 Vict. c. 100, s. 28	F. Life	No		2677
causing explosion likely to endanger life, etc. ....	46 & 47 Vict. c. 3, s. 2	F. Life	No		2303
attempting to cause explosions or making or possessing with intent to endanger life, etc.	46 & 47 Vict. c. 3, s. 3	F. 20 yrs.	Yes		2303
making or possessing under suspicious circumstances ..	46 & 47 Vict. c. 3, s. 4	F. 14 yrs.	Yes		2303
placing near building or shop with intent to do bodily injury .....	24 & 25 Vict. c. 100, s. 30	F. 14 yrs.	Yes		2677
using, with intent to do grievous bodily injury .....	24 & 25 Vict. c. 100, s. 29	F. Life	No		2677
<b>4311. FALSE IMPRISONMENT</b>	Common law	M. Imprisonment or fine or both	Yes		2801
<b>FALSE PRETENCES</b> obtaining chattels, etc., by or inducing execution of valuable security, etc. ....	6 & 7 Geo. 5, c. 50, s. 32	M. 5 yrs.	Yes	Not entitled to be acquitted if larceny proved.	1932
<b>FALSIFICATION OF ACCOUNTS</b> by clerks or servants .....	38 & 39 Vict. c. 24, s. 1	M. 7 yrs.	Yes		2073
<b>FIREARMS</b> possessing with intent to endanger life, etc. ....	1 Edw. 8 & 1 Geo. 6, c. 12, s. 22	F. 14 yrs.	Yes		2318
using, etc., with intent to resist apprehension, etc. ..	1 Edw. 8 & 1 Geo. 6, c. 12, s. 23 (1)	M. 14 yrs.	Yes		2319
possessing at time of commission of another offence or at time of apprehension for another offence .....	1 Edw. 8 & 1 Geo. 6, c. 12, s. 23 (2)	M. 7 yrs.	Yes		2319

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1653

Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
<b>4312. FORGERY</b>	Common law	M. Imprisonment	Yes**		2141
wills, bonds or deeds, or bank-notes .....	3 & 4 Geo. 5, c. 27, s. 2 (1)	F. Life	No		2151
valuable security, documents of title, etc. ....	3 & 4 Geo. 5, c. 27, s. 2 (2)	F. 14 yrs.	No except under para. (a), see ante, § 2201		2151
document stamped with Great Seal, etc. ....	3 & 4 Geo. 5, c. 27, s. 3 (1)	F. Life	No		2166
registers, etc., of births, baptisms, marriages, deaths, etc.	3 & 4 Geo. 5, c. 27, s. 3 (2)	F. 14 yrs.	No		2166
registers, designs .....	12, 13 & 14 Geo. 6, c. 88, s. 34	M. Imprisonment	Yes		3333
registers, patent .....	12, 13 & 14 Geo. 6, c. 87, s. 90	M. Imprisonment	Yes		3333
official documents .....	3 & 4 Geo. 5, c. 27, s. 3 (3)	F. 7 yrs.	No		2168
documents other than provided for .....	3 & 4 Geo. 5, c. 27, s. 4	M. 2 yrs.	No Yes** }		2171
seals .....	3 & 4 Geo. 5, c. 27, s. 5 (1)	F. Life	No		2173
	3 & 4 Geo. 5, c. 27, s. 5 (2)	F. 14 yrs.	No		2173
	3 & 4 Geo. 5, c. 27, s. 5 (3)	F. 7 yrs.	No		2173
dies .....	3 & 4 Geo. 5, c. 27, s. 5 (4)	F. 14 yrs.	No		2173
demanding money on forged document .....	3 & 4 Geo. 5, c. 27, s. 7	F. 14 yrs.	No except under para. (a), see ante, § 2201		2191
documents, etc., relating to motor vehicles .....	8 & 9 Eliz. 2, c. 16, s. 233	M. 2 yrs.	Yes		2225
making or possessing certain paper or implements .....	3 & 4 Geo. 5, c. 27, s. 9	F. 7 yrs.	No		2194
passport .....	15 & 16 Geo. 5, c. 86, s. 36	M. 2 yrs. Fine £100 or both	Yes**		2223
purchasing or possessing certain paper before stamped and issued .....	3 & 4 Geo. 5, c. 27, s. 10	M. 2 yrs.	No		2195
possession of forged banknote	3 & 4 Geo. 5, c. 27, s. 8 (1)	F. 14 yrs.	No		2193
possession of forged die for marking gold, silver, etc. ...	3 & 4 Geo. 5, c. 27, s. 8 (2)	F. 14 yrs.	No		2193
possession of forged stamp or die within Stamp Duties Management Act, 1891 ....	3 & 4 Geo. 5, c. 27, s. 8 (2)	F. 14 yrs.	Yes**		2193
uttering forged document, seal, or die .....	3 & 4 Geo. 5, c. 27, s. 6	As if guilty of forging	No except when the forgery is so triable, see ante, § 2201		2177
false entries of stock, etc., in books of Bank of England ..	24 & 25 Vict. c. 98, s. 5	F. Life	No		2209
false entries of stock, etc., in books created by L.C.C. ...	2 & 3 Geo. 5, c. cv, s. 39	F. 14 yrs.	No		2210
making false dividend warrant, etc., by clerk, etc., of Bank of England .....	24 & 25 Vict. c. 98, s. 6	F. 7 yrs.	No		2213
making false dividend warrant, etc., by clerk of L.C.C.	2 & 3 Geo. 5, c. cv, s. 40	F. 7 yrs.	No		2214
false entries of birth, baptism, etc. ....	3 & 4 Vict. c. 92, s. 8	F. 5 yrs.	No		2217
destruction of registers of birth, baptism, etc.	24 & 25 Vict. c. 98, ss. 36, 37	F. Life	No		2219
<b>4313. FRAUDS BY DIRECTORS,</b>	24 & 25 Vict. c. 96, ss. 82, 83, 84	M. 7 yrs.	No		2015, 2016
Etc. ....	11 & 12 Geo. 6, c. 38	See the different sections of the Act	Yes except under s. 84		2019 et seq.
<b>FRAUDULENT CANCELLATION</b>					
documents of title to land ..	24 & 25 Vict. c. 96, s. 28	F. 5 yrs.	No		1566
other valuable security .....	24 & 25 Vict. c. 96, s. 27	F. 5 yrs.	No		1572
will .....	24 & 25 Vict. c. 96, s. 29	F. Life	No		1563

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Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
FRAUDULENT CONVERSION OF PROPERTY in general .....	6 & 7 Geo. 5, c. 50, s. 20	M. 7 yrs.	No		1901
by factors or agents .....	6 & 7 Geo. 5, c. 50, s. 22	M. 7 yrs.	except under subs. (1) (iv) No		1903
by officers of savings banks, etc. ....	2 & 3 Eliz. 2, c. 63, s. 58	M. 7 yrs.	Yes		2005
by trustee .....	6 & 7 Geo. 5, c. 50, s. 21	M. 7 yrs.	No		1902
FRAUDULENT MEDIUMS	14 & 15 Geo. 6, c. 33, s. 1	M. Fine or 2 yrs. or both	Yes		2010
1656 FRAUDULENT REMOVAL records from place of deposit, of .....	24 & 25 Vict. c. 96, s. 30	F. 5 yrs.	No		1569
4314. GAMING	8 & 9 Eliz. 2, c. 60, s. 27	M. Fine and/or 12 mths. And see statute	Yes		3868
GRIEVOUS BODILY HARM (See under CAUSING GRIEVOUS BODILY HARM and under WOUNDING)					
HOUSEBREAKING felony committed .....	6 & 7 Geo. 5, c. 50, s. 26	F. 14 yrs.	Yes	(1) Larceny in dwelling-house to amount of £5 (if stealing alleged and value of property)	1825

with intent to commit felony ..	6 & 7 Geo. 5, c. 50, s. 27	F. 7 yrs.	Yes	(2) Simple larceny (if stealing alleged)	1825
HOUSEBREAKING IMPLEMENTS possession of, by night .....	6 & 7 Geo. 5, c. 50, s. 28	M. 5 yrs. M. 10 yrs. (if previous conviction of this misdemeanor or any felony)	Yes		1846
4315. ILLEGAL TRAINING AND DRILLING .....	60 Geo. 3 & 1 Geo. 4, c. 1, s. 1	M. 7 yrs.	No		3191
INCEST by a man .....	4 & 5 Eliz. 2, c. 69, ss. 10, 37, Sched. II (14) (a)	M. If with girl under 13, life; otherwise 7 yrs.	No	(1) of intercourse with a girl under 13 (2) of intercourse with a girl between 13 and 16 (3) of intercourse with a defective	2889, 2890
by a woman .....	7 & 8 Eliz. 2, c. 72, Sched. VII 4 & 5 Eliz. 2, c. 69, ss. 11, 37, Sched. II (15)	M. 7 yrs.	No		2892
attempt (see ATTEMPTS)					
INCITING TO COMMIT CRIME	Common law	M. Fine or imprisonment or both	Yes		4091
INCITING TO DISAFFECTION	24 & 25 Geo. 5, c. 56, s. 1	M. 2 yrs.	Yes		3185
INCITING TO MUTINY .....	37 Geo. 3, c. 70, s. 1	F. Life	No		3181
4316. INDECENT ASSAULT on females .....	4 & 5 Eliz. 2, c. 69, s. 14, Sched. II (17)	M. 2 yrs.	Yes	Common assault	2920, 2921

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Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
<b>INDECENT ASSAULT—cont.</b>					
under 13 .....	8 & 9 Eliz. 2, c. 33, s. 2	M. 5 yrs.	Yes	Common assault	2921
on males .....	4 & 5 Eliz. 2, c. 69, s. 15, Sched. II (18)	M. 10 yrs.	Yes		Common assault
gross indecency with male persons .....	<i>Ibid.</i> s. 13, Sched. II (16)	M. 2 yrs.	Yes**		2985, 2986
with or towards children under 14 .....	8 & 9 Eliz. 2, c. 33, s. 1	M. 2 yrs.	Yes		2927
<b>INDECENT PRINTS, ETC.</b>					
selling, etc .....	Common law	M. Fine or imprisonment or both	Yes		3839
sending through post .....	1 & 2 Eliz. 2, c. 36, s. 11	M. Fine or 12 Months	Yes		3844
<b>INFANTICIDE</b> .....	1 & 2 Geo. 6, c. 36, s. 1	F. Life	No	(1) Cruelty to child (2) Child destruction (3) Concealment of birth	2603
<b>4317. LARCENY</b>				Embezzlement	1701
by clerk or servant .....	6 & 7 Geo. 5, c. 50, s. 17	F. 14 yrs.	Yes		1651
by tenant or lodger .....	6 & 7 Geo. 5, c. 50, s. 16 (a)	F. 7 yrs.	Yes		1651
where value over £5 .....	6 & 7 Geo. 5, c. 50, s. 16 (b)	F. 2 yrs.	Yes		1643
where value under £5 .....	6 & 7 Geo. 5, c. 50, s. 14	F. 14 yrs.	Yes		1646
from the person .....	6 & 7 Geo. 5, c. 50, s. 15	F. 14 yrs.	Yes		1637
from ships, docks, etc. ....	6 & 7 Geo. 5, c. 50, s. 13	F. 14 yrs.	Yes		1536
in dwelling-house .....	6 & 7 Geo. 5, c. 50, s. 3	F. 14 yrs.	Yes		1547
of cattle .....	24 & 25 Vict. c. 96, s. 12	F. 2 yrs.	Yes		
of deer .....		(after previous conviction)			
		F. 5 yrs.	Yes		1566, 1569, 1583
of documents of title .....	24 & 25 Vict. c. 96, ss. 28 & 30; 6 & 7 Geo. 5, c. 50, s. 7				
of dogs .....	6 & 7 Geo. 5, c. 50, s. 5	M. 18 mths.	Yes		1542
(after previous conviction)					
of electricity .....	6 & 7 Geo. 5, c. 50, s. 10	F. 5 yrs.	Yes		1598
of fish .....	24 & 25 Vict. c. 96, s. 24	M. 2 yrs.	Yes		1554
of fixtures .....	6 & 7 Geo. 5, c. 50, s. 8	F. 5 yrs.	Yes		1588
of goods in process of manufacture .....	6 & 7 Geo. 5, c. 50, s. 9	F. 14 yrs.	Yes		1595
of hares or rabbits at night ..	24 & 25 Vict. c. 96, s. 17	M. 2 yrs.	Yes		1551
of ore .....	24 & 25 Vict. c. 96, s. 39 & 6 & 7 Geo. 5, c. 50, s. 11	F. 2 yrs.	Yes		1601, 1604
of plants .....	6 & 7 Geo. 5, c. 50, s. 8 (3)	F. 5 yrs.	Yes		1588
(after previous conviction)					
of postal packets .....	6 & 7 Geo. 5, c. 50, s. 12 & 1 & 2 Eliz. 2, c. 36, s. 52	F. Life	Yes		1605, 1606
by officer of post office....	6 & 7 Geo. 5, c. 50, s. 18 (a) & 1 & 2 Eliz. 2, c. 36, s. 57	F. Life	Yes		1605, 1607
of trees, etc. ....	6 & 7 Geo. 5, c. 50, s. 18 (b)	F. 7 yrs.	Yes		1605
of wills, etc. ....	6 & 7 Geo. 5, c. 50, s. 8 (2)	F. 5 yrs.	Yes		1588
killing animals with intent to steal carcase, etc. ....	6 & 7 Geo. 5, c. 50, s. 6	F. Life	No		1580
simple .....	6 & 7 Geo. 5, c. 50, s. 4	F. 14 yrs.	Yes		1536
	Common law	F. 5 yrs. (6 & 7 Geo. 5, c. 50, s. 2)	Yes	(1) Embezzlement (2) False pretences (3) Offence under 8 & 9 Eliz. 2, c. 16, s. 217, where thing taken is a motor vehicle	1453, 1464
(after previous conviction for felony) .....	6 & 7 Geo. 5, c. 50, s. 37 (1)	F. 10 yrs.	Yes		4205
(after previous conviction for any misdemeanor punishable under <i>Larceny Act, 1916</i> ) .....	6 & 7 Geo. 5, c. 50, s. 37 (2) (a)	F. 7 yrs.	Yes		4205
(after 2 summary convictions under <i>Larceny Act, 1861</i> , or <i>Malicious Damage Act, 1861</i> , or <i>Larceny Act, 1916</i> ) .....	6 & 7 Geo. 5, c. 50, s. 37 (2) (b)	F. 5 yrs.	Yes		4205



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TABLE OF PRINCIPAL INDICTABLE OFFENCES

§ 4319

Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
<b>4318. LIBEL</b>				Publishing	
publishing knowing falsity ..	6 & 7 Vict. c. 96, s. 4	M. 2 yrs.	No		3622
publishing .....	6 & 7 Vict. c. 96, s. 5	M. 1 yr.	No		3622
obscene .....	Common law	M. Imprisonment or fine or both	Yes		3837
blasphemous .....	Common law	M. Imprisonment or fine or both	No		3401
sedition .....	Common law	M. Imprisonment or fine or both	No		3143
<b>LOTTERY</b>					
offences against Betting and Lotteries Act, 1934 .....	24 & 25 Geo. 5, c. 58, ss. 21 and 30	Fine £500. On second conviction 1 yr. or fine £750 or both	Yes		3895, 3900
<b>4319. MALICIOUS CANCELLATION</b>					
records, of .....	24 & 25 Vict. c. 96, s. 30	F. 5 yrs.	No		1569
<b>MALICIOUS DAMAGE</b>					
animals other than cattle, to	24 & 25 Vict. c. 97, s. 41	M. 6 mths. or 12 for second offence	Yes		2381
agricultural or certain other machinery, to .....	24 & 25 Vict. c. 97, s. 15	F. 7 yrs.	Yes		2337
attempting to blow up dwelling-houses .....	24 & 25 Vict. c. 97, s. 9	F. Life	No		2301
conspiring to cause explosions, etc. ....	46 & 47 Vict. c. 3, s. 3	F. 20 yrs.	Yes		2303
banks of river or sea, to ....	24 & 25 Vict. c. 97, s. 30	F. Life	No		2360
piles, etc., in banks, to ....	24 & 25 Vict. c. 97, s. 31	F. 7 yrs.	Yes		2365
buoys, etc., to .....	24 & 25 Vict. c. 97, s. 48	F. 7 yrs.	Yes		2357
bridges, to .....	24 & 25 Vict. c. 97, s. 33	F. Life	No		2370
cattle, to .....	24 & 25 Vict. c. 97, s. 40	F. 14 yrs.	Yes		2381
causing explosion likely to endanger life or injure property	46 & 47 Vict. c. 3, s. 2	F. Life	No		2303
electric lines or works, to ..	45 & 46 Vict. c. 56, s. 22	F. 5 yrs.	Yes		2376
fish ponds, mill ponds, etc., to	24 & 25 Vict. c. 97, s. 32	M. 7 yrs.	Yes		2380
goods in process of manufacture or machinery, to .....	24 & 25 Vict. c. 97, s. 14	F. Life	Yes**		2334
hopbinds, to .....	24 & 25 Vict. c. 97, s. 19	F. 14 yrs.	Yes		2389
manufacture or possession of explosives for purpose of committing offences .....	24 & 25 Vict. c. 97, s. 54	M. 2 yrs.	Yes		2301
mines, to .....	24 & 25 Vict. c. 97, s. 28	F. 7 yrs.	Yes		2340
engines, etc., used in ..	24 & 25 Vict. c. 97, s. 29	F. 7 yrs.	Yes		2343
putting explosive near building	24 & 25 Vict. c. 97, s. 10	F. 14 yrs.	Yes		2301
plants in gardens (second offence) .....	24 & 25 Vict. c. 97, s. 23	F. 5 yrs.	Yes		2400
post office letter boxes, to ..	1 & 2 Eliz. 2, c. 36, s. 60	M. 12 mths.	Yes		2409
railways, to .....	24 & 25 Vict. c. 97, s. 35	F. Life	No		2375
obstructing .....	24 & 25 Vict. c. 97, s. 36	M. 2 yrs.	Yes		2375
riotously demolishing houses, etc. ....	24 & 25 Vict. c. 97, s. 11	F. Life	No	(1) Misdemeanor under s. 12 of same Act (2) Riot	2328
ships, to .....	24 & 25 Vict. c. 97, s. 42	F. Life	No		2346
otherwise than by fire or explosives .....	24 & 25 Vict. c. 97, s. 46	F. 7 yrs.	Yes		2348
by false signals, etc. ....	24 & 25 Vict. c. 97, s. 47	F. Life	No		2351
ships, in distress .....	24 & 25 Vict. c. 97, s. 49	F. 14 yrs.	Yes		2354
submarine telegraph cables, to	48 & 49 Vict. c. 49, s. 3	M. 5 yrs. if wilful; 3 mths. if by culpable negligence	Yes		2377
telegraphs, to .....	24 & 25 Vict. c. 97, s. 37	M. 2 yrs.	Yes		2375
tenants, by .....	24 & 25 Vict. c. 97, s. 13	M. 2 yrs.	Yes		2331

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Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
<b>MALICIOUS DAMAGE—cont.</b>					
trees in parks (damage exceeding £1), to .....	24 & 25 Vict. c. 97, s. 20	F. 5 yrs.	Yes		2392
trees not in parks (damage exceeding £5), to .....	24 & 25 Vict. c. 97, s. 21	F. 5 yrs.	Yes		2392
third offence (damage 1s.)	24 & 25 Vict. c. 97, s. 22	M. 2 yrs.	Yes		2397
works of art, to .....	24 & 25 Vict. c. 97, s. 39	M. 6 mths.	Yes		2403
exceeding £20 .....	24 & 25 Vict. c. 97, s. 51 & 4 & 5 Geo. 5, c. 58, s. 14	M. 2 yrs. M. 5 yrs. if committed at night	Yes		2404, 2405
<b>4320. MANSLAUGHTER</b>					
	Common law 24 & 25 Vict. c. 100, s. 5	F. Life Fine	No	(1) Ill-treatment of child (2) Child destruction (3) Offences under s. 2 of the Road Traffic Act, 1960	2462
<b>MARRIAGE</b>					
offences relating to time, banns, place and Holy Orders ..	12 & 13 Geo. 6, c. 76, s. 75 (1)	F. 14 yrs.	No		3813, 3814
issue of illegal certificates and registration of void marriages .....	12 & 13 Geo. 6, c. 76, s. 75 (3) (5)	F. 5 yrs.	No		3812
other offences against the Marriage Act .....	12 & 13 Geo. 6, c. 76, s. 77	M. Fine or 2 yrs.	No		3814
bigamy (see BIGAMY)					
<b>MENACES</b>					
demanding money by, with intent to extort, defraud, or injure .....	6 & 7 Geo. 5, c. 50, s. 29	F. Life	No		1871
demanding money by, with intent to steal .....	6 & 7 Geo. 5, c. 50, s. 30	F. 5 yrs.	Yes		1887
threatening to publish with intent to extort or induce favour, etc. ....	6 & 7 Geo. 5, c. 50, s. 31	M. 2 yrs.	Yes		1893
<b>4321. MONEY-LENDERS</b>					
false statements by .....	63 & 64 Vict. c. 51, s. 4	M. 2 yrs. and/or fine £500	Yes		2006
offences in relation to advertisements .....	17 & 18 Geo. 5, c. 21, s. 5	M. 3 mths. and/or fine £100	Yes		3891
	17 & 18 Geo. 5, c. 21, s. 16	M. 2 yrs. and/or fine £500	Yes		3893
<b>MOTOR VEHICLE</b>					
causing bodily harm by wanton or furious driving ....	24 & 25 Vict. c. 100, s. 35	M. 2 yrs.	Yes		2821
reckless or dangerous driving	8 & 9 Eliz. 2, c. 16, s. 2	2 yrs. and/or fine	Yes		2824
driving when under influence of drink or drugs .....	8 & 9 Eliz. 2, c. 16, s. 6	2 yrs. and/or fine	Yes		2825
taking without owner's consent	8 & 9 Eliz. 2, c. 16, s. 217	M. 12 mths. and/or fine £100	Yes		2837
causing death by reckless or dangerous driving .....	8 & 9 Eliz. 2, c. 16, s. 1	5 yrs.	No	Dangerous driving	2823
<b>4322. MURDER</b>					
capital .....	5 & 6 Eliz. 2, c. 11, s. 5	F. Death	No	Murder, and as in the case of ordinary murder	2453
repeated .....	5 & 6 Eliz. 2, c. 11, s. 6	F. Death	No	Murder, and as in the case of ordinary murder	2455
otherwise .....	common law 24 & 25 Vict. c. 100 5 & 6 Eliz. 2, c. 11, s. 9 (1)	F. Life	No	(1) Manslaughter (2) Concealment of birth (where the murder charged is that of a child) (3) Infanticide (4) Child destruction (5) Offence under Suicide Act, 1961 (where applicable)	2457

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TABLE OF PRINCIPAL INDICTABLE OFFENCES

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Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
<b>MURDER—cont.</b>					
administering poison with intent to .....	24 & 25 Vict. c. 100, s. 11	F. Life	No		2554
attempted .....	24 & 25 Vict. c. 100, s. 14	F. Life	No		2562
	24 & 25 Vict. c. 100, s. 15	F. Life	No		2576
conspiring, etc., to .....	24 & 25 Vict. c. 100, s. 4	M. 10 yrs.	No		2551
destroying buildings with intent to .....	24 & 25 Vict. c. 100, s. 12	F. Life	No		2571
destroying ships with intent to .....	24 & 25 Vict. c. 100, s. 13	F. Life	No		2574
wounding, etc., with intent to .....	24 & 25 Vict. c. 100, s. 11	F. Life	No		2554
<b>NUISANCE</b> .....	Common law	M. Fine or imprisonment or both	Yes		3621
1664 <b>4323. OBSCENE LIBEL</b> .....	Common law	M. Fine or imprisonment or both	Yes		3637
<b>OBSCENE PRINTS</b> exposing for sale, selling, etc. ....	Common law	M. Fine or imprisonment or both	Yes		3845
<b>OBTAINING CREDIT</b> under false pretences or by other fraud .....	32 & 33 Vict. c. 62, s. 13	M. 1 yr.	Yes		3691
by bankrupts (see <b>BANKRUPTCY</b> )					
<b>OFFICIAL SECRETS</b>					
spying .....	1 & 2 Geo. 5, c. 28, s. 1	F. 14 yrs.	No	Misdemeanor under same Act	3211
wrongful communication of information .....	1 & 2 Geo. 5, c. 28, s. 2 10 & 11 Geo. 5, c. 75, s. 8 (2)	M. 2 yrs.	No		3212, 3226
disclosure of information (patents) .....	12, 13 & 14 Geo. 6, c. 87, s. 18	M. Fine or 2 years or both	Yes		3333

disclosure of information (designs) .....	12, 13 & 14 Geo. 6, c. 88, s. 5	M. Fine or 2 years or both	Yes		3333
attempts .....	10 & 11 Geo. 5, c. 75, s. 7	As if full offence committed	No		3225
harbouring spies .....	1 & 2 Geo. 5, c. 28, s. 7	M. 2 yrs.	No		3216
unauthorised use of uniforms, etc. ....	10 & 11 Geo. 5, c. 75, s. 1	M. 2 yrs.	No		3219
forgery .....	10 & 11 Geo. 5, c. 75, s. 1	M. 2 yrs.	No		3219
personation .....	10 & 11 Geo. 5, c. 75, s. 1	M. 2 yrs.	No		3219
<b>4324. PERJURY</b>					
as to births and deaths .....	1 & 2 Geo. 5, c. 6, s. 4	M. 7 yrs.	Yes**		3532
as to marriages .....	1 & 2 Geo. 5, c. 6, s. 3	M. 7 yrs.	Yes**		3531
in judicial proceedings .....	1 & 2 Geo. 5, c. 6, s. 1	M. 7 yrs.	No		3501
not in judicial proceedings ..	1 & 2 Geo. 5, c. 6, s. 2	M. 7 yrs.	Yes**		3531
subornation of .....	1 & 2 Geo. 5, c. 6, s. 7 (1)	As if principal offender	No		3543
subornation, attempted .....	1 & 2 Geo. 5, c. 6, s. 7 (2)	M. 2 yrs.	No		3543
false declarations to obtain registration for carrying on a vocation .....	1 & 2 Geo. 5, c. 6, s. 6	M. 1 yr.	Yes**		3537
statutory declarations .....	1 & 2 Geo. 5, c. 6, s. 5	M. 2 yrs.	Yes		3535
<b>PERSONATION</b>					
of bail .....	24 & 25 Vict. c. 98, s. 34	F. 7 yrs.	Yes		2123
of heir, etc. ....	37 & 38 Vict. c. 36, s. 1	F. Life	No		2122
of owner of stock .....	24 & 25 Vict. c. 98, s. 3 and 33 & 34 Vict. c. 58, s. 4	F. Life	No		2118, 2119
of Inland Revenue officer ....	15 & 16 Geo. 6 and 1 Eliz. 2, c. 44, s. 7	M. Fine or 2 yrs. or both	Yes		2129
of seaman .....	28 & 29 Vict. c. 124, s. 8	M. 5 yrs.	Yes		2114
of soldier .....	7 Geo. 4, c. 16, s. 38, and 2 & 3 Will. 4, c. 53, s. 49	F. Life	Yes**		2112, 2113
of voter .....	12 & 13 Geo. 6, c. 68, ss. 47, 146 (2)	F. 2 yrs.	No		2127, 3963

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Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
<b>4325. PIRACY</b> <i>jure gentium</i> .....	Common law	F. Life	No		3051
	slave trading .....	5 Geo. 4, c. 113, s. 9	F. Life	No	3065
	trading with pirates .....	8 Geo. 1, c. 24, s. 1	F. Life	No	3063
	under foreign commission ..	11 Will. 3, c. 7, ss. 7, 8	F. Life	No	3060
	under enemy's commission ..	18 Geo. 2, c. 30, s. 1	F. Life	No	3064
	with violence .....	7 Will. 4 & 1 Vict. c. 88, s. 2	F. Death	No	3066
<b>4326. POACHING</b>	9 Geo. 4, c. 69, s. 1	M. 7 yrs. (on third conviction under this section)	Yes		3930
	by three or more armed ....	9 Geo. 4, c. 69, s. 9	M. 14 yrs.	No	3931
<b>1666 POISON</b>	administering so as to endanger life, etc. ....	24 & 25 Vict. c. 100, s. 23	F. 10 yrs.	Yes	M. Administering poison with intent to injure 2673
	administering with intent to injure .....	24 & 25 Vict. c. 100, s. 24	M. 5 yrs.	Yes	2673
<b>POLICE</b>	causing disaffection amongst	9 & 10 Geo. 5, c. 46, s. 3	M. 2 yrs.	Yes	3183
<b>PROCURATION</b>	of girl under 21 .....	4 & 5 Eliz. 2, c. 69 ss. 23, 37, Sched. II (24)	M. 2 yrs.	No	2950
	detention in brothel, etc. ....	ss. 24, 37, Sched. II (25)	M. 2 yrs.	No	2954
	defective, of .....	ss. 27, 37, Sched. II (27)	M. 2 yrs.	No	2962
	drugs, by .....	ss. 4, 37, Sched. II (9)	M. 2 yrs.	No	2953
	false pretences, by .....	ss. 3, 37, Sched. II (8)	M. 2 yrs.	No	2953
	threats, by .....	ss. 2, 37, Sched. II (7)	M. 2 yrs.	No	2953

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<b>4327. PROSTITUTION</b>	causing or encouraging prostitution of girl under 16 ....	4 & 5 Eliz. 2, c. 69, ss. 28, 37, Sched. II (28)	M. 2 yrs.	Yes	2949
	living on earnings of .....	4 & 5 Eliz. 2, c. 69, ss. 30, 37, Sched. II (30) 7 & 8 Eliz. 2, c. 57, s. 4	M. 7 yrs.	Yes	2964
	woman exercising control over a prostitute .....	4 & 5 Eliz. 2, c. 69, ss. 31, 37, Sched. II (31) 7 & 8 Eliz. 2, c. 57, s. 4	M. 7 yrs.	Yes	2964
	causing or encouraging prostitution of defective .....	4 & 5 Eliz. 2, c. 69, ss. 29, 37, Sched. II (29)	M. 2 yrs.	No	2962
	causing .....	4 & 5 Eliz. 2, c. 69, ss. 22, 37, Sched. II (23) (a)	M. 2 yrs.	No	2952
	<b>PUBLIC MISCHIEF</b> .....	Common law	M. Imprisonment or fine or both	Yes	3481
<b>1667 4328. RAILWAYS</b>	endangering safety of passengers .....	24 & 25 Vict. c. 100, ss. 32, 33	F. Life	No	2689
	endangering safety by unlawful act or wilful omission ..	24 & 25 Vict. c. 100, s. 34	M. 2 yrs.	Yes	2689
	maliciously obstructing .....	24 & 25 Vict. c. 97, s. 35	F. Life	No	2375
	unlawfully obstructing .....	24 & 25 Vict. c. 97, s. 36	M. 2 yrs.	Yes	2375
<b>RAPE</b> .....	4 & 5 Eliz. 2, c. 69, ss. 1, 37, Sched. II (1) (a)	F. Life	No	(1) of procurement of a woman by threats (2) of procurement of a woman by false pretences (3) of administering drugs to obtain or facilitate intercourse (4) of intercourse with a girl under 13 2873	

Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
RAPE—cont.				(5) of intercourse with a girl between 13 and 16 (6) of intercourse with a defective (7) of intercourse with a defective (8) of incest (9) of indecent assault on a woman	
attempt (see ATTEMPTS)	7 & 8 Eliz. 2, c. 72, Sched. VII				
1688 RECEIVING any property .....	6 & 7 Geo. 5, c. 50, s. 33 (1)	If stealing felony, F. 14 yrs.	Yes		2083
	6 & 7 Geo. 5, c. 50, s. 33 (1)	If stealing mis., M. 7 yrs.	Yes		2083
postal packets .....	1 & 2 Eliz. 2, c. 36, s. 54 6 & 7 Geo. 5, c. 50, s. 33 (2)	As for larceny As for larceny	Yes Yes		1605, 1606
4329. RIOT	Common law	M. Fine or imprisonment or both	Yes	(1) Unlawful assembly (2) Assault (if charged) (3) Rout	3581
after proclamation .....	1 Geo. 1, st. 2, c. 5, s. 1	F. Life	No		3587
ROBBERY .....	6 & 7 Geo. 5, c. 50, s. 23 (2)	F. 14 yrs.	Yes	(1) Assault with intent to rob (2) Simple larceny	1761

armed or with aggravation ..	6 & 7 Geo. 5, c. 50, s. 23 (1) (a)	F. Life	No	Assault with intent to rob, armed or with aggravation	1761
with violence .....	6 & 7 Geo. 5, c. 50, s. 23 (1) (b)	F. Life	No	(1) Robbery (2) Assault with intent to rob (3) Larceny from the person (4) Simple larceny	1761
assault with intent to rob ..	6 & 7 Geo. 5, c. 50, s. 23 (3)	F. 5 yrs.	Yes		1761
assault with intent to rob, armed or with aggravation	6 & 7 Geo. 5, c. 50, s. 23 (1) (a)	F. Life	No		1761
SACRILEGE .....	6 & 7 Geo. 5, c. 50, s. 24	F. Life	Yes		1843
1689 SEDITION AND SEDITIOUS LABEL .....	Common law	M. Fine or imprisonment or both	No		3143
4330. SEXUAL INTERCOURSE with girl under 13 .....	4 & 5 Eliz. 2, c. 69, ss. 5, 37, Sched. II, (2) (a)	F. Life	No	(1) of procurement by threats (2) of procurement by false pretences (3) of administering drugs to obtain or facilitate intercourse (4) of intercourse with a girl between 13 and 16 (5) of intercourse with a defective (6) of indecent assault	2897
with girl 13-16 .....	7 & 8 Eliz. 2, c. 72, Sched. VII 4 & 5 Eliz. 2, c. 69, ss. 6, 37, Sched. II (10) (a)	M. 2 yrs.	No	Indecent assault *	2906

\* This, however, is not clearly established, see § 2908.

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Offence	How Created	Maximum Punishment	Whether triable at Quarter Sessions	Other Offences of which Accused may be found Guilty	Paragraph of this Book where dealt with
SEXUAL INTERCOURSE—cont. causing or encouraging with girl under 16 .....	4 & 5 Eliz. 2, c. 69, ss. 28, 37, Sched. II (28)	M. 2 yrs.	Yes		2949
permitting girl under 13 to use premises for .....	4 & 5 Eliz. 2, c. 69, ss. 25, 37, Sched. II (6)	F. Life	No	Offence under Children and Young Persons Act, 1933, s. 3 Offence under Children and Young Persons Act, 1933, s. 3	2948
permitting girl aged 13-16 to use premises for .....	4 & 5 Eliz. 2, c. 69, ss. 26, 37, Sched. II (26)	M. 2 yrs.	No		2948
<b>4331. SHARE PUSHING</b>	6 & 7 Eliz. 2, c. 45	M. 7 yrs., but see the different sections of the Act	Yes		2044
SHOOTING at naval or revenue vessels or aircraft .....	15 & 16 Geo. 6 & 1 Eliz. 2, c. 46, s. 72 (2)	F. 5 yrs.	No		3344
with intent to maim, etc. ..	24 & 25 Vict. c. 100, s. 18	F. Life	No		2652
SHOPBREAKING (as in HOUSEBREAKING).					
SMUGGLING improper importation or exportation of goods .....	15 & 16 Geo. 6 & 1 Eliz. 2, c. 44, ss. 45 (1), 47 (3)	M. Fine or 2 yrs. or both	Yes		3341
evasion of duty .....	15 & 16 Geo. 6 & 1 Eliz. 2, s. 304	M. Fine or 2 yrs. or both	Yes		3342
signalling to smugglers .....	15 & 16 Geo. 6 & 1 Eliz. 2, s. 71 (1)	M. Fine or 1 yr. or both	Yes		3343

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interfering with revenue vessels or aircraft .....	15 & 16 Geo. 6 & 1 Eliz. 2, s. 72 (2)	F. 5 yrs.	Yes		3344
smugglers armed or disguised .....	15 & 16 Geo. 6 & 1 Eliz. 2, s. 73	M. 3 yrs.	Yes		3345
<b>4332. SPRING GUNS</b> setting with intent to inflict grievous bodily harm .....	24 & 25 Vict. c. 100, s. 31	M. 5 yrs.	Yes		2685
SUICIDE aiding, abetting, etc. ....	9 & 10 Eliz. 2, c. 60, s. 2 (1)	14 yrs.	No		4128, 4171
THREATS to burn houses, etc. ....	24 & 25 Vict. c. 97, s. 50	F. 10 yrs.	Yes		3616
to murder .....	24 & 25 Vict. c. 100, s. 16	F. 10 yrs.	Yes		3615
(see also MENACES).					
TREASON .....	25 Edw. 3, st. 5, c. 2, & 33 & 34 Vict. c. 23, s. 1	Death	No		3002, 3013
TREASON FELONY .....	11 & 12 Vict. c. 12, s. 3	F. Life	No		3041
UNLAWFUL ASSEMBLY .....	Common law	M. Fine or imprisonment or both	Yes		3571
UNLAWFUL OATHS .....	37 Geo. 3, c. 123, s. 1	F. 7 yrs.	No		3168
UNLAWFUL WEARING OF UNIFORMS .....	52 Geo. 3, c. 104, s. 1	F. Life	No		3173
UNLAWFUL WEARING OF UNIFORMS .....	1 Edw. 8 & 1 Geo. 6, c. 6, s. 2	M. 2 yrs.	Yes		3194
WAREHOUSE BREAKING (as in HOUSEBREAKING).					
WOUNDING unlawful .....	24 & 25 Vict. c. 100, s. 20	M. 5 yrs.	Yes	Common assault Unlawful wounding Unlawful wounding	2664
with intent to maim, etc. ..	24 & 25 Vict. c. 100, s. 18	F. Life	No		2652
with intent to murder .....	24 & 25 Vict. c. 100, s. 11	F. Life	No		2554

TABLE OF PRINCIPAL INDICTABLE OFFENCES

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2453. Section 5.—*Death penalty for certain murders.* “(1) Subject to subsection (2) of this section, the following murders shall be capital murders, that is to say,—

- (a) any murder done in the course or furtherance of theft;
- (b) any murder by shooting or by causing an explosion;
- (c) any murder done in the course or for the purpose of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody;
- (d) any murder of a police officer acting in the execution of his duty or of a person assisting a police officer so acting;
- (e) in the case of a person who was a prisoner at the time when he did or was a party to the murder, any murder of a prison officer acting in the execution of his duty or of a person assisting a prison officer so acting.

“(2) If, in the case of any murder falling within the foregoing subsection, two or more persons are guilty of the murder, it shall be capital murder in the case of any of them who by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on, the person murdered, or who himself used force on that person in the course or furtherance of an attack on him; but the murderer shall not be capital murder in the case of any other of the persons guilty of it.

“(3) Where it is alleged that a person accused of murder is guilty of capital murder, the offence shall be charged as capital murder in the indictment, and if a person charged with capital murder is convicted thereof, he shall be liable to the same punishment for the murder as heretofore. [*i.e.*, death under section 1 of the *Offences against the Person Act, 1861 (ante)*.]

[The appellant broke into a shop, went upstairs and from a safe which had been left open took some money and notes which he put into his pocket. As he was about to descend the stairs, he heard someone enter the front door and saw the lights go on. The manager had returned to lock up the safe. As the manager neared the top of the stairs, the appellant struck him a fatal blow. The appellant was convicted of capital murder done in the course of theft. For the appellant it was contended that the theft was complete before the murder was committed and therefore the murder was not “in the course of the theft.” The Court of Criminal Appeal, affirming the conviction, stated that this was a case of a thief being caught red-handed who, in order to escape detection, committed murder and that such murder was committed in the course of theft: *R. v. Jones, E. R. [1959] 1 Q.B. 291; 43 Cr.App.R. 94.* During the hearing of this appeal reference was made to *H.M. Advocate v. Graham, 1958 S.L.T. 167*, in which case Lord Sorn said: “If a burglar is interrupted and if he murders in order to get away, it is still murder done in the course of theft,” and this was approved by the Court of Criminal Appeal.]

2454. “(4) In this Act ‘capital murder’ means capital murder within subsections (1) and (2) of this section.

CHAPTER 12

OFFENCES AGAINST THE PERSONS OF INDIVIDUALS

SECTION 1. *Homicide*, § 2451.

- (1) *Murder and manslaughter*, § 2451.
- (2) *Conspiracy to murder and inciting to murder*, § 2551.
- (3) *Attempts to murder*, § 2554.
  - (i) *Administering poison, wounding, etc., with intent to murder*, § 2554.
  - (ii) *Attempting to poison, shoot, drown, etc., with intent to murder*, § 2562.
  - (iii) *Destroying buildings by explosives with intent to murder*, § 2571.
  - (iv) *Destroying ships with intent to murder*, § 2574.
  - (v) *Other attempts to murder*, § 2576.
- 2. *Child Destruction, Infanticide and endeavouring to conceal the Birth of Children*, § 2601.
- 3. *Attempts to procure Abortion*, § 2621.
- 4. *Assaults, Battery, Wounding, Ill-treatment, etc.*, § 2631.
- 5. *False imprisonment and Kidnapping*, § 2801.
- 6. *Offences in connection with the driving of vehicles*, § 2821.
  - (i) *Carriages*, § 2821.
  - (ii) *Motor vehicles*, § 2823.
- 7. *Sexual offences*, § 2871.

SECTION 1

HOMICIDE

MURDER AND MANSLAUGHTER

Statutes

2451. *Offences against the Person Act, 1861, s. 1.—Punishment of murder.* “Whosoever shall be convicted of murder shall suffer death as a felon.”

Homicide Act, 1957

2452. Section 1 of the *Offences against the Person Act, 1861*, must now be read subject to the provisions of the *Homicide Act, 1957*. Section 2 of the Act of 1861 is repealed. The relevant provisions of the *Homicide Act* are as follows:—

" (5) In this section—

- (a) 'police officer' means a constable who is a member of a police force or a special constable appointed under any Act of Parliament, and 'police force' has the same meaning as in section thirty of the *Police Pensions Act, 1921* (as amended by the *Police Act, 1946*) or as regards Scotland, the same meaning as in section forty of the *Police (Scotland) Act, 1956*;
- (b) 'prison' means any institution for which rules may be made under the *Prison Act, 1952*, or the *Prisons (Scotland) Act, 1952*, and any establishment under the control of the Admiralty or the Secretary of State where persons may be required to serve sentences of imprisonment or detention passed under the *Naval Discipline Act, the Army Act, 1955*, or the *Air Force Act, 1955*;
- (c) 'prison officer' includes any member of the staff of a prison;
- (d) 'prisoner' means a person who is undergoing imprisonment or detention in a prison, whether under sentence or not, or who, while liable to imprisonment or detention in a prison, is unlawfully at large;
- (e) 'theft' includes any offence which involves stealing or is done with intent to steal."

**2455.** Section 6.—*Death penalty for repeated murders.* " (1) A person convicted of murder shall be liable to the same punishment as heretofore, if before conviction of that murder he has, whether before or after the commencement of this Act, been convicted of another murder done on a different occasion (both murders having been done in Great Britain).

" (2) Where a person is charged with the murder of two or more persons, no rule of practice shall prevent the murders being charged in the same indictment or (unless separate trials are desirable in the interests of justice) prevent them being tried together; and where a person is convicted of two murders tried together (but done on different occasions), subsection (1) of this section shall apply as if one conviction had preceded the other."

By section 9 (4) and Sched. I, para. 1.—" (1) On an indictment charging a person with capital murder, he may be found not guilty of capital murder but guilty of murder.

" (2) Capital murder shall be treated as a distinct offence from murder for the purposes of any appeal against conviction; but where on an appeal against conviction of capital murder the court substitute a verdict of guilty of murder for the verdict of guilty of capital murder, the court shall nevertheless confirm the sentence of death if the sentence is warranted by section six of this Act.

" (3) Subject to the foregoing sub-paragraphs, capital murder shall not be treated as a different offence from murder for any purpose."

[For provisions relating to appeals against conviction or sentence under section 6, see *ante*, § 912.]

**2456.** By section 9 (4) and Sched. I, para. 2.—" (1) Where a person is convicted of murder, he shall not by virtue of section six of this Act be sentenced to death by reason of a previous conviction of another murder done in Great Britain on a different occasion, unless—

- (a) at least three days before the trial notice is given to him and to the clerk of assize that it is intended to prove the previous conviction; and
- (b) before he is sentenced, his previous conviction of the other murder, and the fact that the murders were done in Great Britain on different occasions, are admitted by him or found by the verdict of a jury:

Provided that head (a) of this sub-paragraph shall not apply where he is convicted of both murders at the same assizes (or before the same court of assize held by virtue of a special commission).

" (2) The said jury shall be the trial jury, that is to say the jury to whom he was given in charge to be tried for the murder for which the sentence is in question, and the members of the jury need not be re-sworn:

Provided that—

(a) if any member of the trial jury, either before or after the conviction, dies or is discharged by the court as being through illness incapable of continuing to act or for any other cause, the inquiry under this paragraph shall proceed without him; and

(b) where there is no trial jury, a jury shall be constituted as if to try whether or not he was fit to plead, and shall be sworn in such manner as the court may direct."

By section 9 (4) and Sched. I, para. 4.—" (1) Where a person is convicted of two murders tried together, he shall not by reason thereof be sentenced to death by virtue of section six of this Act, unless before he is sentenced the fact that the murders were done in Great Britain on different occasions is admitted by him or found by the verdict of a jury: and sub-paragraphs (2) to (4) of paragraph 2 of this Schedule shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

" (2) Where sentence of death is passed on a person convicted of two murders tried together, it shall be treated as passed in respect of each of the convictions; but if one of the convictions is and the other is not set aside on appeal, the court deciding the appeal, unless satisfied that the sentence remains warranted in law in respect of the other conviction, shall set the sentence aside and pass the appropriate sentence in substitution for it."

By section 9 (4) and Sched. I, para. 6.—" References to a previous or later conviction include a conviction in Scotland."

W. was charged with the capital murder of her second and third husbands. Medical evidence was called by the prosecution to show that a post-mortem examination had revealed phosphorus in the bodies of both husbands, and that phosphorus had been the cause of death. Medical evidence was called by the defence in rebuttal; but W. did not herself give

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Section 16.—*General saving.* "Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if this Act had not passed."

**2460.** *Central Criminal Court (Prisons) Act, 1881, s. 2 (5).* "Where judgment of death is passed at the Central Criminal Court upon a person convicted of any offence, the judgment may be carried into execution in any prison in the Central Criminal Court district or in the county, if any, where the offence was committed, or is supposed to have been committed, where the justice or judge of the said court passing sentence or any other justice or judge of the court subsequently may order, and if no order is made, then in the prison in which the convict is for the time being confined; and such sheriff as is ordered by any justice or judge of the said court, or if no order is made, the sheriff of the county in which the offence was committed or is supposed to have been committed, or if the offence was committed or is supposed to have been committed on the high seas, or if the county in which the offence was committed does not clearly appear, the sheriff of Middlesex shall be charged with the execution of the judgment; and the sheriff charged with the execution of the judgment shall for that purpose have the same jurisdiction and powers and be subject to the same duties in the prison in which the judgment is to be carried into execution, although such prison is not situate within his county, as he has by law with respect to the common gaol of his county or would have had if the *Prison Act, 1865*, and the *Prison Act, 1877*, had not passed."

[The *Prison Act, 1865*, and the *Prison Act, 1877*, have both been repealed by the *Prison Act, 1952, s. 54* and Schedule 4. The Act of 1952 consolidates the Acts of 1865 and 1877 and replaces the majority of their provisions with amendments where necessary.]

"The coroner whose duty it is to hold an inquest on the bodies of persons dying in any prison shall hold an inquest in accordance with the *Capital Punishment Amendment Act, 1868, [s. 5]* on the body of any convict executed in that prison."

**2461.** *Sheriffs Act, 1887, s. 13.* "Where judgment of death has been passed upon a convict at any court of assize or any sessions of oyer and terminer or gaol delivery held for any county or riding or division or other part of a county, the sheriff of such county shall be charged with the execution of such judgment, and may carry such judgment into execution in any prison which is the common gaol of his county or in which the convict was confined for the purpose of safe custody prior to his removal to the place where such court was held, and shall, for the purpose of such execution, have the same jurisdiction and powers over and in the prison in which the judgment is to be carried into execution, whether such prison is or is not situate within his county, and over the officers of such prison, as he has by law over and in the common gaol of his county and the officers thereof, or would have had if the *Prison Act, 1865*, and the *Prison Act, 1877*, had not passed, and shall be subject to the same responsibility and duties as if the said Acts had not passed."

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evidence. On appeal it was contended that the trial judge should have ordered separate trials. The Court of Criminal Appeal held that, the evidence of the first death being material evidence in connection with the second, there was no reason to interfere with the judge's discretion: *R. v. Wilson* [1958] Crim.L.R. 475, C.C.A.

**2457.** Section 7.—*Abolition of death penalty for other murders.* "No person shall be liable to suffer death for murder in any case not falling within section five or six of this Act."

Section 9 (1)—*Punishment for murders not punishable with death.* "Where a court (including a court-martial) is precluded by this Part of this Act from passing sentence of death, the sentence shall be one of imprisonment for life."

Section 10—*Form of sentence of death for murder.* See *ante*, § 653.

Section 16—*Past offences.* "This Act shall not have effect in relation to any offence where an indictment for that offence has been signed . . . before the date of the commencement of this Act, . . . but (subject to that) this Act shall have effect in relation to offences committed wholly or partly before that date as it applies in relation to offences committed after that date."

**2458.** *Children and Young Persons Act, 1933, s. 53*, as substituted by section 9 (3) of the *Homicide Act, 1957*.—*Persons under eighteen not to be sentenced to death.* See the section set out *ante*, § 684.

*Capital Punishment Amendment Act, 1868, s. 2*.—*Judgment of death for murder to be executed within prison walls.* "Judgment of death to be executed on any prisoner sentenced . . . on any indictment, or inquisition for murder shall be carried into effect within the walls of the prison in which the offender is confined at the time of the execution."

Section 3.—*Provision for presence of sheriff and certain prison officials and others at execution.*

**2459.** *Capital Punishment (Amendment) Act, 1868, s. 6*.—*Burial of offender executed.* "The body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him: provided that if one of Her Majesty's principal Secretaries of State is satisfied, on the representation of the visiting justices of a prison, that there is not convenient space within the walls thereof for the burial of offenders executed therein, he may, by writing under his hand, appoint some other fit place for that purpose, and the same shall be used accordingly."

Section 7.—*Power of Secretary of State to make regulations.* See Regulations of June 5, 1902. Statutory Rules and Orders Revised (ed. 1904), vol. 10, tit. Prison, E., p. 65.

Section 15.—*Saving clause as to legality of execution.* "The omission to comply with any provision of this Act shall not make the execution of judgment of death illegal in any case where such execution would otherwise have been legal."

The *Prison Act*, 1865, and the *Prison Act*, 1877, have both been repealed by the *Prison Act*, 1952, s. 54, and Schedule 4. The Act of 1952 consolidates the Acts of 1865 and 1877 and replaces the majority of their provisions with amendments where necessary.

[For special provision as to sheriff of Chester, see *Chester Courts Act*, 1867, s. 4.]

"(2) This section shall be in addition to and not in derogation of any power authorised to be exercised by order in council under the *Winter Assizes Act*, 1876, and the *Spring Assizes Act*, 1879, or either of them, and of the provisions of the *Central Criminal Court (Prisons) Act*, 1881" [*ante*, § 2460].

**2462. Offences against the Person Act, 1861, s. 5.—Punishment of manslaughter.** "Whosoever shall be convicted of manslaughter shall be liable, at the discretion of the court, to imprisonment for life, . . ." [and see section 71, *post*, § 2465.]

*Children and Young Persons Act*, 1933, s. 1 (4).—*Power to convict of cruelty on indictment for manslaughter of person under sixteen by person over sixteen.* See *post*, §§ 2540, 2541; also *post*, § 2740, in which the section is set out in full.

Section 53.—*Punishment of persons under the age of seventeen years.* See *ante*, § 684.

*Offences against the Person Act*, 1861, s. 7.—*Homicide not felonious.* "No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence, or in any other manner without felony."

Section 8.—*Petit treason to be treated as murder.* "Every offence which before the commencement of the Act of the ninth year of King George the Fourth, chapter thirty-one [*i.e.*, July 1, 1828], would have amounted to petit treason shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried and punished as principals and accessories in murder."

[Petit treason consisted of the murder of a superior by an inferior by whom allegiance was owed in a natural, civil or spiritual relation, and see further, 1 Hawk. c. 92.]

**2463. Section 9.—Murder or manslaughter abroad.—Veneue.** "Where any murder or manslaughter shall be committed on land out of the United Kingdom, whether within the Queen's dominions or without, and whether the person killed were a subject of Her Majesty or not, every offence committed by any subject of Her Majesty, in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in any county or place in England . . . in which such person shall be apprehended or be in custody, in

the same manner in all respects as if such offence had been actually committed in that county or place; provided that nothing herein contained shall prevent any person from being tried in any place out of England . . . for any murder or manslaughter committed out of England . . . in the same manner as such person might have been tried before the passing of this Act."

[As to the effect of this section, see *ante*, § 70. In *R. v. Heisham*, 4 C. & P. 394, on an indictment under 9 Geo. 4, c. 31, s. 1 (*rep.*), of which this is a re-enactment, it was held that the prisoner must be described as a British subject; *sed quære*. See *R. v. De Mattos*, 7 C. & P. 458; *R. v. Jameson* [1896] 2 Q.B. 425. In *R. v. Page* [1954] 1 Q.B. 170; 37 Cr.App.R. 189 (Cis-Martial App.Ct.) a British soldier who killed an Egyptian national in Egypt was held to have been rightly convicted of murder by a court-martial.]

Section 10.—*Death within the realm of a person feloniously stricken outside the realm.—Veneue.* "Where any person being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England . . . , shall die of such stroke, poisoning, or hurt in England . . . , or being feloniously stricken, poisoned, or otherwise hurt at any place in England . . . , shall die of such stroke, poisoning or hurt upon the sea, or at any place out of England . . . , every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in the county or place in England . . . in which such death, stroke, poisoning, or hurt shall happen in the same manner in all respects as if such offence had been wholly committed in that county or place."

[As to the effect of this section, see *ante*, § 70.]

**2464. Offences against the Person Act, 1861, s. 66.—Persons loitering at night and suspected of any felony against this Act, may be apprehended.** "Any constable or peace officer may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony in this Act mentioned, and shall take such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law."

Section 67.—*Punishment of principals in the second degree, accessories and abettors.* "In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act (except murder) shall be liable to be imprisoned for any term not exceeding two years, . . . ; and every accessory after the fact to murder shall be liable, at the discretion of the court to imprisonment for life . . . ; and whosoever shall counsel, aid, or abet the commission of any indictable misdemeanor punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal offender."

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felony within the *Offences against the Person Act, 1861*, ss. 11-15. This direction and the sentence were upheld on appeal on the ground that the offences described in sections 11-15 fell within the definition of attempts to murder, and that on an indictment for murder it was permissible under the *Criminal Procedure Act, 1951*, s. 9, to convict of such attempt (b). In this case the court seem to have regarded as doubtful the distinction drawn in *R. v. Linnaker* [1906] 2 K.B. 99, between acts done with intent to murder and attempts to murder.

**4111. Punishment.** Every attempt which is a common law misdemeanor and for which no special punishment has been prescribed by statute is punishable by fine or imprisonment or by both. It would seem that there is no limit to the amount of either the fine or the imprisonment that may be imposed provided the sentence is not inordinate: *R. v. Morris* [1951] 1 K.B. 394; 34 Cr.App.R. 210. But a person who is convicted only of an attempt to commit an offence should not be given a longer sentence than he could have been given if he had committed the full offence: *R. v. Pearce*, 36 Cr.App.R. 140.

[The next paragraph is 4121]

(b) *R. v. Connell*, 6 Cox 178, was distinguished and was held not to apply to the offences under *Offences against the Person Act, 1861*, ss. 11-15. It had already been criticised in *R. v. Cook*, 20 N.S.W.Rep. (Law) 264.

## PART IV

## CHAPTER 20

## PRINCIPALS, ACCESSORIES AND ABETTERS

- SECT. 1. *Principals in the First Degree in Felony*, § 4121.
2. *Principals in the Second Degree in Felony*, § 4123.
3. *Accessories before the fact to Felony*, § 4141.
4. *Accessories after the fact to Felony*, § 4155.
5. *Misprision of Treason or Felony*, § 4165.
6. *Abettors in Misdemeanor*, § 4171.

## SECTION 1

## PRINCIPALS IN THE FIRST DEGREE IN FELONY

## Common Law

**4121.** At common law a distinction is drawn in the case of felony between—

- (1) Principals in the first degree;
- (2) Principals in the second degree;
- (3) Accessories before the fact;
- (4) Accessories after the fact.

This distinction was of importance with reference both to procedure and punishment, but much of the earlier case law on the subject has been rendered obsolete by legislation. See 1 Russ.Cr., 11th ed., 137.

**4122. Principals in the first degree.** A principal in the first degree is one who is the actor, or actual perpetrator of the fact: 1 Hale 283, 615. It is not necessary that he should be actually present when the offence is consummated; for if one lays poison purposely for another who takes it and is killed, he who laid the poison, though absent when it was taken, is a principal in the first degree: *R. v. Harley*, 4 C. & P. 369. Nor is it necessary that the act should be perpetrated with his own hands; for if an offence is committed through the medium of an innocent agent, the employer, though absent when the act is done, is answerable as a principal in the first degree: *R. v. Bull & Schmidt*, 1 Cox 281; *R. v. Manley*, *ibid.* 104; *R. v. Cliford*, 2 C. & K. 202; *R. v. Bleasdale*, *ibid.* 765; *R. v. Buit*, 15 Cox 564, C.C.R. Thus, if a child, under the age of discretion, or any other person who is not criminally responsible, by defect of understanding, ignorance

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of the facts or other cause, is incited to the commission of any crime, the inciter, though absent when the act was committed, is liable for the act of his agent, and is a principal in the first degree: *Fost. 349*; 1 Hawk. c. 31, s. 7; *R. v. Palm and Hudson*, 2 Leach 978; *R. v. Butcher*, Bell. 6. But if the agent is aware of the nature, etc., of his act, he is a principal in the first degree, and the employer, if absent when the act is committed, is an accessory before the fact: *R. v. Stewart*, R. & R. 363; *R. v. Williams*, 1 Den. 39; or, if present, is liable as a principal in the second degree: *Fost. 349*; unless the agent concurs in the act merely for the purpose of detecting and punishing his principal, in which case the agent is considered to be innocent: *R. v. Lannen*, 2 Mood. 309; *R. v. Johnson and Jones*, C. & Mar. 218; and see *R. v. Dannelly*, R. & R. 310, where one of three persons who had agreed to commit a burglary informed the police, and though present at the burglary was held not liable to conviction.

## SECTION 2

## PRINCIPALS IN THE SECOND DEGREE IN FELONY

**4123. Definition.** Principals in the second degree are those who are present at the commission of the offence, and aid and abet its commission.

A person may be a principal in the second degree even if from sex or age incapable of being a principal in the first degree: *Lord Baltimore's Case*, 4 Burr. 2179; *R. v. Eldershaw*, 3 C. & P. 896; *R. v. Ram*, 17 Cox 609.

**4124. Presence.** Presence, in this sense, may be either *actual* or *constructive*. It is not necessary that the party should be actually present, an eye-witness or ear-witness of the transaction; he is, in construction of law, present, aiding and abetting, if, with the intention of giving assistance, he is near enough to afford it, should occasion arise. Thus, if he is outside the house, watching, to prevent surprise, or the like, whilst his companions are in the house committing a felony, such constructive presence is sufficient to make him a principal in the second degree: *Fost. 347, 350*; 2 Hawk. c. 29, ss. 7, 8; 1 Hale 555; 1 Russ.Cr., 11th ed., 146; *R. v. Howell*, 3 St.Tr.(x.s.) 1087; *R. v. Gogery*, R. & R. 343; *R. v. Owen*, 1 Mood. 96. But he must be near enough to give assistance: *R. v. Stewart*, R. & R. 363; and the mere circumstance of a party going towards a place where a felony is to be committed, in order to assist to carry off the property, and assisting in carrying it off, will not make him a principal in the second degree, unless, at the time of the felonious taking, he was within such a distance as to be able to assist in it: *R. v. Kelly*, R. & R. 421; 1 Russ.Cr., 11th ed., 148.

Where two persons broke open a warehouse, and stole thereout a quantity of butter, which they carried along the street for thirty yards, and then fetched the prisoner, who, being apprised of the robbery, assisted in carrying away the property, it was held that he was not a principal, but only an accessory after the fact: *R. v. King*, R. & R. 332; and see *R. v. McMakin and Smith*, R. & R. 333n.; *R. v. Dyer*, 2 East P.C. 767. Even where a

felonious act is committed in pursuance of a preconcerted plan between the parties, those who are not present, or near enough to be able to afford aid and assistance *at the time when the act is done*, are not principals, but accessories before the fact: *R. v. Soares*, R. & R. 25; *R. v. Davis*, *ibid.* 113; *R. v. Else*, *ibid.* 142; *R. v. Badcock*, *ibid.* 249; *R. v. Hurse*, 2 M. & Rob. 360; *R. v. Manners*, 7 C. & P. 801; *R. v. Howell*, *ante*; *R. v. Tuckwell*, C. & Mar. 215. So, if one of two who are acting in concert is apprehended before the other commits the offence, he can be considered only as an accessory before the fact: *R. v. Johnson and Jones*, C. & Mar. 218.

**4125.** Presence during the whole of the transaction is not necessary; for instance, if several combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are, nevertheless, all guilty as principals: *R. v. Bingley*, R. & R. 446. Thus, if A counsel B to make the paper, C to engrave the plate, and D to fill up the names of a forged note, and they do so, each without knowing that the others are employed for that purpose, B, C, and D may be indicted for the forgery, and A as an accessory: *R. v. Dade*, 1 Mood. 307; for, if several make distinct parts of a forged instrument, each is a principal, though he does not know by whom the other parts are executed, and though it is finished by one alone in the absence of the others: *R. v. Kirkwood*, 1 Mood. 304. See also *R. v. Atwell and O'Donnell*, 2 East P.C. 768; and *R. v. Kelly and McCarthy*, 2 C. & K. 379. "Although the prisoner might not be able to write himself, yet if he got any one to write the name, he is as much guilty of forgery as if he wrote it himself": *R. v. James*, 4 Cox 90, *per* Erle J.

Where presence may be entirely accidental, it is not even evidence of aiding and abetting: where presence is *prima facie* not accidental, it is evidence, but no more than evidence, for the jury: *per* Cave J. in *R. v. Coney*, 8 Q.B.D. 534, and see *Wilcox v. Jeffery* [1951] 1 All E.R. 464.

**4126. Participation.** There must also be a participation in the act; *R. v. Borthwick*, 1 Doug. 207, for even if a man is present whilst a felony is committed, if he takes no part in it and does not act in concert with those who commit it, he will not be a principal in the second degree, merely because he did not endeavour to prevent the felony, or failed to apprehend the felon: 1 Hale 439; *Fost. 350*; *R. v. Fretwell*, L. & C. 161. See *post*, § 4165, "Misprision."

It is not necessary to prove that the party actually aided in the commission of the offence; if he watched for his companions in order to prevent surprise, or remained at a convenient distance, in order to favour their escape, if necessary, or was in such a situation as to be able readily to come to their assistance, the knowledge of which was calculated to give additional confidence to his companions, he was, in contemplation of law, present aiding and abetting.

**4127. Common design.** A participation, the result of a concerted design to commit a specific offence, is sufficient to render the participant a principal in the second degree. Thus, if several act in concert to steal goods,

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in the second, it was held that the conviction upon the first count was good: *R. v. Folkes*, 1 Mood. 354; *R. v. Gray*, 7 C. & P. 164. See *R. v. Crisham*, C. & Mar. 187. Where a man is charged as a principal in the first degree, evidence of his being a principal in the second degree will support the indictment: *Ibid.*; and see *Fost*, 361.

A person cannot be convicted of aiding and abetting the commission of an offence unless he knew the facts which must be proved to show that an offence has been committed: *Johnson v. Youden* [1950] 1 K.B. 544; and see *Pope v. Minton* [1954] Crim.L.R. 711 and *post*, § 4173.

It is not necessary to show that the person knew that it was an offence, because he cannot plead ignorance of the law, but where anyone is charged with aiding and abetting a person to commit an offence, it must at least be shown that he knew what that person was doing. A person who does not know of the acts which another person is doing cannot be charged with aiding and abetting him because he does not know that he is doing acts which amount to an offence: *Thomas v. Lindop*, 66 T.L.R. (Pt. 1) 1241; applying *Ackroyd's Air Travel v. D. P.* [1950] 1 All E.R. 983.

So where the licensee of a public house who had duly called "time" was unaware that guests in one of the rooms were still consuming alcoholic liquor which had been supplied by a servant before "time" was called, it was held that the licensee could not be convicted of aiding and abetting the offence committed by the customers because she did not know what was being done nor had she connived at what was being done: *Thomas v. Lindop*, *ante*.

[The next paragraph is 4141]

### SECTION 3

#### ACCESSORIES BEFORE THE FACT TO FELONY

**4141. Common law.** An accessory before the fact is one who, though absent at the time of the felony committed, doth yet procure, counsel, command or abet another to commit a felony: 1 Hale 615; 1 Russ.Cr., 11th ed., 159; *R. v. MacDaniel*, 19 St.Tr. 745.

The term "accessory" is used only with reference to felonies. In treason, every instance of incitement, etc., which in felony would make a man an accessory before the fact, will make him a principal traitor: *Fost*, 341-346; and he must be indicted as such: 1 Hale 238. In point of law there is no such person as an accessory to misdemeanor: *R. v. Burton*, 13 Cox 71; *Du Cros v. Lambourne* [1907] 1 K.B. 40, 43 (but see *Gould & Co., Ltd. v. Houghton* [1921] 1 K.B. 509, at p. 520, *per* Darling J.), and all those, who in felony would be accessories before the fact, in offences before felony are principals and indictable as such: 4 Bl.Com. 36; 1 Russ. Cr., 11th ed., 159; *R. v. Clayton*, 1 C. & K. 128; *R. v. Moland*, 2 Mood.

276; *R. v. Greenwood*, 2 Den. 453. And see *Accessories and Abettors Act*, 1861, s. 8 (*post*, § 4171).

If the party is actually or constructively present when the felony is committed, he is, as has been seen (*ante*, §§ 4124 *et seq.*), an aider and abettor, and not an accessory *before* the fact; for it is essential to constitute the offence of being an accessory, that the party should be *absent* at the time the offence is committed: 1 Hale 615; *R. v. Gordon*, 1 Leach 515. Acting upon this rule, Coleridge C.J. directed the acquittal of a woman indicted as accessory before the fact to a murder, it being proved that she was present at the time when the murder was committed, and was therefore liable, if at all, as a principal: *R. v. Brown*, 14 Cox 144. It is submitted that she might properly have been convicted as a principal.

A verdict which acquits of a crime those charged as principals but convicts a person charged as an accessory before the fact is, *prima facie*, an inconsistent and contradictory verdict: *Surujsipaul v. R.* [1958] 1 W.L.R. 1050, P.C.

**4142. The procurement.** The procurement may be personal, or through the intervention of a third person: *Fost*, 125; *R. v. Earl of Somerset*, 2 St.Tr. 965; 19 St.Tr. 804, *cit.*; *R. v. Cooper*, 5 C. & P. 535.

It may also be direct, by hire, counsel, command, or conspiracy; or indirect, by evincing an express liking, approbation, or assent to another's felonious design of committing a felony: 2 Hawk. c. 29, s. 16; but the bare concealment of a felony contemplated by another will not make the party concealing it an accessory before the fact: 2 Hawk. c. 29, s. 23; nor will a tacit acquiescence, or words which amount to a bare permission, be sufficient to constitute this offence: 1 Hale 616.

Whether there must be a procurement for the particular felony charged in the indictment has not been specifically decided: *R. v. Lomas*, 9 Cr.App. R. 220, explained in *R. v. Bullock* [1955] 1 W.L.R. 1; 38 Cr.App.R. 151. In the latter case the appellant was charged with two offences of breaking and entering, and the evidence showed that on each occasion a car hired by the appellant was found on the scene of the crime. The appellant's defence to each charge was an alibi: the Court of Criminal Appeal held that a direction given by the judge, in answer to a question asked by the jury after retirement, that knowledge of the fact that the car was being used for an unlawful purpose was sufficient to constitute the prisoner an accessory before the fact was, in the circumstances of the case, sufficient since, if the appellant knew that the car was to be used for an unlawful purpose, he must also have permitted it so to be used. The court, however, added "It is no doubt true that, if an accused person merely suspects that if he lends something it may be used in a general way, that may not be enough. . . . If an accused person lends a man a revolver, believing that it may be used to commit a crime of violence, but with nothing specific in mind, it may not be enough": *R. v. Bullock (ante)*.

**4143. Agent.** Where the procurement is through an intermediate agent, it is not necessary that the accessory should name the person to be

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**ANNEX E**  
**IMPACT WITNESS STATEMENTS**

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ANNEX F

**EXCERPTS OF TRANSCRIPTS OF WITNESSES WHO  
SUFFERED STRESS DURING THE PROCEEDINGS**

**CONFIDENTIAL**

**FILED SEPARATELY**

ANNEX G

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Expert Report - **The Psychosocial Impact of War-related Crimes on  
Victims of the Sierra Leonean Conflict** by An Michels



## Expert Witness Report

**The Psychosocial Impact of War-related Crimes on Victims  
of the Sierra Leonean Conflict**

An Michels  
Psychologist

June 2007

## 1. Overview

### 1.1 Introduction and definitions

The effects of armed conflict on the physical and mental health and psychosocial well-being of victims are vast.<sup>1</sup> Also in Sierra Leone, the combined effects of pervasive human rights abuses, large-scale war crimes and crimes against humanity, prolonged conflict and massive displacement have had a devastating impact on the health and well-being of the Sierra Leonean people.<sup>2</sup>

This paper describes the psychosocial impact war-related crimes had on the victims in Sierra Leone. It gives an overview of short- and long term effects on adults and children directly and indirectly harmed by atrocities, and of the impact of crimes on their families and communities. Further, there is a focus on particular groups of victims. The impacts on children - in particular separated children, children who were victims of atrocities or witnessed atrocities, children formerly associated with the fighting forces; women and girls victims of sexual violence as well as victims of amputation or mutilation, are analysed.

At the individual level, psychological suffering of victims during and after armed conflict is often described with the term 'traumatisation', 'trauma' or 'post traumatic stress'. In a clinical context the term Post Traumatic Stress Disorder (PTSD) is also used. This psycho-diagnostic term refers to a set of symptoms that frequently occur as a result of a terrifying, uncontrollable and unpredictable experience. Such a 'traumatic event' is an occurrence in which both of the following were present: (a) the person experienced, witnessed or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the

<sup>1</sup> WHO, (2002). *World Report on Violence and Health*. P. 215 – 239. Available at: [www.who.int/eng](http://www.who.int/eng)

<sup>2</sup> Truth and Reconciliation Commission Sierra Leone (2007). *Chapter four: The Nature of the Conflict*. Vol. 3A. Available at: <http://trcsierraleone.org/drwebsite/publish/v3a-c4.shtml>

de Jong, K., Mulhern, M., Ford, N., van der Kam, S., Kleber, R. (2000) *The trauma of war in Sierra Leone*. The Lancet, Volume 355, Issue 9220, Pages 2067-2068.

Physicians for Human Rights, (2002). *War-Related Sexual Violence in Sierra Leone. A population-based Assessment*. Boston: Physicians for Human Rights. Available at: [www.phrusa.org](http://www.phrusa.org)

physical integrity of others; (b) the person's reaction involved intense fear, helplessness, or horror.<sup>3</sup>

A diagnosis of PTSD can be made if the person exhibits a certain combination of symptoms as a consequence of exposure to traumatic events. The diagnostic criteria include symptoms of intrusion - such as recurrent thoughts about the trauma, nightmares, flashbacks and exaggerated reactions upon exposure to reminders of the trauma; symptoms of avoidance - such as efforts to avoid thoughts about the event, efforts to avoid places or activities which remind of the trauma, emotional indifference or numbness; and symptoms of increased arousal - such as irritability, insomnia, poor concentration and hyper-vigilance.<sup>4</sup>

However, the concept of post traumatic stress disorder has a narrow focus and does not capture all psychological consequences of war-related atrocities for victims. It describes just one manifestation of psychological disorders resulting from war and violence. Often, a general increase of mental illness is observed in the aftermath of war, especially anxiety disorders, depression, substance abuse, anti-social and suicidal behaviour.<sup>5</sup> In addition, the concept of PTSD does not consider the impact of traumatisation on the family system or the entire social surrounding. It also does not cover the variety of cultural manifestations of grief and individual responses to the experiences. Finally, while PTSD is often attributed to one triggering event, in reality traumatisation in war is often due to years of violence and long-lasting, recurrent traumatic experiences.<sup>6</sup>

In a context of widespread atrocities and prolonged violence, like it was the case in Sierra Leone, it is therefore important to look at consequences in a psychosocial framework, which includes the psychological and the social perspective. In this paper the term 'psychosocial impact' is therefore used. This focus addresses the impact of war-related crimes on the individual, the family, community and society; and recognises the inextricable interconnection between effects at these different levels.

The term psychosocial "underlines the dynamic relationship between psychological effects and social effects, each of which continually influences the other. Psychological effects are those that affect emotion, behaviour, thoughts, memory, learning ability, perceptions and understanding. Social effects refer to relationships altered by death, separation, estrangement and other losses; family and community breakdown; damage to social values and customary practices; and the destruction of social facilities and services. They also extend to the economic dimension, for war leaves many individuals and families destitute, destroying their capacity to support themselves and maintain their standing in society".<sup>7</sup>

The paper describes in qualitative terms the psychosocial impact of atrocities committed during the Sierra Leonean conflict on victims, their families and the society at large. It focuses on the various impacts and psychosocial consequences the crimes had on victims.

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<sup>3</sup> American Psychiatric Association (2000). *Diagnostic and Statistical Manual of Mental Disorders – DSM-IV-TR Classification*. Available at: <http://www.psychiatryonline.com/content.aspx?aID=3357#3357>

<sup>4</sup> Ibid.

<sup>5</sup> WHO, (2002). p. 222 - 224.

de Jong, J., Komproe, I, Van Ommeren, M. (2003). *Common mental disorders in post-conflict settings*. The Lancet 2003; 361:2128-2130.

<sup>6</sup> GTZ (2003). *Development-oriented trauma healing in post-war situations*; p. 8. Available at: <http://www.gtz.de/de/dokumente/en-trauma-healing.pdf>

<sup>7</sup> UNICEF definition, in: Machel, G. (2001). *The impact of war on children: A review of the progress since the 1996 United Nations Report on the impact of armed conflict on children*. UNICEF/UNIFEM: Hurst & Company, London. p. 80 – 81.

Findings in this paper are based on current literature on the different aspects of the psychosocial impact of the war and war-related crimes on victims, on studies carried out in Sierra Leone and on the specific experience the author gathered in Sierra Leone. As the psychologist of the Witnesses and Victims Section I worked with many OTP witnesses for the RUF, AFRC and CDF trials at the Special Court for Sierra Leone. Many of these witnesses were victims of atrocities or witnessed atrocities: women victims of sexual violence, victims of amputations or mutilations, children, in particular ex-combatants, civilians who lost close family members and livelihoods in the war. I regularly carried out psychosocial vulnerability assessments of witnesses in Freetown and other provinces and cooperated closely with several NGO's and Agencies. Observations made during my work are integrated in this report.<sup>8</sup>

## **1.2 Psychosocial impact on the individual victims, their families, communities and the society**

The psychosocial impact of the crimes committed during the armed conflict in Sierra Leone must be looked at on different levels: the individual, family - community and societal level.

### ***1.2.1 Impact on individual victims***

At the individual level, the horrendous atrocities committed during the war in Sierra Leone resulted in massive physical and psychological suffering for the victims. Many of them suffered from psychological reactions after direct and often repeated exposure to such terrifying events.

A very large part of the Sierra Leonean population has been a direct victim of atrocities or has witnessed atrocities. Many suffered from abductions, sexual violence, beating, killing, torture, forced labour or deliberate amputations. But also witnessing attacks on villages or destruction of houses, exposure to cross fire, bombing or mortar fire were common.<sup>9</sup>

I observed that the loss of loved ones, the suffering from physical injuries or disability and the destruction of livelihoods caused by the atrocities have led for many victims to situations of prolonged and complicated grief. Lack of information about the fate of those disappeared or separated and the impossibility to carry out the proper burial and commemoration rituals have hindered the recovery process for many even further. Moreover, the impact of the disruption of family and community ties and the economic consequences of the war also caused direct and indirect psychological suffering.

Many victims I assessed suffered from feelings of anxiety, anger, hopelessness or lack of control; intrusive thoughts and nightmares, sleeping problems, increased irritability or a lack of emotional responsiveness. Some victims tend to avoid places, people and activities that are

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<sup>8</sup> I worked as a psychologist for the WVS between September 2003 and May 2005. I was assisted in my work by a team of Sierra Leonean psychosocial assistants. Currently, I am working as an expert-consultant focusing on psychosocial interventions in conflict and post-conflict regions for several international organisations.

See also: Michels, A. (2004) Expert declaration in the '*Prosecution motion for modification of protective measures for witnesses*'. Prosecution v Norman, Fofanah, Kondewa, case no. SCSL -2004-14-PT and in Prosecution v Sesay, Kallon, Gbao, case no. SCSL - 04 -PT.

Michels, A. (2006) *As if it was happening again: supporting especially vulnerable witnesses, in particular women and children, at the special court for Sierra Leone*. Chapter 10 in: International criminal accountability and the rights of children. Arts, K. and Popovski, V. The Hague: Hague Academic Press.

<sup>9</sup> de Jong, K., Mulhern, M., Ford, N., van der Kam, S., Kleber; R. (2000).

Physicians for Human Rights, (2002), p.3.

associated with the events. Some victims suffer from feelings of shame about what happened to them and guilt about the fact they survived the atrocities, while many others did not. Frequently, victims also expressed distress through somatic problems such as headaches, non-specific pains or discomfort.<sup>10</sup> A number of victims suffered from symptoms of severe traumatisation, like dissociation or acute anxiety or developed suicidal thoughts. Some victims have developed serious mental health disorders in the aftermath of the atrocities.<sup>11</sup> While for many victims the psychological and psychosomatic reactions have decreased or will decrease over time, for many others the severe psychological reactions continue to have an important impact on their daily occupation and ability to cope with the extensive poverty and difficult living conditions in Sierra Leone. Grief and emotional suffering also impact on the capacity to fulfil the role of care-giver or breadwinner, and have as such a long-term impact on the emotional well-being of children of victims, also of those who are growing up in the years after the conflict.

### 1.2.2 *Impact on families and communities*

The atrocities committed during the conflict in Sierra Leone not only targeted individuals but also families and community structures. Acts of extreme violence aimed at and resulted in a disorganisation and disintegration of links within families and communities.

Numerous examples show how the social cohesion was deliberately destroyed. Heads of households were brutalised and killed in the presence of their children and family members. Girls, mothers and grandmothers were raped in front of fathers and husbands. Family members were forced to conduct sexual acts in front of community members. “The humiliation, pain and fear inflicted by the perpetrators served to dominate and degrade not only the victim but also her community.”<sup>12</sup> Boys and girls were forcefully abducted and conscripted into armed groups. In many cases, their links with their families were deliberately severed through forcing them to commit horrendous atrocities against family or community members.<sup>13</sup> People were often randomly singled out from their community to be amputated or killed. Men, women, boys and girls were abducted and forced to slave labour or were used for sexual slavery, many became so-called ‘bush wives’. In the Sierra Leone conflict “the entire population directly or indirectly went through extremely violent experiences which deeply affected their ability to be linked to other people, including members of their family and community.”<sup>14</sup>

Widespread atrocities forced many Sierra Leoneans to flee. The displacement of a large part of the population, as well as the deliberate destruction of homes, schools, hospitals, churches and mosques contributed to the severe social disruption and emotional distress among the population.<sup>15</sup>

<sup>10</sup> See also: de Jong, K., Mulhern, M., Ford, N., van der Kam, S., Kleber, R. (2000). WHO, (2002).

<sup>11</sup> See also: Asare, J., Jones, L. (2005). *Tackling mental health in Sierra Leone*. British Medical Journal 2005; 331:720. Available at: <http://www.bmj.com/cgi/content/full/331/7519/720-b>

<sup>12</sup> Human Rights Watch. (2003) “*We’ll kill you if you cry.*” *Sexual violence in the Sierra Leone conflict*. Vol.15, No.1., p. 4.

<sup>13</sup> Truth and Reconciliation Commission of Sierra Leone. (2007) *Chapter 4: Nature of the Conflict*. Vol3a. p.16. Available at: <http://trcsierraleone.org/drwebsite/publish/v3a-c4.shtml?page=16>

<sup>14</sup>Gbega, V., Koroma, H. – Handicap International. (2006). *The psychological impact of civil war in Sierra Leone*; p. 5. Available at: [http://www.child-soldiers.org/psycho-social/Psychological\\_Impact\\_of\\_Civil\\_War\\_in\\_Sierra\\_Leone\\_\(2006\)\\_by\\_Victor\\_E.M.\\_Gbegba\\_and\\_Hassan\\_Koroma.pdf](http://www.child-soldiers.org/psycho-social/Psychological_Impact_of_Civil_War_in_Sierra_Leone_(2006)_by_Victor_E.M._Gbegba_and_Hassan_Koroma.pdf)

<sup>15</sup> Plan International - Gupta, L. (2000). *Psychosocial Assessment of displaced children exposed to war related violence in Sierra Leone*. Available at: [www.reliefweb.org](http://www.reliefweb.org)

The destruction of families, communities and the social fabric aggravated the impact of war crimes on individual victims. It undermined the role of families and community structures as a source of support and adaptation, thus exacerbating the impact of symptoms of trauma and stress on victims. In many stories victims told me, it became also clear that social disruption itself caused psychological suffering. Especially children suffer from social disruption, since a predictable social environment and stable attachment to care-givers are crucial for their psychosocial development.<sup>16</sup>

### 1.2.3 Impact on the society

War crimes targeted people's belief systems and cultural heritages. "Traditional and community meeting spaces and institutions were demolished and desecrated. People were forced to commit sacrilege against symbols of their religion or faith. Certain groups like property owners, chiefs, figures of traditional authority and representatives of government institutions were targeted on the basis of revenge, economic appropriation and because of their ethnicity."<sup>17</sup> Many violent acts constituted a transgression of taboos - like murder, incest and cannibalism – or an appropriation of acts normally limited to authoritative spaces and figures – like initiation rituals. This contributed further to the rupture of psychological, social and cultural boundaries within the Sierra Leonean society.<sup>18</sup>

The impact of atrocities on families, communities and the society as a whole has weakened communities and is reflected in many of the social problems people in Sierra Leone are facing today. Psychological suffering of victims, their exclusion from communities and destruction of social fabric exacerbates the prevalence of violence, especially sexual and domestic violence, alcoholism, child abuse and other problems impacting on the psychosocial well-being of the population. Pervasive poverty, partly also caused by the deliberate destruction during the war, also influences the scope and the impact of these problems.<sup>19</sup> Domestic violence, already very common in Sierra Leone before the war, has increased since the conflict.<sup>20</sup> Prostitution has increased.<sup>21</sup> Many children continue to be exposed to violence, abuse and exploitation.<sup>22</sup>

<sup>16</sup> See also: Summerfield, D. (1998). *The social experience of war and some issues for the humanitarian field*. In: Bracken, P., Petty, C. Eds. (1998) *Rethinking the trauma of war*; p. 9 - 37. London: Free Association Books Ltd.

Gbega, V., Koroma, H – Handicap International. (2006).

<sup>17</sup> Truth and Reconciliation Commission of Sierra Leone. 2007. *Chapter 2: Executive summary*. Vol2. p.5.

<sup>18</sup> Heeren, N. - Handicap International (2004). *Sierra Leone and civil war – Neglected trauma and forgotten children*. Available at: [http://www.child-soldiers.org/psycho-social/Sierra\\_Leone\\_and\\_Civil\\_War\\_Neglected\\_Trauma\\_and\\_Forgotten\\_Children\\_\(2006\)\\_by\\_Nicolas\\_Heeren.pdf](http://www.child-soldiers.org/psycho-social/Sierra_Leone_and_Civil_War_Neglected_Trauma_and_Forgotten_Children_(2006)_by_Nicolas_Heeren.pdf)

Human Rights Watch. (2003).

See also: Gbega, V., Koroma, H – Handicap International. (2006).

<sup>19</sup> Ward, J. (2002). If not now, when? *Addressing Gender-based violence in Refugee, Internally Displaced and Post-conflict Settings – Country Profile: Sierra Leone*. New York: RHRC; p. 35 – 41.

Physicians for Human Rights, (2002), p.55.

HRW (2003); p. 19.

Gbega, V., Koroma, H – Handicap International. (2006).

<sup>20</sup> HRW (2003); p. 19.

Ward, J. (2002); p. 37.

<sup>21</sup> UN - ECOSOC (2002). *Report of the special rapporteur on violence against women, its causes and consequences – Addendum: Mission to Sierra Leone*. E/CN.4/2002/83/Add.2.; para. 87. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G02/107/32/PDF/G0210732.pdf?OpenElement>

Prostitution has also increased due to other direct and indirect consequences of the conflict in Sierra Leone, e.g. the presence of peacekeepers, humanitarian workers and others.

<sup>22</sup> See below: 'Separated children'.

### 1.3 Factors aggravating the psychosocial impact of the atrocities during the Sierra Leonean conflict

A number of particular factors can be identified that have aggravated the psychosocial impact of the atrocities committed Sierra Leonean conflict on the victims.

As mentioned earlier, the deliberate destruction of the social fabric has had a devastating impact on victims, their families, communities and the wider society. The impact will be felt in generations to come. Given the vital role of the family and community in the functioning of Sierra Leonean society, this will have long-term and serious consequences. Within Sierra Leonean society, all individuals belong and are affiliated to groups, which form the cornerstone of the individual identity. Kinship connections extending well beyond the nuclear family provide a structure for many interpersonal relations in Sierra Leonean communities. They traditionally also provide the basis for the formation of groups that carry out a range of social, political and economic activities. Also secret societies are traditionally significant to the social, religious and political life of many ethnic groups in Sierra Leone.<sup>23</sup> The widespread atrocities and massive displacement have shattered many of these relationships and networks, leaving many adults, but especially also children, deprived from the protection and support of their community.

A closely related aspect is the stigmatisation and exclusion of victims from their communities as a direct result of the atrocities committed against them. There have been reports of victims of sexual violence having been stigmatised and rejected by their family and community.<sup>24</sup> Particularly at risk for exclusion and stigmatisation were women and girls who had been abducted and forced to become sex slaves or 'bush wives'. Especially those who returned with children born in the bush frequently faced exclusion and rejection by their communities. Many victims of rape and abduction turned to prostitution as they feel that this is the only option available to them.<sup>25</sup> Also boys and girls associated with fighting factions faced stigmatisation and exclusion by the society. Victims explained me that the rejection and isolation made reintegration more difficult and hampered their return to a normal life, thus slowing down their psychosocial recovery as well as the well-being of them and their children.

In the conflict in Sierra Leone, boundaries between victims and perpetrators were often blurred. Adults and children were abducted and forced to commit crimes or joined armed groups voluntarily. Women and girls were forced to build up family-relations with their captors. Many became victim and perpetrator at the same time. I observed that the lack of a clear victim status, often accompanied by strong feelings of shame and guilt, complicates recovery at individual and community level. Many victims also have the feeling to 'have to live together' with their perpetrators, a factor which impedes the re-establishment of social cohesion.

Finally, victims often described what has happened to them during the conflict as incomprehensible. The increasing absence of ideology, growing anarchy and widespread war

<sup>23</sup> Gbega, V., Koroma, H – Handicap International. (2006).

Kaplan, I. (1991) *Countries of the world: Sierra Leone*. Chapter 5A: The social system. Available at: [www.highbeam.com](http://www.highbeam.com)

<sup>24</sup> Human Rights Watch. (2003).

<sup>25</sup> UN - ECOSOC (2002). *Report of the special rapporteur on violence against women, its causes and consequences – Addendum: Mission to Sierra Leone*. E/CN.4/2002/83/Add.2.; para. 86 – 87. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G02/107/32/PDF/G0210732.pdf?OpenElement>

crimes during the conflict have limited the possibility for victims to give meaning to or 'make sense' of their suffering, factors that are known to be protective against severe traumatisation.<sup>26</sup>

## 2. Impact on Particular Groups of Victims

### 2.1 Children

“War undermines the very foundations of children’s lives, destroying their homes, splintering their communities and shattering their trust in adults. It affects every aspect of a child’s development – physical, emotional, intellectual, social and spiritual.”<sup>27</sup>

In Sierra Leone, children were among the main victims of atrocities. Exposure to extreme violence, but also its consequences like displacement, the lack of access to education and health care have affected children’s development and denied their childhood. The effects are enduring and far-reaching.

Although all children have been affected, some groups have particularly suffered from the impact of war crimes.

#### *2.1.1 Children victims of atrocities or witnessing atrocities*

Children in Sierra Leone who were direct victims of atrocities or witnessed atrocities – often against parents or siblings – suffered from physical and psychosocial consequences of these acts. Studies show that children who are confronted with atrocities in war often develop severe stress reactions such as intense feelings of fear or anger and sleeping problems. Young children frequently show signs of regression, anxiety and disturbed attachment. Older children often suffer from signs of depression and anxiety; intrusion of stressful memories; withdrawal and isolation, poor concentration often combined with learning disorders and conduct disturbances. Adolescents may develop severe depressions, sometimes in combination with suicidal thoughts. In addition, some children develop psychosomatic complaints such as headaches or stomach pains.<sup>28</sup> Also in Sierra Leone, these reactions were observed frequently.<sup>29</sup> The psychological reactions to traumatic events impacted on the children’s ability to engage with the world around them and to engage in important routines such as play and school.

Children cope differently with the impact of atrocities in Sierra Leone. The effects depend to a large extent on the frequency and length of the exposure to and severity of atrocities, the individual character of the child and its social environment. Some children recovered after

<sup>26</sup> Summerfield, D. (1998). *The social experience of war and some issues for the humanitarian field*. In: Bracken, P., Petty, C. Eds. (1998) *Rethinking the trauma of war*; p. 9 - 37. London: Free Association Books Ltd.

Rafman, S. (2004) *Where the political and the psychological meet: moral disruption and children’s understanding of war*. International Relations 2004; 18; 467 – 479.

<sup>27</sup> Machel, G. (2001). *The impact of war on children: A review of the progress since the 1996 United Nations Report on the impact of armed conflict on children*. UNICEF/UNIFEM: Hurst & Company, London, p. 80.

<sup>28</sup> Machel, G. (2001).

UN, General Assembly (1996). Promotion and protection of the rights of children, Impact of armed conflict on children – Note by the Secretary General. A/51/306. para. 166 – 171. Available at: <http://www.un.org/documents/ga/docs/51/plenary/a51-306.htm>

<sup>29</sup> Gupta, L. (2000).

their return to a stable environment, while others displayed distress as soon as some degree of stability and security in their environment was established. Generally, children who have supportive families and peers and who feel secure in their communities, have a greater capacity to develop resilience and overcome the negative psychosocial impact of atrocities.<sup>30</sup> Displacement as a result of atrocities committed contributed to the breakdown of families and community structures and aggravated the psychosocial impact of atrocities on children. The traumatic experiences and the disruption of families and communities will for many children have a profound effect on their adult development.

**2.1.2 Separated children**

The thousands of children who have lost or were separated from their parents or guardians - often in very violent circumstances - had to deal with the loss of important attachment figures. The events surrounding the loss of a close relationship are among the most significant in the development of life-long scars in children.<sup>31</sup> In the process of breakdown of families and communities many children also became separated and often unaccompanied, deprived of the care from adults. Some of them had to become heads of household and had to take care of siblings. The loss of attachment figures and of a stable social environment made these children much more vulnerable for subsequent abuse and exploitation. Very often unaccompanied children and child-headed households did not have access to basic necessities such as food or shelter, which impacted on the children’s physical and psychosocial development.<sup>32</sup> Several young victims told me their stories of abandonment and struggle to survive after their families were ripped apart.

The destruction of the social fabric as a result of war crimes has an impact on the situation of children in Sierra Leone today. While it was possible to reunite many separated or unaccompanied children with their families during or after the conflict, many children ended up in orphanages or in foster care.

Up to this day a considerable number of children does not live with their family. In some cases, their parents have died, but also the care of the extended family is often not available, in large measure because of the strain of the consequences of atrocities on families and communities. A number of them have been rejected by their communities and live in the streets.<sup>33</sup> Children continue to be exposed to violence, exploitation, abuse and deprivation. Sexual and gender-based violence against children remains a serious concern.<sup>34</sup>

**2.1.3 Child soldiers**

The recruitment and use of children by fighting forces became one of the trademarks of the conflict in Sierra Leone. Boys and girls were used as combatants, body-guards, sex-slaves,

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<sup>30</sup> Machel, G. (2001), p. 83.  
Rafman, S. (2004) *Where the political and the psychological meet: moral disruption and children’s understanding of war*. International Relations 2004; 18; 467 – 479.  
<sup>31</sup> Machel, G. (2001) p.82.  
<sup>32</sup> Gupta (2000).  
<sup>33</sup> Consortium for Street Children. *Situation in Sierra Leone*. Available at: <http://www.streetchildren.org.uk/resources/details/?type=country&country=25>  
<sup>34</sup> According to UNICEF, about 11 percent of children are orphans and 20 percent do not live with their biological parents.  
UN News Centre. *UN welcomes Child Rights Bill in Sierra Leone*. 13 June 07. Available at: <http://www.un.org/apps/news/story.asp?NewsID=22884&Cr=Sierra&Cr1=Leone>



cooks, porters or messengers. The involvement of children in the activities of armed groups has exposed them to risks of death, combat-related injuries and other health hazards. For those who survived, the psychosocial impact of their experiences is significant.

Ex-child combatants have to bear a double burden: they were victims and perpetrators and have to deal with the complex mental and moral consequences of that fact. In my work with child ex-combatants, I observed that while some children show difficulties to acknowledge the past and to re-adapt to social and moral norms of the Sierra Leonean society, others struggle with deep-seated feelings of shame, guilt and worthlessness. Behavioural disorders, like poor control of aggression or inappropriate risk-behaviour; affect-deregulation, like mood-swings or numbness; nightmares and flashbacks; poor concentration and memory; anxiety and substance abuse have been observed regularly among former child-soldiers. Their traumatic experiences have a deep mental impact that can affect them until and throughout adulthood.<sup>35</sup>

While signs of stress and some of the behavioural and emotional disorders might disappear over time, they often form obstacles for the sustainable reintegration of children in their community. The transition from child soldier back to child is generally very hard and the reintegration of child ex-combatants in their communities is often difficult. Many children also find it difficult to disengage from the idea that violence is a legitimate means of achieving their aims, particularly when confronted with frustration or a feeling of injustice.<sup>36</sup> The process of emotional attachment to parents and other relatives – crucial in the psychological development of a child – is often severely disturbed. Many children were forced to commit atrocities against their families, with the purpose to break bounds and to prevent them from returning to their community. Commanders frequently became attachment figures for these children. In spite of suffering and abuse, children developed an ambiguous loyalty as ‘insiders’.<sup>37</sup> Former child soldiers also told me that the stigmatisation as a ‘rebel’ by the community often formed an obstacle to develop normal social contacts and to reintegrate in the society.

Finally, children who spent a large part of their formative years in the bush have experienced a physical and psychosocial development gap, caused by lack of education, chronic malnutrition, harsh living conditions, drug-abuse and exposure to a climate of violence and distorted moral values. I observed that for some children this gap was hard to fill, and formed an additional challenge for their future.

## 2.2 Victims of sexual violence

In Sierra Leone, women and girls who have been victims of sexual violence during the conflict have to live the consequences of extremely brutal and humiliating acts, often carried out in public and in the presence of family members. The psychosocial impact of sexual violence is far-reaching and often underestimated.

Sexual violence like rape – often very violent rape, sometimes carried out by several perpetrators, with foreign objects or accompanied by sexual mutilation or beatings - have led for many women and especially young girls to extensive physical health consequences. Many victims of sexual violence in Sierra Leone suffered from physical injuries, like fractures or haemorrhages; chronic health conditions, including fistula's<sup>38</sup>, chronic pain and

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<sup>35</sup> Michels, A. (2006).

See also: WHO, (2002).

<sup>36</sup> Machel, G. (2001), p. 20.

<sup>37</sup> Michels, A. (2004).

<sup>38</sup> Vasio-vaginal fistula (VVF) and Recto-vaginal fistula (RVF).

gastrointestinal disorders, pelvic inflammatory disease and sexually transmitted infections, including HIV/AIDS; miscarriages; injuries or death after unsafe abortions. Injuries have caused and still cause obstetric problems in later pregnancies of victims. Physical injuries like fistula - accompanied by chronic incontinence for urine or faeces- have led to social rejection or isolation from families and communities.<sup>39</sup>

The victims of sexual violence I assessed very often showed symptoms of severe post traumatic stress and reported strong feelings of hopelessness and worthlessness, shame and guilt. Some of the psychological effects can radically change a victim's course of life. Women often expressed the feeling that 'their life has ended'. For young girls who were targeted because of their virginity, the fact that they were 'less eligible for marriage' after rape, sometimes stigmatised by their communities, reinforced their feelings of hopelessness.<sup>40</sup> The physical and psychosocial consequences of sexual violence have been aggravated because of the fact that many women and girls did not have access to health care. Many of them also did not dare to report or seek health care after rape, out of shame or justified fear for retaliation or rejection. As a result, many of them continue to suffer from serious medical conditions, they remain isolated and are not able to share their psychological suffering.<sup>41</sup>

Ongoing medical problems affecting the reproductive health of victims of sexual violence caused for many of them additional stress, psychological suffering and problems with sexuality and relationships. Some women told me that it was impossible for them to find a (new) partner after the sexual violence. Life as a single woman, sometimes as head of household, had often also dramatic economic consequences for the women and their children.

### **2.2.1 Women and girls, victims of abduction, sexual slavery and forced marriage**

Women and girls who were abducted and served as sex-slaves or were forced to 'marry' one of their abductors struggle with complex psychosocial consequences of long-lasting sexual abuse. Victims I spoke with suffered from the consequences of sexual violence, as well as from the psychological impact of the relationship with their aggressors and of the power they had over them, including over their fate and life. Their internal conflict is just as important as the social stigma and the lack of recognition as a victim. They had to deal with feelings of shame and guilt, but also with the emotional attachment to the 'husband', often strengthened by the presence of 'rebel children' born in the bush. These women and girls often show an ambiguous loyalty towards their husband-perpetrator, a relationship frequently marked by abuse, but also by protection and status. For, being a 'rebel's wife' often saved their life and granted them special benefits.

The psychological complexity of the bond, the economic security the relationship may offer, but also the fear for rejection by the community made some women and girls choose to remain with their captors. Very often this situation prevents them from finding peace and coping with the past.<sup>42</sup>

<sup>39</sup> HRW (2003).

<sup>40</sup> See also: UN - ECOSOC (2002)., para. 55.

<sup>41</sup> Human Rights Watch. (2003).

UN General Assembly (2006) *In-depth study on all forms of violence against women*. Report of the Secretary-General. A/61/122/Add.1. Available at: <http://www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm>

Physicians for Human Rights, (2002).

<sup>42</sup> Michels, A.(2006), p. 137.

Physicians for Human Rights, (2002), p. 76.

### 2.3 Victims of amputation and mutilation

Surviving victims of amputation and mutilation will for the rest of their lives be confronted with the physical and mental scars of these dehumanising acts and of the power of their aggressors who intentionally maimed them.

Victims of amputation or mutilation have to cope with significant physical suffering and disability. Victims, whose ears, nose or lips have been cut off, suffer from serious disfigurement and disability, often leading to stigmatisation and exclusion.

Amputation, mostly of one or both hands or arms, has made many victims in Sierra Leone partly or fully dependent on others for daily care and support. As such, amputation was also a factor in breaking down social strengths and links in families and communities. Most of the amputees I assessed were no longer able to earn their living, take care of their family, fulfil their role in the community or carry out basic daily chores. This has brought many victims and their families into a very difficult socio-economic situation. Some amputees have turned to begging in the streets to provide for their families. The fact that a large number of them lived for a very long time in so-called 'Amputee camps', increased the isolation from their communities and reinforced to a certain extent the stigmatisation and dependency.

For victims the physical trauma and the psychological suffering are closely interrelated. Amputation can lead to so-called phantom pains, which can cause significant chronic discomfort and pain in the limb which is no longer there. Many victims described the pains as a very painful daily reminder of their loss. While the pains have a neurological cause, they are often also an expression of emotional suffering and grief over the loss of their bodily integrity.

Deliberate amputation or mutilation of a human being by another has very specific psychological effects.<sup>43</sup> Amputation or mutilation is not only an extremely traumatic experience, it also dehumanises the victim and the aggressor. Some victims told me that they were forced to make an impossible choice: between 'a short sleeve' or 'a long sleeve', between being killed or being maimed, between being amputated themselves or having to watch the amputation of a family member. By keeping the victim alive and by literally 'marking' him or her – sometimes even with the letters of the name of the rebel group who carried out the act – the perpetrators left a permanent reminder of their omnipotence over the victims, and over the Sierra Leonean society as a whole. This experience has caused significant psychological suffering among many victims and their families and makes rehabilitation a very difficult and long process.

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<sup>43</sup> Heeren, N. – Handicap International (2004), p. 9.

Christodoulou, A., (2003) *Amputations in the Sierra Leone Conflict*, in: Truth and Reconciliation Commission of Sierra Leone. (2007), Appendix 5.

### 3 Conclusion

In Sierra Leone, the pervasive atrocities committed during the years of conflict have had a devastating impact on the psychosocial well-being and physical health of the victims, their families and communities, as well as on the society as a whole. Many Sierra Leoneans directly or indirectly suffer from the psychosocial impact of the atrocities committed during the conflict.

A very large part of Sierra Leoneans has been directly affected: they were a direct victim of atrocities; they witnessed atrocities; they were forced to take part in atrocities; they lost family members; the atrocities forced them to flee; their livelihood was destroyed or they lost the protective support from parents or caretakers.

The war crimes have resulted in massive physical and psychological suffering. While for many the psychological and psychosomatic reactions have decreased or will decrease over time, for many others severe psychological reactions continue to have an important impact on their lives. Some victims have developed serious mental health problems in the aftermath of war.

Acts of extreme violence targeted on families and communities and have resulted in a disintegration of links within families and communities. This fact increased the impact of the atrocities on individual victims since it undermined the role of families and community structures as a source of support and adaptation. The impact is also reflected in an exacerbation of the many social problems Sierra Leone is facing today and will be felt in generations to come.

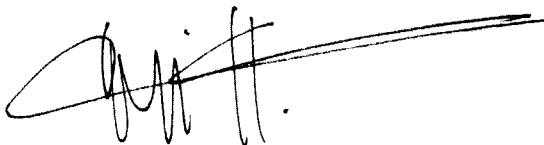
A number of factors have aggravated the psychosocial impact of the atrocities. Family and community play a vital role in the functioning of Sierra Leonean society and in the individual identity of Sierra Leoneans. This fact has made the destructive impact of the crimes on social relationships and networks particularly significant. In addition, many victims have suffered from stigmatisation and rejection by communities as a direct result of the crimes committed against them. Also the fact that boundaries between victim and perpetrator were often blurred has complicated recovery at individual and community level. Finally, the increasing absence of ideology and growing anarchy during the conflict have made it impossible for most victims to give meaning to their suffering.

The psychosocial impact on particular groups of victims requires special attention. Children, growing up during and after the conflict, have suffered in particular from the devastating impact of atrocities on their social environment. Separated and unaccompanied children, children victims of atrocities or witnessing atrocities face particular psychosocial problems. Child ex-combatants were perpetrator and victim and have to live with complex moral consequences of that fact. Their traumatic experiences have impacted on their development and can affect them throughout adulthood. Their reintegration is a difficult process. The psychosocial impact of war-related sexual violence on women and girls is far-reaching and often underestimated. Many victims of sexual slavery, especially victims of forced marriage, have to live with the complex psychological consequences of emotional attachment to their captors and of the presence of children born in captivity. Deliberate amputation or mutilation has a very specific psychological effect on victims. The psychological and socio-economic consequences make rehabilitation difficult, for some impossible.

Until today many Sierra Leoneans suffer from the psychosocial impact of killings, abductions, sexual violence, amputations and other war crimes committed during the conflict. Many have been affected directly as victims, almost everyone has to live with destructive impact these crimes had on families, communities and the society as a whole.

Vienna, 27 June 2007

An Michels

A handwritten signature in black ink, appearing to be 'An Michels', with a long horizontal stroke extending to the right.

Expert Witness Report:  
The psychosocial Impact of War-related Crimes on Victims of the Sierra Leone Conflict.

An Michels

Overview of Resource Documents

List of documents in the order of their quotation in the report:

- a) WHO, (2002). *World Report on Violence and Health*; p. 215 – 239. Available at: [www.who.int/eng](http://www.who.int/eng)
- b) Truth and Reconciliation Commission Sierra Leone (2007). *Chapter four: The Nature of the Conflict*. Vol. 3A. Available at: <http://trcsierraleone.org/drwebsite/publish/v3a-c4.shtml>
- c) de Jong, K., Mulhern, M., Ford, N., van der Kam, S., Kleber, R. (2000) *The trauma of war in Sierra Leone*. The Lancet, Volume 355, Issue 9220, Pages 2067-2068.
- d) Physicians for Human Rights, (2002). *War-Related Sexual Violence in Sierra Leone. A population-based Assessment*. Boston: Physicians for Human Rights. Available at: [www.phrusa.org](http://www.phrusa.org)
- e) American Psychiatric Association (2000). *Diagnostic and Statistical Manual of Mental Disorders – DSM-IV-TR Classification*.
- f) de Jong, J., Komproe, I, Van Ommeren, M. (2003). *Common mental disorders in post-conflict settings*. The Lancet 2003; 361:2128-2130.
- g) GTZ (2003). *Development-oriented trauma healing in post-war situations*, p. 6 – 10. Available at: <http://www.gtz.de/de/dokumente/en-trauma-healing.pdf>
- h) Machel, G. (2001). *The impact of war on children: A review of the progress since the 1996 United Nations Report on the impact of armed conflict on children*. UNICEF/UNIFEM: Hurst & Company, London. p. 7 – 25; 80 – 91.
- i) Michels, A. (2004) Expert declaration in the 'Prosecution motion for modification of protective measures for witnesses'. Prosecution v Norman, Fofanah, Kondewa, case no. SCSL -2004-14-PT and in Prosecution v Sesay, Kallon, Gbao, case no. SCSL – 04 –PT.
- j) Michels, A. (2006). *As if it was happening again: supporting especially vulnerable witnesses, in particular women and children, at the special court for Sierra Leone*. Chapter 10 in: International criminal accountability and the rights of children. Arts, K. and Popovski, V. The Hague: Hague Academic Press.
- k) Asare, J., Jones, L. (2005). *Tackling mental health in Sierra Leone*. British Medical Journal 2005; 331:720. Available at: <http://www.bmj.com/cgi/content/full/331/7519/720-b>
- l) Human Rights Watch. (2003) "We'll kill you if you cry." *Sexual violence in the Sierra Leone conflict*. Vol.15, No.1. Available at: <http://hrw.org/reports/2003/sierraleone/>
- m) Truth and Reconciliation Commission of Sierra Leone. 2007. *Chapter 2: Executive summary*. Vol2.

- n) Gbega, V., Koroma, H. – Handicap International. (2006). *The psychological impact of civil war in Sierra Leone*. Available at: [http://www.child-soldiers.org/psycho-social/Psychological\\_Impact\\_of\\_Civil\\_War\\_in\\_Sierra\\_Leone\\_\(2006\)\\_by\\_Victor\\_E.M.\\_Gbega\\_and\\_Hassan\\_Koroma.pdf](http://www.child-soldiers.org/psycho-social/Psychological_Impact_of_Civil_War_in_Sierra_Leone_(2006)_by_Victor_E.M._Gbega_and_Hassan_Koroma.pdf)
- o) Plan International - Gupta, L. (2000). *Psychosocial Assessment of displaced children exposed to war related violence in Sierra Leone*. Available at: [www.reliefweb.org](http://www.reliefweb.org)
- p) Summerfield, D. (1998). *The social experience of war and some issues for the humanitarian field*. In: Bracken, P., Petty, C. Eds. (1998) *Rethinking the trauma of war*; p. 9 - 37. London: Free Association Books Ltd.
- q) Heeren, N. - Handicap International (2004). *Sierra Leone and civil war – Neglected trauma and forgotten children*. Available at: [http://www.child-soldiers.org/psycho-social/Sierra\\_Leone\\_and\\_Civil\\_War\\_-\\_Neglected\\_Trauma\\_and\\_Forgotten\\_Children\\_\(2006\)\\_by\\_Nicolas\\_Heeren.pdf](http://www.child-soldiers.org/psycho-social/Sierra_Leone_and_Civil_War_-_Neglected_Trauma_and_Forgotten_Children_(2006)_by_Nicolas_Heeren.pdf)
- r) Ward, J. (2002). *If not now, when? Addressing Gender-based violence in Refugee, Internally Displaced and Post-conflict Settings – Country Profile: Sierra Leone*. New York: RHRC; p. 35 – 41. Available at: <http://www.rhrc.org/pdf/gbvafrica.pdf>
- s) UN - ECOSOC (2002). *Report of the special rapporteur on violence against women, its causes and consequences – Addendum: Mission to Sierra Leone*. E/CN.4/2002/83/Add.2.; Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G02/107/32/PDF/G0210732.pdf?OpenElement>
- t) Kaplan, I. (1991) *Countries of the world: Sierra Leone*. Chapter 5A: The social system. Available at: [www.highbeam.com](http://www.highbeam.com)
- u) Rafman, S. (2004) *Where the political and the psychological meet: moral disruption and children's understanding of war*. *International Relations* 2004; 18; 467 – 479.
- v) UN, General Assembly (1996). Promotion and protection of the rights of children, Impact of armed conflict on children – Note by the Secretary General. A/51/306. para. 166 – 171. Available at: <http://www.un.org/documents/ga/docs/51/plenary/a51-306.htm>
- w) Consortium for Street Children. *Situation in Sierra Leone*. Available at: <http://www.streetchildren.org.uk/resources/details/?type=country&country=25>
- x) UN News Centre. *UN welcomes Child Rights Bill in Sierra Leone*. 13 June 07. Available at: <http://www.un.org/apps/news/story.asp?NewsID=22884&Cr=Sierra&Cr1=Leone>
- y) UN General Assembly (2006) *In-depth study on all forms of violence against women*. Report of the Secretary-General. A/61/122/Add.1. Available at: <http://www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm>
- z) Christodoulou, A., (2003) *Amputations in the Sierra Leone Conflict*, in: Truth and Reconciliation Commission of Sierra Leone. (2007), Appendix 5.

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**ANNEX H**

**Articles written on the impact of crimes on victims**



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## ANNEX H

### **Articles written on the impact of crimes on victims**

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## Assessing Trauma in Sierra Leone

Psychosocial Questionnaire: Freetown Survey Outcomes  
by Kaz de Jong, Maureen Mulham, and Saskia van der Kam  
January 11, 2000

This report is the product of close cooperation and hard work by a multinational team motivated to bear witness to the anguish suffered by the Sierra Leone population.

Warm thanks to MSF-Holland's medical coordinator in Freetown, Maureen Mulham, for skillfully guiding the survey process. Lo van Beers was instrumental during the data entry process. Special thanks go to the group of Sierra Leonian interviewers and their respondents for the difficult and often painful work of asking and answering the survey questions. For reasons of security, the names of the interviewers/interviewees cannot be given.

— Kaz de Jong, Mental Health Advisor, MSF-Holland (January 2000)

### I. Summary

This report is based on a mental health survey of persons in Freetown, Sierra Leone in May 1999. Several months earlier the city saw fierce fighting that left more than 6000 people dead, an untold number injured and mutilated, and tens of thousands homeless. Many of those affected had gone through similar experiences before, and had fled to Freetown for its relative safety.

The findings only touch on the sufferings of the country's population. The civil war in Sierra Leone began in 1991 and no region has been spared. The residents of Freetown were not alone in their trauma: the country's town and village dwellers too, have often been repeated victims of war, displaced time and again from their homes and subjected to terrible and long-lasting hardships.

Although fighting in the country has largely ceased since the Lome Peace Accord of July 1999, the effects of that war will be with the population for a long time. As this survey makes clear, few escaped the mental trauma of the war zone that Freetown became for more than three weeks in January 1999.

Doctors Without Borders found, among other things, that 99% of those surveyed suffered some degree of starvation, 90% witnessed people being wounded or killed, and at least 50% lost someone close to them. The intensity of the fighting is indicated by the numbers: 65% endured shelling, 62% the burning of their property, and 73% the destruction of their homes. Physical harm was also great: 7% had been amputated (typically a limb, hand, foot or ear), 16% had been tortured by a warring faction, 33% had been held hostage, and 39% had been maltreated in some way or another.

The psychological impact of actually witnessing horrific events imposes a serious psychological stress. Deliberately or not, witnessing at least once events such as torture (54%), execution (41%), (attempted) amputations (32%), people being burnt in their houses (28%) and public rape (14%) often results in traumatic stress or even Post-Traumatic Stress Disorder (PTSD). Almost all respondents reported to have seen wounded people at least once (90%).

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Doctors Without Borders also found, through a technique called the Impact of Event Scale, that the population showed very high levels of traumatic stress. Traumatic stress associated with physical complaints like headaches (38%) and body pains (12%) is reported most frequently.

The psychosocial and mental health consequences of war on civilians are all too often neglected. Even after hostilities cease, the war may continue in people's minds for years, decades, perhaps even generations. To address only the material restoration and physical needs of the population denies the shattered emotional worlds, ignores the broken basic assumptions of trust and benevolence of human beings, and leaves unaddressed the shattered moral and spiritual consequences of war.

After severe conflicts, people seek to forget or deny what happened to avoid painful memories of the past and to escape the sense of hopelessness, humiliation, and anger. But for the direct survivors of violence, acknowledgement of the suffering is a crucial element for making sense of and addressing traumatic experiences. To help a traumatized person there is a need to restore the bonds between the individual and their surrounding system of family, friends, community, and society. Overcoming the extreme stress and sometimes even severe mental health problems associated with mass traumatization such as occurred in Sierra Leone, tests the healing capacity of family and community.

## **II. Background**

### **1. Political Context**

In May 1997, military officers of the self-proclaimed Armed Forces Revolutionary Council (AFRC) overthrew the democratically elected government of President Ahmed Tejan Kabbah and formed a junta with the insurgent Revolutionary United Front (RUF). In February 1998, the West African peacekeeping force ECOMOG ousted the combined AFRC/RUF forces, whose remaining fighters fled to the countryside. President Kabbah was reinstated in office on March 10, 1998. In December 1998 the combined RUF/AFRC forces launched a massive offensive that brought the fighting into the capital, Freetown.

The fighting in Freetown in January 1999 was an intense, violent repetition of the brutality that has become common in Sierra Leone. The rebel forces committed indiscriminate attacks – thousands of executions, abductions, and rapes – on the civilian population. Arson and looting were widespread. ECOMOG forces were implicated in the summary execution of hundreds of suspected RUF fighters. Altogether, some 6000 people died in Freetown over a three-week period and some 150,000 were displaced from their homes. When the rebels were forced to retreat, they cruelly amputated arms and legs and ears of civilians in their custody.

On July 7, 1999 the various parties signed a Peace Accord in Lome. Since then, armed clashes have been sporadic, travel through most of the country is now possible, and Freetown is being rebuilt. But insecurity remains. The inadequately funded and ill-functioning Disarmament, Demobilisation, and Reintegration program has meant that too many armed soldiers and ex-soldiers roam the countryside. Too few of those abducted, including hundreds of children, have been allowed to return home. And continued lawlessness by the armed factions has sharply limited humanitarian access in those regions, particularly in the north and east, where assistance is most needed.

### **2. Medical Context**

Since 1994, Doctors Without Borders has provided medical and nutritional programs in Sierra Leone, including surgery, primary health care support, and water and sanitation. At the end of 1997, a psychosocial program was implemented around Magburaka in central

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Sierra Leone, but because of the security situation, the program was suspended. After the January 1999 events, Doctors Without Borders, through trained local counselors, started psychosocial care to amputees in the hospital in Freetown.

Until recently, emergency medical programs have been dominated by a perspective emphasizing physical health and immediate relief. Behavioral, mental, and social problems were neglected. Since the genocide in Rwanda and the conflict in the Former Yugoslavia, it has become recognized that mental health and psychosocial programs can greatly contribute to the alleviation of the suffering of people in war and disaster-stricken areas (e.g. Ajdukovic, 1997). Focused primarily on the effects of post-traumatic stress, these programs have put the psychological consequences of massive man-made violence on individuals and populations on the agenda of the international community.

Research has shown that nearly all war victims experience recurrent and intrusive recollections, dreams, and sudden feelings of reliving the event (e.g. Bramsen, 1996). These responses are combined with increased arousal, avoidance of stimuli associated with the trauma, and numbing. Through the oscillation between intrusions and avoidance, the psychological integration of the traumatic experience is realized, which has been made clear in cognitive processing models (e.g. Creamer, 1995). Physical symptoms such as headaches, stomach pains, and back pains are often part of this process. These physical symptoms frequently cause persons to seek medical attention. The occurrence of mass PTSD can have a debilitating effect on communities. Daily experience in the field demonstrates that traumatized people impede the restoration of ordinary life and jeopardize conflict resolution.

Besides the mental and physical suffering that people experience, on a spiritual level their fundamental assumptions of control and certainty, as well as basic beliefs in the future and in the benevolence of other people, are also shattered--often beyond repair (Janoff-Bulman, 1992; Kleber & Brom, 1992). Research indicates that the duration and the frequency of traumatic experiences negatively influences physical, mental and spiritual coping mechanisms (e.g. Kleber & Brom, 1992).

Post-Traumatic Stress Disorder (PTSD) is frequently used in connection with traumatic events. The concept is well fitted to describe the serious and prolonged disturbances of individuals confronted with major life events. The distinctive criteria of PTSD (Diagnostic and Statistical Manual of Mental Disorders, 4th ed. (DSM-IV); APA, 1994) are (1) an extreme stress, (2) intrusive and re-experiencing symptoms, (3) avoidance and numbing symptoms, (4) symptoms of hyperarousal, and (5) symptoms of criteria 2, 3, and 4 should be present at least one month. The concept is also included in the International Classification of Diseases (ICD-10) of the World Health Organization (1992). PTSD is strongly associated with dissociation and somatization (McFarlane, Atchinson, Rafalowicz & Papay, 1994; Van der Kolk et al., 1996).

The concept of PTSD should be considered with care for several reasons. First, not all disorders after traumatic events can be described in terms of PTSD. It is not the one and only possible disorder after traumatic events, even according to the DSM system. Comorbidity has been found to be more prominent in trauma patients than was originally assumed (Kleber, 1997). Second, whether western conceptual frameworks on psychological stress and mental disorders can be transferred to different areas of the world are practical as well as theoretical and ethical questions (Kleber, Figley & Gersons, 1995; Summerfield, 1996).

Doctors Without Borders has been addressing the psychosocial problems of the survivors of violence in Sierra Leone before, during and after the January 1999 events. Doctors Without Borders is very concerned that neglect of the mental health and psychosocial problems of the large number of people who are suffering from prolonged traumatic experiences may cause serious problems for the future of Sierra Leone. Simply ending the war does not

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eliminate the problem.

Doctors Without Borders decided to start a psychosocial program in Freetown. As part of its program, a population survey was conducted in Freetown to learn what people experienced, to what extent the events resulted in traumatic stress, and what other medical needs the inhabitants had. In the absence of other psychosocial surveys in emergency situations to serve as a model, the survey instruments were composed and partly designed by Doctors Without Borders.

### **III. Methodology**

#### **1. Target Population & Sample**

The survey was conducted after receiving the permission of the appropriate authorities, during the first two weeks of May 1999, four months after the atrocities in Freetown. Because everyone in Freetown had been subjected to traumatic experiences, both Internally Displaced Persons (IDP's) and residents were included in the sample.

A two-stage cluster sampling method was used, a methodology based on vaccination surveys. The methodology is extensively described in the various handbooks of WHO. The sampling method entails a first phase where 30 clusters are chosen. In the second phase a pre-set number of individuals are chosen per cluster. The sampling technique itself ensures that every individual has an equal chance to be chosen. The result obtained through sampling techniques is an approximation of the real value in the entire population. The real population value is in a range around the value obtained by the sampling method. The narrower the range, the more precise is the estimation. The precision depends on the sample size and the inter-cluster variation and the intra-cluster variation of the specific survey. The precision of the results with this two-stage sampling technique is less than the precision one would get with a random sampling technique.

The sample consisted of 30 clusters of 8 respondents, as the intra-cluster variation was thought to be reasonably small, since most traumatic events take place on a community level and not on an individual level. The sampling frame is based on the 1997 census of the Ministry of Health and UNICEF, which gives a population of 600,000. The rural part of the Western area (encompassing Freetown and its peninsula) was excluded because most of the area was not accessible during the survey for security reasons.

The areas (clusters) were chosen with a chance proportional to the population size. The teams went to the center point of these areas; a pen was spun to determine the direction and every tenth house to the right was selected until the eight necessary for the cluster had been identified. The most senior member of the household present was interviewed. Any refusals were noted and the selection process continued to the next tenth house. There was a note made on each questionnaire of the displaced or resident status of the interviewee. Where the cluster was in a displaced camp one person from each section of the camp was interviewed, depending on the layout of the camp.

Four survey teams were selected. Each team had to conduct eight interviews each day. All interviews were scheduled in the first two weeks. Eight interviews per day per team were the maximum due to the difficult nature of the information gathered.

#### **2. Training**

The survey teams consisted of two trained local counselors who did the interviews and a support team of one expatriate staff member and a driver. The training consisted of the following elements: introduction to Doctors Without Borders, the nature and purpose of the survey, confidentiality of the data and information, survey technique, data registration and

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task division among crews. Some survey questions might have provoked strong emotions, so the counselors received special training on how to deal with them. They were also informed on referral possibilities for those in need of follow-up psychosocial support.

Counselors practiced interviewing skills on each other. The items of the questionnaire were discussed in depth until a final interpretation was agreed on each question. A pilot study of eight interviews was carried out by the teams in the National Stadium IDP site, Kingtom area, Aberdeen Junction and Murray Town. After the pilot interviews, problems of interviewing, sampling and approaching people were discussed. Ambiguities in the questionnaire were addressed. The training (including the pilot study) lasted two days.

### **3. The Interview**

The counselors worked in pairs. After the counselors introduced themselves and Doctors Without Borders, the purpose of the survey was explained to the potential participant. In the introduction it was clearly stated that the participant would not receive any compensation, that the data were treated confidentially and that the interview would last for a maximum of 40 minutes. After the introduction the participant could decide whether to participate. The timing of the interviews was crucial, since people had to be at home and be available.

It was important that the participants completed the survey. To avoid exceeding the interview time it was explained that direct and short answers were necessary. Extra discussions or conversations were avoided. However, the counselors were permitted to stop or interrupt the interview when they deemed the questions to be too emotionally upsetting for the participant. When the counselor believed that the participant needed follow-up support, referral to professional counselors was facilitated.

All teams had a daily technical and emotional debriefing. Further emotional support for the counselors was provided through the Doctors Without Borders psychosocial peer support system for national staff, which was trained by the Doctors Without Borders Amsterdam Public Health Department and Psychosocial Care Unit.

### **4. The Psychosocial Questionnaire**

The structured interview was based on a questionnaire consisting of 35 questions with subdivisions.

To control the time of the interview most questions offered a limited number of alternatives from which the participant could choose. Only two questions in the health section of the questionnaire were open ended. To limit the emotional burden the questions were put as factually and simply as possible. When unclear, a short explanation was allowed. Participants were not allowed to fill the questionnaire later nor were they permitted to study the questionnaire in advance. Interviewers had to respect confidentiality at all times.

No trans-cultural tools to measure traumatic stress are available. To assess the level of trauma, three important indicators of traumatic stress were measured. The first indicator is the presence of a potential traumatic event. The second indicator is the impact of event scale, which expresses the extent of traumatic stress response. The third indicator appraises physical complaints, which likely are correlated to traumatic stress. When all three indicators of traumatic stress were positive, at least strong circumstantial evidence for the prevalence of traumatic stress was found.

The psychosocial questionnaire was composed of four sections. The first section assessed the demographics and personal background of the participant. A second section appraised traumatic events such as exposure to violent situations, who was lost and the traumatic events witnessed. Both the number of traumatic experiences and their length are important

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risk factors in the development of PTSD (Kleber & Brom, 1992).

The third section measured the impact of these events. To measure the prevalence of traumatic stress responses the Impact of Event Scale was used (Horowitz, Wilner & Alvarez, 1979). This psychometric instrument assesses two central dimensions of coping with drastic life events: intrusion and denial. It has been used worldwide and generally consistent structures have been found across samples and situations (Dyregrov, Kuterovac & Barath, 1996; Joseph, Williams, Yule & Walker, 1992; Robbins & Hunt, 1996; Schwarzwald, Solomon, Weisenberg & Mikulincer, 1987; Silver & Iacono, 1984; Zilberg, Weiss & Horowitz, 1982). Despite its wide use, interpretations of the outcomes should be done with appropriate care since the Impact of Event Scale is not validated either for Western Africa or for Sierra Leone.

The final section of the questionnaire evaluated current physical health complaints and needs. PTSD is frequently associated with somatization. Physical symptoms like headaches, stomach problems, general body pain, dizziness or palpitations are often expressed by people suffering from traumatic stress. A high prevalence indicates a possible high level of traumatic stress or PTSD. Physicals are registered by means of open-ended questions. The access to health care and the perceived health levels were registered using the Lickerd scale.

## 5. Data registration

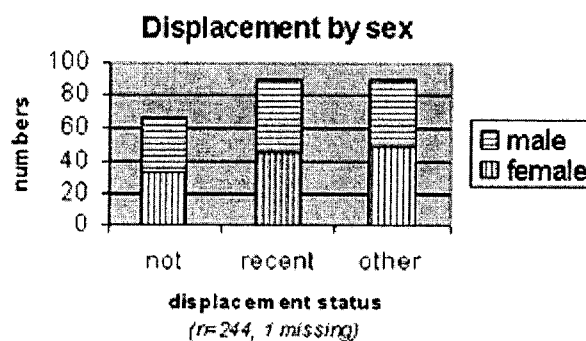
The forms were registered anonymously. Data were entered in a spreadsheet in EXCEL, and data were analyzed by EXCEL and EPIINFO-6.

## IV. Results

All four teams contributed equally to the survey (each 25%). The fixed number of interviews in each cluster (n=80) was extended in four clusters (Old Warf, Aberdeen, Approved School/Kuntoloh, National Workshop). The total number of respondents was 248 (n= 248), of which three respondents were excluded because they were younger than 15 years.

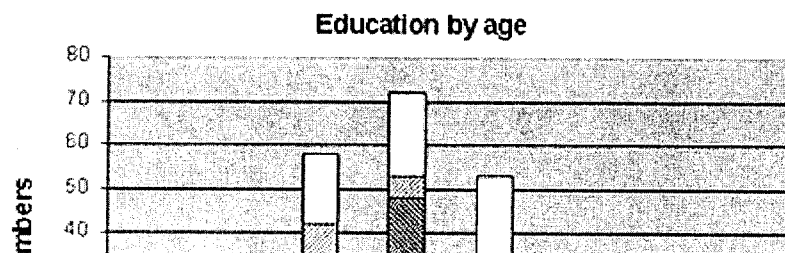
### 1. Demographics (First section)

In total 91 (37%) respondents were recently displaced; only 66 (27%) were residents. The others (37%) could not be placed in one of these categories. A possible explanation is that many people had been displaced in earlier years. About half (52%) of the respondents were female (Confidence interval 95% level: 46.4 - 56.8).



The age of the respondents varies from 15 up to 81 years with a majority of the respondents in the middle age group of 35-44 years (29%). The majority has attended primary school, also in the older age groups; on average 30% have not had formal education.

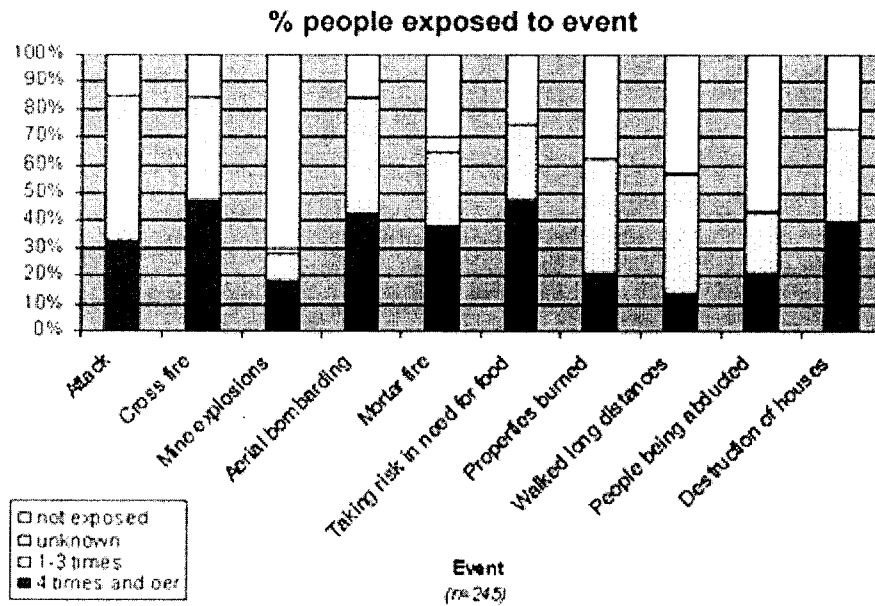
### 2. Appraisal of traumatic experiences (Second section)



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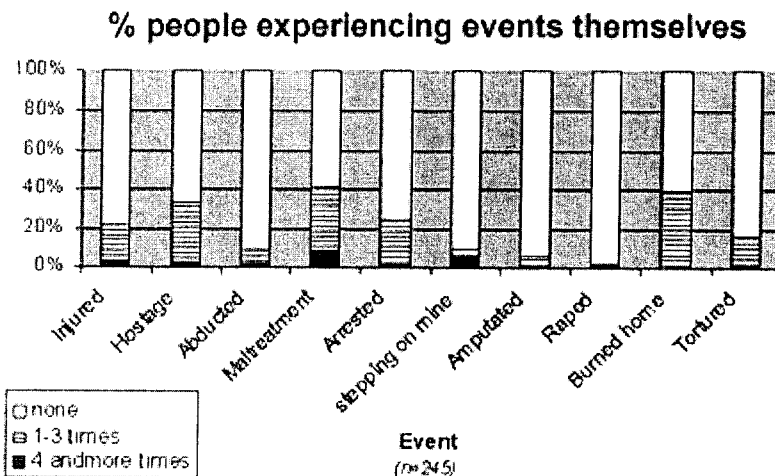
Graph 3 shows what situations the respondents have faced. Incidents include: attack on village (84%), exposed to cross fire (84%), explosion of mines (28%), aerial bombing (83%), mortar fire (65%), burning of properties (62%) and destruction of houses (73%), indicating that large groups of the population of Freetown have been caught in direct war. In addition to the direct threats caused by the hostilities, the lack of food and other commodities forced people to take extra risks (74%). A smaller number of people (57%) had to walk long distances to find a safer place. The risk of abduction was clearly present since 43% of the respondents reported having been exposed to abductions. Generally half of the respondents indicate that the event had taken place more than three times.

Coping with traumatic events is more difficult when people themselves experience immediate life-threatening circumstances (Kleber, Brom; 1992). Graph 4 shows what life-threatening traumatic experiences some of the respondents survived.



The respondents were allowed to report on all items. The percentages are related to the number of people having experienced that event as a proportion of the total number of respondents. Several people suffered from multiple life-threatening experiences.

A high percentage of respondents directly experienced at least once an event threatening their physical integrity, either by maltreatment (39%) torture (16%) or amputations (7%). 40% of the respondents have seen their houses burned down; 33% were taken hostage. The percentage of people reporting abduction is, in contrast to the above, relatively low (7%). The relatively low report on rape (2%)



should not be misinterpreted. Rape is, as in most other countries, a taboo topic. Rape victims usually do not report this crime to avoid serious repercussion from their family or to evade the stigma communities and society impose on these victims.

The dire food situation is by far the highest life threatening experience, as it was reported



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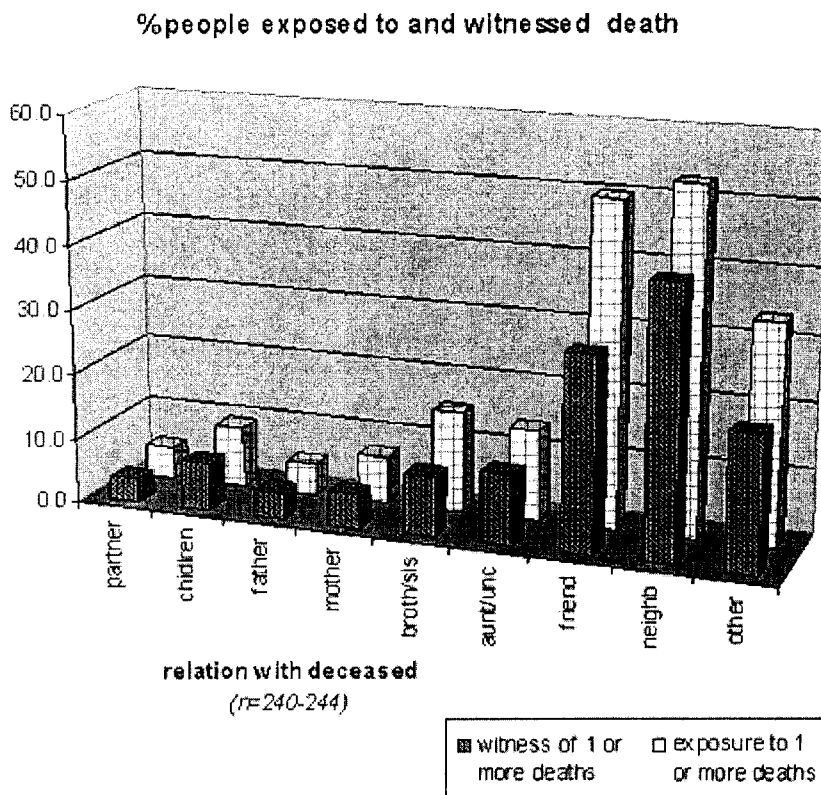
by almost all the respondents (99%).

**2.2 Loss and witnessing**

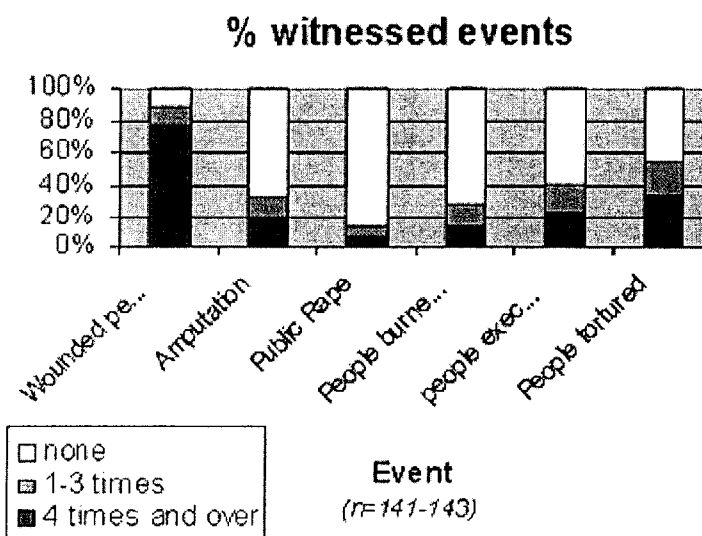
Conflict and violence are closely related to loss. Loss of loved ones and witnessing their violent death might be one of the most serious risk factors for PTSD. Graph 5 gives an overview of both.

The percentage of people lost increases with the number available. The loss in the nuclear family (partner (5%), father (5%), mother (7%), child(ren) (9%) and siblings (16%)) is reported less than the loss of more "distant" family members (aunt, uncles (14%)).

The percentages reported on death of neighbors (53%) and friends (50%), is clearly higher, since there are more of them. These data indicate that at least 50% of the respondents lost someone they knew very closely. Many respondents witnessed the death of a close person: 30% witnessed the death of a friend, 41% that of a neighbor. Additionally 7% witnessed the death of their child.



To create terror a perpetrator often demands others to witness the atrocities. The psychological impact of actually witnessing horrific events imposes a serious psychological stress. Deliberately or not, witnessing at least once events such as torture (54%), execution (41%), (attempted) amputations (32%), people being burnt in their houses (28%) and public rape (14%) often results in traumatic stress or even PTSD. Almost all respondents reported to have seen wounded people at least once (90%). Graph 6 gives an overview.



**3. Impact of Event Scale (Third section)**

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The inhabitants experienced horrific events. The third section measures the prevalence of traumatic stress responses through the Impact of Event Scale questionnaire (Horowitz, Wilier & Alvarez, 1979). The PTSD score as outcome of the Impact of Event Scale (I.E.S.), is constructed around two clusters of reactions. Intrusions such as flashbacks, nightmares and reliving the event are indicators of the preoccupation with the events that often characterize survivors of violence. Complaints like "I can't stop thinking about it" combined with the unpredictable occurrence of flashbacks often provoke feelings of having lost control or becoming crazy. To compensate for the agony of ongoing intrusions, survivors try to avoid situations, places, conversations or people that remind them of the events. The avoidance as well as the intrusions has a debilitating effect on the survivors' social life. Social withdrawal and a life obsessed by fear and avoidance may be the destiny of those that suffer from severe, chronic PTSD.

The overall PTSD scores registered on the I.E.S. are high. When the cut of scores (no problem: 0-10, at risk: 11-25, PTSD: 26-75) for Western Europe are applied, no one reports to having "no problem." Two people have scores indicating a risk for developing PTSD. All other respondents (99%) have scores on the I.E.S. that are associated with PTSD in a Western European setting. In the current survey most

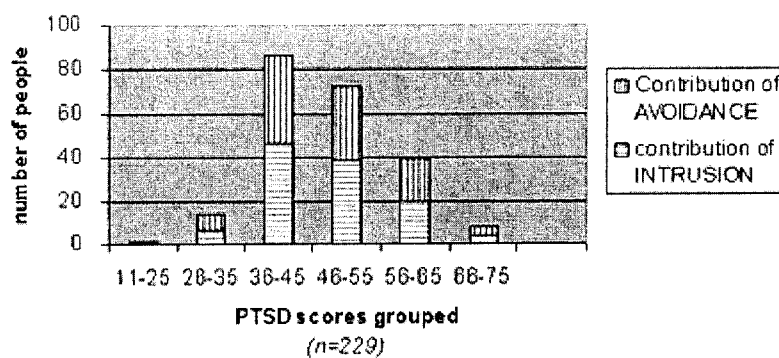
people (111, 27%) have scores between 36 and 45, which is similar to the number of people having scores between 46 and 55. Graph 7 shows the scores on the I.E.S. No significant differences were found between the contribution of intrusions and avoidance on the overall PTSD score. There were 16 respondents who were not able to give a clear answer on one of the questions composing the PTSD scale; these respondents are excluded from the total PTSD score. The average score on the PTSD scale was 47.6, with a confidence interval of 45.6-49.6 (95% confidence level). This result shows good precision.

The results on the I.E.S. are consistent with the conclusions on the appraisal of traumatic experiences. The reported high numbers of traumatic experiences may explain the high scores on the I.E.S. However, this conclusion has to be read with care. The I.E.S. is not validated in Sierra Leone and may therefore be subject to differences in understanding some questions. Moreover the cut-off scores may prove to be quite different then the ones used by us. Despite these considerations, high levels of traumatic stress are evident, since even when the cut of score is raised to 55 (more then doubled), 63 people (25%) still suffer from severe traumatic stress or even PTSD.

#### 4. Physical health (Section 4)

People suffering from traumatic stress and PTSD often have physical complaints like headache, stomach problems, body pain, dizziness or palpitations. Frequently the complaints cannot be

**Frequency PTSD scores  
and contribution of intrusion and avoidance**



**Frequency of 1st and 2nd most  
important physical complaint**



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related to a physical disease or disorder. Nevertheless, the physical complaints are expressed in frequent visits to the overburdened health care settings. People continue to search for a physical cure to alleviate their emotional problems. Medical people are not aware of or feel powerless against the somatizing patient and offer medication. Despite the costs both to the patient and the health system, this situation is frequently found in health settings in violent contexts. Some indicators of physical health and medical needs are described below.

Since the onset of the violence, the majority of the respondents (85%) perceived their health to be worse than before. Consistent with this finding is the occurrence of unclear physical symptoms reported by the majority of the respondents (78%). As a result, 42% of the respondents visited the health post or clinic at least twice in the four weeks prior to the survey.

	NOT AT ALL	RARELY	SOMETIMES	OFTEN	n
UN-HEALTHIER	19 (8%)	19 (8%)	132 (54%)	74 (31%)	244
UNCLEAR SYMPTOMS	33 (13%)	21 (9%)	125(51%)	66 (27%)	245
HEALTH POST VISIT	100 (41%)	35 (14%)	76 (31%)	27 (11%)	238

The table above is an overview of perceived health, the occurrence of unclear symptoms and the number of health post/clinic visits (Rarely = 1; Sometimes= 2.3; Often= 4+).

The results of the fourth section (physical health) confirm the tendencies reported earlier. Traumatic stress associated with physical complaints (like headache (39%) and body pains (12%)) is reported most frequently. The visits to health facilities are relatively high (42%). The majority takes medication (e.g. paracetamol, panadol, vitamins, chloroquine).

## V. Conclusions

The survey among respondents from all suburbs of Freetown indicates high levels of traumatic stress among the population surveyed. Every indicator (experienced events, Impact of Event Scale and Physical Health) points in the same direction. The indicators are discussed below.

The responses on the second section appraise the traumatic experiences of the respondents. The high percentages of certain events (starvation (99%), witnessing wounded people (90%), having lost someone close (at least 50%)) result in a clear conclusion that most respondents living in all parts of Freetown have experienced at least one traumatic experience. It is likely they have been subjected to many more.

The Impact of Event Scale (Horowitz, Wilner & Alvarez, 1979) indicates high levels of traumatic stress and PTSD in the survey population (99%). The final score on the I.E.S. is constructed around two clusters of reactions: intrusions (e.g. flashbacks, reliving of events) and avoidance (e.g. evasion of situations, amnesia). Neither of them contributed significantly more to the overall PTSD score.

The outcome of the Impact of Event Scale (I.E.S.) is not conclusive and should be considered with care since the I.E.S. questionnaire is not validated for Sierra Leone and the cut-off scores applied in this report are based on Western European data. The outcomes on the I.E.S. should not lead to the conclusion that almost everybody in Sierra Leone is traumatized and suffers from PTSD or other mental health problems. However, the high scores on the I.E.S. are supported by the outcomes on the appraisal of traumatic experiences (second section).

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The results of the last section (physical health) confirm the tendencies reported earlier. Traumatic stress associated with physical complaints (like headache (39%) and body pains (12%)) is reported most frequently. The visits to health facilities are relatively high (42%).

The high levels of traumatic stress or even PTSD indicate a clear need for psychosocial or mental health interventions to address the needs of the survivors of violence in Freetown. To focus humanitarian aid only on material restoration and physical needs denies the shattered emotional worlds of the population, and ignores the ruined basic assumptions of trust and the benevolence of human beings. It leaves unaddressed the broken morale of the survivors and the spiritual consequences of war.

A population that is in general psychologically healthy can prosper and overcome the burdens of the past. Psychologically healthy people can also solve their disagreements in less violent ways. Helping traumatized people is a matter of restoring the bond between the individual and the surrounding system of family, friends, community and society. To overcome mass traumatization as in the case of Sierra Leone, the healing capacity of family and community systems must support people in their coping with extreme stress and more severe mental health problems. Psychosocial and mental health programs are evident tools in this process and should not be overlooked. The involvement of Sierra Leoneans in these programs is of crucial importance.

### Annexes

SECTIONS	ESTIMATED TOTAL POPULATION	CUMULATIVE POPULATION	ATTRIBUTED NUMBERS	NO. OF CLUSTERS PER SECTION
EAST 1	106458	106458	1 - 106458	5
EAST 2	112910	219368	106459 - 219368	5
CENTRAL 1	35748	255116	219369 - 255116	2
CENTRAL 2	27542	282658	255117 - 282658	2
WEST 1	52870	335528	282659 - 335528	2
WEST 2	73258	408786	335529 - 408786	4
EAST 3	112972	521758	408787 - 521758	5
WEST 3	80800	602558	521759 - 602558	5
Total No.	602558			

Table 1: Key areas and cluster distribution

	TEAM 1	TEAM 2	TEAM 3	TEAM 4
DAY 1	CALABA TOWN	OLD WHARF	MURRAY TOWN	ABERDEEN/ FERRY RD
DAY 2	APPROVED SCHOOL/ KUNTOLOH	BAILO BARRY/ DOCKYARD	LUMLEY	ABERDEEN VILLAGE
DAY 3	NATIONAL WORKSHOP	MAYIBA/ KISSY BROOK	WILBERFORCE VILLAGE	TENGBETH TOWN
DAY 4	FOURAH BAY	KANNIKAY	KINGTOM	NATIONAL STADIUM
DAY 5	BOMBAY STREET	GUARD STREET	KROO TOWN ROAD	KROO BAY

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DAY 6	GINGER HALL	HAISHOBI CORNER	SUSAN'S BAY	GOVERNMENT WHARF
DAY 7	MOUNTAIN CUT	MAGASINE COURT	BROOKFIELDS	SACKVILLE ST/ LUMLEY ST
DAY 8	DAN STREET	SORIE TOWN		

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## 'The Fear Is Still in Me': Caring for Survivors of Torture

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'The Fear Is Still in Me': Caring for Survivors of Torture: How to identify, assess, and treat those who have endured this extreme trauma.

[FEATURES: CE]

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Editor's note: The three cases that begin this article are composite characters based on real survivors of torture. The fourth case, that of the Cambodian woman, is real, but details have been changed to protect her anonymity.

While visiting the home of a 34-year-old immigrant from Cameroon who recently delivered her second child, a public health nurse notices that the woman's husband seems overly vigilant. During the visit, the couple's three-year-old son makes a loud noise by hitting a plastic toy against a wooden table. The husband jumps up at the sound, then yells at his son for making noise. After her husband leaves the room, the woman explains that he doesn't sleep well and that "he hasn't been the same" since his imprisonment in Cameroon for organizing a public demonstration critical of the government's human rights abuses. Weeping, she explains that her husband used to be a happy person who enjoyed life. She says she doesn't know what was done to him during his imprisonment because he won't discuss it with her, and now she doesn't know how to help him.

A 26-year-old Iraqi man comes to the ED of a county hospital complaining of chest pain. The man speaks limited English. While waiting for the Arabic interpreter, the nurse checks his blood pressure and pulse, which are 150/98 mmHg and 110 beats per minute, respectively. Using gestures, she indicates that the man should remove his shirt and lie down; he seems nervous but complies. As she places cardiac monitor electrodes on his chest and begins connecting the monitor cables, she notices dime-size scars on his chest. The man sits up suddenly and pulls off the electrodes, shouting, "No! No!" He grabs his shirt and walks out of the ED.

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Image courtesy of the Rehabilitation and Research Centre for Torture Victims, Copenhagen, Denmark.

FIGURE. Torture Victim in a Spider's Web , Anonymous, watercolor on paper, 8.273 3 11.693, early 1980s. The artist, who wishes to remain anonymous, is a survivor of torture.

A 24-year-old Ethiopian Oromo woman has an appointment at a neighborhood clinic. Upon reviewing the patient's chart, the clinic nurse notices that the patient has visited the clinic four times in three months with abdominal and lower-back pain. Twice this woman was hospitalized for testing; all results were normal. When the nurse asks how she feels today, the patient places her hand over her lower abdomen and says, "Please, you must help me. I have terrible pain."

Although you may not realize it, if your patient population includes refugees, you are probably caring for survivors of torture. The cases described above represent just three of an estimated 400,000 to 500,000 survivors of torture now living in the United States. **1** Amnesty International's most recent annual report cites instances of torture and "ill treatment" by state authorities in 132 out of 155 nations (85%)—including the United States. **2** A literature review conducted by Eisenman and colleagues found that between 5% and 35% of refugees (men, women, and children) worldwide have been tortured. **3** And in particular cultural groups, the percentage of torture survivors may be even higher. For example, a recent study conducted in Minnesota among Ethiopian Oromo and Somali refugees found the prevalence of torture to be as high as 69%. **4**

Countries that have ratified the United Nations' 1984 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (including the United States, in 1990) are legally bound to ensure that health care personnel learn about torture. **5** But such education has not yet been included in the curricula of U.S. schools of nursing. The Center for Victims of Torture (CVT; [www.cvt.org](http://www.cvt.org)) in Minneapolis, where each of us has worked or works, focuses on treating survivors of torture by foreign governments. The CVT's resources are limited and so therefore is its focus; although torture is sometimes perpetrated by U.S. citizens against U.S. citizens, it was thought that these survivors would have greater access to the mainstream health care system. This article focuses on immigrants or refugees living in the United States who have been tortured.

#### AN OVERVIEW

Torture defined.

The Geneva Conventions that were written in 1949 and ratified by the United States in 1955 constitute the main source of international humanitarian laws today, according to Human Rights Watch. **6** The conventions explicitly forbade "physical or mental coercion" and made the use of torture a war crime; they were a basis for the 1984 United Nations convention mentioned above. In 1975 the World Medical Association defined torture as "the deliberate, systematic, or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason." **7** In its 1998 position statement on nurses and torture, the International Council of Nurses stated that "nurses have the duty to provide the highest possible level of care to victims of cruel, degrading, and inhumane treatment. The nurse shall not voluntarily participate in any deliberate infliction of physical or mental suffering." **8** (See Working Against Torture: The Importance of Education, page 60.)

Why people torture.

While the media usually portray torture being used to extract information from someone, this is just one aspect; in fact, information so obtained is notoriously unreliable because most people subjected to torture will admit to anything. The primary goal of torturers is to gain power over others and to silence opposition. Individuals, communities, and even entire countries have been controlled through the use of torture. For example, from 1973 to 1990 Chile was governed by a military regime led by Augusto Pinochet, on whose orders thousands of people were put to death, tortured, or kidnapped (the "disappeared") for supporting the previous regime and for protesting the Pinochet government's human rights abuses. The fear engendered silenced countless people. Considered by experts to be at epidemic levels worldwide, torture has been used for as long as humans have sought power over one another. As Conroy noted, "Torture was routine in ancient Greece and Rome, and although methods have changed in the intervening centuries, the goals of the torturer—to punish, to force an individual to change his beliefs or loyalties, to intimidate a community—have not changed at all." **9**

The rise of the use of torture worldwide in recent years appears related to greater political instability, economic inequality, and war, which have displaced huge numbers of people, many of whom become refugees. In 1980 the U.S. Congress passed the Refugee Act, adopting the international definition of refugee, as put forth in the United Nations' Convention and Protocol Relating to the Status of



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Refugees: a person who, because of "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion," has left his home country and is unable or unwilling to return. **10** Today the federal Office of Refugee Resettlement recognizes that "many members of groups residing in the United States, including refugees, asylees, immigrants, other displaced persons, and U.S. citizens, may have experienced torture." **11**

## TORTURE AND ITS EFFECT ON SURVIVORS

There has been some debate among mental health professionals as to whether a distinct "torture syndrome" exists. Regardless, it's possible to identify survivors of torture.

The physical effects of torture depend on the methods used and may involve structural damage, disturbed function, or both. **12** Because victims are often subjected to many forms of torture—severe beatings to the soles of the feet (falanga) or other parts of the body, prolonged immobilization, electric shock, and rape—establishing etiology for a particular injury is difficult. It's rare for U.S. clinicians to see refugees with recently acquired physical injuries because travel takes time. Chronic sequelae such as untreated fractures, mutilation of genitalia, or paraplegia may be present. Over the long term, survivors of torture are at increased risk for "infectious disease, malignancies, cerebrovascular accidents, and heart disease," as compared with nontortured, culturally matched controls, according to Goldman and Goldston (as cited by Basoglu and colleagues in *The Mental Health Consequences of Torture*). **12** The reasons for the differences in risk are unknown. Survivors may also have illnesses such as tuberculosis or parasitic infection acquired in prison, in a refugee camp, or by fleeing.

### Psychological effects.

At the CVT, survivors say that psychological torture is harder to endure than physical torture and that its effects are more difficult to live with. Forms of psychological torture include prolonged interrogation, sensory deprivation, mock execution, and being forced to watch loved ones being tortured.

Posttraumatic stress disorder (PTSD) and depression are the most common psychological disorders in people who've survived torture. Symptoms of PTSD commonly seen in this population include "reexperiencing phenomena" (such as flashbacks, intrusive thoughts, and nightmares), the avoidance of stimuli associated with being tortured (such as other people from one's cultural group, people in uniforms, windowless rooms), and physiologic symptoms of increased arousal and reactivity of the sympathetic nervous system (such as hypertension, sleep disturbances, and a heightened startle response). **12, 13** Survivors may find themselves caught in a cycle of trying to move on with their lives as vivid reminders of the past encroach. Though it may seem paradoxical, severely depressed survivors can have physiologic symptoms of increased arousal and reactivity; clinicians should look for symptoms of both depression and PTSD. Other possible symptoms include social isolation, impaired memory and concentration (which may or may not be a result of head injury), fatigue, sexual dysfunction (especially if sexual trauma has occurred), and personality changes. **12** (See "PTSD in the World War II Combat Veteran," November 2003.)

Although PTSD appears to be a common response to severe stress, the interpretation and expression of symptoms differs among cultural groups. **14** For example, a 49-year-old Cambodian woman who survived the "killing fields" of the Khmer Rouge and emigrated to the United States several years ago reported that for more than 25 years she has experienced chronic headaches, abdominal pain, nightmares, and difficulty sleeping. Her U.S. providers attributed these symptoms to the extreme trauma she had endured, which included being starved, beaten, raped, and forced to witness the torture and execution of family members and friends. But the woman believed that her symptoms were caused by the spirit of her dead mother, who "shook" her feet at night because her daughter hadn't buried her properly. Some survivors view their suffering as punishment for bad behavior in this or a previous life.



Image courtesy of the Rehabilitation and Research Centre for Torture Victims, Copenhagen, Denmark

FIGURE. Surrounded by Torturers He Cannot See, Anonymous, watercolor on paper, 8.273 3 11.693, early 1980s.

Somatization refers to the physical expression of psychological needs. Most cultures regard mental health in absolute terms—one is either sane or crazy—and thus physical symptoms are more socially

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acceptable than psychological ones. For example, one person might express emotional pain as a gastrointestinal disorder; another might say that his head is "too hot." Survivors frequently complain of head, shoulder, back, or abdominal pain, yet in many cases no physical cause can be found on examination. **15** With time, as the emotional issues are addressed, the physical pain diminishes or disappears.

Variations in symptoms can be tremendous among survivors. In our experience, risk factors for a greater severity of symptoms include longer duration and greater intensity of torture, a history of abuse during childhood (before the torture), an absence of social support after the torture, young age at the time of torture (children are particularly vulnerable), and any history of mental illness. Another risk factor is having family members who were tortured or killed in retribution for the survivor's political activities. However, as Basoglu and Aker note, "some torture survivors never develop psychological problems . . . others recover from the trauma spontaneously." **16** Many survivors would agree with Dianna Ortiz, an American nun who was tortured in Guatemala, who writes, "Considerably more attention must be given to our resilience and less to what others may consider to be our weakness, our pathological behavior." **17**

Ortiz also notes that survivors often "try to cope with the aftermath of [their] trauma by searching for ways to numb the pain," **17** such as through alcohol or drug abuse, high-risk sexual behavior, excessive sleeping, and even self-injury or suicidal thoughts. It's important for clinicians to realize that though injurious in the long run, these behaviors may have short-term survival value for torture survivors. Ortiz cautions, "Hearing the behaviors that have allowed us to survive described as deviant or pathological only reinforces our sense that we are misunderstood [and] alone." **17** The rate of suicide among torture survivors is unknown.

According to Amnesty International (as cited by Basoglu in the Journal of the American Medical Association **18**), torture occurs more often in the context of other severe stressors such as war and other forms of armed conflict. Symptoms are more pronounced in refugees than in those who remain in their homelands, because of the added stress associated with the loss of one's family, community, and country and having to adapt to a new culture.

The families and communities surrounding survivors of torture are also profoundly affected. A study of 85 children whose parents had been tortured showed that 68% had emotional disorders, physical symptoms, or both. **19** Specifically, 34 children had insomnia and nightmares, 34 suffered from anxiety, 12 had chronic stomachaches, 13 had frequent headaches, 15 wet their beds, 13 had anorexia, four had impaired memories, and 16 demonstrated unspecified "behavioral difficulties." Conroy reports that "studies of Nazi Holocaust survivors have found that their children and even grandchildren have higher rates of clinical depression and suicide than the population at large." **20**

Some of the current social problems within the African-American and Native-American communities (for example, these groups have higher rates of domestic violence, alcoholism, and drug abuse than most other groups) may be the result of intergenerational transmission of the effects of torture. With intergenerational transmission, symptoms such as depression and low self-esteem are often seen not only in the survivors but also in their descendants for generations. Maria Yellow Horse Brave Heart, associate professor of social work at the University of Denver, in Colorado, has labeled this phenomenon "historical trauma." **21** According to Brave Heart, symptoms in a community affected by historical trauma include elevated rates of suicide, depression, self-destructive behavior, substance abuse, obsessive thoughts about past trauma, somatization, anxiety, guilt, and chronic grief. Many of the symptoms of historical trauma are the same as those seen in survivors of torture.

## TREATMENT

The treatment of torture survivors is a relatively new field, and much is still unknown. Although some psychologists and psychiatrists had worked with Holocaust survivors, it wasn't until the 1970s that torture treatment began to be viewed as an area deserving of focus. The world's first torture treatment center, the Rehabilitation and Research Centre for Torture Victims, opened in 1982 in Copenhagen, Denmark. In 1985 the CVT became the first such center in the United States. Currently, there are 30 centers in the United States, with more planned or in development, and more than 200 worldwide.

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There is no published nursing research on torture survivors; what little research exists has been done in the fields of medicine and psychology. There is little information on the treatment of torture survivors and thus little consensus on which interventions are best. **13** Many survivors of torture are unaware that their current symptoms are the result of having been tortured.

In Europe and the United States, the primary treatment modality has been psychotherapy using cognitive-behavioral and insight-oriented approaches. **22** Cognitive-behavioral therapy emphasizes the role of thinking in how patients feel and act. The underlying premise is that thoughts, not external situations, cause feelings and behaviors; thus, learning to think differently will result in desired change. Insight-oriented therapies ("talk" therapies) focus on a patient's current or past experiences, thoughts, and feelings. The underlying assumption is that gaining insight into one's feelings and actions can bring about desired change.

Psychotropic medications, especially selective serotonin reuptake inhibitors that have been approved by the Food and Drug Administration for the treatment of PTSD, such as paroxetine (Paxil) and sertraline (Zoloft), are also used frequently in the treatment of torture survivors. Although no research on their use in treating torture survivors has yet been done, the efficacy of these drugs in treating anxiety and depression associated with PTSD is well established.

Many survivors now living in the United States have difficulty obtaining access to health care that is affordable and culturally appropriate. In our experience, cultural differences in beliefs about health, illness, and care create the most formidable barriers to their getting that care. Western-based psychological treatment isn't acceptable to all survivors, and as Ortiz has noted, "Talk therapy is not the only form of treatment that has proved useful." **17** She points out that treatment by traditional or "folk" healers and interventions considered alternative or complementary in Western health care, such as herbal remedies, massage therapy, aromatherapy, and breathing and relaxation exercises, may also be valuable. For example, a British nurse and Reiki practitioner reported that Reiki treatments helped reduce the frequency and severity of nightmares, abdominal pain, headaches, and stress in two Bosnian torture survivors. **23**

#### NURSING CARE FOR TORTURE SURVIVORS

##### Torture assessment.

If a nurse suspects that a patient may have been tortured, an assessment for this should be done. A good opening question is "Can you tell me a little about what happened in your country that made you come to the United States?" Based on the patient's response and apparent comfort level, the nurse might follow with more specific questions, such as "I know that in your country many people have been beaten or arrested by soldiers or rebels. Have you ever been attacked like that?" We find that it's best to avoid the word "torture" as the word encompasses different things in different cultures. For example, not all cultures consider rape to be a form of torture.

We have found that it can be very therapeutic for survivors to tell their stories. As nurses, we are often so busy with more concrete tasks that we sometimes forget the tremendous healing power of presence and empathy. Indeed, in the July 1 issue of the *New England Journal of Medicine*, Mollica noted that "despite routine exposure to the suffering of victims of human brutality, health care professionals tend to shy away from confronting this reality . . . they believe they won't have the tools or the time to help torture survivors once they've elicited their history." **24** Clinicians may also fear that asking the survivor to retell his story will retraumatize him. However, survivors frequently tell us that although telling their stories is difficult, having someone believe them and show concern for them outweighs the difficulty.

It's important to let the survivor proceed at his own pace and to tell as much or as little of his story as he's comfortable with. Many survivors have said that simply being listened to is beneficial; some have never told friends or family members what happened to them. Some survivors may be very reluctant to relate their experiences; others may tell a story without any apparent emotion. (The suppression of emotion is one sign of PTSD and can be a reaction to torture.) Assurances of confidentiality are essential, as survivors often feel great shame about the torture they experienced and may fear what others will think. This may be especially true if an interpreter must be present. Thus, under no circumstances should a family member or friend be used to interpret when asking a patient whether she has been tortured.

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Nurses should be aware that survivors who tell their story will need continuing care once the trauma is revealed. Survivors' trust in other human beings has been deliberately damaged. Nurses will need patience and commitment in forming therapeutic relationships with torture survivors. Supporting their autonomy and allowing them as much control as possible in a given situation will help. For example, questions such as "Where would you like to sit?" and statements such as "Tell me when you'd like to take a break" can be useful. **25**

Beyond the assessment.

Assisting survivors with whatever they feel is most important at that moment may be the best way to support them. Often social service and economic issues are paramount, especially for recent immigrants. Survivors may need help obtaining basic necessities such as food, clothing, and housing before they can begin to deal with the effects of torture. Teaching them relevant survival skills—such as how to access and navigate the health care system or how to use mass transit, enroll a child in school, or use a bank—also helps them gain some control of their situation and rebuilds confidence.

Survivors generally need help in understanding the link between the torture and its physical and psychological effects. There is some controversy about whether a survivor of extreme trauma who has PTSD or depression can be considered to have a mental illness; it's argued that these are normal responses to horrific experiences. Regardless, it seems clear that clinicians must be sensitive to what survivors have endured. Ortiz, speaking on behalf of survivors, writes, "We readily acknowledge that the trauma we have endured has altered our lives. . . . We want to be recognized as normal people, people who were tortured and who have survived with tenacity, grace, and dignity." **17** Garcia-Peltoniemi and Jaranson (as reported by Laurence in *Issues in Mental Health Nursing* ) found that many survivors are "tremendously relieved to hear that symptoms they are experiencing are a direct result [of] the extreme experiences they were forced to endure and not because they are crazy, possessed by spirits, or weak in character." **26** Survivors also want to know which symptoms of torture are permanent and which they can expect will heal with treatment.

Routine procedures can be extremely stressful for survivors of torture. For example, an electrocardiogram for a survivor of electrical torture or a gynecologic exam for a rape survivor may trigger a flashback. It's important to prevent or minimize such stressors to the extent possible. Many survivors can get through tests and procedures without being severely retraumatized if they're told what the test or procedure will entail and are given emotional support. Sensitivity to specifics is always important. For example, a female rape survivor might prefer a female clinician; a survivor who was tortured by someone from his own cultural group might be more comfortable with clinicians from a different background. In some cases, certain procedures (such as rectal or pelvic examinations for rape survivors) may best be done under anesthesia. Relaxation, meditation, and other coping strategies such as listening to quiet music also can be useful. These techniques allow survivors to calm themselves when they begin to feel anxiety.

Many refugees come from cultures in which the foods they consumed were much more nutritious than American fast foods; many refugees may have walked miles daily in their home countries and find that they get less exercise here. As would any refugee, survivors of torture will benefit from a thorough evaluation of their diet and exercise regimen. (For more information, see "From Sudan to Omaha," In *Our Community*, July.)

Community interventions.

Nurses' participation in the development of community-based interventions that are culturally appropriate is vital. Nurses will need to work with survivors and their communities to identify the most pressing issues and discern acceptable solutions. In addition to those built on a framework of Western psychology and "talk therapy," community support groups could be based on whatever survivors feel their needs warrant. For example, Survivors International ( [www.survivorsintl.org](http://www.survivorsintl.org) ), a nonprofit organization based in San Francisco, offers a Cambodian women's support group and a Bosnian women's sewing group.

For continued support and treatment, most survivors will need appropriate referrals, ideally either to a torture treatment center or to a mental health provider specializing in emotional trauma. But torture

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treatment centers are not available in all areas; and even where a center is an option, some survivors may choose—for various reasons—not to go. Other health care providers, such as clinic staff or public health nurses, may sometimes be the only professional help available. Yet untrained providers may be hesitant to help. And although most torture treatment centers offer fees on a sliding scale, the cost of services elsewhere may be prohibitive to refugees, who as a group tend to have low incomes. As of this writing, there is no central clearinghouse of providers who specialize in working with torture and war trauma survivors.

Nursing implications.

Nurses need to conduct research on appropriate and effective treatment for survivors, including complementary and alternative therapies as well as Western-based modalities. Research is also needed on the effects of torture on the family and community, as well as on effective ways to combat the use of torture worldwide.

Many pioneers of public health nursing, including Margaret Sanger, Lillian Wald, and Lavinia Dock, viewed working for social justice and peace as a nursing function. **27** Laurence writes that “as promoters of health and well-being, nurses must take responsibility in the prevention of human rights abuses and in the promotion of human rights.” **26** We agree. These are especially timely issues for nurses, given the recent public debate over the use of torture by the U.S. military as a means of fighting terrorism.

We find that an overwhelming majority of survivors attribute their survival to their spiritual beliefs, yet this aspect is the least well incorporated into treatment. Nurses can help survivors by encouraging them to get involved with people and activities that bring renewed meaning and a sense of worth to their lives. Ortiz exemplifies this. About her work with the Torture Abolition and Survivors Support Coalition International (an organization she cofounded), she writes, “I used to think that God made an error in allowing me to survive—but I no longer believe that. . . . God, I believe, has united our voices . . . [in] calling for an end to torture.” **28**

Nurses must have in-depth knowledge of trans-cultural issues with regard to responses to torture. It’s also important for nurses to have some understanding of what life is like for most people in economically poor countries, what refugees have gone through in their home countries, and what adjusting to life in the United States entails. (One excellent resource is *The Middle of Everywhere: The World’s Refugees Come to Our Town*, by Mary Pipher, a family therapist in Lincoln, Nebraska, who writes perceptively about the lives of refugees, including torture survivors, from Bosnia, Vietnam, and Sierra Leone, among others.)

In keeping with the United Nations Convention Against Torture, U.S. nursing schools must begin to incorporate education on caring for torture survivors into their curricula. In 2001 the American Academy of Nursing issued Policy Recommendations for Nurses Caring for Victims of Torture, which include the following (quoted verbatim) **29**:

- \* Fund and administer educational training and support for nurses who will develop nursing care plans to assist victims of torture to find hope and healing.
- \* Include torture and treatment of its sequelae in nursing’s research agenda.
- \* Develop linkages with current centers of treatment to add nursing expertise.
- \* Support a conference or institute on the topic of torture and survivors of torture.
- \* Consider a . . . conference to develop a white paper on torture.
- \* Augment nursing educational training to add expertise in treatment of victims of torture in psychiatric mental health nurse practitioner programs.
- \* Extend the Academy’s support of [these] recommendations to the ANA, ICN, and Sigma Theta Tau to ensure that the profession of nursing contributes to healing victims of torture.

As of this writing, these recommendations had not been acted on.

The impact on nurses.

The prospect of working with survivors of torture can raise several concerns. First, nurses may fear

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that they'll inadvertently do something that exacerbates a survivor's suffering. It's true that survivors are vulnerable; their vulnerability stems from a susceptibility to having trauma symptoms triggered by everyday events and, like other refugees, to a general lack of knowledge about U.S. culture. But most torture survivors are also strong and resilient people.

It's also true that many nurses don't have specialized knowledge or skills for helping people who have been tortured. Years ago nurses were in a similar situation with regard to suspected cases of domestic violence. Nurses often didn't ask whether domestic violence was occurring, either because they didn't know how to respond if it was or because they assumed the matter was someone else's responsibility; far too often, therefore, domestic violence was ignored. Nurses need to learn to work with survivors of torture and extreme trauma. Information on caring for survivors must be included in nursing schools and through continuing education courses.

For caregivers, hearing about the deliberate infliction of severe pain and suffering may be especially troubling. Nurses may worry that they too will begin to feel hopelessness and despair. Secondary trauma is prevalent throughout nursing, yet nurses aren't taught much about how to prevent or address it. Caring for oneself is more than simply finding time to relax; it requires having a deliberate plan for balancing all aspects of one's life. Each nurse must determine what this means for her. (For more on this subject, see "Understanding Secondary Traumatic Stress," July 2001.)

Complete the CE test for this article by using the mail-in form available in this issue or visit **[NursingCenter.com](http://www.nursingcenter.com)**'s "CE Connection" to take the test and find other CE activities and "My CE Planner."

The Center for Victims of Torture The first in this country.

The Center for Victims of Torture, founded in Minneapolis in 1985, was the first treatment center for torture survivors in the United States. An independent nonprofit organization, it offers free treatment services to survivors living in the Minneapolis-St. Paul area, as well as in Guinea and Sierra Leone, West Africa. In Minnesota survivors work with a team of care providers, including doctors, nurses, psychologists, social workers, massage therapists, and physical therapists. The Minneapolis and St. Paul treatment programs serve approximately 200 to 300 people a year. In addition, the center provides education in working effectively with survivors of torture and war trauma for health care providers, students, educators, and social workers, training about 5,000 professionals annually. Basic and advanced nursing curricula have been developed, and the center's nurse trainer makes educational presentations in health care facilities, public health agencies, and nursing schools statewide. In West Africa similar programs offer refugees group therapy and education on the effects of war trauma. They provide education for African health care providers in how to care for survivors effectively; in some cases they also train refugees, who then serve as paraprofessional care-givers. In Guinea, for example, some Liberian refugees given training in the areas of communication, counseling, and conflict resolution have gone on to work with other refugees.

Working Against Torture: The Importance of Education  
INTERNATIONAL DECLARATIONS  
The United Nations.

As of June 2004, 136 states (out of 194 possible) had ratified the United Nations' Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984); the United States ratified it in October 1994. (For the complete text, see **[www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm)** ). These states stand committed to condemning torture and refraining from its use under any circumstances. (Ratifying the convention has not eliminated the use of torture by these states, as recent news of the torture of Iraqi prisoners by American and British troops at Abu Ghraib prison indicates.)

Although the convention is not directly aimed at nurses and doctors, much of it is relevant to health care professionals. Two articles are of particular importance. Article 2 emphasizes that torture is never permissible or acceptable; it states that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency" can justify the use of torture; neither can "an order from a superior officer or other authority." Article 10 makes "education

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and information regarding the prohibition against torture" mandatory components in the training of medical personnel, including nurses.

The International Council of Nurses

(ICN) adopted its first position statement against torture in 1989. Revised in 1998, it's now known as the ICN's Position Statement on Torture, Death Penalty, and Participation by Nurses in Executions. (For the complete text, see [www.icn.ch/pstorture.htm](http://www.icn.ch/pstorture.htm).) The statement reads, in part:

The nurse's primary responsibility is to those people who require nursing care. Nurses have the duty to provide the highest possible level of care to victims of cruel, degrading, and inhumane treatment. The nurse shall not voluntarily participate in any deliberate infliction of physical or mental suffering.

The ICN also advocates the inclusion at all levels of nursing curricula the recognition of human rights issues and violations, including the use of torture.

Nurses will meet torture survivors among their patients. Survivors are often very reluctant to talk about or even mention what they have experienced, but the effects of torture will be evident if the nurse knows what to look for.

#### TEACHING NURSES: THE DANISH PERSPECTIVE

The Rehabilitation and Research Centre for Torture Victims in Copenhagen (RCT), the first center of its kind worldwide, was founded in 1982. In keeping with the importance placed on education by the aforementioned UN convention (Denmark ratified it in 1987) and the ICN position statement, one of the RCT's long-standing goals has been to offer targeted training about torture and torture survivors to nurse teachers at Danish schools of nursing. Ultimately the goal is to make such training compulsory in nursing education programs.

In the autumn of 1992 the RCT planned its first seminar for nurse teachers. The goal was to provide them with basic knowledge of torture, including the various methods and effects of torture, as well as rehabilitation, treatment, and services that they could then pass on to their students. Instruction also focused on nurses' responsibilities as outlined in the ICN position statement. The long-term objective was to teach students and nurses how to identify likely torture survivors and to plan care and treatment programs that would meet their specific needs.

The RCT has continued to offer the two-day seminars every other year since 1992. As of this writing, 136 nurse teachers have participated, and 35 are teaching these subjects to nursing students at several of Denmark's 22 nursing schools. The nursing schools cover the RCT staff's travel expenses and teaching fees; the RCT covers venue and food costs.

Nurse teachers who have taken the RCT seminar have expressed a need to share subsequent teaching experiences with colleagues at other nursing schools and to continue learning about torture and the treatment of torture survivors. They've also sought further discussion of practical matters, such as when during a nursing student's overall course of study the subject of torture should be taught and what course materials should be used. To meet these goals, the RCT now offers a follow-up seminar every two years. For more about the RCT and its work, go to [www.rct.dk/usr/rct/webuk.nsf/fWEB?ReadForm&Load=RTIG-4L5JTU](http://www.rct.dk/usr/rct/webuk.nsf/fWEB?ReadForm&Load=RTIG-4L5JTU) .

Nurse teachers are enthusiastic about passing on what they learn about caring for torture survivors, not only to nursing students, but to RNs and other health care students and professionals. They have become a new and vocal group in opposing the use of torture.— Lone Jacobsen, MA Health, RN (specialist in management, teaching, and systemic therapy), chief nurse and psychotherapist, Rehabilitation and Research Centre for Torture Victims, Copenhagen, Denmark, and member, ICN's Data Bank of Experts in Ethics

Common Methods of Torture



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- \* Beatings with hands or objects (such as rifle butts or clubs)
- \* Electric shocks to sensitive body parts
- \* Hanging by the arms, legs, or shoulders
- \* Sexual humiliation and rape
- \* Burning with cigarettes, hot water, or acid
- \* Exposure to environmental extremes (such as very high or low temperature)
- \* Being forced to stand for extended periods of time
- \* Being forced to stare at the sun
- \* Having one's head submerged in water or excrement
- \* Mock execution (for example, having an empty gun fired at one's head)
- \* Threats of violence to loved ones
- \* Being forced to watch or participate in the torture or death of others, including loved ones
- \* Forced nakedness
- \* Not being allowed the use of a toilet
- \* Solitary confinement or overcrowding
- \* Exposure to continuous noise
- \* Sleep deprivation
- \* Being forced to remain with dead bodies
- \* Repeated interrogations conducted at random and unpredictable times

Holtan N, et al. Minn Med 2002;85(5):35-9. Adapted with permission.

Giving Light A book of short stories offers hope of redemption.

In her 2004 book *The Dew Breaker*, a collection of related stories, Edwidge Danticat looks at the life of a "choukèt laroze," a man who tortured others during Haiti's Duvalier dictatorships. The term "dew breaker" is Danticat's own translation of the Creole phrase and could easily have been the dew shaker or the dew stomper, a reference to the way the torturers would often abduct their victims at first light, disrupting the morning dew. The book presents the dew breaker through the eyes of those around him—wife, daughter, and former victims.

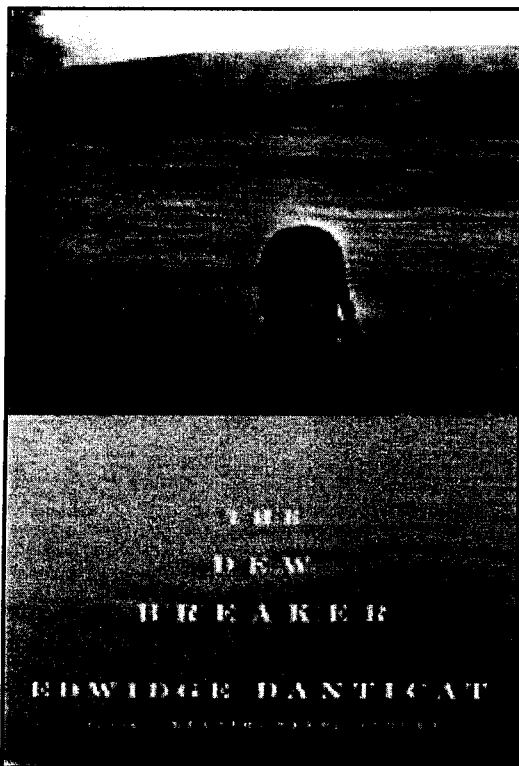


FIGURE. No caption available.

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Set primarily in the United States, the stories offer insight into how those who have suffered torture survive and the form that survival takes. The characters in Danticat's book manage their pasts with greater and lesser degrees of success: for some, the threat of encountering a former torturer is very real; he is the barber in the shop on your street. For others, he exists only in the imagination, the result of "chasing fragments of themselves long lost to others." There is a palpable sense that the torture has not ended—in one story, the dew breaker's wife (who had also suffered loss at his hands), having just arrived in America, listens to the radio and hears callers talking "about a Haitian American man named Patrick Dorsimond who had been killed. He had been shot by a police officer in a place called Manhattan." One has the sense that the place names have changed, but the dangers remain.

In a book that swings between "regret and forgiveness," Danticat gives hope. In an e-mail interview, she stated that she believes "silence is a very big part of suffering and sometimes an obstacle to healing." In the story "Night Talkers" Danticat writes of "palannit," night talkers, "those who spoke their nightmares out loud to themselves." With the character of Claude, a Haiti-born son of immigrants who was raised in America but sent "home" after committing patricide, Danticat offers the hope of some redemption—for the afflicted and the afflictors alike. Claude, a palannit, is both a victim and a perpetrator and is "even luckier than he realized, for he was able to speak his nightmares to himself as well as others, in the nighttime as well as in the hours past dawn, when the moon had completely vanished from the sky." Danticat believes telling one's story helps in healing. She noted, "Sometimes just to have people acknowledge what happened to you can be a great help." Perhaps *The Dew Breaker* serves as some acknowledgment for the torture survivors of Haiti, with stories that speak truths, told in the light of day. —Lisa Melhado, associate editor

#### REFERENCES

1. Torture and torture victims. *Fed Regist* 2000;65(32): 14,595–603. [\[Context Link\]](#)
2. Amnesty International. Annual report [introduction]. 2004. <http://www.amnestyusa.org/annualreport/index.html>. [\[Context Link\]](#)
3. Eisenman DP, et al. Survivors of torture in a general medical setting: how often have patients been tortured, and how often is it missed? *West J Med* 2000;172(5):301–4. [\[Context Link\]](#)
4. Jaranson JM, et al. Somali and Oromo refugees: correlates of torture and trauma history. *Am J Public Health* 2004;94(4):591–8. [\[Context Link\]](#)
5. Jacobsen L. Teaching health professionals about torture. *Int Nurs Rev* 1998;45(3):79–80. [\[Context Link\]](#)
6. Human Rights Watch. Summary of international and U.S. law prohibiting torture and other ill-treatment of persons in custody. 2004. [http://hrw.org/english/docs/2004/05/24/usint8614\\_txt.htm](http://hrw.org/english/docs/2004/05/24/usint8614_txt.htm). [\[Context Link\]](#)
7. World Medical Association. Declaration of Tokyo . 1975. <http://www.wma.net/e/policy/c18.htm>. [\[Context Link\]](#)
8. International Council of Nurses. Torture, death penalty, and participation by nurses in executions. 1998. <http://www.icn.ch/pstorture.htm>. [\[Context Link\]](#)
9. Conroy J. History and method. In: *Unspeakable acts, ordinary people. The dynamics of torture*. New York: Alfred A. Knopf; 2000. p. 27–38. [\[Context Link\]](#)
10. United Nations High Commissioner for Refugees. Convention and protocol relating to the status of refugees. 1996. <http://www.unhcr.ch>. [\[Context Link\]](#)
11. U.S. Office of Refugee Resettlement. Office of Refugee Resettlement (ORR) torture treatment program. 2002. <http://www.acf.dhhs.gov/programs/orr/programs/torturep.htm>. [\[Context Link\]](#)

22500

12. Basoglu M, et al. Torture and mental health. A research overview. In: Gerrity E, et al., editors. The mental health consequences of torture. New York City: Kluwer Academic; 2001. p. 35-62. [\[Context Link\]](#)
13. Jaranson JM, et al. Assessment, diagnosis, and intervention. In: Gerrity E, et al., editors. The mental health consequences of torture. New York City: Kluwer Academic; 2001. p. 249-76. [\[Context Link\]](#)
14. Jaranson J. The science and politics of rehabilitating torture survivors. In: Jaranson J, Popkin M, editors. Caring for victims of torture. Washington, DC: American Psychiatric Press; 1998. p. 15-40. [\[Context Link\]](#)
15. Westermeyer J. Cross-cultural psychiatric assessment. In: Gaw A, editor. Culture, ethnicity, and mental illness. Washington, DC: American Psychiatric Press; 1993. p. 125-44. [\[Context Link\]](#)
16. Basoglu M, Aker T. Cognitive-behavioral treatment of torture survivors seekers: a case study. *Torture* 1996;6(3):61-5. [\[Context Link\]](#)
17. Ortiz D. The survivor's perspective. Voices from the center. In: Gerrity E, et al., editors. The mental health consequences of torture. New York: Kluwer Academic; 2001. p. 13-34. [\[Context Link\]](#)
18. Basoglu M. Prevention of torture and care of survivors. An integrated approach. *JAMA* 1993;270(5):606-11. [\[Context Link\]](#)
19. Cohn J, et al. A study of Chilean refugee children in Denmark. *Lancet* 1985;2(8452):437-8. [\[Context Link\]](#)
20. Conroy J. Victims. In: *Unspeakable acts, ordinary people. The dynamics of torture*. New York: Alfred A. Knopf; 2000. p. 169-83. [\[Context Link\]](#)
21. Brave Heart M. Oyate ptayela: rebuilding the Lakota Nation through addressing historical trauma among Lakota parents. *Journal of Behavior and Social Environment* 1999;2(1/2):109-26. [\[Context Link\]](#)
22. Randall G, Lutz E. Psychological treatment techniques. In: *Serving survivors of torture*. Waldorf, MD: American Association for the Advancement of Science; 1991. p. 117-35. [\[Context Link\]](#)
23. Kennedy P. Working with survivors of torture in Sarajevo with Reiki. *Complement Ther Nurs Midwifery* 2001;7(1):4-7. [\[Context Link\]](#)
24. Mollica RF. Surviving torture. *N Engl J Med* 2004;351(1):5-7. [\[Context Link\]](#)
25. Randall G, Lutz E. Introduction to psychological treatment. In: *Serving survivors of torture*. Waldorf, MD: American Association for the Advancement of Science; 1991. p. 97-116. [\[Context Link\]](#)
26. Laurence R. Part II: The treatment of torture survivors: a review of the literature. *Issues Ment Health Nurs* 1992;13(4):311-20. [\[Context Link\]](#)
27. Temkin E. Nurses and the prevention of war. Public health nurses and the peace movement in World War I. In: Levy B, Sidel V, editors. *War and public health*. New York: Oxford University Press; 1997. p. 350-9. [\[Context Link\]](#)
28. Ortiz D, Davis P. The blindfold's eye: my journey from torture to truth. Maryknoll, NY: Orbis; 2002. [\[Context Link\]](#)
29. American Academy of Nursing Expert Panel on Violence policy recommendations for nurses caring

22501

for victims of torture (adopted 2001). *Issues Ment Health Nurs* 2003; 24(6-7):595-7. **[Context Link]**

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# SIERRA LEONE

## Childhood - a casualty of conflict

### Introduction

More than 5,000 children under the age of 18, both boys and girls and some as young as five, have fought as combatants in Sierra Leone's internal armed conflict. Children have been specifically singled out for recruitment by both the armed opposition and forces fighting in support of the government. Most of the children fighting with rebel forces have been abducted from their homes and families and forced to fight. Many were separated from their families at a very young age. Victims themselves, they have also been perpetrators of human rights abuses, sometimes against members of their own families and communities. Many have been forced to kill and mutilate under the influence of drugs, alcohol or simply because of fear. Former child combatants often say that they do not know why Sierra Leoneans are killing Sierra Leoneans.

A further 5,000 children, again both boys and girls, have been associated with rebel forces although not directly deployed in combat; they have been used to carry goods, cook or collect firewood, and girls have been raped and forced into sexual slavery. Some girls are forced to "serve" many male combatants.(1)

These are the figures provided by the United Nations Children's Fund (UNICEF) but they are estimates; the real figures may be much higher. The Special Representative of the United Nations (UN) Secretary-General for Children and Armed Conflict, after a visit to Sierra Leone, said on 9 September 1999 that '*more than 10,000 children have been serving as child soldiers in various fighting groups*'.

On 7 July 1999 in Lomé, Togo, the government of Sierra Leone and the armed opposition Revolutionary United Front (RUF) signed a peace agreement which was to end Sierra Leone's eight-year conflict. The difficult task of disarming and demobilizing very large numbers of child combatants and helping them to return to a normal life with their families and communities began.

While some progress was being made towards securing the release, disarmament and demobilization of child combatants following the signing of the peace agreement, further efforts have since been curtailed. The political and security situation in Sierra Leone deteriorated in early May 2000 with the capture of some 500 UN peace-keeping troops by rebel forces and a resumption of hostilities. The recruitment and use of children as combatants by both rebel forces and government-allied forces are continuing. This is among the most distressing features of a conflict which has also been characterized by systematic and widespread deliberate and arbitrary killing, amputation of limbs and mutilation, rape and other forms of sexual violence.(2)

In this report Amnesty International describes the violation of the most fundamental rights of the children of Sierra Leone. Much of the information included comes from the children themselves who were interviewed by Amnesty International representatives during visits to Sierra Leone in March, June and July 2000.

The scale of the problem of child combatants in Sierra Leone is well known and has been recognized, including by the UN Secretary-General, his Special Representative for Children and Armed Conflict, UNICEF, the UN Committee on the Rights of the Child, the government of Sierra Leone and non-governmental organizations, both national and international. There is a wealth of international and regional standards, resolutions and statements on the protection of children in situations of armed conflict. What is now urgent is to give substance to the repeated commitments to end the recruitment and use of children as combatants, by whatever side.

Amnesty International is making a series of recommendations to the government of Sierra Leone, the leaders of RUF forces and the international community aimed at finally ending the use of child soldiers in Sierra Leone. These include:

- the highest priority should be given to resuming the disarmament, demobilization and reintegration of child combatants, and prompt and effective measures should be taken to ensure that no child under the age of 18 is recruited for military service, including by passing legislation raising the minimum age for military recruitment to 18;
- all children held by RUF forces, either used as combatants or in any way associated with fighting forces, should be released immediately and RUF forces should immediately cease forcible or voluntary recruitment and use of children under the age of 18;
- in all efforts by the international community to resolve the political and security crisis in Sierra Leone, the needs of children affected by the internal armed conflict, including child combatants, should be given the highest priority and concrete steps should be taken to implement commitments made to end the recruitment and use of child combatants in Sierra Leone;

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- those responsible for grave breaches of international human rights law and humanitarian law, including the abduction and forcible recruitment of children, should be brought to justice.

## The use of child combatants in the internal armed conflict

Children have fought with the various forces involved in Sierra Leone's internal armed conflict which began in 1991. These forces include the RUF, the Armed Forces Revolutionary Council (AFRC), the Sierra Leone Army and the Civil Defence Forces (CDF). The AFRC came to power following the military coup on 25 May 1997 which overthrew the government of President Ahmad Tejan Kabbah elected in 1996. The AFRC joined forces with the RUF after coming to power and remained its ally after the AFRC was forced from power in February 1998 by forces deployed in Sierra Leone by the Economic Community of West African States (ECOWAS), known as ECOMOG. With the signing of the peace agreement in July 1999, the AFRC allied itself to the government of President Kabbah but some of its forces continued to engage in hostilities against government-allied forces. Rebel forces who remain in control of parts of the north and east of the country continue to forcibly recruit and use child soldiers. Previously disarmed and demobilized members of the AFRC and those members of the Sierra Leone Army who had remained loyal to the government, including children under the age of 18, have again been recruited and rearmed to fight on behalf of the government since May 2000. Large numbers of children have also been recruited and used in combat by the CDF, the civilian militia based on societies of traditional hunters, such as the *kamajors*, which support the government of President Kabbah.

The involvement of children in conflict has devastating effects on their physical and mental integrity. There have been higher casualty rates among children because of their inexperience, fearlessness and lack of training. Children are considered as particularly useful because their size and agility means that they may be sent on particularly hazardous assignments. Frequently ill-treated or even killed by the commanders, they have no protectors. Adult combatants who commit human rights abuses, including crimes against humanity and war crimes, involve children in those crimes. In addition to the obvious risks of death or serious injury in combat, children suffer disproportionately from the general rigours of military life, especially in the bush, and are particularly vulnerable to disease and malnutrition. As for the severe psychological consequences of active participation in hostilities, with children witnessing and at times also committing atrocities, the full extent of the impact on child combatants as well as society as a whole may only become apparent over a long period.

## Former child combatants tell their stories

Those children who have been released or have escaped and who have been disarmed and demobilized provide horrifying accounts of how the conflict has affected them. The names of the children whose testimonies are included have been changed in order to protect their identities. Most were interviewed by Amnesty International representatives during June and July 2000.

Child combatants live in constant fear of being beaten and killed. Many former child combatants describe being threatened, intimidated and severely beaten; others recount the killing of their friends and companions. Former child combatants describe the killings and mutilations of civilians which they carried out while fighting. If they refused, they risked being beaten or killed. Peter, a 12-year-old former child combatant, said: "*When I was killing, I felt like it wasn't me doing these things. I had to because the rebels threatened to kill me.*"

### Former child combatants fighting with RUF

Ibrahim is now aged 16 and living at a centre for former child combatants at an internally displaced people's camp at Waterloo, 20 kilometres east of Freetown. He was captured by the RUF in 1992 in Kono District, Eastern Province, and from there was transferred to the rebel stronghold of Kailahun District, also in Eastern Province. He was taught how to use weapons, how to advance and attack the enemy and how to ambush. He described how before attacks, each combatant, including child combatants, was given cocaine and marijuana: "*After sniffing cocaine, I was not afraid of anything. I became bloody.*"

Ibrahim told Amnesty International on 19 June 2000 that when the RUF forces with whom he fought heard that RUF leader Foday Sankoh was going to be tried in 1998: "*We were ordered to kill any civilian that we came across. Any fighter or children suspected of being reluctant to do the killings were severely beaten. We were asked to advance and to do everything possible to terrorize the civilians. It was during this period that people's hands and limbs were cut off, in Kono, Masingbi, Matatoka, Magburaka and Makeni. During that time, one of the children asked the commander the reasons for the killings. He said that the civilians were supporting President Kabbah's government. Sheriff Kabia, who was 17 and known as 'Crazy Jungle', was killed because he asked this question.*" Sheriff Kabia was reported to have been killed in November 1998. Ibrahim also described the death of Mamadu Kamara, aged 14, who was killed because he refused to cut off the hand of someone from his own village.

Abdul, now aged 17, was abducted by the RUF in 1997 during an ambush in Kenema District, Eastern Province. He told Amnesty International on 21 July 2000 that he was taken to an RUF training camp, known as Camp Lion, near Pendembu in Kailahun District where he was trained by both Sierra Leoneans and Liberians. He was taught to use a variety of weapons, including AK47 and AK58 rifles, which he said came from Liberia. "*After the Lomé peace accord, we thought that was the end of the whole war. We were waiting to disarm; there was no fighting. Instead we all went to Tongo Field to mine. Most rebels did that.*" Abdul was then ordered to go to Lunsar, Port Loko District: "*We didn't even reach the front line when we met some wounded colleagues. I wanted to surrender but I*

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was afraid." When he gave himself up to Sierra Leone Army forces, his arms were tied tightly behind his back; rope marks on both arms were still visible. He was first taken to Masiaka, some 50 kilometres east of Freetown, where he was hit on the head with a pistol by a soldier and then transferred to Cockerill military headquarters in Freetown. *"They threatened to kill me. For the first week I was treated badly but then I was given food and water and no one treated me badly. For the first two weeks I was not allowed out of the cell."* He remained there for more than three weeks before being transferred to an interim care centre in Freetown. *"I want to go back to school but here in Freetown, not in the provinces. I am scared that I'll get taken back to the front line."*

David, now aged 14, from Bumbuna, Tonkolili District, Northern Province, was abducted in 1996 by the RUF when they attacked Bumbuna. He is now at a centre established to care for former child combatants, known as an interim care centre, run by an international non-governmental organization, in Freetown. When interviewed by Amnesty International on 12 July 2000, he said that after his abduction he was taken first to Kabala, Koinadugu District, Northern Province, and then to Bunumbu in Kailahun District, an RUF stronghold. There he, together with another 40 children, was trained to fight at Camp Lion. *"I had to go through the training and learn to fight, otherwise the RUF people would beat me or kill me."* Among those killed by the RUF during the training was a boy, aged about 11, with whom David had become friends. He was beaten to death because he refused to continue training. He had complained of being tired - the training was difficult and he was exhausted. He was beaten in front of more than 30 other children and his body was thrown into the bush. Another child, aged 14, was also beaten and killed.

David described how, even under the influence of marijuana and alcohol, he was still afraid to fight, but he did not tell anyone for fear of being killed. David remained with rebel forces for three years until surrendering to forces of the UN Mission in Sierra Leone (UNAMSIL) at Makeni, Bombali District, Northern Province, after the peace agreement was signed in July 1999. Now at the interim care centre, he said: *"I want to become a doctor now and go back to school to learn how to cure people."*

Many former child combatants with rebel forces have described how they were forced to drink alcohol and take drugs and the effect that it had on them. Among the drugs used were marijuana, amphetamines, commonly referred to as "blue boats", and cocaine. When child combatants refused to take drugs they were beaten and, in some cases, killed.

Komba, now aged 15, was captured by the RUF in 1997 in Binkolo, Bombali, District. Now at the centre for former child combatants at Waterloo, he told Amnesty International on 20 June 2000 that he was among rebel forces who attacked Freetown in January 1999: *"My legs were cut with blades and cocaine was rubbed in the wounds. Afterwards, I felt like a big person. I saw the other people like chickens and rats. I wanted to kill them."*

When interviewed by Amnesty International on 20 June 2000, Gibril, aged 11, said: *"Before battles, I was given white powder which was mixed with rice. It made me brave, it made me think that I could do anything."*

Fifteen child combatants, including at least two girls, were among some 2,500 Sierra Leonean refugees who fled into Gueckédou in Guinea during the first two weeks of August 2000 to escape intensified fighting and bombing by government forces of rebel-held areas in Eastern Province. All but one had been abducted by rebel forces and forced to fight for periods of up to seven years. According to the UN High Commissioner for Refugees (UNHCR), all the children said that they had been heavily drugged with cocaine and they acknowledged that they had been extremely brutal. They were separated from other refugees because they feared that victims of the atrocities which they had committed would recognize them.

### Former child combatants fighting with the AFRC

After being removed from power in February 1998 by ECOMOG forces acting in support of President Kabbah, the AFRC, together with the RUF, wreaked a campaign of terror against civilians, particularly in Northern Province. From April 1998 reports emerged of widespread killings, amputations and abductions in villages in Northern Province.

When interviewed on 19 June 2000 by Amnesty International, Sayo, now aged 14, said that he was abducted by AFRC forces in 1998 in Makali, Tonkolili District. He was trained in different places, including Koinadugu District. He described how his skin was cut in different places, including near his eyes, and cocaine put in the wounds. *"When I go to the battle fields, I smoke enough. That's why I become unafraid of everything. When you refuse to take drugs, it's called technical sabotage and you are killed."* After the peace agreement was signed in July 1999 Sayo was freed and taken to a centre for former child combatants run by a non-governmental organization, CARITAS-Makeni, in Kabala. He is now at the centre for former child combatants at Waterloo.

Hassan, now aged 15, from Makeni, told Amnesty International on 21 July 2000 at a centre for former child combatants in Freetown that he was abducted with four of his cousins by the AFRC in 1998 when he was aged 13. He was trained in a camp near Kabala where he was given an AK 47 rifle. He claimed that there were several hundred other young boys in the camp. The training lasted three months. He had to learn how to dismantle a weapon, how to use a rocket propelled grenade (RPG), how to attack, how to undertake guard duty and how to parade. He also said that he had to parade for AFRC leaders, including Johnny Paul Koroma, now head of the Commission for the Consolidation of Peace, established under the July 1999 peace agreement, and Brigadier, now Colonel, Gabriel Mani, who was appointed in July 2000 as Director of Army Training.

Hassan spent over a year with the AFRC in Kono District, Eastern Province. Following the signing of the peace agreement in July 1999 he remained with the AFRC in the Occra Hills, some 40 kilometres east of Freetown, the stronghold of a faction of the AFRC known as the "West Side Boys" who had not disarmed after the peace agreement. In late June 2000 Hassan travelled to Freetown to purchase drinks for the "West Side Boys". He was not armed and he travelled in a public transport vehicle. At a checkpoint he was recognized as

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a West Side Boy by members of the Sierra Leone Army and the *kamajors* and ordered to get out of the vehicle. His shoes and trousers were removed but, initially, he was not otherwise ill-treated. He was taken to Benguema military training camp, 20 kilometres east of Freetown, and the following day to Cockerill military headquarters in Freetown. He was interrogated about a recent attack on the town of Masiaka. One soldier, however, beat him severely on his back; three weeks later, in July 2000, deep scars were still visible. The beating was stopped by a more senior officer.

Hassan said: *"At first, I loved being in the bush. I could get money and other things, including vehicles, for free. But then I got tired. Now I want to go home."*

When interviewed on 24 July 2000 John, now aged 15, from Mokanji, Moyamba District, Southern Province, did not remember when he had been abducted by the AFRC and did not know what had happened to his family. He was threatened that he would be killed if he did not go with the AFRC and was taken to Makeni where he was trained how to use weapons and how to fight the CDF and ECOMOG. John said that he was told not to kill civilians and that civilians were killed in the cross-fire. He was also instructed not to loot property but said that many AFRC members did engage in looting. *"I was not happy living in the bush but I had no way to escape. I asked to leave and was told 'go if you can' but I then saw children being killed - many of them - when they tried to escape to go home. I was afraid of fighting but I was given 'blue boats'. After that I felt like I could do anything. I never refused to take drugs."*

John recalled that children were punished if they refused to obey orders: *"I was punished after I was asked to be part of an advance team to attack Koinadugu. I was not feeling well; I was feeling sick and had a stomach ache. I said that I could not go and fight. The commander ordered other small boys to beat me. After I was beaten a doctor who had been captured helped me."*

Isatu, a girl now aged 17, was abducted by AFRC forces from Fadugu, Koinadugu District, in 1998. She told Amnesty International on 24 July 2000 at a centre for former child combatants: *"I did not want to go; I was forced to go. They killed a lot of women who refused to go with them."* She was forced to become the sexual partner of the combatant who captured her and is now the mother of their three-month-old baby: *"When they capture young girls, you belong to the soldier who captured you. I was 'married' to him."*

Isatu was trained in a base near Kabala to use weapons, including a bayonet, gun and knife, and fought in the area around Fadugu and Makeni. She admitted that she had cut off the hands of children and adults, and set fire to houses with civilians locked inside. *"There is a law of the AFRC that forces you to kill; if you refuse to, you yourself are killed."*

#### **Former child combatants fighting with the CDF**

Child combatants recruited by the CDF have also recounted their experiences. The parents of 12-year-old Brima, now at the centre for former child combatants at Waterloo, gave permission to the CDF to use him as a child combatant in 1998. He continued to live at his home but was active with the CDF in areas around Masiaka, Port Loko and Yele. He was trained to fight by CDF "initiators", those who admit members into the societies of traditional hunters. Brima told Amnesty International on 20 June 2000 that when children disobeyed orders they were beaten unless their parents paid a fine. Brima recalled: *"I was beaten because I became separated from a CDF patrol."*

Brima recounted that when a rebel is caught, his arms are tied up behind his back. The captive is then interrogated and stabbed to death. *"I saw four executions."*

Mohamed, also aged 12, from Port Loko, Port Loko District, Northern Province, was recruited by the CDF in 1998. His parents were not informed about the recruitment but they did nothing to prevent it because of the status attached to membership of the society of traditional hunters, such as the *kamajors*, described by Mohamed as *"the supremacy of the society"*. In addition to carrying water and machetes for the CDF, he escorted captured rebels to the Sierra Leone Army. He also described to Amnesty International on 20 June 2000 how the CDF executed rebels they had captured or those suspected of being rebels: *"I saw three captured rebels being killed; their heads were cut off. The children had to bring the heads to the SLA [Sierra Leone Army] headquarters to show that the CDF were effective."*

## **Rehabilitating child combatants**

Until the resumption of hostilities in May 2000 UNAMSIL, including its human rights section, played an important role in negotiating the release of children held by rebel forces and providing logistical support and military escorts to ensure their safe transfer to interim care centres. It worked with a number of non-governmental organizations, both national and international, who have been active in trying to secure the release of children and to provide the assistance they need. In March 2000 UNICEF and non-governmental organizations were supporting more than 700 children in interim care centres; about 80 per cent of these were demobilized child combatants.

Following the July 1999 peace agreement and before the resumption of hostilities in May 2000, specific procedures had been adopted for child combatants. When children presented themselves to a disarmament, demobilization and reintegration reception centre - sometimes simply a table in the middle of the road - those who were not combatants were handed over to child protection agencies and taken to an interim care centre. If, after questioning, it was established that they were combatants, they were transferred to the children's sections of disarmament, demobilization and reintegration camps. For those who had fought with the RUF, the AFRC or the former Sierra Leone Army this program lasted for five weeks; for those with the CDF a shorter program was provided because normally the children had not been separated from their families and communities.



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At interim care centres former child combatants are provided with medical treatment, food and clothing, psycho-social rehabilitation, education and recreation. Some of the older children, especially those who had spent months or years with rebel forces, have bullet wounds or other injuries. Malnutrition, respiratory and skin infections and other ailments are common, as are sexually transmitted diseases, including HIV/AIDS. Some still suffer the effects of narcotic drugs.

When Amnesty International met former child combatants at the centre for former child combatants at Waterloo on 25 March 2000, a boy aged 14 who had been abducted by AFRC forces in 1998 said: *"I want to go to school and learn so that I can forget the old times."* Another former child combatant interviewed at Waterloo on 19 June 2000 said: *"We want to go back to school; we don't want to go back to the bush."*

The psychological effects of the conflict on children have often been severe: many have killed, mutilated or raped or have witnessed such atrocities. During the rebel incursion into Freetown in January 1999 - when at least 2,000 civilians were killed, more than 500 people had limbs severed, and rape of girls and women was systematic - it was estimated that some 10 per cent of rebel combatants were children. Often under the influence of drugs, many of them committed atrocities. During the first few weeks after they are disarmed and demobilized, former child combatants are reported to be often aggressive and violent, to show other behavioural problems, to suffer nightmares, alienation, outbursts of anger and an inability to interact socially. In a report published in January 2000, the international humanitarian organization *Médecins sans Frontières* (MSF-Holland) said that: *"The psychological impact of actually witnessing horrific events imposes a serious psychological stress. Deliberately or not, witnessing at least once events such as torture, execution, (attempted) amputations, people being burnt in their houses and public rape often results in traumatic stress or even post-traumatic stress disorder."*(3)

At an interim care centre in Lungi, former child combatants have been encouraged to make drawings of their experiences as child combatants. Many have depicted horrific scenes of the mutilation, rape and killing in which they have been involved.

After considering Sierra Leone's initial report under the UN Convention on the Rights of the Child in January 2000, the UN Committee on the Rights of the Child expressed concern that the government had insufficient capacity to provide psycho-social assistance to the many children who have suffered forms of psychological trauma. The Committee urged the government to make every effort to strengthen available psycho-social assistance and to recruit more mental health workers, recommending in addition that the government seek international assistance in this area.

After undergoing the demobilization and rehabilitation process, efforts are made to reunite former child combatants with their families. Child protection agencies have developed programs for family tracing and reunification, often with success. In some cases, however, former child combatants, especially the younger ones, do not know their real names and have lost all knowledge of what a family is. One boy now aged 16, who was abducted by the RUF in 1992, said: *"The commander told me when I was captured: 'Your father is gone. Now I am your father!'"* Another, aged 15, who was abducted in 1997 said: *"After you are captured you cannot think about your family; that is out. Sometimes, when I was by myself, I would think about them. But when you are captured you have to change or you are a dead man."*

Many former child combatants have been transferred to the province from which they originally came, if this has been possible, in order to increase the possibility of tracing their families. In other cases, however, their parents have been killed or displaced. Where their families cannot be traced, the children are placed temporarily with foster families. Significant efforts have been made to sensitize communities to the plight of former child combatants and to promote reconciliation. In some cases, however, former child combatants have been rejected by their families and communities because of the atrocities committed by rebel forces during the conflict. One 16-year-old former child combatant said: *"I don't want to go back to my village because I burnt all the houses there. I don't know what the people would do, but they'd harm me. I don't think I'll ever be accepted in my village."*

Girls who have been abducted and forcibly recruited often face specific problems.

When an Amnesty International delegation visited Sierra Leone in March 2000, it identified that the process of disarmament, demobilization and reintegration of former combatants appeared often not to provide any real opportunity to those girls and women who had been abducted by rebel forces and forced to become their sexual partners to free themselves from former combatants when they reported for disarmament and demobilization. The Fourth Report of the UN Secretary-General on UNAMSIL of 19 May 2000 recognized *"the need to protect dependants of ex-combatants, the majority of whom are women and children"* and that *"the majority of 'wives' of the combatants are in fact abductees and, if not interviewed separately from their 'husbands', would most likely not feel free to express their wish to return to their original families"*.(4)

Effective provision needs to be made for those girls and women, many of whom are pregnant or have young children, to leave former combatants, if they wish. This would require: firstly, the opportunity to indicate privately to UN personnel their desire to leave the men who abducted and sexually abused them; secondly, support to enable them to receive all necessary medical and psycho-social care; and thirdly, support either to return to their families where this is possible or to re-establish their lives together with their children.

In Resolution 1314 (2000) on children and armed conflict of 11 August 2000 the UN Security Council underlined *"the importance of giving consideration to the special needs and particular vulnerabilities of girls affected by armed conflict, including, inter alia, those heading households, orphaned, sexually exploited and used as combatants"* and urged *"that their human rights, protection and welfare be incorporated in the development of policies and programmes, including those for prevention, disarmament, demobilization and reintegration"*.

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## May 2000 - children again forced into conflict

"A whole generation of children has already been emotionally traumatized and physically scarred. They'd been told that peace had finally arrived. Now what are we supposed to tell them?" - Johanna van Gerpen, UNICEF representative in Sierra Leone, 10 May 2000.

After the signing of a peace agreement between the government and the RUF in July 1999, several hundred children were released by rebel forces; by the end of 1999 some 800 children, many of them combatants, had been handed over to UNICEF and other child protection agencies. During the first months of 2000 there was a significant increase in the release of children, most of them combatants, by AFRC forces from the Occra Hills to the east of Freetown and from Kabala, Northern Province. By the end of April 2000, some 1,700 child combatants, of an estimated total of 5,000, had been absorbed into the disarmament, demobilization and reintegration program. According to estimates by UNICEF, about 800 of them had been reunited with their families or placed in foster care, or had run away, leaving 900 in interim care centres. Several thousand children, however, remained in the hands of rebel forces, particularly in Northern Province.

When the political and security situation in Sierra Leone deteriorated seriously at the beginning of May 2000, fears of an imminent attack on Freetown by rebel forces intensified and hostilities between RUF forces and forces of the Sierra Leone Army, the CDF and UNAMSIL troops were reported close to the capital and in Port Loko District.

Moves to secure the release of children still held by rebel forces halted. Former child combatants in interim care centres in areas where rebel forces were active again became vulnerable to being abducted and forcibly recruited by rebel forces. UNICEF and the child protection agencies with which it works have tried to ensure adequate protection for these children.

In his Fourth Report on UNAMSIL to the UN Security Council on 19 May 2000, the UN Secretary-General cited preliminary reports which suggested that child combatants were being used extensively as hostilities resumed. UNAMSIL human rights officers who visited Masiaka on 15 May 2000 observed several child combatants, mostly boys, with the CDF, the AFRC and former Sierra Leone Army and the reconstituted Sierra Leone Army. Some 25 per cent of the combatants observed were under 18 and some freely admitted that they were between 7 and 14. Almost all of them were armed. Other reports indicated that RUF forces were using a similar proportion of child combatants at the front line. In his subsequent report to the UN Security Council on 31 July 2000, the Secretary-General reported that both the RUF and forces fighting for the government continued to use children in combat.<sup>(5)</sup> He expressed deep concern about continuing human rights abuses, including the forced recruitment of children, and urged "*all fighting forces to immediately release all child combatants among their forces and to cease the recruitment of children as combatants*".

### Continuing recruitment of children by the RUF

Since May 2000 RUF forces have continued to abduct and forcibly recruit children as combatants, some of whom had previously been demobilized. While some of the children recruited by both rebel and government-allied forces since May 2000 were forcibly recruited, usually after being abducted, others were reported to have volunteered to join the RUF. It appears, however, that in many cases these children had little option but to do so. Reports from Kambia District, Northern Province, during May 2000 described RUF forces going from village to village demanding a quota of men and boys, most of whom were forced to join under duress. Local traditional rulers, known as Paramount Chiefs, were ordered to provide a certain number of recruits and families were forced to hand over children, including those aged under 18. For example, in Madina Junction, Kambia District, 300 men and boys were demanded. Similar reports have been received from the towns of Kambia and Kamakwie. This practice explained the comparatively high number of young men and boys, without their families, who fled across the border into Forécariah region, Guinea, during May 2000. Reports of forcible recruitment were also received from Mange in Port Loko District.

In Makeni, when the RUF first confronted UNAMSIL troops in early May 2000, children were pressed by RUF forces by threats and intimidation into joining them. RUF commanders positioned vehicles at the entrance of an interim care centre, run by CARITAS-Makeni, and repeatedly coaxed the older boys to rejoin them, through enticement and implicit threat. Some of the children were told by RUF forces that their families had been traced and that the RUF would help them return to their homes. It was also reported that the RUF had threatened to kill all those in the interim care centre if the children did not rejoin the RUF. Staff at the centre believed that up to 30 boys aged from 14 to 17 rejoined the RUF; other estimates put the number of those who rejoined the RUF at 40 or as many as 50. It appeared that shortage of food at the centre, which had been looted by rebel forces, was also a factor influencing the children's return to rebel forces. The centre had been looted on 2 May 2000 by rebel forces; some of the older boys in the interim care centre had tried to prevent the looting and one of the adult carers, a woman, had been beaten. The rebels came the following day and again looted the centre.

For fear of further attack, on 23 May 2000, 83 children from the centre - 73 boys and nine girls, most aged between 6 and 12 years - and 27 adult carers fled the centre for Freetown. On their arduous three-day trek their remaining possessions, including food and money, were stolen by RUF combatants. When they arrived in Petifu, Tonkolili District, some of the group, both children and adults, were beaten by members of the CDF. The children finally arrived safely in Freetown on 26 May 2000 and were taken to the interim care centre at Lungi.

One former child combatant, Francis, now aged 16 who had been abducted in 1998, described to Amnesty International on 15 July 2000 at the interim care centre in Lungi how RUF forces had tried to lure children back into their ranks from an interim care centre in Lunsar, Port Loko District: "*by then the rebels had moved from Makeni to Lunsar. They came to our camp and asked some children to join them again and we refused. We have rights to live and play. They encouraged us to join them. We told the manager of the centre to*

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*move us. At that time there were no vehicles; even the NGO's vehicle was not around. We walked along the road to Rogberi Junction where we met the rebels. They told us to return to our camp. We knew that they were killing people around. After that they said, please, come and join us or we are going to kill you people. After that we fled in the bush."*

On 31 May 2000 RUF forces were reported to have killed two boys and a young man at the village of Maforay, near Port Loko, after they refused to join them. On 15 June 2000, a farmer from a village near Magbile, Port Loko District, between Masiaka and Rogberi Junction, described to Amnesty International the killing of his sons by RUF forces on 11 June 2000: *"My four sons, aged 11, 21, 23 and 25, were building a new hut when the rebels asked them to join them. They refused and the rebels shot and killed them."* His three eldest sons were all farmers, married with children; his youngest son worked on his father's farm.

### **Continuing recruitment of children by government-allied forces**

Government-allied forces have also continued to recruit children and use them in combat. Some of the child combatants who had been disarmed and demobilized after the peace agreement were again recruited to fight against the RUF. Government-allied forces comprise a loose alliance of the Sierra Leone Army, the AFRC and the CDF. Although in theory these various forces are under the command of the Chief of Defence Staff, in practice it appears that chain-of-command control is diffuse and often unclear and that, in the confused and unstable situation which prevails, it is unlikely that senior military personnel of the Sierra Leone Army exert effective control over all forces fighting on behalf of the government.

When an Amnesty International delegation met the Deputy Minister of Defence, Chief Samuel Hinga Norman, who is also the National Coordinator of the CDF, in Freetown on 25 May 2000, he denied that the CDF recruited children or "initiated" them into the societies of traditional hunters. He said that the children with CDF forces had been rescued or captured from rebel forces and that they were handed over to child protection agencies. Chief Hinga Norman has publicly announced that child combatants will be demobilized from government and government-allied forces. In mid-July 2000 he held a meeting in Bo, Southern Province, with CDF leaders and "initiators". He instructed that no further children were to be "initiated" into the CDF. It is not clear, however, to what extent this instruction is being heeded. While it may reduce the number of children newly admitted into the CDF, it does not resolve the problem of those already with CDF forces.

A senior member of the CDF in Kenema, Eastern Province, told Amnesty International on 27 July 2000 that, although he personally opposed the use of children, he acknowledged that it was normal practice within the CDF. He was in the presence of two boys who appeared to be under 18 and who were both armed. He claimed that, before the peace agreement, there were some 600 children in the CDF forces around Kenema but that they were all subsequently demobilized and that there was no further recruitment of children.

On 12 June 2000 in Masiaka, an area where hostilities were continuing, much publicity was given to the apparent demobilization of 135 child combatants with government-allied forces, in particular the CDF. It subsequently transpired, however, that only 13 of these children were serving as combatants, nine with the CDF and four with the AFRC. It appeared that children and their families were attracted by the potential assistance and facilities provided to former child combatants, including food and education, as well as the opportunity to remove the children to safety from an area close to the front line. The children who were not former child combatants, and who had been separated from their families, were subsequently returned to their homes.

According to some reports, recruitment of children by the CDF is continuing in Bo and Moyamba Districts in Southern Province. It is often difficult, however, to distinguish between "initiation" into the societies of traditional hunters and recruitment to fight. Child protection agencies report that recruitment of children, including those who had previously been demobilized, is continuing. According to reports which remain unconfirmed, villages in Southern Province are expected to provide a certain number of children to the CDF. In some areas the CDF appear to be no longer using children so openly to guard checkpoints along major roads in Southern Province; children, some of them armed, have been seen close to checkpoints but hidden in the bush. In late May 2000 two children with the CDF aged about 14 or 15 were observed in Moyamba close to a checkpoint. In other areas, however, an increase in the number of children guarding checkpoints has been observed.

## **Arming the children**

### **Military assistance to rebel forces**

Rebel forces in Sierra Leone have received and continue to receive significant military assistance, including arms and ammunition, despite a UN embargo on the provision of such assistance. UN Security Council Resolution 1132 (1997) of 8 October 1997 imposed an arms embargo on Sierra Leone following the military coup of 25 May 1997 which brought the AFRC to power. After the government of President Kabbah was restored to power in March 1998, UN Security Council Resolution 1171 (1998) of 5 June 1998 lifted the arms embargo on the government of Sierra Leone but prohibited the sale and supply of arms and related *matériel* to non-governmental forces in Sierra Leone.

In view of the appalling level of human rights abuses against civilians perpetrated by rebel forces, military assistance to rebel forces can be assumed to have contributed, and to continue to contribute, to continuing violations of international human rights and humanitarian law. Among these violations are the recruitment and use of child combatants. Arms and ammunition reaching rebel forces inevitably fall into the hands of the children abducted and forcibly recruited by rebel forces. Traffic in small arms and light weapons clearly facilitates and encourages the use of child combatants. Amnesty International is calling for the cessation of all military assistance to rebel forces in Sierra Leone, including the provision of arms, ammunition, combatants and training.

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The government of Liberia has been consistently cited as violating the embargo on military assistance to rebel forces in Sierra Leone. Following a visit to Sierra Leone and Liberia in December 1998 the Chairman of the UN Security Council sanctions committee on Sierra Leone said that arms and ammunition were crossing into Sierra Leone from neighbouring countries, including Liberia, in violation of UN Security Council Resolution 1171 (1998).(6) At the time of the rebel incursion into Freetown in January 1999, the governments of both the United Kingdom (UK) and the United States of America (USA) unambiguously accused the government of Liberia of supporting rebel forces. Burkina Faso has also been reported to have acted as a transit route for military assistance to rebel forces in Sierra Leone. Some of this assistance has originated from countries in the former Soviet bloc and has been facilitated by the activities of international arms brokers and shipping agents, some of them based in Europe.

In April 1999 the commander of ECOMOG in Sierra Leone accused Liberia and Burkina Faso of transferring arms to rebel forces. He asserted that a Ukrainian-registered cargo plane had delivered arms and ammunition to Ouagadougou, the capital of Burkina Faso, for on-shipment to RUF forces through Liberia.(7) A Gibraltar-based company was reported to have organized the arms shipment to Burkina Faso, using a UK-based air company.

These accusations against Liberia and Burkina Faso have continued and intensified, especially as the international community has focused increasing attention on the role of the illicit trade in diamonds from rebel-held areas of Sierra Leone in financing the provision of military assistance to rebel forces.(8)

On 5 July 2000 the UN Security Council passed Resolution 1306 (2000) which imposed an embargo on all diamond exports from Sierra Leone for 18 months until the government of Sierra Leone can establish a proper certification system for diamonds and regain full access to those areas of the country - notably in Eastern Province and in particular Kono District and Tongo Field - where RUF forces remain in control. Liberia was specifically referred to as a transit route for diamonds from rebel-held areas; the Security Council expressed its concern "*at the role played by the illicit trade in diamonds in fuelling the conflict in Sierra Leone, and at reports that such diamonds transit neighbouring countries, including the territory of Liberia*". The resolution decided that "*all States shall take the necessary measures to prohibit the direct or indirect import of all rough diamonds from Sierra Leone to their territory*".

The international diamond industry has meanwhile responded to growing international pressure. The International Diamond Manufacturers' Association and the World Federation of Diamond Bourses, meeting in Antwerp, Belgium, from 17 to 19 July 2000, agreed that they will not trade in diamonds from rebel-held areas of Sierra Leone. The industry has sought further legal action from governments, such as import control and certification systems.

In line with the provisions of Resolution 1306 (2000), on 31 July and 1 August 2000 the UN Security Council sanctions committee on Sierra Leone held a public meeting, which included representatives of the international diamond trade, governments and non-governmental organizations, to debate the role of the illicit trade in diamonds from rebel-held areas in procuring military assistance for rebel forces.

Further allegations were levelled against Liberia and Burkina Faso, notably by representatives of the UK and USA governments. Ambassador Jeremy Greenstock of the UK said that: "*a variety of reliable sources show that President [Charles] Taylor [of Liberia] is orchestrating the activities of the RUF. He is giving direct military support, encouraging attacks against UNAMSIL and Sierra Leone government forces, providing strategic direction, influencing decisions on leadership and on command and control. Moreover, he is using the RUF to retain control of Sierra Leone's diamonds reserves*". Ambassador Richard Holbrooke of the USA said that: "*there was reason to believe that RUF leaders and the President of Liberia have taken increasingly large commissions for each of themselves, and particularly for Liberian President Taylor for his services as a facilitator of diamond sales and related arms transfers*" and added that the government of Burkina Faso was also involved providing arms to the RUF.

The governments of both Liberia and Burkina Faso vigorously denied these allegations and called on the international community to conduct independent investigations in their countries in order to substantiate these claims.

The UN Security Council sanctions committee on Sierra Leone established a panel of five experts to continue to investigate the link between the diamond trade and the conflict in Sierra Leone, including the alleged implication of the governments of Liberia and Burkina Faso. The panel of experts is expected to report on its findings by the end of October 2000.

In Resolution 1314 (2000) on children and armed conflict, the UN Security Council expressed its grave concern at: "*the linkages between the illicit trade in natural resources and armed conflict, as well as the linkages between illicit trafficking in small arms and light weapons and armed conflict, which can prolong armed conflict and intensify its impact on children, and, in this regard, expresses its intention to consider taking appropriate steps, in accordance with the Charter of the United Nations*".

#### **Military assistance to government forces**

Since May 2000 combatants below the age of 18 have continued to be recruited by the Sierra Leone Army and other government-allied forces, including the AFRC and the CDF.

While recognizing the responsibility of the Sierra Leone government to maintain security and protect its population and territory, Amnesty International opposes the provision of assistance to armed forces where it can be reasonably assumed to contribute to the recruitment of children under the age of 18 by the armed forces or other armed groups and their participation in hostilities. Effective

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mechanisms need to be put in place to monitor the distribution and use of arms and ammunition provided by other countries to the Sierra Leone Army and other forces fighting on behalf of the Sierra Leone government in order to ensure that they do not reach combatants under the age of 18. Continuing military assistance to government forces should be conditional on guarantees being provided that such assistance does not facilitate the recruitment and use of child combatants, or contribute to other human rights violations. If evidence is found that military assistance from other countries facilitates the recruitment and use of child combatants, the international community has a responsibility to ensure that such assistance is suspended.

The UK government has provided substantial assistance to the government of Sierra Leone for training and equipping the new Sierra Leone Army. As a condition for proceeding with training and equipping the Sierra Leone Army, the UK government sought and obtained assurances from President Kabbah in March 1999 that children under the age of 18 would not be used by the Sierra Leone Army or the CDF and that equipment supplied would be used in accordance with international human rights and humanitarian law.

The UK leads what will become a 90-strong military training team composed of military personnel from several other countries. Some 200 UK military personnel are providing a two-month training for recruits for the new Sierra Leone Army; a first contingent of 1,000 recruits completed their training in July 2000 and a further contingent of 1,000 is now being trained. All have been over 18. In addition, the UK continues to provide arms and ammunition to the Sierra Leone Army.

On 23 May 2000 the UK Ministry of Defence announced that it would be transferring 10,000 self-loading rifles to the Sierra Leone Army to assist in military operations against the RUF. UK government officials stressed at the time that the program to train and equip the Sierra Leone Army would be carried out under strict supervision. It sought to allay fears that arms supplied by the UK government would fall into the hands of children. These fears were fuelled by a photograph published by a UK newspaper of a 14-year-old boy, alleged to be fighting with government-allied forces, with a weapon previously supplied by the UK government. A spokesperson for the UK government said on 24 May 2000 that: "*We have instructed the [(UK) High Commissioner in Sierra Leone to remind the President of his undertaking last year that UK-supplied weapons would be used only by regular soldiers and in accordance with international law.*" During a visit to Sierra Leone in early June 2000 UK Foreign Secretary, Robin Cook, obtained clear and public commitments from the leaders of government-allied force that they would not use child soldiers and that any remaining in their ranks would be disarmed and demobilized.

Further assurances were provided by the UK Secretary of State for Defence, Geoffrey Hoon, following an announcement that further military assistance, including ammunition, was to be transferred to the Sierra Leone Army. He was reported to have said on 12 July 2000 that: "*the ammunition is being provided subject to further reassurances that it will be used only by regular soldiers, in accordance with humanitarian law and human rights standards, and not by child soldiers.*"

## A violation of children's rights and a war crime

The recruitment and use of children under the age of 15 as combatants is prohibited by both international human rights law and international humanitarian law.

Invariably, the use of children as combatants violates the rights enshrined in the UN Convention on the Rights of the Child of 1989, ratified by Sierra Leone on 18 June 1990, for example by depriving them of a family environment, education and basic health care.

On 13 January 2000 the UN Committee on the Rights of the Child considered Sierra Leone's initial report on its implementation of the Convention on the Rights of the Child and adopted its concluding observations on 28 January 2000.<sup>(9)</sup> The Committee expressed "*its deep consternation at the very high numbers of children who have been forcibly recruited into armed forces, including children at least as young as five years old, and who have been forced to commit atrocities against other people, including other children and members of their community*". The Committee added that it was "*deeply saddened by direct effects of the armed conflict on all child victims, including child combatants, and is concerned with the tragic loss of life and severe psychological trauma inflicted upon them*".

Article 1 of the Convention on the Rights of the Child states that:

*For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.*

Article 38 of the Convention on the Rights of the Child states that:

- *States Parties undertake to respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.*
- *States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.*
- *States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.*

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- *In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.*

Amnesty International believes that voluntary or compulsory recruitment and participation in hostilities, whether on the part of governments or armed opposition groups, ultimately jeopardize the mental and physical integrity of anyone below the age of 18. For this reason, Amnesty International actively opposes the voluntary or compulsory recruitment, as well as participation in hostilities, of children below 18 by governments or armed opposition groups.

In line with the general age of majority set in the Convention of the Rights of the Child, Amnesty International and five other international non-governmental organizations have been calling for the age of military recruitment - be it voluntary or compulsory - as well as deployment in hostilities to be raised to 18.(10)

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict states:

Article 1 *States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.*

Article 2 *States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.*

Article 4 (1) *Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.*

(2) *States Parties shall take all feasible measures to prevent such recruitment and use, including adoption of legal measures necessary to prohibit and criminalize such practices.*

(3) *The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.*

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was adopted by the UN General Assembly on 25 May 2000 and is now open for signature and ratification. The Optional Protocol raises the age for participation in hostilities, for both the armed forces and armed groups, from 15 to 18. Eight countries have so far signed the Optional Protocol; only one, Canada, has ratified it. UN Security Council 1314 (2000) on children and armed conflict urged member states to ratify the Optional Protocol.

The African Charter on the Rights and Welfare of the Child, which entered into force on 29 November 1999, is the only regional instrument which specifically prohibits the recruitment and use as combatants of children under 18 in both international and internal armed conflicts. Article 22 (2) requires States Parties to "*take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular from recruiting any child*". Sierra Leone has signed but not yet ratified the African Charter on the Rights and Welfare of the Child.

International humanitarian law - the laws of war - also prohibits the recruitment of children under 15 into the armed forces of governments and armed opposition groups as well as their participation in hostilities.(11)

Article 4 (3)(c) of Additional Protocol II to the Geneva Conventions states that:

*Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.*

Francis, now aged 16 and at the interim care centre in Lungi, was abducted by rebel forces in 1998. He told Amnesty International on 15 July 2000: "*As far as the Geneva Conventions are concerned, we should not fight. They have violated our rights. Even the government troops, they some time ago made a mistake of killing the children because the rebels use children.*"

Many of the children who have been abducted and forcibly recruited have also been victims of deliberate and arbitrary killing, beatings and other forms of torture or ill-treatment. Girls have been raped and forced into sexual slavery. These abuses constitute the most serious violations of international humanitarian law. Article 3, common to all four Geneva Conventions, extends to "*armed conflict not of an international character*" (internal armed conflict) fundamental rules for the protection of those taking no active part in hostilities which each party to the conflict is "*bound to apply, as a minimum*". Under the terms of common Article 3, people who take no active part or who have ceased to take an active part in hostilities must be treated humanely in all circumstances. Common Article 3

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specifically prohibits: "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment." This prohibition is binding not only on government forces but on all parties to internal armed conflicts, including armed political groups.

Additional Protocol II of the Geneva Conventions relating to the protection of victims of internal armed conflicts, which develops and supplements common Article 3 of the Geneva Conventions, requires all parties to the conflict to treat humanely every person affected by the conflict. Article 4 of Additional Protocol II prohibits: "violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment" of all those not taking a direct part in hostilities or who have ceased to take part in hostilities.

In Resolution 1314 (2000) on children and armed conflict the UN Security Council urged: "all parties to armed conflict to respect fully international law applicable to the rights and protection of children in armed conflict, in particular the Geneva Conventions of 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977, the United Nations Convention on the Rights of the Child of 1989 and the Optional Protocol thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court."

## Bringing to justice those who recruit and deploy children as combatants

Although the recruitment of children is unlawful in many countries, prosecution is rare. The majority of the world's nations finalized in July 1998 the Statute of a permanent International Criminal Court which will have jurisdiction to prosecute those charged with war crimes, genocide, aggression and crimes against humanity. Included in the list of war crimes is "conscripting or enlisting children under the age of 15 years into national armed forces or using them to participate actively in hostilities" and, in the case of an internal armed conflict, "conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities". The International Criminal Court will be formally established once 60 states have ratified the Statute, thereby giving the court jurisdiction over these provisions. Sierra Leone signed the Statute on 17 October 1998 and intends to ratify it shortly.

On 12 February 1999, Carol Bellamy, Executive Director of UNICEF, stated at a UN Security Council Open Briefing on the Protection of Civilians that: "over 300,000 children, girls as well as boys, have participated as combatants in the 30 most recent conflicts. Many are recruited - others are abducted. Some join simply to survive. And many of these children, some less than 10 years old, have witnessed or taken part in acts of unspeakable violence, often against their own families or communities... Children's recruitment as members of the armed forces, their rape and slaughter, and the targeting of their schools and hospitals are recognized by the International Criminal Court statute for what they are: heinous atrocities."

The UN Security Council, in Resolution 1261 (1999) of 25 August 1999 on children and armed conflict, called on all parties concerned to comply strictly with their obligations under international law, in particular the Geneva Conventions, the Additional Protocols, and the Convention on the Rights of the Child, and stressed "the responsibility of all States to bring an end to impunity and their obligation to prosecute those responsible for grave breaches of the Geneva Conventions of 12 August 1949".

This was reiterated by the UN Security Council in Resolution 1314 (2000) in which it emphasized the responsibility of all States: "to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes, and, in this regard, stresses the need to exclude these, where feasible, from amnesty provisions and relevant legislation." In a statement issued on 11 August 2000 when the resolution was adopted, UNICEF said that it: "underlines the urgent need for an end to impunity for those who commit crimes against children."

Although the use of child combatants under 15 violates both international human rights and humanitarian law, no one in Sierra Leone has yet been brought to justice for these crimes. The peace agreement signed in July 1999 provided an amnesty for all activities undertaken in pursuit of the conflict, including human rights abuses, even when amounting to crimes against humanity or war crimes. The UN at the time added a disclaimer to the agreement that the amnesty would not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. Although the amnesty did not apply to crimes committed after 7 July 1999, human rights abuses against civilians, including deliberate and arbitrary killings, mutilation, rape, abduction and forcible recruitment continued to be committed with impunity.

By June 2000, with the lack of implementation of key provisions of the peace agreement, the resumption of hostilities and the arrest of the leader of the RUF, Foday Sankoh, and other leading members of the RUF, initiatives by the authorities began to address the issue of impunity. On 12 June 2000 the government wrote a letter to the UN Secretary-General requesting assistance from the UN in establishing a special court to try Foday Sankoh and other senior members of the RUF for "crimes against the people of Sierra Leone and for the taking of UN peace-keepers as hostages".

On 14 August 2000 the UN Security Council passed Resolution 1315 (2000) on the creation of an independent special court. Amnesty International has urged that the special court try all those alleged to be responsible for crimes under international law, including crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as certain grave crimes under national law, throughout the period since the conflict began in 1991. This would include the forcible recruitment and deployment of children under 15. Although forces of the RUF have been responsible for systematic and widespread abuses throughout the conflict, those of the AFRC, the Sierra Leone Army and the CDF have also been responsible for gross human rights abuses, including violations of international humanitarian law. Those allegedly responsible for these crimes, whether they be members of the RUF, the AFRC, the Sierra Leone Army and regardless of their current political position or allegiance, must be brought to justice.(12)

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Child combatants themselves will not be brought to trial before the International Criminal Court, as the Statute bars it from exercising jurisdiction over any person who was under 18 at the time that the crime was committed. Child combatants in Sierra Leone have been responsible for gross human rights abuses; many of the worst atrocities have been carried out by children who were abducted and subjected to horrifying acts of violence. In a situation where crimes have been committed by children terrorized and brutalized into submission, complex questions about their criminal responsibility are raised.

While recognizing the need for justice and accountability, former child combatants must be treated in accordance with the principles of juvenile justice, which place the best interest of the child as a priority, recognize the special factors and needs of childhood, and place an emphasis on rehabilitation and reintegration rather than punishment. In conformity with the provisions of the Convention on the Rights of the Child, arrest, detention or imprisonment of a child must be in accordance with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Any child who is detained should be held separately from adults.

## The Sierra Leone government's responsibility to end the use of child soldiers

The government of Sierra Leone has made repeated commitments to demobilize all combatants under the age of 18, to raise the legal age of military recruitment to 18 and to fulfil its obligations under the UN Convention on the Rights of the Child.

Considering Sierra Leone's initial report in January 2000, the UN Committee on the Rights of the Child expressed its deep concern about the massive participation of children associated with fighting forces in Sierra Leone, either as combatants or in other roles. The Committee also noted that there is no minimum age defined by national legislation for voluntary recruitment, when the consent of a specified adult party is given. The Committee welcomed the government's intention to pass legislation raising the minimum age of recruitment to 18 and urged the government to move quickly towards passing this legislation and to ensure that the new legislation was enforced.

On 24 May 2000, following reports that children were either fighting with government-allied forces or were being allowed to remain in front-line positions, the government issued a statement reiterating its position on the recruitment of child soldiers (see appendix A).

The government stated that this practice was "*totally against government policy which stipulates that 18 years is the minimum age for bearing arms in Sierra Leone*". The statement continued: "*The Acting Chief of Defence Staff has been instructed to ensure that all those below the age of 18 currently involved in fighting on the side of the government should be immediately withdrawn, demobilized and handed over to competent institutions for rehabilitation. Henceforth, any commander who allows a child below 18 years to carry arms within his area of operations or allows children to remain in areas of active conflict will face severe disciplinary action.*" It is not clear, however, what measures have been taken to implement these commitments.

On the same day Johnny Paul Koroma, leader of the AFRC, issued statements on behalf of the AFRC and the Commission for the Consolidation of Peace which he heads. In these statements Johnny Paul Koroma "*warned all warring factions to desist from recruiting child soldiers*" and stated his strong opposition to the recruitment of child soldiers by both government-allied forces and rebel forces.

On 22 March 2000 CARITAS-Makeni launched a campaign to end the use of child combatants. Secondary school children marched through the centre of Freetown and speakers representing the government, UN agencies and non-governmental organizations called publicly for an end to the use of child combatants.

A Declaration of Commitment to the Release of Child Combatants and Child Abductees by the Various Factions was drafted as part of the campaign and signed by Chief Hinga Norman, Deputy Minister of Defence and National Coordinator of the CDF, Johnny Paul Koroma, leader of the AFRC and Chairman of the Commission for the Consolidation of Peace, and Colonel Tom Carew, acting Chief of Defence Staff. RUF leader Foday Sankoh declined to sign the declaration (see appendix B). The declaration made the following commitments:

*Article 1 The parties hereto shall forthwith facilitate the disarmament of all child combatants, that is to say, children under the age of 18 years and bearing arms and shall take immediate steps to prevent the use of child combatants in any manner whatsoever.*

*Article 2 The parties hereto shall in tandem with the actions contemplated in Article 1 above, release, free and cause to be released, all children and other persons abducted both during the conflict and after the signing of the Lomé peace accord.*

*Article 3 The parties shall in utmost good faith facilitate the return and/or handing over of child combatants and abductees to UNAMSIL, disarmament, demobilization and reintegration camps and other humanitarian agencies by 15 May 2000 (the International Day of the Family), to enable them to receive care and attention and ultimately to be reunited with their families and relatives.*

*Article 4 The parties in this regard undertake to cooperate with UNAMSIL, all agencies concerned with the welfare of children and the war affected and shall assiduously work towards the attainment of goals enumerated in the Declaration.*

Following the signing of the peace agreement in July 1999 Foday Sankoh became the Chairman of the Commission for the Management of Strategic Resources, National Reconstruction and Development, and assumed the protocol rank of Vice-President. Other RUF members also became part of the government by being appointed to ministerial and deputy ministerial positions. The RUF therefore became obliged not only to implement the provisions of the peace agreement which it had signed, but also to implement the



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government's commitments under the Convention on the Rights of the Child.

Article XXI of the peace agreement stated specifically that all prisoners of war and non-combatants should be released immediately and unconditionally by both parties. This would include the thousands of civilians, including children, who had been abducted by rebel forces. Article XXX of the peace agreement stated that the government of Sierra Leone should give particular attention to the issue of child combatants and should mobilize resources, both within Sierra Leone and from the international community, to address the special needs of former child combatants in the process of disarmament, demobilization and reintegration.

Foday Sankoh frequently denied that the RUF had abducted children. In a meeting with Amnesty International representatives on 25 March 2000 he said that the RUF had not abducted any children but had "rescued" them and was not holding any children captive. He was arrested on 17 May 2000, after more than 20 civilians were shot and killed by his forces during a demonstration outside his house in Freetown on 12 May 2000, and remains in detention. Other prominent members of the RUF are also detained. They are expected to be charged with a number of offences, including crimes amounting to violations of international humanitarian law.

In late April 2000, just before the resumption of hostilities, the government of Sierra Leone agreed to establish a National Commission for War-Affected Children in order to ensure that children's concerns are addressed at the highest political levels. This agreement was reached during a visit to Freetown on 29 and 30 April 2000 of the Special Representative of the UN Secretary-General for Children and Armed Conflict, Olara Otunnu, and the Canadian Minister of Foreign Affairs, Lloyd Axworthy.

## Moves by the international community to end the use of child soldiers

The plight of children in Sierra Leone has been highlighted repeatedly by the international community and commitments have been made to assist the children whose lives have been blighted by nine years of conflict. In the Eighth Report of the UN Secretary-General on the UN Observer Mission in Sierra Leone (then known as UNOMSIL) of 23 September 1999, the Secretary-General stated that "*the plight of children is among the most pressing challenges currently facing Sierra Leone*".(13)

On 25 August 1999 the UN Security Council adopted Resolution 1261 (1999) on children and armed conflict. The Security Council urged States and all relevant parts of the UN: "*to intensify their efforts to ensure an end to the recruitment and use of children in armed conflict in violation of international law through political and other efforts, including promotion of the availability of alternatives for children to their participation in armed conflict*"; and also "*to facilitate the disarmament, demobilization, rehabilitation and reintegration of children used as soldiers in violation of international law*."

At a debate on children and armed conflict at the UN Security Council on 26 July 2000, Carol Bellamy, Executive Director of UNICEF, said that many of the values, principles and concrete commitments enshrined in the Convention on the Rights of the Child remained unfulfilled, as did those of Resolution 1261 (1999). The Special Representative of the UN Secretary-General for Children and Armed Conflict, Olara Otunnu, said that the use of child combatants must be curbed by mobilizing political pressure, addressing the economic, social and political factors leading to the use of child combatants and increasing capacity on the ground for receiving and rehabilitating child combatants.(14) Commenting on UN Security Council 1314 (2000) on children and armed conflict which was passed on 11 August 2000, UNICEF said that: "*The council has reminded the world that it is both immoral and illegal to make children the victims and protagonists of war... It has helped to maintain awareness of the unacceptability of turning children into soldiers, of forcing millions of children and women to flee their homes, and of subjecting children to forced labour, sexual abuse and the pressure to commit atrocities*."

Olara Otunnu has visited Sierra Leone on several occasions, most recently in April 2000, and has made recommendations for a special program for assisting children affected by the conflict. Following a visit in late August and early September 1999, he formulated a 15-point agenda for action for children affected by the conflict, which included recommendations in respect of: ending the recruitment and use of child combatants; access to and release of abducted children; demobilization of child combatants; and the establishment of a National Commission for Children in Sierra Leone.

UNAMSIL, whose current full strength is 13,000, but which is expected to be increased to 16,500 peace-keeping troops, was deployed to assist with the implementation of the peace agreement, including the disarmament, demobilization and reintegration of former combatants. UN Security Council Resolution 1313 (2000) of 4 August 2000 extended UNAMSIL's mandate until 8 September 2000 and requested the UN Secretary-General to make recommendations for the restructuring and strengthening of UNAMSIL.

The process of disarmament, demobilization and reintegration was first hampered by the failure of large numbers of combatants to disarm and demobilize and then halted by the resumption of hostilities in May 2000. The human rights section of UNAMSIL is providing training in human rights, including children's rights, and international humanitarian law for peace-keeping troops. Since the peace-keeping force comprises troops from several countries with different training and experience, it is essential to ensure that adequate time and resources are devoted to comprehensive human rights training, including in children's rights. A child protection adviser was appointed to UNAMSIL in February 2000 and the UNAMSIL human rights section includes human rights officers with specific responsibilities for children's rights.

Resolution 1261 (1999) of 25 August 1999 on children and armed conflict specifically requested the UN Secretary-General to ensure that: "*personnel involved in United Nations peacemaking, peacekeeping and peace-building activities have appropriate training on the protection, rights and welfare of children*." It urged States and relevant international and regional organizations to ensure that appropriate training was included in their program for personnel involved in similar activities.

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At the end of the African Conference on the use of Children as Soldiers, held in Maputo, Mozambique, from 19-22 April 1999, participants adopted a declaration against the use of children as combatants. The Declaration calls on all African states to end the recruitment of all children under 18 into the armed forces. The Declaration also condemned the use of children by armed opposition groups and called upon these groups to end the recruitment of children and to demobilize or release into safety children already being used as combatants.

On 27 and 28 April 2000 a West African ministerial conference on war-affected children was held in Accra, Ghana, sponsored and co-hosted by the governments of Ghana and Canada. It brought together ECOWAS foreign ministers, as well as civil society organizations, donor governments, UN representatives, including Olara Otunnu, and children affected by conflict in the region. The primary objective of the event was to mobilize concrete action for child protection in a region whose children have been acutely affected by armed conflict. The conference focused on practical ways to implement and support international instruments of child protection, such as the African Charter on the Rights and Welfare of the Child and the Convention on the Rights of the Child.

At the end of the conference the delegates adopted and signed a West African Declaration on War-Affected Children which is expected to lead to commitments to: implementation of existing international, regional and local norms; ratification of the Statute of the International Criminal Court; incorporation of child rights and civilian protection into military training; and implementation or early warning/response systems to prevent armed conflict. At the conclusion of the conference, the Canadian Minister of Foreign Affairs said: "*The protection of children affected by war and the promotion of their well-being is a moral, political, social and economic imperative.*" The outcome of the conference will be discussed and developed at an International Conference on War-Affected Children to take place in Winnipeg, Canada, in September 2000.

While some countries have made commitments towards providing assistance to children affected by the conflict and others have made significant contributions towards the disarmament, demobilization and reintegration of former combatants, the attention of the international community should continue to focus on the needs of former child combatants, both on securing their disarmament and demobilization and also providing the assistance they need to be rehabilitated and reintegrated into their families and communities. All these initiatives will require sustained commitment and resources from the international community.

## Amnesty International's recommendations

Amnesty International is urging that the Sierra Leone government, the leaders of the RUF and the international community implement swiftly and effectively the following recommendations in order to end the recruitment and use of child combatants in Sierra Leone and to meet the particular needs of former child combatants.

### Recommendations to the Sierra Leone government, including the Chief of Defence Staff, the Deputy Minister of Defence and the leader of the AFRC:

- the highest priority should be given to the immediate disarmament, demobilization and reintegration of child combatants;
- prompt and effective measures should be taken by the government to ensure that no child under the age of 18 is recruited for military service, including by passing legislation raising the minimum age for military recruitment to 18;
- the Chief of Defence Staff should ensure that there is effective chain of command over all forces fighting on behalf of the government to ensure the immediate demobilization and disarmament of child combatants currently serving in these forces and to ensure that no child under the age of 18 is recruited or used in the future;
- the leader of the AFRC should give immediate effect to his condemnation of the recruitment and use as combatants of children under the age of 18 by instructing AFRC forces to release all children, both those used as child combatants or in any way associated with AFRC forces;
- the Deputy Minister of Defence and National Coordinator of the CDF should immediately and unequivocally denounce the recruitment and use of children under the age of 18 by the CDF and instruct all CDF leaders to immediately demobilize and disarm all child combatants serving with the CDF and to cease any further recruitment;
- the government of Sierra Leone should take steps to implement the recommendations of the UN Committee on the Rights of the Child, including by identifying priorities relating to child combatants and defining strategies to implement those priorities;
- the government should ratify without delay the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the African Charter on the Rights and Welfare of the Child, and the Statute of the International Criminal Court;
- the government should take effective measures to end impunity and prosecute those responsible for crimes under international law including violations of international humanitarian law, such as the abduction and forcible recruitment of children under the age of 15.

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### Recommendations to the leaders of the RUF:

- leaders of the RUF should immediately and publicly condemn and prohibit the recruitment and use of child combatants and RUF forces should immediately cease forcible or voluntary recruitment and use of children under the age of 18;
- RUF forces should be instructed to release immediately all children either used as combatants or in any way associated with fighting forces;
- leaders of the RUF should make a public commitment to observing international humanitarian law, in particular Additional Protocol II of the Geneva Conventions of 1949;
- RUF forces should be instructed to end deliberate and arbitrary killings, rape, sexual abuse and other forms of torture or ill-treatment of all captured civilians, including children;
- RUF forces should also allow immediate, full and unhindered access by child protection agencies and UNAMSIL personnel supervising the disarmament and demobilization program to children who continue to be held;
- RUF forces should allow immediate, full and unhindered access by humanitarian agencies, both national and international, to all civilians, including children, who continue to be held, and the delivery of humanitarian assistance.

### Recommendations to the international community:

- the international community should repeat its condemnation of the continuing recruitment and use of children as combatants in Sierra Leone which constitute a crime under international law and a violation of both international human rights and international humanitarian law;
- the highest priority should be given to implementing commitments made to end the use and recruitment of child combatants, including by taking concrete measures to implement UN Security Council Resolution 1314 (2000) of 11 August 2000;
- in all efforts to resolve the political and security crisis in Sierra Leone, including any reconsideration or renegotiation of the peace agreement signed in Lomé, Togo, on 7 July 1999, the needs of children affected by the internal armed conflict, including child combatants, should be given the highest priority;
- all governments should take all possible measures to end military transfers, including arms, ammunition, combatants and training, to rebel forces in Sierra Leone and enact legislation to prevent the trade in diamonds from rebel-held areas of Sierra Leone from facilitating the provision of military assistance to rebel forces;
- those governments which are providing military assistance, including training, arms and ammunition, to the Sierra Leone Army and other forces fighting on behalf of the government should first ensure that stringent safeguards are in place to ensure that this assistance does not facilitate or encourage violations of international human rights and humanitarian law, including the recruitment and use of child combatants; these safeguards should also include effective mechanisms to ensure that arms do not reach combatants under the age of 18; if evidence is found that such assistance facilitates the recruitment and use of child combatants, such assistance should be suspended;
- the international community should provide full and sustained support and assistance to relevant UN agencies and non-governmental organizations, both national and international, in order to strengthen initiatives for child protection, prevent further recruitment and use as combatants of children under the age of 18 and assist the disarmament, demobilization and reintegration of former child combatants, including by addressing their social, psychological and material needs;
- the child protection adviser and human rights section of UNAMSIL must be given full political support and adequate resources in order to undertake their work in relation to child protection;
- the UN should ensure that all troops participating in the UNAMSIL peace-keeping force are fully trained in international human rights and humanitarian law, including children's rights, and that they have training in addressing the specific needs of child combatants;
- the international community should ensure that those responsible for grave breaches of international human rights and humanitarian law, including the abduction and forcible recruitment of children, should be brought to justice; this should include provision of the necessary expertise and practical assistance for the independent special court to be established under UN Security Council Resolution 1315 (2000) of 14 August 2000.

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(1) For further information about the abduction, rape and other forms of sexual violence committed against girls and women, see *Sierra Leone: Rape and other forms of sexual violence against girls and women* (AI Index: AFR 51/35/00), published by Amnesty

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International on 29 June 2000.

(2) For further information about human rights committed during the conflict, see previous reports published by Amnesty International, in particular: *Sierra Leone: Recommendations to the international contact group on Sierra Leone, New York, 19 April 1999* (AI Index: AFR 51/05/99), 19 April 1999; *Sierra Leone: 1998 - a year of atrocities against civilians* (AI Index: AFR 51/22/98), November 1998; *Sierra Leone: A disastrous set-back for human rights* (AI Index: AFR 51/05/97), 20 October 1997; *Sierra Leone: Towards a future founded on human rights* (AI Index: AFR 51/05/96), 25 September 1996; and *Sierra Leone: Human rights abuses in a war against civilians* (AI Index: AFR 51/05/95), 13 September 1995.

(3) *Assessing Trauma in Sierra Leone*, Médecins Sans Frontières (Holland), 11 January 2000.

(4) Fourth Report of the Secretary-General on the United Nations Mission in Sierra Leone, S/2000/455.

(5) Fifth Report of the Secretary-General on the United Nations Mission in Sierra Leone, S/2000/751.

(6) S/1998/1236, Report of the Security Council Committee established pursuant to Resolution 1132 (1997) concerning Sierra Leone, 31 December 1998.

(7) For further information, see *Neglected Arms Embargo on Sierra Leone Rebels*, published by Human Rights Watch on 15 May 2000.

(8) For further information on Amnesty International's position on military assistance to rebel forces and the trade in diamonds, see *Sierra Leone: Cutting the link between diamonds and human rights abuses "forever"* (AI Index: AFR 51/56/00) 14 July 2000, *Sierra Leone: Amnesty International calls for fast and effective action on diamonds* (AI Index: AFR 51/54/00), 30 June 2000, and *Sierra Leone: Cutting the link between diamonds and guns* (AI Index: AFR 51/27/00), 31 May 2000.

(9) Concluding Observations of the Committee on the Rights of the Child: Sierra Leone, CRC/C/15/Add.116.

(10) Amnesty International, Human Rights Watch, International Federation *Terre des Hommes*, the International Save the Children Alliance, the Jesuit Refugee Service and the Quaker UN Office (Geneva) launched the Coalition to Stop the Use of Child Soldiers in June 1998. For further information, see *Stop Using Child Soldiers!*, Coalition to Stop the Use of Child Soldiers, second edition published by Rádda Barnen on behalf of the International Save the Children Alliance in November 1998.

(11) Sierra Leone acceded to the Geneva Conventions of 12 August 1949 on 10 June 1965. On 21 October 1986 it acceded to both Additional Protocol I of 8 June 1977 relating to the Protection of Victims of International Armed Conflicts, and Additional Protocol II of 8 June 1977 relating to the Protection of Victims of Non-International Armed Conflicts.

(12) For further information on Amnesty International's recommendations for ending impunity in Sierra Leone, see *Sierra Leone: The United Nations Security Council should strengthen the independent special court to prosecute perpetrators of human rights abuses* (AI Index: AFR 51/66/00), 4 August 2000, and *Sierra Leone: Ending impunity - an opportunity not to be missed* (AI Index: AFR 51/60/00), 26 July 2000.

(13) Eighth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone, S/1999/1003.

(14) SC/6985, Security Council holds debate on children and armed conflict, 26 July 2000.

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## THE SCARS OF DEATH

### Children Abducted by the Lord's Resistance Army in Uganda

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#### *The Future*

Children who escape from rebel captivity are in poor shape: they are usually in lice-ridden rags, covered with sores, scarred from beatings and bullet wounds. According to World Vision's Robby Muhumuza, the children arrive at trauma counseling centers "sick, malnourished, with low appetite. They have guilt feelings, are depressed and with low self-esteem . . . They have swollen feet, rough skin, chest infections . . . they tend to be aloof . . . with little confidence in themselves or others. They tend to lapse into absentmindedness as well as swift mood changes."<sup>(12)</sup>

Many of the children--especially the girls, who are routinely given to rebel leaders as "wives"--also have sexually transmitted diseases: "They arrive with gonorrhea, syphilis or sores, skin rash and complaints of abdominal pain and backache."<sup>(13)</sup> At World Vision in Gulu, 70 to 80 percent of the children newly arriving at the center test positive for at least one sexually transmitted disease.<sup>(14)</sup> Some of the girls are pregnant, while others, who tested negative for pregnancy, have stopped having their menstrual periods because of malnutrition and stress.<sup>(15)</sup> The trauma counseling centers do not test the children for HIV, reasoning that after their experiences in the bush, the children are not yet psychologically ready to be told that they may have contracted a fatal illness. But with HIV infection rates of 25 percent in parts of Gulu and Kitgum, it is overwhelmingly likely that many of the children--especially the girls--have become infected.

Counselors and children's advocates criticize the Uganda People's Defense Force for not providing escaped children with adequate medical care while the children are in UPDF control. "They don't always give them treatment right away," says Richard Oneka, a counselor. "Sometimes by the time they reach us, they've been with the UPDF for weeks without seeing a doctor."<sup>(16)</sup>

The Uganda People's Defense Force also sometimes brings recently escaped children to appear at public rallies, to drum up popular support for the fight against the rebels. This practice, too, is sharply criticized by children's advocates: "They display the children, and read out their names, which only increases the likelihood of rebel reprisals against the child or his family," explains Paulinus Nyeko of Gulu Human Rights Focus. "Also, they give details on how the child escaped. The rebels come to hear of it, and that makes it hard for other children to escape. The army is just using the children."<sup>(17)</sup>

In its 1996 report to the U.N. Committee on the Rights of the Child, the Ugandan government affirmed its general commitment "to improve the lives of . . . child soldiers" and its "special concern" for children abducted by rebels.<sup>(18)</sup> Nonetheless, the Uganda Child Rights NGO Network (UCRNN) has been critical of the government's response to the crisis in the north, noting that while the Museveni government provided "special services" for children who were caught up in civil wars of the early 1980s (when Museveni's guerrilla army fought the Obote and Okello regimes), "children caught up in the armed rebellion in northern Uganda since 1987 have not received adequate support from the government." According to UCRNN, "no government programmes or resources have been identified" for children abducted by the Lord's Resistance Army. UCRNN has called upon the government to "take concrete measures to address the needs of children caught up in armed conflict" and to "establish adequate responses for the long-term support of these children."<sup>(19)</sup>

Some of the children who escape from the rebels go immediately home to their villages, and some return to their boarding schools, but many end up staying, for a time, at the trauma centers operated by World Vision or the Gulu Save the Children Organization (GUSCO). Conditions in the centers are poor: too many children in small huts and tents, too few trained counselors, and not enough for the children to do. At one center, children are taught basic skills like carpentry, tailoring and bicycle repair, but at the others, the children spend much of their time just sitting around, playing card games or staring into space.

But at least the centers feel safe to the children: at the centers, they are surrounded by other children who have gone through similar experiences, and cared for by supportive, non-judgmental adults. This is not always the case outside of the centers: according to Robby Muhumuza, children who return home sometimes find that other families with young relatives still in captivity are "jealous of those who have returned." Some people also blame the children for rebel atrocities. Those villagers who had themselves suffered at the hands of Lord's Resistance Army rebels are sometimes "antagonistic, labeling the children 'rebels.'"<sup>(20)</sup> Occasionally, children face physical threats from community members who identify them as perpetrators of atrocities.<sup>(21)</sup>

For girls, in a culture which regards non-marital sex as "defilement," the difficulties are even greater: reviled for being "rebels," the girls may also find themselves ostracized for having been "wives." They fear "shame, humiliation and rejection by their relatives and possible future husbands." They may suffer "continual taunts from boys and men [who say they are] used products that have lost their taste."<sup>(22)</sup>

For many children, lack of community acceptance is the least of their troubles. "Many of these children have parents who were killed during their abductions," explains World Vision's Charles Wotman. "Others have families, but they have been displaced, and no one knows where they are."<sup>(23)</sup> Children without families worry that they will be unable to support themselves. Even those children with supportive homes and communities fear leaving the centers, because of the danger of being re-abducted and killed.

Sharon, thirteen:

I haven't been home since I was abducted, and I don't know where my family is. I met my cousin in Gulu and she told me that after I escaped, my uncle was killed. She said my mother and family ran away.

I want to finish my course in tailoring here, and try to look for a place to stay in Gulu town. I won't go home--I think I would be abducted again, and maybe killed.

Patricia, fifteen:

I'm afraid to go home because I'll be abducted again and killed. Home is not safe. My parents came to see me when I was in Gulu. They were so happy to see me. They said they thought I was dead. But they told me to stay away, to stay at [the trauma counseling center], because home is not safe.

Samuel, seventeen:

I've been here at the center for three weeks now. My mother came to see me last week. She told me that my other two brothers [who were abducted with me] have not returned. I hope they are still alive. I do not want to think about them.

My mother said that shortly after me and my brothers were abducted, the Lord's Resistance Army attacked our home again, and looted, and burned it down. My mother has moved to Atiak trading center. She says home is not yet secure, and that she will look for a home for me in Gulu town. I want to take vocational training here at the center.

I think the world should think about Kony's actions because he is abusing children so much. Children also want to enjoy peace like their fathers and mothers enjoyed when they were young.

In the short term, the children face many direct threats to their lives and livelihoods. But the long-term psychological effects of their experiences can only be guessed at. For many children, fears about the future are accompanied by memories of the past, memories of their own pain and of the atrocities they witnessed and took part in:

William, ten:

I am afraid to go back home to my village, because the rebels are still there in plenty. I fear they will kill me if they come to know of me here. I was in primary three when I was abducted, and I would like to go back to school, if there is somewhere that is safe. I don't know. I am sad now. The other thing I would like to say is that I experienced the deaths of many children. I wish there could be a solution.

Thomas, fourteen:

When I think back, the hardest thing was seeing other children being killed. That was the hardest thing. The second hardest thing was the brutal life--someone can be beaten on no grounds at all. I don't know what I will do, now: I would like to go back home but it is still unsafe, and I fear the rebels coming again. I am learning bicycle repair here, but when I must leave I fear having no tools. I do not know how I will support myself.

Molly, seventeen:

I have been back at school now for almost three months. I tend to forget, almost, that it ever happened to me. But it often comes to me suddenly. I look around in class and see the seats that are still empty because of our girls who are still in the bush, and I think that the bad things that for me are over are still happening to them, and then I feel sad and afraid.

Teddy, thirteen:

A thing I remember is how if you tried to escape, they would put you in the center of the circle and stab at you with bayonets or pangas. Sometimes little pieces of the bodies would come off. This is what I remember most often.

As for me now, I am very happy here for the time right now. I would like to go home and continue a normal education, but there is nobody to support me. There is nobody to care for me. I pray to God to help.

For other children, it isn't the waking memories that are worst, but the dreams. "These children don't want to remember what they've been through," says James Kazini, commander of the army's Fourth Division in Gulu. "My wife and I had several of the escaped girls staying in our house, before they went back to school, and they were all dreaming in the night: at one time, one of the girls woke us shouting, because she said she was seeing blood everywhere, blood floating out of the bed." <sup>(24)</sup>

Stephen, seventeen:

I went to the elders and I was cleansed: I had to be cleansed because I killed. It does not matter that you did not wish to kill. You still have killed and must become clean again. For me, I am older, and I think I will be all right. But I am thinking that it is the young boys and young girls who will not be all right.

I am very much interested to go back to school. So for now I am just here, and I am feeling okay. But I don't feel yet free, because of some dreams that can come at night, because of the bad things that happened to me in the bush. Killing people, dead bodies, the sound of gunshots--sometimes you wake up and it is as though that is what is still taking place. Life with the rebels was really very bad.

Timothy, fourteen

I don't know what I will do in the future. Since I've been here [at the trauma counseling center], I haven't seen my family, and am sad that they haven't come. I don't know anything about them--I have no news. I can't go home. I'll be re-abducted and killed straightaway. At least here, I feel safer than at home. I dream at night of being re-abducted, or that I am still a captive, walking somewhere.

Susan, sixteen:

I feel so bad about the things that I did. It disturbs me so much, that I inflicted death on other people. When I go home I must do some traditional rites because I have killed. I must perform these rites and cleanse myself. I still dream about the boy from my village who I killed. I see him in my dreams and he is talking to me and saying I killed him for nothing, and I am crying.

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1. See Thomas P. Ofcansky, *Uganda: Tarnished Pearl of Africa* (Boulder: Westview Press, 1996), Chapter 3, *passim*; A.B.K. Kasozi, *The Social Origins of Violence in Uganda, 1964-1985* (Montreal: McGill-Queens University Press, 1994), pp. 11, 54; Amii Omara-Otunnu, *Politics and the Military in Uganda, 1980-1985* (London: Macmillan, 1987), pp. 104, 125-126, 158-159.

2. Ofcansky, *Uganda*, pp. 56-58.

3. Human Rights Watch interview, Gulu, May 30, 1997.

4. Museveni and other senior officials have acknowledged human rights violations by NRA forces during this period, and tried and punished some of the soldiers involved. The Parliament of Uganda, "Report of the Committee on Defense and Internal Affairs on the War in Northern Uganda," January 1997, pp. 11-12.

5. For a brief discussion of Sudan's charges against Uganda and the Ugandan government response, see, for instance, Nhial Bol, "Sudan-Uganda: Khartoum Denies Air Attack on Ugandan Town," *Interpress Service*, February 16, 1997.

6. In this report, the word "children" refers to anyone under the age of eighteen. The U.N. Convention on the Rights of the Child defines a child as "every human being under the age of eighteen unless, under the law applicable to the child, majority is obtained earlier." Article 1. Convention on the Rights of the Child, G.A. res. 44/25, annex 44 U.N. GAOR Supp. (No 49), at 167, U.N. Doc. A/4/49 (1989). The full text of the Convention on the Rights of the Child is set forth in the Appendix.



7. Our findings in this report are corroborated by the findings of a team of Amnesty International researchers, which visited Uganda in May 1997. See Amnesty International, *Breaking God's Commands: The Destruction of Childhood by the Lord's Resistance Army in Uganda*, AI Index: AFR 59/01/97 (London: September 18, 1997). See also UNICEF/ World Vision, *Shattered Innocence: Testimonies of Children Abducted in Northern Uganda*, (Uganda:1997).
8. It should be noted that the children we interviewed are somewhat atypical, in that they succeeded in escaping from the rebels, something most abducted children never do. In our investigation, we had to rely solely on the testimony of those children who had escaped from the rebels, since it is impossible to gain access to the rebel camps and interview children still in captivity.
9. A number of these testimonials are included in the appendix to this report.
10. The rebels destroy bicycles (and often kill or mutilate their owners) because the bicycle is a relatively quick form of transportation over poorly maintained rural roads. The rebels fear that the existence of bicycles enables civilians to warn government soldiers quickly of rebel activity.
11. The existence of slavery in Sudan (particularly involving children from southern Sudan) has been well-documented. See, for instance, Human Rights Watch/Africa & Human Rights Watch Children's Rights Project, *Children of Sudan: Slaves, Street Children and Child Soldiers* (New York: Human Rights Watch, 1995).
12. Robby Muhumuza, *The Gun Children of Gulu* (Uganda: World Vision, December 1995), pp. 9-10.
13. Ibid.
14. Human Rights Watch interview, World Vision's Gulu Tramatized Children of War Project, Gulu, May 30, 1997.
15. Human Rights Watch interview, Concerned Parents of Aboke, Lira, May 27, 1997.
16. Human Rights Watch interview, Richard Onoko, Counselor, Gulu Save the Children Organization, Gulu, May 30, 1997.
17. Human Rights Watch interview, Gulu, May 30, 1997.
18. Government of Uganda, report on the implementation of the U.N. Convention on the Rights of the Child, 1 February 1996. The Ugandan Constitution lays out certain basic rights of children: "Every child has a right to know and be cared for by his parents . . . a child has a right to a basic education . . . No child shall be deprived of medical care, education or any other social and economic benefit." Constitution of the Republic of Uganda, enacted September 22, 1995, promulgated October 8, 1995. Chapter Four, Paragraph 17. The Government's duties with regard to children are elaborated in the Children Statute of 1996, which entered into force in August 1997. The statute defines a child as "a person below the age of eighteen years," (Part II, paragraph 3), and states that "whenever the state, a court, a local authority or any person determines any question with respect [to] the upbringing of a child . . . the child's welfare shall be the paramount consideration." (First Schedule, paragraph 1). Specifically, "A child shall have the right . . . to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters." (First Schedule, Paragraph 4b).

The constitution also declares that Ugandan children have "all the rights set out in the U.N. Convention on the rights of the child and the OAU Charter on the rights and welfare of the child. . . ." (First Schedule, paragraph 4c). The U.N. Convention on the Rights of the Child states that "States parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not a direct part

in hostilities . . . . In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict." Convention on the Rights of the Child, Article 38. The African Charter on the Rights and Welfare of the Child reiterates these principles in Article 22: "States parties to the present charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife."

19. Uganda Child Rights NGO Network, "Response to the Government of Uganda Country Report on the Implementation of the U.N. Convention on the Rights of the Child," pp. iii, 12.

20. Muhumuza, "Gun Children," p. 11.

21. Human Rights Watch interview, Lacor Hospital, Gulu, May 29, 1997.

22. Robby Muhumuza, *Girls Under Guns* (Uganda: World Vision, December, 1995), pp. 12-13.

23. Human Rights Watch interview, Kiryandongo, May 26, 1997.

24. Human Rights Watch interview, Gulu, May 30, 1997.

25. The protections established by Common Article 3 are developed and supplemented by Protocol II to the Geneva Conventions of 1949, which applies to internal armed conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol." (Article 1, 1). Protocol II reiterates the fundamental guarantees laid out in Common Article 3, and adds a range of additional requirements for armed groups to whom the protocol applies. In circumstances in which Protocol II does not directly apply, it is generally seen as providing interpretive guidance on the implementation of Common Article 3, which establishes only minimum humanitarian standards. Of particular relevance here are several of the Protocol II provisions which relate specifically to children: for instance, Article 4(3)(c) states that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities." Article 4(3)(d) states that "the special protection provided in this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured." Protocol II was ratified by Uganda in 1991.

26. Graca Machel, Statement to the Third Committee of the U.N. General Assembly, November 8, 1996.

27. Human Rights Watch supports current efforts to raise to eighteen the age at which people can take part in armed conflicts. This effort is being spearheaded by the United Nations Working Group on a Draft Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. (The Draft Optional Protocol is included in the appendix to this report). For other Human Rights Watch reports dealing with child soldiers in various parts of the world, see, for instance, Human Rights Watch/Asia, "Burma: Children's Rights and the Rule of Law," *A Human Rights Watch Short Report*, vol.9, no.1(c), January 1997; Human Rights Watch/Africa & Human Rights Watch Children's Rights Project, *Children of Sudan: Slaves, Street Children and Child Soldiers* (New York: Human Rights Watch, 1995), and Human Rights Watch/ Africa & Human Rights Watch Children's Rights Project, *Easy Prey: Child Soldiers in Liberia* (New York: Human Rights Watch, 1994).

28. Human Rights Watch interview, Kampala, June 2, 1997.

29. The Parliament of Uganda, "Report of the Committee on Defense and Internal Affairs on the War in Northern Uganda," Minority Report by Hon. Norbert Mao and Hon. Daniel Omara Atubo, January 1997.

30. UNICEF Background Situation Report, June 1997.

31. Gulu District Emergency Plan, May-June 1997. Since the total population of Gulu and Kitgum combined is roughly 700,000, UNICEF's figure seems more plausible. (*Uganda Districts Information Handbook*, 1995/96 Edition (Kampala: Fountain Publishers, Inc., 1995)).

32. UNICEF Background Situation Report, June 1997.

33. Gulu District Emergency Plan.

34. One hundred and nine of the Aboke girls were released shortly after the raid, when Sister Rachele Fassera, the deputy headmistress of the school, succeeded in following the rebels into the bush. She confronted the rebels and begged them to release the children, urging them to take her in the girls stead. Faced with her pleas, the rebels permitted her to leave with 109 of the girls, keeping only thirty as captives. Sister Rachele's courageous actions helped bring public attention to the Lord's Resistance Army's practice of abducting children, and the subsequent efforts of Sister Rachele Fassera and the Concerned Parents of Aboke have forced the Museveni government to begin negotiations with Sudan in an effort to obtain the release of the remaining Aboke captives. Of the thirty girls kept by the rebels after Sister Rachele's intervention, nine had escaped as of May 1997. We interviewed six of the nine escapees during our visit to St. Mary's on May 28, 1997, and we collected written testimonials from over a hundred of the other girls. A number of the most representative testimonials are reproduced in the appendix to this report.

35. Gulu District Emergency Plan.

36. This estimate was given to us by a number of different journalists, lawyers and doctors.

37. Gulu District Emergency Plan.

38. "11 Years on, War Wracked Acholi only getting Worse," *The Monitor* (Kampala), May 25, 1997. Despite the extremely dangerous conditions in the protected camps, a number of people interviewed by Human Rights Watch charged that government soldiers often force unwilling civilians into the camps, warning them that if they remain in rural areas, the Uganda People's Defense Force will consider them to be rebel collaborators and may kill them. A number of our interviewees also complained that government soldiers do not provide the camps with adequate military protection, and do not respond quickly enough to reports of rebel activity. Since Human Rights Watch's mission to Uganda was primarily concerned with the abduction of children, we were unable to investigate these allegations or assess their validity.

39. There were 1457 deaths from malaria, 14 from measles, 1558 from diarrhea, 490 from "diarrhea with blood," sixteen from malnutrition and 480 from upper respiratory tract disorder like pneumonia. Gulu District Office Morbidity Data for Protected Camps, February 1997.

40. Human Rights Watch interview, Gulu, May 29, 1997.

41. Human Rights Watch interview, Gulu, May 30, 1997. These allegations were repeated to us by numerous other NGO representatives.

42. Human Rights Watch interview, Gulu, May 29, 1997.

43. Human Rights Watch interview, Gulu, May 30, 1997.

44. Human Rights Watch interview, Kampala, May 20, 1997.
45. Human Rights Watch interview, Kampala, June 3, 1997.
46. Human Rights Watch interview, Kampala, May 26, 1997.
47. "Christian Rebels Wage a War of Terror in Uganda," *The New York Times*, March 5, 1997.
48. "Ugandan Rebel Activity Erupts In Fighting; Religious Fundamentalism One Cause," CNN World Report, February 20, 1997.
49. "Uganda - Africa's Pearl: Trade On, and Damn the 'Mosquitoes,'" *The Guardian*, July 9, 1997.
50. Roger Winter, U.S. Committee for Refugees, testimony before the African Affairs Subcommittee of the United States Senate Foreign Relations Subcommittee, May 15, 1997.
51. Ofcansky, *Uganda: Tarnished Pearl of Africa*, p. 42-43.
52. Kasozi, *The Social Origins of Violence in Uganda, 1964-1985*, p. 111.
53. Omara-Otunnu, *Politics and the Military in Uganda*, p. 104.
54. Ofcansky, *Uganda*, chapter 3.
55. *Ibid.*, p. 55.
56. Human Rights Watch interview, Gulu, May 30, 1997.
57. Human Rights Watch interview, Gulu, May 30, 1997.
58. *Ibid.*
59. Heike Behrend, "Is Alice Lakwena a Witch?" in Hanson and Twaddle, eds., *Changing Uganda* (London: James Currie, 1991), p. 173.
60. Behrend, p. 174.
61. Behrend, pp. 175-76.
62. Behrend, p. 165.
63. Behrend., pp. 166-67.
64. Behrend, p. 167.
65. Human Rights Watch interview, Kampala, May 20, 1997.
66. Human Rights Watch interview, Kampala, May 26, 1997.
67. Human Rights Watch interview, Kampala, May 26, 1997.

68. Human Rights Watch interview with Hon. Alphonse Owiny-Dollo, Minister of State for the North, Kampala, May 20, 1997.
69. Behrend, "Is Alice Lakwena a Witch?" pp. 168-69.
70. Human Rights Watch interview, Kampala, May 20, 1997.
71. A.G.G. Gingyera-Pinyewa, *Northern Uganda in National Politics* (Kampala: Fountain Publishers, 1992), pp. 21-22.
72. Ofcansky, *Uganda*, pp. 63-64.
73. Several anthropologists did a significant amount of research on Lakwena and Kony during this early period (1985-88), and readers wanting a fuller discussion of the Holy Spirit Movement and Kony's early leadership should consult the work of Heike Behrend, cited above, and Tim Allen, "Understanding Alice: Uganda's Holy Spirit Movement in Context," *Africa*, Volume 61, Number 3, 1991, pp. 370-99.
74. For convenience, we will refer to Kony's followers as the Lord's Resistance Army from this point on, although this name is somewhat anachronistic when applied to Kony's group during the late eighties and early nineties.
75. Gingyera-Pinyewa, *Northern Uganda*, p. 20.
76. Ibid.
77. Ibid.
78. Acholi Parliamentary Group, "Submission to the Parliamentary Committee on Defense and Internal Affairs Investigating the Northern Rebellion with a View to Bringing it to a Speedy End," date uncertain, but probably December 1996 or January 1997, pp. 5-6.
79. Ibid.
80. Human Rights Watch interview, Gulu, May 30, 1997.
81. Human Rights Watch interview, Ron and Pam Ferguson, Mennonite Central Committee, Kampala, May 31, 1997.
82. In the wake of the abduction of thirty girls from St. Mary's School in Aboke, the Ugandan government began to negotiate with Sudan for the return of the girls, who were believed to have been taken across the Sudanese border by the Lord's Resistance Army. The Sudanese government eventually permitted a delegation that included the deputy headmistress of St. Mary's and a representative of the Concerned Parents of Aboke, to visit an LRA camp in Sudan, under Sudanese government auspices. Although the Sudanese government insisted that it knew nothing about the fate of the Aboke abductees, the tour of the LRA camp further undermines the Sudanese government's assertion that it does not support or control the LRA.
83. Human Rights Watch interview, Cathy Watson, Kampala, May 26, 1997.
84. According to one news report, Joseph Kony recently converted to Islam at the behest of the Sudanese government. See Emmy Alio, "Uganda: Kony Converts to Islam," *Africa News*, July 31, 1997.

85. A number of expatriate Acholi have at varying times come forward and claimed to be spokespeople for the Lord's Resistance Army, but the utter lack of agreement between their statements and the actions of the rebels casts serious doubt on their ability to speak for the LRA. Government officials, journalists and local activists all agree that the various LRA "spokesmen" cannot be assumed to have any real authority within the LRA, and may, indeed, have no connection at all to the LRA

For instance, at a recent conference of Acholi leaders held at the University of London, a paper was given by Dr. James Obita, who claims to be the Lord's Resistance Army Secretary for External Affairs and Mobilisation. According to Dr. Obita, the aims of the LRA are: "a) To remove dictatorship and stop the oppression of our people; b) To fight for the immediate restoration of competitive multi party democracy in Uganda; c) To see an end to gross violation of human rights and dignity of Ugandans; d) To ensure the restoration of peace and security in Uganda; e) To ensure unity, sovereignty and economic prosperity beneficial to all Ugandans; f) To bring to an end to the repressive policy of deliberate marginalization of groups of people who may not agree with the NRA ideology."

Dr. Obita insisted that the LRA does not abduct children or kill civilians: "It is . . . not the policy of the LRM/A to abduct or force people to join its ranks . . . . We are usually shocked and puzzled when we hear government allegations that the LRA are massacring civilians in the villages of northern Uganda. LRA has no programmes or intentions of killing the very people they are supposed to defend and protect." Obita attributed such atrocities to government soldiers disguised as rebels: "The aim for these atrocities by the UPDF and the shifting of the blames for them on the LRA is intended to discredit the LRA and simultaneously frighten and anger the civilian population of northern Uganda with the hope of turning them against LRA." Dr James Alfred Obita, Secretary for External Affairs and Mobilisation, Lord's Resistance Movement/Army, "A Case For National Reconciliation, Peace, Democracy And Economic Prosperity For All Ugandans." Paper Presented At Kacoke Madit, London, April 5-6, 1997. This and other documents of Obita's have been disseminated via the world-wide web at <http://www.columbia.edu/~bo23/obita-km.htm>.

86. Human Rights Watch interview, Gulu, May 30, 1997.

87. Human Rights Watch interview, Sister Bruna Barollo, Camboni Sisters, Kampala, May 26, 1997.

88. Human Rights Watch interview, Kampala, May 26, 1997.

89. Human Rights Watch interview, Kampala, June 3, 1997.

90. Human Rights Watch interview, Kampala, June 2, 1997.

91. Human Rights Watch interview, Gulu, May 30, 1997.

92. Human Rights Watch interview, Kampala, May 26, 1997.

93. Yoweri Museveni, address at the opening of parliament, April 28, 1997.

94. "Uganda - Africa's Pearl: Trade On, and Damn the 'Mosquitoes,' " *Guardian*, July 9, 1997.

95. Museveni, address to parliament, April 28, 1997.

96. Human Rights Watch interview, Commander James Kazini, UPDF Fourth Division, Gulu, May 30, 1997.

97. Human Rights Watch interview, Paulinus Nyeko, Gulu, May 30, 1997.

98. Human Rights Watch interview, Kampala, June 3, 1997.

99. Human Rights Watch interview, Jim Mugungu, Monitor newspaper, Kampala, June 3, 1997.
100. Human Rights Watch interview, Angelina Atyoum, Concerned Parents of Aboke, Aboke, May 28, 1997.
101. Human Rights Watch interview, Kampala, June 2, 1997.
102. Human Rights Watch interview, Aboke, May 28, 1997. The Ugandan government is committed to defeating the Lord's Resistance Army through military means. It should be noted that most Acholi elected leaders, along with NGOs like Gulu Human Rights Focus and the Acholi Development Association, oppose this policy on the grounds that it has led to excessive loss of civilian lives. These leaders and organizations urge a negotiated end to the conflict.
103. Human Rights Watch interview, Gulu, May 30, 1997.
104. Ibid.
105. Human Rights Watch, Kampala, June 3, 1997.
106. Human Rights Watch interview, Andres Banya, Acholi Development Association, Kampala, June 2, 1997.
107. Human Rights Watch interview, Kampala, June 2, 1997.
108. Human Rights Watch interview, Kampala, June 2, 1997.
109. Human Rights Watch interview, Kampala, June 2, 1997.
110. Human Rights Watch interview, Gulu, May 29, 1997.
111. Song in Acholi Development Association brochure, 1997. Translated into English for Human Rights Watch by Ponsiano Ocheru, UNICEF.
112. Graca Machel, Statement to the Third Committee of the U.N. General Assembly, November 8, 1996.
113. As of the date of publication of this report, the African Charter on the Rights and Welfare of the Child had not yet entered into force.
114. In 1994, the U.N. Commission on Human Rights decided to establish an open-ended inter-sessional working group to elaborate a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts. Article 38 of the Convention on the Rights of the Child sets fifteen years as the minimum age for recruitment and participation in hostilities. The purpose of the draft optional protocol is to raise that age. Sessions of the working group were held in the autumn of 1994, January 1996, and January 1997.

This is the text of the draft optional protocol as it emerged from the third session of the working group in January 1997. The fourth session of the working group will take place in January 1998. Once finalized, the draft text will be submitted to the U.N. Commission on Human Rights, and ultimately to the U.N. General Assembly. The optional protocol will be opened for signature by any State which is a signatory to the Convention on the Rights of the Child. The optional protocol will be subject to ratification or open to accession by any State which has ratified or acceded to the Convention.

Bracketed language is language that has not yet been agreed upon by members of the working group. Note that the working group has agreed to set the age for compulsory recruitment into government armed forces at eighteen (Draft Article 2). Disagreement exists on the minimum age for voluntary recruitment into government armed forces (Draft Article 3), and for participation in hostilities (Draft Article 1).

It should be noted that the U.S. government has played a key role in preventing the working group from reaching an agreement on the minimum age for participation in hostilities (Draft Article 1). At the last session of the working group, the U.S. government stated that it would refuse to accept eighteen as the minimum age; all other governments participating in the working group supported, or were willing to support, eighteen as the minimum age.



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Source: Médecins Sans Frontières (MSF)

Date: 01 Jul 2002

## Treatment of neuropathic pain in Sierra Leone

*By Phillipe Lacoux and Nathan Ford - This article first appeared in The Lancet*

### Summary

During Sierra Leone's violent decade-long war, the warring parties used amputation, especially of arms, as a means of terror. In a camp for amputees in the capital city Freetown, Médecins Sans Frontières established a clinic and a treatment programme for neuropathic pain.

Insecurity and cultural and language barriers have complicated this work, but medical and humanitarian benefits have been demonstrated. Pain services are virtually non-existent in less-developed countries. There have recently been no major treatment advances for neuropathic or phantom pain; however, the general body of knowledge about amputation pain can be increased by observations from these difficult settings.

Clinics devoted to the treatment of chronic pain syndromes are a relatively new development. The scientific knowledge behind the treatment of pain is growing through the work of organisations such as the International Association for the Study of Pain and the Pain Society in the UK.

For both medical and humanitarian reasons, <sup>1</sup> there are acute pain services in most hospitals in the UK. There is growing evidence that improved treatment of acute pain can reduce the incidence of chronic pain. In less-developed countries, where basic medical services may be in disrepair, pain services are virtually non-existent, although interest in the subject is growing. A chronic-pain clinic in Tanzania recently reported a mixture of cases similar to that seen in UK clinics. <sup>2</sup>

Non-governmental organisations also contribute to pain treatment services. Douleurs sans Frontières, for example, has worked in various places particularly with landmine victims. <sup>3</sup>

Aid organisations provide a large part of the aid to victims of humanitarian crises in less-developed countries. In recent years, these agencies have become more reflective about the quality of care provided. <sup>4</sup> How agencies distribute their limited resources in the face of overwhelming need is constantly being re-evaluated. <sup>5</sup> Their goal is not simply to increase the availability of health care, but also to focus on particular areas of need that, for reasons of marginalisation, stigmatisation, or the injustice that results from limited resources, <sup>6</sup> may otherwise be left unaddressed.

Médecins Sans Frontières (MSF) is an emergency medical relief organisation that runs around 500 medical relief programmes in over 80 countries worldwide. It responds to humanitarian crises where there is broad abuse of freedom, and where violence and war lead to social injustice. For several years MSF provided surgical support to the main government hospital in Freetown, Sierra Leone. This article describes the work, beginning in early 2000, of an anaesthetist (PL) and a local community health officer working for MSF surgical programme in a pain clinic in the Murray Town Amputees' camp in Freetown.

### Sierra Leone's violent past

In 1991, civil war broke out in Sierra Leone between the government and the Revolutionary United Front (RUF), which was formed by people who felt excluded from government because of corruption and nepotism. In the ensuing decade, the government of Sierra Leone became weakened and after several military coups the national army became discredited.

All parties involved in the war have been implicated in the perpetration of war crimes, <sup>7</sup> and civilians have been the victims of various human rights abuses, including rape, abduction, and violent amputation. <sup>8,9</sup> Furthermore,

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armed forces present as part of regional peacekeeping organisations have not been innocent.

The West African peacekeeping force known as ECOMOG were present in Sierra Leone at the invitation of the government. In January 1999, they were nearly thrown out of the country by the RUF during the campaign "Operation no living thing". During their fight back for control of Freetown, ECOMOG were widely involved in killings and beatings.

This decade of conflict has claimed thousands of lives and produced more than 400,000 refugees. Over 1 million people are estimated to have been displaced.<sup>10</sup> Criteria for human development and life expectancy-access to improved water sources, immunisation rates, and access to essential drugs-place Sierra Leone bottom in the world tables.<sup>11</sup> One of the most distressing legacies of this war is the large number of amputees.

### **The origins of amputation in Sierra Leone**

The number of people in Sierra Leone who had amputations is not known, and some exaggerated figures have been produced. However, more conservative estimates put the numbers at fewer than 1,000 people who have lost an arm or a hand in the country, many of whom may not have been seen by medical or rehabilitation services.

However, an unknown number have died from infection or associated injuries, isolated from any assistance by distance and insecurity. In January 1999 alone, Freetown's main hospital treated 97 victims of amputation by axes and machetes (figure 1). MSF, working in one hospital, treated over 40 cases of serious lacerations to the arms and legs that were caused by attempted amputations.<sup>7</sup>

Various accounts are given for how the amputations started.<sup>12</sup> Some accounts suggest that, in their early days, the RUF needed to influence the civilian population; for example, to discourage them from taking in the harvest in a particular area. Amputation of the hands of people who defied their orders would intimidate all the people in an area.

Forms of political intimidation have also been cited. In his election campaign, Ahmad Tejan Kabbah (President of Sierra Leone since 1996) is alleged to have said, "use your hand to vote forme". Many people said that after amputation their hands were put into a bag and the perpetrators said they would send the bag to the president. The practice of amputation across the palm, leaving just the thumb, may derive from a closed-fist thumbs-up sign of another political group, called "One Love".

### **Initial pain assessment**

Murray Town Amputees' Camp in Freetown has been home to 2,000 people, about 140 of whom have lost an arm or hand, and a further 80 have had leg amputations. Together with their families, they have been displaced from their homes by the war. Visited by foreign journalists and VIPs, they have become a symbol of Sierra Leone's troubles; they are famous.

MSF decided to assess chronic pain among the large cohort of arm amputees after the community health officer (a trained primary healthcare provider) confirmed a pain problem.

Interviews were conducted via interpreters who had worked as physiotherapy and prosthetics assistants for Handicap International who witnessed daily the problem of amputees being unable to use prostheses owing to chronic pain. The interpreters were trained in the general characteristics of pain and use of the questionnaire that was used to assess pain. A local nurse explained the patients' information sheet to the study participants, making clear that, at this stage, we were offering nothing in the way of treatment. We wanted amputees' own descriptions of the pain they felt.

During our week of assessment (May 2000) the political and security situations deteriorated. The peace agreement signed in 1999 failed as fighting between all parties was resumed. Conflict was especially intense where United Nations (UN) forces were moving into RUF-controlled areas.

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In some rural areas, UN peacekeepers and some non-governmental organisation personnel were kidnapped. Quite quickly over 500 UN troops were captured, their vehicles, weapons, and uniforms were stolen. There was a feeling of anxiety and suppressed panic. Following this, many non-governmental organisations including MSF took the decision to partially evacuate. Therefore, the pain assessment was hurriedly completed. Nevertheless, 40 questionnaires were gathered (table 1) and examined back in the UK.

Characteristic	Number of amputees (n=40)
<b>Sex</b>	
Male	32 (80%)
Female	8 (20%)
Mean (range) age, years	39.4 (16-68)
<b>Amputation</b>	
Total	51
Machete	35 (71%)
Axe	12 (19%)
Gunshot	4 (10%)
Unilateral amputation	29
Bilateral amputation	11
<b>Site</b>	
Below elbow	49 (98%)
Above elbow	2 (2%)
Other injuries in addition to the amputation	21/40 (53%)
Mean (range) time since injury, months	22.5 (10-49)
<b>Pain characteristics</b>	
Stump pain	40 (100%)
Phantom sensation	37 (93%)
Phantom pain	13 (33%)

**Table 1. Initial assessment of 40 arm amputees in May, 2000**

These early results showed that many of the amputees were still living with pain. Their amputations had happened between 10 and 48 months previously. The "chop" was with a machete in most cases, or with an axe in some; a few were the result of a bullet wound. We hoped very much that with the deterioration in security a new cohort was not in the making.

All of the 40 people we assessed had stump pain. <sup>13</sup> 13 had phantom pain ( table 1). Both stump and phantom pain were described in ways similar to those in which they are described in other parts of the world ( panel 1 ).

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The explanations for the pains were both practical and consistent, the latter probably reflecting the discussion between amputees living closely together inside the camp.

**Descriptions of stump pain**

- Pricking, shocks, nervous, trembles, one point tender
- Heavy, draws\*, can radiate up arm
- Bite bite, shocks, runs down arm, easier when he hangs the arm down
- Swell up, cry, thunder, bites, made worse by the sun
- Scratches, stiff, warm, worse in heat, worse after drinking water
- Current, feels like it has been freshly cut

**Explanations for stump pain**

"Because some of my nerves and veins have been cut off and as a result I am not getting complete blood circulation."

"Sometimes [I] think that because I walk under the sun, which is hot that is why I feel the burning pain. When I get the desire to work with my hands and there is no way for me I then feel the pain"

"I believe it is because the blood is not circulating properly due to the amputation done to my hand"

**Descriptions of phantom pain**

- Numb, vibrates, stiff, like being hit by a stick, hot water, massage and bandage helped
- Scratching, warm, a painful scratch
- Like something growing bit by bit-the hand and so it hurts, at the same time the stump shakes
- Hot pepper
- Warm, pepper, needles

**Explanations for phantom pain**

"Because I still have the memories of my normal hand in my mind, since I was not born like this"

"Because I still have the memories of this missing part in my brain"

\*The word "draws" in Krio translates as stretching.

**Panel 1. Descriptions of stump and phantom pain and explanations given by the patient for the phenomena**

Pain scoring was a central part of the research. In our initial assessment, we had found that a number scale (0 for no pain; 10 for worst pain imaginable) seemed comprehensible, whereas a word scale (none, mild, moderate, severe and extreme) was not understood.

Translations into Krio (a language based on English that is the first or second language of most Sierra Leonians) and other languages were not exact or not available. We subsequently developed word scales for both mood and pain in Krio (panel 2).

**In the past month how sad or happy have you been?**

Very happy	= A glady too mos
Happy	= Glady
Normal	= E nor bad, or half half
Sad	= Me heart poil

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Very Sad	= Me heart poil bad
<b>Word scale for pain</b>	
None	- None
Minor	- Small
Medium	- Half and half
Severe	- Serious

### Panel 2. Krio visual analogue and word scales for mood and pain

When we asked people what they now wanted in life, pain relief was not on their list. They replied in terms such as finding their family members (some of whom are alive, some of whom are not alive), returning to their homes, finding their lost possessions, finding employment, obtaining a modicum of personal success or progress, stability in the country, and regaining self-respect. Revenge was rarely mentioned and is still rarely an issue. These are important answers, but they did not mean that we should not attempt to intervene with the pain problems. Furthermore, for MSF the development of a protocol to treat neuropathic pain that could be adaptable to the various difficult situations in which the organisation works would also be useful.

### Pain treatment

Chronic-pain treatment was established when we were able to resume the MSF programme in the Murray Town Amputees' Camp in early 2001. The pain clinic was not limited to particular problems, and anyone with pain was able to attend; however, most of those who attended were amputees (table 2). The aim was to establish the clinic, train a local community health officer, and let the clinic function for a period, and then reassess. One useful outcome measure was whether such an activity could run with minimum expert input.

Pain site	Number of patients
Generalised body pain	23 (13%)
Head, face, mouth	14 (8%)
Neck	8 (4%)
Thorax	16 (9%)
Abdomen	7 (4%)
Back	42 (23%)
Upper limb stump	-
Unilateral	83 (46%)
Bilateral	19 (11%)
Total	102 (57%)
Lower limb stump	-
Unilateral	42 (23%)
Bilateral	1 (1%)

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Total	43 (24%)
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A single patient may have several sites of pain.

**Table 2. Site of the pain in first 181 new patients seen in the clinic**

One of the local staff we employed was at first sceptical of there being a problem with pain, but became convinced otherwise during an early meeting with one of the camp's committees to discuss the planned intervention. One man described in detail the burning, "drawing" (stretching), and pricking in his elbow stump; he spoke in a loud voice with emphatic gestures and with vocal support from several others in the group. After this experience, the local staff member impressed upon us that there was a real problem here that we must do something about.

Consultations were by appointment and patients were given reminders to attend. The information we collected included demographics, pain descriptors, pain scoring, mood, use of prostheses, activities of daily living, and clinical examination. We also asked about other injuries-beatings were common and there were other amputations, including ears (figure 2) and toes.

Assessment of a new patient took approximately one hour; follow-up visits took 15 mins. If treatment had been started, the follow-up consultations were weekly, with the aim of checking for side-effects and repeating key messages as the opportunity arose (panel 3). Doses were increased as tolerated on a simple dosage regimen; patients could reach any dose on this regimen.

#### Key messages

- We believe that you have pain
- Pain does not mean continuing damage, the damage has already happened
- Medication may or may not help the pain
- Medication may take weeks or months to help
- Medication must be taken regularly
- Medication must be taken regularly
- Side effects become less as you continue to take the medication
- Only rarely are further operations useful
- Exercise and physiotherapy are good at reducing pain

#### Dosage schedule

##### Week 1

Amitriptyline 25 mg at night  
Carbamazepine 200 mg at night

##### Week 2

Amitriptyline 50 mg at night  
Carbamazepine 200 mg morning and night

##### Week 3

Amitriptyline 75 mg at night  
Carbamazepine 200 mg morning, midday and night

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Patients remain on the dose they can tolerate

Drugs were used in combination, except in women of childbearing age

#### Criteria for starting medication

- Pain description included words such as shooting, shocking, burning, or cramping. The local term "drawing" was also commonly present, which translates as stretching
- History consistent with the physical damage of nerves
- Examination with cottonwool and blunt pin showed evidence of a difference from normal skin such as allodynia and hyperalgesia or numbness
- Pain scores and how it affects the patient's life were suggestive of a significant problem. For example pain waking them from sleep
- Patient wished to try it and could follow instructions

#### Panel 3. Aims, dosage, and criteria for treatment of amputees

Treatment goals were set in an attempt to avoid unrealistic expectations (eg, to be able to sleep at night without being woken by the pain, or to be able to wear a shoe). We were aware that rumours spread quickly with people living closely together and maintenance of realistic expectations was essential both for therapeutic reasons and because this group had already been exposed to various broken promises.

We took advice from the community health officer who was in charge of the general clinic and talked to the religious leaders, the camp committees, and to Handicap International. The latter played an important part in advising appropriate people—such as those having difficulty in rehabilitating owing to pain, or for whom pain was limiting the use of prostheses—to come to the clinic. They also gave feedback about problems or misconceptions that occurred and provided some of the elements common in pain clinics in more developed countries, such as physiotherapy and some psychological support. We could not hope to run along genuinely multidisciplinary lines, but we did try.

Although the clinic was positioned within the MSF health clinic and beside the Handicap International working area, the working conditions were not ideal. The room was noisy, positioned as it was between an orthotic workshop and a hut containing the generator. About 3.5 m square, the room was also hot. A maximum of three interviews could be undertaken at the same time.

Clinic tools were simple, mostly paperwork such as the record sheets and appointment cards (figure 3); examination was with cottonwool and a blunt pin. All of the criteria for starting medication (panel 5) had to be met by patients before treatment was started (unless examination results were equivocal and the other four criteria were met). Most cases showed both hyperalgesia with a blunt pin (thought to be indicative of a wind-up phenomenon in the spinal cord) and allodynia (pain with a stimulus not normally resulting in pain, which may reflect rewiring as Ab fibres sprout into C fibre regions) with cottonwool.

We chose the antidepressant amitriptyline and the anticonvulsant carbamazepine for treatment because there is wide experience with their use and demonstrated efficacy in the treatment of neuropathic pain.<sup>14-16</sup> Side-effect profiles were acceptable and the drugs were already on the MSF list of essential drugs. The drugs were used in combination, except in women of childbearing age for whom only amitriptyline was used owing to the association between carbamazepine and neural tube defects.

Social interaction is an essential part of medical work, but is inhibited when one is working with another culture, especially when working through interpreters. We sometimes found it hard to tell when people were upset: facial changes were small or the patient became silent. Working with interpreters could be frustrating because they may lead the patient to avoid upsetting issues or not relate information they find distressing.

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Mirrors have been reported to be useful in the treatment of the phantom pain of amputees,<sup>17</sup> the theory being that putting back the visual input can complete a neural circuit.

We know what a profound experience seeing the missing limb can be. We constructed a mirror box to be used in treatment. Despite explanation of the aims and what they might feel, for most of the seven patients who tried it, the mirror box brought back the terrible events of the amputation.

When we talked with each of them the next day, they did not seem to be angry but they also had no intention of trying the mirror box again. As a method of potential help the use of the mirror box was justified as it is noninvasive, simple, and patient directed, but the preparation, explanation, and discussion of expectations was inadequate in this difficult setting.

### Reassessment

In late 2001, the clinic was reassessed (the locally trained community health officer had been in charge for the previous seven months). We reassessed the patients on medication, those who had stopped medication, and those never on medication; each group made up about a third of the total number of patients (now about 220, although not all amputees). We repeated some of the assessments used earlier in the year.

The side-effects of amitriptyline and carbamazepine frequently limit their use. Not surprisingly, therefore, side-effects were the most common reason given for stopping medication. Some people had moved away. Most who had stopped said they were interested in starting medication again, and these people were reviewed.

The majority of those on medication had complied with it for 7 months. The reasons for long intervals without medication were generally understandable (eg, illness or travelling away for a funeral). Short intervals occurred mostly because the patient forgot to take their medication or there were competing commitments such as training or a meeting. There was some confusion over dose and when to take medication. Most said they took the tablets for pain relief, although some said they took them to aid sleep, for a generally well body, or for an increased appetite.

After medication, improvements were found in measures of mood, in day-to-day life (eg, employment, prostheses use, reaching physical goals, and in activities of daily living) and in pain (measured by word scale and number scale). Patients on medication thought it had reduced their pain, and on examination there were fewer physical signs. These improvements cannot be attributed to medication alone; the passing of time and the increasing stability in the country may account for some. Patients did not simply receive tablets or no tablets, they also all received an assessment and some explanation of what they felt and had a chance to talk. These features may be equally important.

### The future

The general situation in Sierra Leone in early 2002 seems to be improving. There is free access for the UN forces throughout the country, disarmament of combatants is taking place, and displaced people are gradually returning to their home areas. The atmosphere during the mid-May parliamentary and presidential election was very calm. Rebuilding Sierra Leone is an enormous task and how conditions develop in the wider context of West Africa remains to be seen. Fighting has recently increased in neighbouring Liberia.

MSF's treatment of pain has both humanitarian and medical features. The chance for people to tell their story and to have acknowledgment of the pain seemed to be useful for them and, we hope, reduced fear. The main problems faced in undertaking this work were related to security, and the language and cultural barriers that had to be overcome.

Published research into neuropathic and phantom pain is exciting, but no major treatment advances are appearing. The striking CNS changes and plasticity of the system have been demonstrated in various studies, largely with positron emission tomography.<sup>17</sup> The body of knowledge about amputation pain can be added to by observations from frequently neglected and difficult settings like Sierra Leone.<sup>13,18</sup>



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This work indicates that a combination of explanation, interest, and medication can help to improve the well-being of a vulnerable group in a setting of some social turmoil after nerve damaging injuries have led to neuropathic pain. Part of the benefit that results from such work is through showing people that we believe them about their pain, and can explain it a little, which in turn makes them less frightened by it.

#### Authors' contributions

PL wrote this paper as an account of his experiences in Sierra Leone. NF contributed to the writing of the paper.

#### Web sites

About the RUF

<http://www.fas.org/irp/world/para/ruf.htm>

About the IASP International Association for the Study of Pain

<http://www.iasp-pain.org>

About UNAMSIL

[http://www.un.org/Depts/dpko/unamsil/body\\_unamsil/htm](http://www.un.org/Depts/dpko/unamsil/body_unamsil/htm)

About Human Rights Watch

<http://www.hrw.org>

Médecins Sans Frontières

<http://www.msf.org>

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We thank expatriate and local staff in both Paris and Freetown, all of whom are dedicated to MSF's programmes in Sierra Leone. Members of the Pain Service and Department of Epidemiology and Public Health in Ninewells Hospital, Dundee, Scotland, have provided valuable contributions to the programme. Most of all, we acknowledge the dignity and fortitude of the patients and their families.

#### References

- <sup>1</sup> The Royal College of Surgeons of England and the College of Anaesthetists. Commission on the provision of surgical services: report of the working party on pain after surgery. London: RCS publications, 1990.
- <sup>2</sup> Mwafongo V, Mazubin . The pattern of pain seen among Dar es Salaam residents. Trop Doct 2001; 31: 227-28. [PubMed]
- <sup>3</sup> de Smet J, Charlton JE, Meynadier J. Pain and rehabilitation from landmine injury. Pain: Clin Updates 1998; VI: 1-4. [PubMed]
- <sup>4</sup> Griekspoor A, Collins S. Raising standards in emergency relief: how useful are Sphere minimum standards for humanitarian assistance?. BMJ 2001; 323: 740-42. [PubMed]
- <sup>5</sup> Ford N. , Bedell R. (Eds.) 1999; Intentions and consequences: human rights, humanitarianism and culture 1999; Amsterdam: Médecins sans Frontières
- <sup>6</sup> Benatar S. Resolving Moral Conflict. In: Ford , Bedell (Eds.) 2002; Justice and MSF operational choices pp. 5-6. Amsterdam: Médecins sans Frontières
- <sup>7</sup> Human Rights Watch. Sierra Leone: getting away with murder, mutilation, rape. new testimony from Sierra Leone. New York: Human Rights Watch, July 1999, 11: 3(A).
- <sup>8</sup> de Jong K, Mulhern M, Ford N, van der Kam S, Kleber R. The trauma of war in Sierra Leone. Lancet 2000; 355: 2067-68. [PubMed]
- <sup>9</sup> Amowitz L, Reis C, Lyons KH, et al. Prevalence of war-related sexual violence and other human rights abuses

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among internally displaced persons in Sierra Leone. JAMA 2002; 287: 4. [PubMed]

<sup>10</sup> Global IDP Survey Database: <http://www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/>

<sup>11</sup> Human Development Report. In: United Nations development programme. Geneva: United Nations, 2001.

<sup>12</sup> Richards P. Fighting for the rainforest: war, youth & resources in Sierra Leone. 1996; London: International African Institute

<sup>13</sup> Lacoux PA, Crombie KI, Macrae WA. Pain in traumatic upper limb amputees in Sierra Leone. Pain (in press).

<sup>14</sup> McQuay H, Carroll D, Jadad AR, Wiffen P, Moore A. Anti-convulsant drugs for the management of pain: a systematic review. BMJ 1995; 311: 1047-52. [PubMed]

<sup>15</sup> McQuay HJ, Tramer M, Nye BA, Carroll D, Wiffen PJ, Moore RA. A systematic review of antidepressants in neuropathic pain. Pain 1996; 68: 217-27. [PubMed]

<sup>16</sup> Drug treatment of neuropathic pain. Drug Ther Bull 2000; 38: 89-93.

<sup>17</sup> Ramachandran VS, Hirstein W. The perception of phantom limbs. Brain 1998; 121: 1603-30. [PubMed]

<sup>18</sup> Isaakidis P, Swingler GH, Piennar E, Volmin k J, Ioannidis JPA. Relation between burden of disease and randomised evidence in sub-Saharan Africa: a survey of research. BMJ 2002; 324: 702-05. [PubMed]

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## No Compassion for Sierra Leone's Amputees

Roland Bankole Marke, Wordpress.org correspondent, March 29, 2007

A harrowing, decade-long civil war endured by the citizens of Sierra Leone is now over, but many scars still remain. Top United Nations emissary Carolyn McAskie, responsible for peace-building, said: "The war has been over for five years. The peace has held; I think that's a Gold Standard. ... There is still a lot to do though."

President Ahmed Tejan Kabba has publicly told the nation that his government is bogged down with other overwhelming national priorities; therefore he could not address the individual needs of his people. He advised every Sierra Leonean to start helping themselves.

But thousands of amputees in this tiny nation barely the size of Maine cannot do that. Their personal battles with trauma have only intensified. The amputees' traumatic experiences have caused more emotional, mental and psychological nightmares than their physical wounds could communicate.

Presently, the government is busy with its pending presidential and parliamentary elections that are just a few months away. However, elections are not a curative measure for the thousands of amputees, such as Mamusu Thoronka and Tamba Ngaujah, who are still languishing in Sierra Leone's wilderness, handicapped and in destitution and despondency. They simply cannot fend for themselves.

The disturbing and graphic practice of mutilation and amputation germinated from the seeds sown during the 1991 civil war in the nation's eastern border town of Bormaru.

Sierra Leone shares close proximity and commonality with neighboring Liberia, where the diabolical genesis of dehumanization and brutality started. The government discounted the rebels, who migrated to Liberia to execute heinous crimes with the aid of Liberia's then-president Charles Taylor, as mere rabble-rousers. But history has come to quite a different judgment. Dire warnings fell by the wayside, to be trodden on or ignored. The government assured its citizens that the dreadful situation was under control, but innocent, peaceful Sierra Leonean civilians would encounter a bizarre, barbaric and innovative surgical nightmare.

The psychology behind the amputation of limbs, tongues or ears is the intent to instill panic within the government and in its citizens. In a previous election the people had voted overwhelmingly for President Kabba. Since they used their hands to vote, dismembering their limbs will prevent them from casting another ballot for a democratic government. The rebels' propaganda campaign of fear has been utilized to impose their will on the people of Sierra Leone, just like terrorists in the Middle East.

The United States recently opened a large, newly built embassy in Sierra Leone with C.I.A. and F.B.I. facilities on-site to help combat terrorism in all its forms.

Mamusu Thoronka, the 41 year-old trader shown in the pictures, is among thousands of amputees living in Freetown, Sierra Leone today. She is struggling to support her family of six children on her own. Her husband is in a transition into another relationship and is distant from the family. Welfare services don't exist and no form of help comes from the government.

According to Mamusu: "On January 22, 1999 when the capital city Freetown was attacked by rebels, I attempted to take refuge in a building to escape their vengeance. But they found me, and put my hand on a table and were ready to cut it off with a machete like a butcher would sever animal meat. I begged for mercy asking them to respect God and me, being His child. They told me to point to God with my right hand which they also tried to chop off. They tried three times but failed; the hand of God probably helped or saved me. I still can't use three fingers on my right hand."

"The rebels said that I should get another hand from President Kabba, who had several to spare. I was in agony and the thought of death crossed my mind. I was later taken to hospital but the doctors, too, had fled for their lives.

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Freetown was infested with hundreds of corpses scattered all around its perimeter. My dangling left hand held by a film of skin had begun to decay. It took a week before I was able to see a doctor who treated my wounds."

"My husband is still distant; I'm sure he has another wife without my knowledge. I persevere to support my children by buying goods like palm-oil in the countryside to resell in Freetown. My responsibility is too much for me. I cannot afford to pay school fees for my six children, as the fees are beyond my reach. I'm appealing for help from the international world, as my two oldest children have dropped out of school."

With her tenacious spirit Mamusu refuses to give up her fight for survival or self-sufficiency. She does cross-border trade between Guinea and Sierra Leone. In Guinea goods are cheaper but a recent embargo put on Guinean goods could threaten her future. She still sells vegetables, such as beans, to enable her to buy clothes and household necessities for her large family. Goods and service are now going at more "cut throat" prices upcountry than in Freetown. Mamusu also rears a few chickens for subsistence and sometimes sells some.

"Rebels have threatened to end our lives," she said. "They say, if the government will not stop talking about amputees and the rebel atrocities that created them, they will get rid of us all. I fear the advent of another war."

Mamusu keeps the welfare of her children paramount in her mind. She is not seeking vengeance or retribution towards her assailants, but instead has offered forgiveness to them, despite the institution of the War Crimes Court to help bring justice to people like her.

"I want someone to take care of my children," she declared. "The former rebel fighters are being well looked after, with skills training and free education for their children. The Truth and Reconciliation Commission said we amputees should get a pension but we have seen nothing." It was a Norwegian charity that helped to house her.

She continued: "There is discrimination against amputees at all levels. I cannot cook for myself; I have to direct my daughter Bonki to do the cooking for me. When my children run into disagreements in school their peers tell them, 'Your mother is a half-person.' It is so demeaning and painful for me since I'm a victim of my circumstance. We amputees are really discriminated against in Sierra Leone."

Tamba Ngaujah has a similar story to tell the world, but lacks the megaphone to communicate to the international community his destitution and abandonment by the society that he once served. He had enlisted in the Republic of Sierra Leone Military Forces (RSLMF) to defend his country against all internal and external aggressions, serving his country diligently and honestly to the best of his ability. When other soldiers defected from the army, he stayed on.

It was in his line of duty that he was captured by the rebels, at the genesis of the warfare in 1991. Tamba suffered double amputation in captivity, becoming the first among thousands of amputees. After surviving his ordeal he was kicked out of the Wilberforce Barracks where he lived in the military quarters. It was during the heavy rainy season when massive flooding is common. His condition did not deter military officials from putting out an evacuation order on his apartment.

Tamba is now languishing in the streets with his family parading as beggars. No plans have been made to provide him with alternative accommodation. He is appealing to the international community to at least provide him a shelter, considering his current status.

Help for amputees does not seem to be moving on a fast track. There are many NGO's in Sierra Leone, but aid received through them does not appear to trickle down fast enough. It's a deplorable situation. The Human Rights Declaration and The Truth and Reconciliation do not seem applicable to them. Even though a recent United Nations assessment gave Sierra Leone high marks for keeping the peace, a nation that does not take care of its disabled or less fortunate subjects is doomed.

A comprehensive read on the Sierra Leone civil war and its effects on other ordinary people can be found in my book: "[Harvest of Hate: Stories and Essays 'Fuel for the Soul'](#)". An extract, "[Harvest of Hate- Mary's Saga](#)" has been published on Wordpress.org.

### **Photo-journal: Sierra Leone Amputee**

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# WORLD

## BEHIND the SCENES

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### Sierra Leone amputees in a league of their own

Injuries sustained in civil war haven't kept soccer players off field

By Jeff Koinange  
CNN

Monday, April 3, 2006 Posted: 1940 GMT (0340 HKT)

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**FREETOWN, Sierra Leone (CNN) --** It's 8 a.m., and a soccer game is under way on a makeshift field by the exotic beaches of Sierra Leone, along the Atlantic Ocean.

But it's no ordinary soccer game, for every one of the players on the six-a-side practice session is missing a leg or an arm or both.

They're all amputees, victims of the West African country's brutal decadelong civil war that cost up to 50,000 lives and left a nation of armless and legless victims. The conflict ended in 2002, but so many people are missing limbs that there is a full-fledged national soccer league for amputees. It has about a dozen teams, with legless field players and handless goalies.

Players struggle as they hobble on crutches and fight for ball possession. But some, such as 19-year-old Amadu Kamara, show amazing dexterity when it comes to ball and body control. Then again, he should.

Kamara was a budding high school soccer star when the civil war was at its height.



Members of the Sierra Leone Single Leg Amputee Sports Club play a match by the Atlantic Ocean.

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One day, when fleeing from the rebels, a bullet hit him in the thigh. He was found three days later by government troops who took him to a local hospital.

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Doctors didn't have the equipment or drugs to treat him and decided to amputate his leg, cutting short his career. He lay depressed for two months.

Seven years later, he's on the beach on crutches, maneuvering his way past other players while dribbling the ball.

"The civil war was terrible," Kamara says. "It's reduced us to a nation of beggars ... one-armed and one-legged beggars."

He is referring to the thousands of amputees who've made this country's busy thoroughfares their homes, begging for alms from sympathetic motorists and passers-by.

### Many lost limbs

One of those amputees is Suleiman Sesay, who says he vividly remembers the day the rebels invaded his city.

Sesay says they rounded up him and other teens and took them to their stronghold, miles away. They were given chores -- collecting firewood, fetching water, cooking and cleaning. They worked for days on end with little food.

One day, Sesay says, he and his friends refused to do a chore, so the rebels decided to make examples of them. The rebels took them outside and in front of everyone grabbed axes and machetes and started hacking at their limbs.

"They gave us a choice," he says. "'Do you want short sleeves or long sleeves?'"

He says he didn't know what the question meant and even thought it was a joke. He took a gamble and said short sleeves.

"They chopped my arm at the elbow," he says. "Six swings and my arm came off."

His friend Ali had chosen long sleeves, and his hand was hacked at the wrist. And on it went until all 12 teens had their limbs severed.

"My other friend, Mohammed, a very good soccer player, had his leg chopped off," Sesay says. "The rebels said they'd done it deliberately so he could never play again. Mohammed bled to death some hours later."

### Some blame Taylor

Abu Sesay (unrelated to Suleiman) was 2 months old when the rebel onslaught came to his village. His father took off with Abu on his back. The rebels' bullets cut short his run. They shattered Abu's leg and killed his father instantly.

Abu was tossed into the bushes and discovered two days later. By that time, gangrene had set in, and his leg had to be amputated.

Seven years later, Abu sits by the step of his mother's house watching his siblings play. Kadiatu Sesay says she wishes her son could be a normal kid like her other children.

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"I can't even afford to pay school fees or indeed feed my children, let alone buy Abu a prosthesis."

I ask Abu if he's ever heard of Charles Taylor, former president of Liberia, a neighboring country. Taylor sits in a jailhouse here in Freetown.

Taylor is accused of countless atrocities in Sierra Leone, including aiding the rebel movement that spurred this nation's civil war and hacked off the limbs of many of its people. Taylor stands accused by a Sierra Leone special court of war crimes and crimes against humanity. He has pleaded not guilty.

Merely 7, Abu knows about Taylor and has a definite opinion of him: "I wish I could use a bullet on him the same way one was used on me. I've never met Charles Taylor, but I know he's a bad man."

As I watch the amputees play soccer by the Atlantic, my thoughts turn to Taylor and his alleged victims. This isn't the way soccer was meant to be played, but don't tell that to these incredibly determined young men.

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**A Tale of Three Amputees****allAfrica.com**

NEWS

14 May 2002

Posted to the web 14 May 2002

By Ofeibea Quist-Arcton  
Freetown, Sierra Leone

Lamin is ready to forgive, but not forget. Ishmael will never forget and is not prepared to forgive. Finna appears to have other things on her mind on election day in Sierra Leone.

All three lined up on Tuesday in the Sierra Leonean capital, Freetown, to cast their votes in the historic presidential and parliamentary polls.

Lamin Jusu Jarka, 43, Ishmael Daramy, 42, and Finna Kamara, 33, all have one thing in common. They were the victims of Revolutionary United Front (RUF) rebels in Sierra Leone's 10-year civil war. They all had their hands chopped off in 1999. They are all residents of the Aberdeen Road Amputee Camp in Freetown.

Unlike other amputees, none of the three was given the choice of what version of 'cut arm' or 'cut hand' they wanted - long sleeves or short sleeves.

They were punished by the rebels for different reasons. Lamin had his two arms hacked off, he says, because he refused to surrender his daughter to the rebels and encouraged her to escape through a back window. They wanted to teach him a lesson, attacking him and leaving him for dead. Lamin told allAfrica.com he could not willingly have handed over his daughter to be raped and possibly killed, during an orgy of rebel atrocities when they attacked Freetown in 1999.

An unforgiving Ishmael says he was maimed in the same 1999 rebel raid on the capital. The rebels told him they were chopping off his two hands to prevent him from ever again using them to vote for "democracy for that man Kabbah" (the leader of the governing Sierra Leone People's Party who is standing for re-election and a second term).

Finna lost her left hand, and almost her life, because she did not have money to give to the rebels to stop them. She says she went to her farm to plant groundnuts and on her return found the rebels, firing off loud shots and making demands.

For good measure they stole her cassette-radio and cut off the hand of her daughter, Damba Koroma, then a mere six years old, "under the giant cotton tree" Finna recalls, in Kabala, in the north.



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Machetes and knives were the rough weapons of choice used by the rebels - including child fighters - for their summary amputations.

Finna, Ishmael and Lamin are just three among hundreds of amputees in Sierra Leone who had their hands, fingers, arms, legs and, in some cases noses, severed from their bodies. They remain a visible, potent and poignant reminder of the barbaric nature of the conflict in Sierra Leone that raged for a decade and claimed tens of thousands of civilian lives.

The amputees are also a symbol and permanent legacy of the horrors of a rebellion where the different factions transformed children into fighters and killers, raped old and young women and turned girls into sex slaves. Other civilians were forced to take up arms.

Special provision was made by the Sierra Leonean authorities for amputees and the blind to vote in the first democratic poll since the war formally ended in January.

At their UN-sponsored amputee camp in Freetown, Finna, Ishmael, Lamin, and the other with missing limbs, were allowed to vote ahead of a throng of other enthusiastic voters queuing in their hundreds to choose a new president and 112 parliamentarians.

The former rebels, transformed into the Revolutionary United Front political party, RUF, are fielding a presidential candidate and potential MPs in the elections in Sierra Leone.

The outgoing leader, Kabbah, 70, is one of nine presidential hopefuls, including one woman, Zainab Hawa Bangura of the Movement for Progress (MoP party). Analysts say Kabbah stands a good chance of winning, if he can gain the required 55 percent in the first round.

If not, Kabbah could face stiff competition in a second round run-off, most likely from the former ruling All People's party (APC) candidate, Ernest Bai Koroma, especially if his rivals form a political alliance.

Kabbah's supporters hail the president who they say helped to restore peace in Sierra Leone, invited the United Nations' peacekeepers into their country and ended the war.

His critics have accused Kabbah's SLPP of intimidating would-be voters from opposition parties and preventing them from campaigning freely throughout the country.

Lamin, who is a chief organizer at the Aberdeen Road amputee camp, chose not disclose who he was voting for.

But Ishmael was quite open and forthright. "I have come to vote to choose my good leader, President Kabbah. Kabbah is my president," he said simply, with a laugh. He added that he had triumphed over the rebels because, although he had no hands to vote, he was still able to cast his ballot for democracy.

Ishmael, who comes from Kono District in eastern Sierra Leone, a region devastated by the rebellion, said: "I believe this is good for the people of Sierra Leone, because this is a peaceful election in Sierra Leone this year".

But he told allAfrica.com indignantly that the rebels would never get his vote - nor the support of most Sierra Leoneans - because of the harm they had done to their country.

"They cut off my hands and told me that I couldn't vote for democracy anymore. They don't like

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democracy. They told me to go to Kabbah to give me new hands or to the international community to give me hands. I suffered for democracy, so I have to support democracy until the end of my life."

Ishmael is not very confident about the future of his country or the process of unifying the divided nation and bringing some understanding between former rebels and their victims.

"I cannot talk about reconciliation, because it is very difficult. The TRC [the planned Truth and Reconciliation Commission in Sierra Leone] may have worked in South Africa, but when you look at the situation in Sierra Leone compared with South Africa, it is so different. In Sierra Leone we had amputations, in South Africa they did not," said Ishmael.

Ishmael said he knew the rebel, the "young boy" as he calls him, who cut off his hands, and was finding it difficult to forgive him. "It is not easy to reconcile with someone who amputated you. It is not easy to forgive. Everyday I have my pain. I am suffering. Who can educate my five children? Who can take care of my wife? Nothing can convince me to forget. Nothing. I can't forget. Everyday I have my pain. How can I forget? It's not easy to forget, it's not easy to forgive."

But Lamin, the camp organizer, talked positively about how the elections represented a new start for Sierra Leone. "It is going to be a new beginning of life because, compared to the previous ten years of war that has taken place in this country, people are looking forward to reinstating a new democratic government which will be able to address the issues of the people of this country."

He and the other amputees are appealing to Sierra Leone's new leaders to help them. "Right now we don't have any assistance," said Lamin.

Lamin painstakingly used his prosthetic arms, with two pincer-fingers, to remove his voting card from his pocket and present it to election officials in the polling station (Finna and Ishmael are so far without prostheses).

Lamin then lifted his foot onto the table for the nail of his big toe to be painted with indelible ink. Normally voters have their left thumb daubed with the ink.

In front of flashing camera lights, and scribbling reporters, Lamin carefully placed his toe on an ink pad and placed a 'toe print', rather than a thumb print, against the presidential candidate of his choice, after which he neatly folded the ballot paper with his pincers.

Mission accomplished, with a big smile and sweating profusely from the exertion, Lamin looked up proudly and triumphantly, telling journalists: "I used to vote with my hands, I did it today with my toe." He said he was 'happy' at having voted and gave a victorious 'thumbs up' with his false arms.

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## VI. EFFECTS OF SEXUAL VIOLENCE

### Health

Sexual violence often continues to impact the physical and mental well-being of survivors long after the abuses were committed. In addition to the reluctance of some survivors to seek medical treatment, the lack of health facilities, especially in the provinces, as well as the survivors' lack of money for transport, medical treatment and drugs has meant that the health status of survivors is poor.<sup>170</sup> Survivors also were often only able to seek medical treatment months after the abuse had happened, for example when they managed to escape rebel captors and make their way to a health center.

The probability of transmission of HIV and certain other sexually transmitted diseases (STDs) is greatly increased in violent sex and any sex where a woman or girl is injured. Doctors and other health personnel interviewed by Human Rights Watch reported a high prevalence of STDs amongst victims, as the armed conflict in Sierra Leone, like other armed conflicts, served as a vector for sexually transmitted diseases.<sup>171</sup>

A World Health Organization (WHO) report found an alarmingly high prevalence rate of HIV/AIDS amongst Sierra Leone Army soldiers. According to the report, the SLA tested 176 soldiers and eighty-two civilians working for the army who had prolonged diarrhea, tuberculosis, weight loss or pneumonia, and found a HIV-positive rate of 41.9 percent (or 108 persons). Among the group tested were eighty female soldiers of whom thirty tested positive (37.5 percent). As many SLA soldiers defected to the rebel factions, it is likely that victims of sexual violence by them have been infected with the virus.<sup>172</sup> A U.N. report on the impact of conflict on children states that rates of sexually transmitted diseases among soldiers are two to five times higher than those of civilian populations, and that during armed conflict the rate of infection can be up to fifty times higher.<sup>173</sup> Commercial sexual exploitation of women by soldiers, including peacekeepers, also contributes to the spread of STDs, including HIV/AIDS.<sup>174</sup> In 1997, tests showed that 70.6 percent of commercial sex workers in Freetown were HIV positive compared to 26.7 percent in 1995.<sup>175</sup>

The 2002 report by the Joint United Nations Programme on HIV/AIDS (UNAIDS) on the global AIDS epidemic estimated that by the end of 2001 there were 170,000 persons aged between fifteen and forty-nine living with HIV/AIDS in Sierra Leone. UNAIDS estimates that more than 50 percent of this figure (90,000) are women and girls.<sup>176</sup> More accurate figures on HIV/AIDS prevalence in Sierra Leone, as opposed to estimates, should be known when the U.S. Centers for Disease Control

Search

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and Prevention (CDC) publish their report based on a nationwide HIV/AIDS prevalence survey conducted in May 2002.<sup>177</sup> The government of Sierra Leone should ensure that future information campaigns on HIV/AIDS are designed both to impart basic information and to help reduce stigma, especially in light of the large number of survivors of sexual violence who may have been infected with HIV.

Other health problems are vasico-vaginal and vasico-rectal fistulas (VVF's and VRF's), as a result of the rape(s) especially of young girls but also of mature women; complications when giving birth; prolapsed uterus; trauma; and unwanted pregnancies. Health professionals have noted high rates of pregnancies amongst young girls with likely resultant illness, injury, and even death, due to pregnancy-related complications. These girls are likely to experience future complications including uterine problems and scarring, reducing their ability to have a normal sex life or to conceive or carry a child to full term in the future. The health of children born to abducted girls is also likely to suffer as the girls often have no one to teach them motherhood skills, contributing to high rates of infant mortality. The health risks are further exacerbated by various factors that impede safe sex, including lack of information about HIV/AIDS, as well as cultural practices and beliefs that undermine the use of reproductive health services and contraception.<sup>178</sup> The lack of attention paid until recently to conflict-related sexual violence has meant that the health needs of women and girls have not received as much attention or funding as required to adequately address the scale of the problem. In general the Sierra Leonean health services lack trained and motivated personnel, medical equipment and supplies, drugs, and blood for transfusion. The reproductive health infrastructure, which was poor before 1991, virtually collapsed during the war.<sup>179</sup> There are only six specialist obstetricians and gynecologists in Sierra Leone.<sup>180</sup> Treatment for sexually transmitted diseases is limited to the main towns and outreach by mobile clinics in some chiefdoms.

Mental health services for survivors of sexual violence are inadequate and as of 2002 there was only one qualified psychiatrist in the country. FAWE Sierra Leone, which has substantial expertise in treating survivors of sexual violence, believes that counseling on a massive scale is needed to ensure that the women and girls can face the future.<sup>181</sup>

### **Stigmatization and Shame of Survivors**

The rebels frequently committed crimes of sexual violence in public places. A.M., a twenty-year-old male, reported that when he was held in captivity in State House in Freetown from January 8, 1999 for three days, he saw from his cell window RUF/AFRC combatants raping about twenty to twenty-five girls each night on the grounds.<sup>182</sup> Given that rape has been committed on such a systematic and widespread scale and was witnessed by many people, it seems that rape survivors, particularly in urban centers, are generally not stigmatized by society. Survivors interviewed have expressed fear of rejection by their families and communities, but in practice it seems that their fears are unfounded. Most survivors are accepted back into their communities, with their families simply overjoyed to find that they are still alive.

Nevertheless, some women, like R.K. who was raped by the CDF (see above, p. 48),

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have been rejected by their husbands:

I told my husband what happened. He cried and rejected me. He said he will find another wife. My family has begged him to accept me as it was not my fault. He does not love me anymore. I am annoyed because I was the senior wife and now he does not treat me well.<sup>183</sup>

Girls and women who voluntarily joined the rebel forces are less likely to be welcomed back.

The survey conducted by Physicians for Human Rights gives an indication of survival strategies employed by women who had been raped: of the ninety-four interviewees reporting having themselves experienced sexual violence, sixty-one (or 65 percent) told someone about their case(s) of sexual violence. The majority of these survivors (fifty women and girls or 53 percent) reported their experience to a health care provider in a hospital, health care center or to a traditional healer, albeit on average five months after the incident(s) occurred. Among those not reporting these incidents and who stated a reason (twenty-eight out of thirty-three), the reasons given were feelings of shame or social stigma (eighteen women and girls or 64 percent), fear of being stigmatized or rejected (eight women and girls or 28 percent) and not having trust in anyone (six women and girls or 21 percent). Eighteen women and girls (19 percent) reported that discussions with family members helped them to try to forget about the incident(s). Other survivors reported that what helped most was to try and forget about the incident (46 percent), support of family (35 percent), a health care provider (33 percent) and traditional medicine (32 percent).<sup>184</sup>

Human Rights Watch also found that many survivors feel intense personal shame that the rebels have defiled them, and therefore often do not report the crime or seek medical attention. S.G., the fifty-year-old widow who had both arms amputated after being raped (see above p. 36), described the shame and anger she felt after her ordeal:

I didn't even tell my people about the rape. It's such a shameful act. Not just because of the rebel's age, but also because never in my life have I had sex with someone besides my husband. I was a good woman. Can you imagine how I felt when this young boy raped me, kicked me and then told me to get out of his sight after doing this to me? And without my arms, how can I as a woman even clean myself, let alone take care of my affairs. We're farmers and how am I to farm now? Both the rape and amputation are awful ... but later when thinking about what happened, I was even angrier about the rape than the amputation because for him to have done that to me was like killing me inside because of the shame. Sex is something you should enjoy together with your man. But to do it like that, to handle me like that, to torture me like that and then kick me and leave me like that ... it's too

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much. But I guess I was somehow lucky. There could have been ten people doing that to me.<sup>185</sup>

P.S. twenty-five, who was abducted and gang raped by the West Side Boys in January 2000, explained why she had not reported her rapes:

I didn't want to tell anyone what happened. I was ashamed because it is bad enough being done like this, but having a rebel do it is even worse. I felt so bad because I wanted to save myself for someone special. I went to secret society and they instructed us not to be involved in sex until we were ready to marry. And now I'm afraid because of AIDS. When I think of them I feel so angry.<sup>186</sup>

170 PHR report, p. 45.

171 Human Rights Watch interviews with Dr. Olayinka Koso-Thomas, Freetown, February 25, 2002; Dr. Noah Conteh, Freetown, March 1, 2002 and Dr. Bernard Fraser, Freetown, March 3, 2002.

172 World Health Organization, *HIV/AIDS in Sierra Leone: The Future at Stake-The Strategic and Organizational Context and Recommendations for Action* (Freetown, 2000), p. 3.

173 See United Nations Security Council resolution 1308 on the responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations, July 17, 2000; and Graça Machel, "The Impact of Armed Conflict on Children: A critical review of progress made and obstacles encountered in increasing protection for war-affected children," report prepared for and presented at the International Conference on War-Affected Children, September 2000, Winnipeg, Canada, p. 12, at <http://www.waraffectedchildren.gc.ca/machel-e.asp>.

174 Human Rights Watch interview, UNAMSIL medical personnel, Freetown, April 30, 2002.

175 Ministry of Health and Sanitation, *National AIDS/STD Control Programme Annual Report for 1998* (Freetown, Ministry of Health and Sanitation, 1998), p. 3.

176 UNAIDS, *Report on the Global HIV/AIDS Epidemic 2002* at <http://www.unaids.org/>, p. 190. This figure is based on a total population of 4,587,000.

177 Human Rights Watch interview with Dr. Joaquim Saweka (WHO Sierra Leone Representative), Freetown, May 3, 2002. The preliminary results of the CDC showed a prevalence rate of 4.9 percent.

178 Only 297 of 4,923 women (or 6 percent) surveyed by the government in 2000 reported that they used contraceptives. This low prevalence of contraception use is due to lack of access to family planning services within the communities,

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inadequate health facilities, especially in the provinces, lack of disposable income to pay for these services, and the low education of women. Only 3 percent of women with no education used contraception compared to 8 percent of women with primary education and 14 percent of women with secondary or higher education. Another worrying factor is the unwillingness of partners to use condoms, which does not bode well given the high prevalence of HIV/AIDS and other STDs. See Government of Sierra Leone, *The Status of Women and Children in Sierra Leone*, pp. 55-58.

179 UNDP, *Human Development Report 2001*, p. 198.

180 WHO and the Ministry of Health and Sanitation, *Assessment of District Hospitals in Sierra Leone for the Delivery of Safe Motherhood and Reproductive Health Services* (Freetown: 2002), p. 10. The Assessment also found that physicians attended only 3 percent of births whereas traditional birth attendants assisted in 38 percent of births nationally. Ibid. pp. 56-57. Only 10 percent of 4,923 women surveyed by the government in 2000 reported that they received antenatal care from a physician. See Government of Sierra Leone, *The Status of Women and Children in Sierra Leone*, p. 10.

181 Human Rights Watch interview with Christiana Thorpe (founding chairperson of FAWE Sierra Leone Chapter), Freetown, March 22, 2002.

182 Human Rights Watch interview, Freetown, April 12, 1999.

183 Human Rights Watch interview, Freetown, August 21, 2000.

184 PHR report, p. 51 and Table 6 on p. 54. Women could select more than one of the choices given.

185 Human Rights Watch interview, Bo, March 2, 2000.

186 Human Rights Watch interview, Freetown, February 8, 2000.

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**ANNEX I**

**CONDUCT OF THE ACCUSED IN DETENTION**

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**Annex J**

**BBC News, “Huntley should die behind bars”**

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## Huntley 'should die behind bars'

**Soham murderer Ian Huntley should die in jail because the "public would expect that", the Lord Chancellor Lord Falconer has suggested.**

In a Sunday Telegraph interview, he said Huntley was among a category of killers who should never be freed.

Society requires "retribution" in such cases and needs to have confidence in the criminal justice system, he added.

Huntley, 33, got a 40-year minimum sentence in 2003 for the 2002 murders of Holly Wells and Jessica Chapman.

### HAVE YOUR SAY

**I think sentences should be proportional to the severity of the offence and should not pander to populist demands**

Duncan, Oxford

The Lord Chancellor's remarks follow a row prompted by the Lord Chief Justice's support for an end to mandatory life terms for murderers.

"There will be some people who I think should stay in prison for the rest of their natural life," Lord Falconer told the paper.

"They should still stay in because the heinousness of their crime means that the public would expect that.

"(Lord Phillips) referred to geriatric lifers - well, there will be some and I think if you want confidence in the system that's got to be the position."

Lord Falconer also cited the case of another child killer, Robert Black, who was jailed for a minimum of 35 years in 1994 and that of Moors murderer Ian Brady, serving a "whole life" tariff.

He said they were "three obvious examples" of people who should never be released.

"It is both because of dangerousness but it is also because society does require retribution in those sorts of cases and if it doesn't get it then people will not be confident of the criminal justice system."

Lord Falconer said low-level offenders with alcohol and drugs problems could serve reduced jail terms if they were better treated and properly monitored in the community.

"The right course is to take every step necessary to make sure they don't reoffend which may involve shorter sentences," he said.

In a speech at the University of Birmingham earlier this month, Lord Chief Justice Lord

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Phillips said prisons risked becoming "full of geriatric lifers" in future.

He said government guidelines were "ratcheting up" the length of time some murderers would spend in prison.

But the most senior judge in England and Wales did not mention any individual cases by name in the speech.

Health Secretary Patricia Hewitt told ITV's Sunday Edition programme that it was not for ministers to decide the timing of a prisoner's release.

But she added: "I have to say as a mother myself I would absolutely echo Charlie Falconer's view."

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## Huntley 'should die behind bars'

**Soham murderer Ian Huntley should die in jail because the "public would expect that", the Lord Chancellor Lord Falconer has suggested.**



Soham murderer Ian Huntley, given minimum 40-year term

In a Sunday Telegraph interview, he said Huntley was among a category of killers who should never be freed.

Society requires "retribution" in such cases and needs to have confidence in the criminal justice system, he added.

Huntley, 33, got a 40-year minimum sentence in 2003 for the 2002 murders of Holly Wells and Jessica Chapman.

The Lord Chancellor's remarks follow a row prompted by the Lord Chief Justice's support for an end to mandatory life terms for murderers.

"There will be some people who I think should stay in prison for the rest of their natural life," Lord Falconer told the paper.

"They should still stay in because the heinousness of their crime means that the public would expect that.

"(Lord Phillips) referred to geriatric lifers - well, there will be some and I think if you want confidence in the system that's got to be the position."

Lord Falconer also cited the case of another child killer, Robert Black, who was jailed for a minimum of 35 years in 1994 and that of Moors murderer Ian Brady, serving a "whole life" tariff.

He said they were "three obvious examples" of people who should never be released.

"It is both because of dangerousness but it is also because society does require

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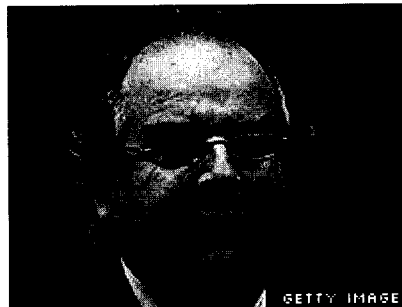
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retribution in those sorts of cases and if it doesn't get it then people will not be confident of the criminal justice system."



Lord Falconer said low-level offenders with alcohol and drugs problems could serve reduced jail terms if they were better treated and properly monitored in the community.

Lord Falconer also said low-level offenders could serve shorter terms

"The right course is to take every step necessary to make sure they don't reoffend which may involve shorter sentences," he said.


In a speech at the University of Birmingham earlier this month, Lord Chief Justice Lord Phillips said prisons risked becoming "full of geriatric lifers" in future.

He said government guidelines were "ratcheting up" the length of time some murderers would spend in prison.

But the most senior judge in England and Wales did not mention any individual cases by name in the speech.

Health Secretary Patricia Hewitt told ITV's Sunday Edition programme that it was not for ministers to decide the timing of a prisoner's release.

But she added: "I have to say as a mother myself I would absolutely echo Charlie Falconer's view."

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