

1242

SCSL-04-15-T  
(33153-33240)

33153

## THE SPECIAL COURT FOR SIERRA LEONE

### BEFORE:

Hon. Justice Pierre Boutet, Presiding  
Hon. Justice Benjamin Itoe,  
Hon. Justice Bankole Thompson

Registrar: Mr. Herman von Hebel

Date filed: 17<sup>th</sup> March 2009

The Prosecutor

-v-

Issa Hassan Sesay  
Morris Kallon  
Augustine Gbao

Case No: SCSL-04-15-T

---

Public

### SESAY DEFENCE SENTENCING BRIEF

---

Office of the Prosecutor

Mr. Stephen Rapp  
Mr. Reginald Fynn  
Mr. Vincent Wagona

Defence Counsel for Issa Hassan Sesay

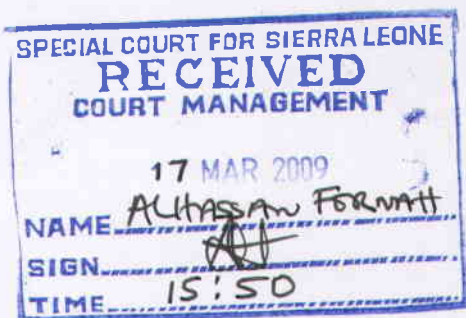
Mr. Wayne Jordash  
Ms. Sareta Ashraph

Defence Counsel for Morris Kallon

Mr. Charles Taku  
Mr. Kennedy Ogetto

Defence Counsel for Augustine Gbao

Mr. John Cammegh  
Mr. Scott Martin



1. The Defence on behalf of Issa Sesay (the 'Defence') hereby files its Sentencing Brief pursuant to Rule 100(A) of the Rules of Procedure and Evidence (the 'Rules') and in accordance with the Scheduling Order issued by the Trial Chamber on 2<sup>nd</sup> March 2009.<sup>1</sup>

### **JUDGMENT AGAINST ISSA SESAY**

2. On 25 February 2009, the Trial Chamber rendered its Judgment<sup>2</sup> in this case.
3. Mr. Sesay was found guilty of the crimes, set out below, by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute:
  - (i) Acts of Terrorism, punishable under Article 3(b) of the Statute, (Count 1) for crimes set out in Counts 3 to 11 and Count 13 in specified locations in Bo, Kenema, Kono and Kailahun districts;
  - (ii) Collective Punishments, punishable under Article 2(b) of the Statute, (Count 2) for crimes set out in Counts 3 to 5 and Count 10 to 11 in specified locations in Kenema, Kono and Kailahun districts;
  - (iii) Extermination, a Crime against Humanity, punishable under Article 2(b) of the Statute, (Count 3) in specified locations in Bo, Kenema, Kono and Kailahun districts;
  - (iv) Murder, a Crime against Humanity, punishable under Article 2(a) of the Statute, (Count 4) in specified locations in Bo, Kenema, Kono and Kailahun districts;
  - (v) Violence to life, health and physical or mental well-being of persons, in particular murder, punishable under Article 3(a) of the Statute, (Count 5) in specified locations in Bo, Kenema, Kono and Kailahun districts;
  - (vi) Rape, a Crime against Humanity, punishable under Article 2(g) of the Statute, (Count 6) in specified locations in Kono district;
  - (vii) Sexual slavery, a Crime against Humanity, punishable under Article 2(g) (Count 7) in specified locations in Kono district and unspecified locations in Kailahun district;
  - (viii) Other inhumane acts (forced marriage), punishable under Article 2(i) of the Statute, a Crime against Humanity, (Count 8), in specified locations in Kono district and unspecified locations in Kailahun district;

<sup>1</sup> *Prosecutor v. Sesay et al.*, Scheduling Order for Sentencing Hearing and Judgment, 2 March 2009, SCSL-04-15-T-1235.

<sup>2</sup> *Prosecutor v. Sesay et al.*, Judgment, (the 'Judgment'), 2 March 2009, SCSL-04-15-T-1234.

- (ix) Outrages upon personal dignity, punishable under Article 3(e) of the Statute, (Count 9), in specified locations in Kono district and unspecified locations in Kailahun district;
  - (x) Violence to life, health and physical or mental well-being of persons, in particular, mutilation, punishable under Article 3(a) of the Statute, (Count 10), in relation to specified locations in Kono;
  - (xi) Other inhumane acts (physical violence), a Crime against Humanity, punishable under Article 2(i), (Count 11), in specified locations in Kenema and Kono districts;
  - (xii) Enslavement, a Crime against Humanity, punishable under Article 2(c) of the Statute, (Count 13), in Tongo field in Kenema district and in Kono district; and
  - (xiii) Pillage, punishable under Article 3(f) of the Statute, (Count 14), in Sembehun in Bo district and Koidu and Tombudu in Kono district.
4. Additionally, pursuant to Article 6(1) of the Statute, Mr. Sesay was convicted of:
- (xiv) Planning the use of children to actively participate in hostilities, an other serious violation of International Humanitarian Law, punishable under Article 4(c) of the Statute, (Count 12), in relation to events in Kenema, Kailahun, Kono and Bombali districts; and
  - (xv) Planning Enslavement, a Crime against Humanity, punishable under Article 2(c) of the Statute, (Count 13), in relation to events in Tombudu and throughout Kono.
5. Pursuant to Article 6(3) of the Statute, Mr. Sesay was convicted of:
- (xvi) Enslavement, a Crime against Humanity, punishable under Article 2(c) of the Statute, (Count 13), in relation to events in Yengema in Kono district;
  - (xvii) Intentionally directing attacks against the UNAMSIL peacekeeping operations, an other serious violation of International Humanitarian Law, punishable under Article 4(b) of the Statute, (Count 15), in relation to events in Bombali, Port Loko, Kono and Tonkolili districts; and
  - (xviii) Violence to life, health and physical or mental well-being of persons, in particular murder, punishable under Article 3(a) of the Statute, (Count 17), in relation to Bombali and Tonkolili districts.

**DETERMINING SENTENCE: The Applicable Law**

**APPLICABLE PROVISIONS**

6. Factors to be considered in determining an appropriate sentence are set out in Article 19 of the Statute and Rule 101 of the Rules.
7. Article 19 reads
1. The Trial Chamber shall impose upon a convicted person ... imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
  2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted persons.
8. Rule 101 expands the sentencing considerations:
- (A) A person convicted by the Special Court ... may be sentenced to imprisonment for a specific number of years.
  - (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19(2) of the Statutes, as well as such factors as:
    - (i) Any aggravating circumstances;
    - (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
    - (iii) ....
  - (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
  - (D) Any period during which the convicted person was detained in custody pending ... trial or appeal shall be taken into consideration.
9. The factors set out in the provisions above are to be taken into consideration by the Trial Chamber when determining sentence<sup>3</sup> but do not constitute binding limitations on the Trial Chamber's discretion.<sup>4</sup> The sentence passed on each individual defendant must always be decided based on the facts of each particular case.<sup>5</sup>

<sup>3</sup> *Prosecutor v. Martić*, Trial Judgment, 12 June 2007, IT-95-11-T ('*Martić Trial Judgment*'), para. 481; *Prosecutor v. Krstić*, Appeals Judgment, 19 April 2004, IT-98-33-A ('*Krstić Appeal Judgment*') para. 241; *Prosecutor v. Delalić (Celebići case)*, Appeals Judgment, 20 February 2001, IT-96-21-T ('*Celebići Appeals Judgment*'), para. 716.

<sup>4</sup> *Martić Trial Judgment*, para. 481; *Krstić Appeal Judgment*, para. 241-2, *Prosecutor v. Kambanda*, Appeals Judgment, 19 October 2000, ICTR-97-23-A ('*Kambanda Appeals Judgment*'), para. 124.

<sup>5</sup> *Martić Trial Judgment*, para. 481; *Prosecutor v. Jelisić*, Appeals Judgment, 5 July 2001, IT-95-10-A ('*Jelisić Appeals Judgment*'), para. 101.



## OBJECTIVES OF SENTENCING

10. The Trial Chamber in *Erdemović* Trial Judgment, commenting on Security Council Resolution 827,<sup>6</sup> held that the Resolution indicated that the Security Council “saw the International Tribunal as a powerful means for the rule of law to prevail, as well as to deter the parties to the conflict in the former Yugoslavia from perpetrating further crimes or to discourage them from committing further atrocities .... The International Tribunal’s objectives as seen by the Security Council – i.e., general prevention (or deterrence), reprobation, retribution as well as collective reconciliation – fit into the Security Council’s broader aim of maintaining peace and security in the former Yugoslavia.”
11. The jurisprudence of the international tribunals suggests that the main objectives of sentencing are usually deterrence and retribution.<sup>7</sup> Rehabilitation, while generally given lesser weight, is regarded as a relevant factor. However, it is submitted, the Chamber has a wide discretion in considering, weighing and determining all relevant circumstances, including which objectives ought to be paramount, when determining a particular sentence.

### Deterrence

12. In the *Celebići* Appeals Judgment, the Appeals Chamber held that “one 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>8</sup> The Security Council in Resolution 827, referred implicitly to the notion of deterrence, when affirming its conviction that that work of the ICTR and ICTY “will contribute to ensuring that such violations are halted”.
13. Both special and general deterrence have been held to be important purposes of sentencing in criminal law. The rationale of special deterrence is to dissuade the wrongdoer from recidivism, whereas general deterrence aims at discouraging others from committing similar kinds of crimes.<sup>9</sup> The logic underpinning this aim rests upon the conclusion that the effective prosecution and proportionate punishment of offenders deters others from committing similar crimes. The

<sup>6</sup> Adopted May 1993.

<sup>7</sup> *Celebići* Appeals Judgment, para. 806; *Prosecutor v. Aleksovski*, Appeals Judgment, 24 March 2000, IT-95-14-1/A (*Aleksovski* Appeals Judgment) para. 185; *Prosecutor v. Furundžija*, Trial Judgment, 10 December 1998, IT-9-17-1/T (*Furundžija* Trial Judgment), para. 288; *Prosecutor v. Kupreškić*, Trial Judgment, 14 January 2000, IT-96-16-T (*Kupreškić* Trial Judgment), para. 848

<sup>8</sup> *Celebići* Appeals Judgment, para. 801.

<sup>9</sup> *Prosecutor v. Krajišnik*, Trial Judgment, 27 September 2006, IT-00-39-T (*Krajišnik* Trial Judgment) para. 1136.

penalties imposed by the Trial Chamber must have sufficient deterrent value to dissuade those who would consider committing similar crimes from doing so.<sup>10</sup>

14. A consideration of general deterrence – and the role it should play in a particular sentence – ought thus to entail an analysis of current international criminal justice endeavors, especially those directed at preventing ongoing and future crimes, as well as a consideration of how these might be rendered efficacious by the passing of appropriate sentences. The sentences rendered ought, at least in part, to be designed to encourage those engaged in crimes to desist from further commission and thereafter surrender themselves (and their subordinates) to international prosecution and justice.
15. It follows that, in an appropriate case, deterrence – incorporated as a sentencing aim – could result in a reduced sentence; this might deter future crimes by recognising and “rewarding” a person’s demonstrable efforts to prevent the ongoing commission of crimes, by the surrender of that person’s military command, and other acts designed to bring peace and reconciliation. This type of sentence could be a powerful incentive to those presently engaged in the commission of crimes, or those who have been indicted by an international court but remain at large, that a repudiation of criminal conduct and surrender to international justice will ensure more lenient treatment. This type of sentence would encourage perpetrators of crimes to a similar moral choice and, ultimately, prevent further abuses of international law.

### Retribution

16. While deterrence aims to ensure that the penalty imposed will dissuade others from committing similar offences, retribution seeks to impose a just and appropriate sentence for a particular offence:<sup>11</sup> “unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and *nothing more*”.<sup>12</sup> As noted by the Trial Chamber in the CDF Sentencing Judgment, retribution is not to be understood as the fulfillment

<sup>10</sup> *Prosecutor v. Kordić and Čerkez*, Appeals Judgment, 17 December 2004, IT-95-14/2-T (‘*Kordić and Čerkez* Appeals Judgment’), para. 1078.

<sup>11</sup> *Aleksovski* Appeals Judgment, para. 185; *Celebići* Appeals Judgment, para. 806; *Prosecutor v. Brima et al.*, Trial Chamber Sentencing Judgment, 19 July 2007, SCSL-04-16-T-624 (‘AFRC Sentencing Judgment’), para. 14.

<sup>12</sup> *Kordić and Čerkez* Appeals Judgment, para. 1075 (emphasis in the original).

of a desire for revenge but as the international community's collective expression of condemnation of the crimes found to have been committed.<sup>13</sup>

### Rehabilitation/Reconciliation

17. When discussing rehabilitation, the international tribunals have focused on both the collective rehabilitation of a nation/community and the personal rehabilitation of the convicted person, with the former being the more significant.

### Collective rehabilitation

18. Collective rehabilitation appears to be of great significance in the context of human rights violations, where reconstruction and reconciliation are essential. As noted by the Security Council, in its resolution creating the ICTR, the prosecutions were designed to "contribute to the process of national reconciliation and to the restoration and maintenance of peace".<sup>14</sup>

### Personal rehabilitation

19. This has been identified as an aim of sentencing: the Trial Chamber in *Erdemović* took into account, that the defendant was a good candidate for rehabilitation, stating that he had "a series of traits characterising a corrigible personality," and it was expected that he would be able to return to normal life.<sup>15</sup>

## FACTORS AFFECTING SENTENCING

20. Article 19 and Rule 101 provide that the Trial Chamber must have regard to certain factors when determining an appropriate sentence, including the gravity of the offence with which the Accused has been convicted and the individual circumstances of the Accused. Additionally, the Trial Chamber is required to take into account any aggravating and mitigating factors and, where appropriate, the general sentencing practices of the international tribunals and the national courts of Sierra Leone.

<sup>13</sup> *Prosecutor v. Fofana et al.*, Trial Chamber Sentencing Judgment, 9 October 2007, SCSL-04-14-T-796 ('CDF Sentencing Judgment'), para. 26. See also, *Aleksovski* Appeals Judgment, para. 185; *Prosecutor v. Kambanda*, Trial Chamber Judgment and Sentencing, 4 September 1998, ICTR-97-23-S ('Kambanda Trial Judgment'), para. 28; *Prosecutor v. Nikolić-Momir*, Trial Chamber Sentencing Judgment, 2 December 2003, IT-02-60/1 ('Nikolić-Momir Trial Sentencing Judgment'), para. 86.

<sup>14</sup> Security Council Resolution 955, 49<sup>th</sup> Session, U.N. Doc. S/RES/955 (1994)

<sup>15</sup> *Prosecutor v. Erdemović*, Trial Judgment, 5 March 1998, IT-96-22-Tbis (*Erdemović* Trial Judgment), para. 111.

21. These factors are not exhaustive and it is within the discretion of the Trial Chamber to consider all relevant matters when determining the sentence. The general principle remains that “in sentencing a Trial Chamber is required to take into account and weigh the totality of an accused’s culpability”.<sup>16</sup> It is settled law that a Trial Chamber must tailor the penalty to fit the individual circumstances of the accused and the gravity of the crime.<sup>17</sup>

### Gravity of offences

22. The primary sentencing consideration is the gravity of the offence committed by the Accused.<sup>18</sup> The Trial Chamber in the CDF Sentencing Judgment stated that the determination of the gravity of the offence requires “a consideration of the particular circumstances of the case, as well as the form and degree of participation of the Accused in the crime”.<sup>19</sup>

23. In its Judgment in *Prosecutor v. Orić*, the ICTY Trial Chamber held factors such as the scale and brutality of the crimes and the impact on the victims were “to be considered as factors subsumed in the notion of gravity itself” and could not “additionally be considered as separate aggravating circumstances.”<sup>20</sup> It is to be noted that “no factor taken into account as an aspect of the gravity of the crime may be additionally taken into account as a separate aggravating circumstance.”<sup>21</sup>

24. The Trial Chamber, in its CDF Sentencing Judgment, took into account such factors as the scale and brutality of the offences committed, the role played by the Accused in their commission, the degree of suffering or impact of crime on the immediate victim, as well as its effect on relatives of the victim and the vulnerability and number of victims.<sup>22</sup>

<sup>16</sup> *Prosecutor v. Kupreškić*, Appeals Judgment, 23 October 2001, IT-98-33-A (‘*Kupreškić Appeals Judgment*’), para. 451.

<sup>17</sup> *Prosecutor v. Kamuhanda*, Appeals Judgment, 19 September 2005, ICTR-95-54A-T (‘*Kamuhanda Appeals Judgment*’), para. 351.

<sup>18</sup> *Celebići Appeals Judgment*, para. 731; *Prosecutor v. Brdanin*, Trial Judgment, 1 September 2004, IT-99-36-T (‘*Brdanin Trial Judgment*’), para. 1094.

<sup>19</sup> CDF Sentencing Judgment, para. 33. See also, *Kupreškić Appeals Judgment*, para. 852; *Prosecutor v. Stakić*, Appeals Chamber Judgment, 22 March 2006, IT-97-24-A (‘*Stakić Appeals Judgment*’), para. 380.

<sup>20</sup> *Prosecutor v. Orić*, Trial Chamber Judgment, 30 June 2006, IT-03-68-T (‘*Orić Trial Judgment*’) para. 729. See also, Trial Chamber’s comments in CDF Sentencing Judgment at footnote 51 as well as *Stakić Appeals Judgment*, para. 380, and *Prosecutor v. Momir-Nikolić*, Appeals Judgment, 8 March 2006, IT-02-60/1-A (‘*Momir-Nikolić Appeals Judgment*’), para. 58.

<sup>21</sup> *Prosecutor v. Brima et al.*, Appeals Judgment, 22 Feb 2008, SCSL-04-16-A-675 (‘*AFRC Appeals Judgment*’), para. 317, citing *Prosecutor v. Deronjić*, Sentencing Judgment (TC), 30 March 2004, IT-02-61 (‘*Deronjić Sentencing Judgment*’), paras. 106-107. See also, CDF Sentencing Judgment, para. 35.

<sup>22</sup> CDF Sentencing Judgment, para. 33. See also, *Stakić Appeals Judgment*, para. 380; *Prosecutor v. Blagojević and Jokić*, Trial Judgment, 17 January 2005, IT-02-60-T (‘*Blagojević Trial Judgment*’), para. 833.



*Form and degree of the participation of the Accused*

25. 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>23</sup> The Trial Chamber should consider the specific role played by the Accused in the commission of the crime,<sup>24</sup> including the function and duties performed by the Accused and the manner in which those tasks and duties were carried out.<sup>25</sup>

26. The Appeals Chamber in *Martić* held that

While the gravity of the offence is the primary factor to be taken into account in imposing a sentence, the inherent gravity of a crime must be determined by reference to the particular circumstances of the case and the form and degree of the accused's participation in the crime. The position of leadership of an accused may increase the relative seriousness of his crime, when there has been an abuse of this position, even if the person did not materially and directly commit the crimes, but ordered them or participated as a member of a joint criminal enterprise.<sup>26</sup>

27. The following factors – which are not to be considered as aggravating factors<sup>27</sup> – may assist in assessing the gravity of the offences:

- (a) the number of victims;<sup>28</sup>
- (b) the impact of the crimes of on the victim;<sup>29</sup>
- (c) the impact of the crimes on others with who the victim had “established bonds”;<sup>30</sup> and
- (d) a conviction for multiple instances of a crime under one count.<sup>31</sup>

<sup>23</sup> *Stakić* Appeals Judgment, para 380; *Prosecutor v. Blaskić*, Appeals Judgement, 29 July 2004, IT-95-14-A ('*Blaskić* Appeals Judgment), para 683.

<sup>24</sup> *Blagojević* Trial Judgment', para. 833.

<sup>25</sup> *Prosecutor v. Nikolić-Dragan*, Trial Sentencing Judgment, 2 December 2003, IT-94-2 ('*Nikolić-Dragan*, Trial Sentencing Judgment,') para. 114.

<sup>26</sup> *Prosecutor v. Martić*, Appeals Judgment, 8 October 2008, IT-95-11-A ('*Martić* Appeals Judgment'), para. 350.

<sup>27</sup> *Prosecutor v. Deronjić*, Appeals Judgment, 20 July 2005, IT-02-61-A ('*Deronjić* Appeals Judgment'), paras. 106-107; *Stakić* Appeals Judgment, paras. 412-413, 694.

<sup>28</sup> *Prosecutor v. Babić*, Trial Sentencing Judgment, 29 June 2004, IT-03-72-S ('*Babić* Trial Sentencing Judgment), para. 47.

<sup>29</sup> *Blaskić* Appeals Judgment, para. 683.

<sup>30</sup> *Prosecutor v. Krnojelac*, Appeals Judgment, 17 September 2003, IT-97-25-A ('*Krnojelac* Appeals Judgment'), para. 260.

<sup>31</sup> *Prosecutor v. Češić*, Sentencing Judgment, 11 March 2004, IT-95-10/1-S ('*Češić* Sentencing Judgment'), para. 34.

28. The gravity of a crime is significantly reduced when it is carried out indirectly; crimes committed through indirect or secondary modes of liability deserve considerably lower sentence than those normally reserved for principal or co-perpetrators.<sup>32</sup>
29. It was held in *Orić* that the ultimate gravity of the offence under Article 6(3) will depend on: the gravity of the underlying crime; the nature of the Accused's knowledge, whether imputed or actual; and the foreseeability of the underlying crimes given the circumstances of the case.<sup>33</sup> The superior bears responsibility for failing to act which is "the only crime for which he is to be sentenced."<sup>34</sup>

### Aggravating factors

30. Only circumstances directly related to the commission of the offence charged and for which the Accused has been convicted, can be considered aggravating. Such factors must be established beyond reasonable doubt by the Prosecution. Where a circumstance is an element of the underlying offence, it cannot be considered as an aggravating factor.<sup>35</sup>
31. Jurisprudence from the ICTR and ICTY has held that the following factors may be considered as aggravating:
- (i) The status of the victims and their position of vulnerability;<sup>36</sup>
  - (ii) "[E]xacerbation, humiliation and degradation, depravity and sadistic behaviour"<sup>37</sup> or "total disregard for the sanctity of human life and dignity",<sup>38</sup>
  - (iii) Pursuant to Article 6(1) of the Statute, the leadership role of the Accused;<sup>39</sup>
  - (iv) Pursuant to Article 6(3) of the Statute, a position of command is an element of Article 6(3) and this cannot be considered to be an aggravating factor, unless the commander has

<sup>32</sup> *Krstić* Appeal Judgment, paras. 237-275; *Orić* Trial Judgment, para. 292; *Prosecutor v. Babić*, Appeals Judgment, 18 July 2005, IT-03-72-A (*Babić* Appeals Judgment), para. 40.

<sup>33</sup> *Orić* Trial Judgment, para. 728.

<sup>34</sup> *Orić* Trial Judgment, para. 727.

<sup>35</sup> *Orić* Trial Judgment, para. 731.

<sup>36</sup> *Prosecutor v. Nikolić-Dragan*, Appeals Judgment, 4 February 2005, IT-94-2-A (*Nikolić-Dragan* Appeals Judgment'), para. 66; *Kordić* Appeals Judgment, para. 1088.

<sup>37</sup> *Prosecutor v. Bralo*, Sentencing Judgment, 7 December 2005, IT-95-17-S (*Bralo* Sentencing Judgment'), paras. 33-35.

<sup>38</sup> *Prosecutor v. Delalić (Celebići case)*, Trial Judgment, 16 November 1998, IT-96-21-T (*Celebići* Trial Judgment'), para. 1268.

<sup>39</sup> *Prosecutor v. Kordić and Čerkez*, Trial Judgment, 26 February 2001, IT-95-14/2-T (*Kordić* Trial Judgment'), para. 853.

actively abused his command position or otherwise promoted, encouraged or participated in the criminal acts of a subordinate”;<sup>40</sup>

(v) Premeditation;<sup>41</sup>

(vi) 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>42</sup>

(vii) The length of time during which the crime was committed;<sup>43</sup>

32. Additionally the Trial Chamber in its CDF Sentencing Judgment held that breach of trust or authority where the Accused was in a position that carries with it a duty to protect or defend victims can be an aggravating factor.<sup>44</sup> It is the actual authority exercised, not the rank or de jure position, which is important.<sup>45</sup>

### **Mitigating Factors**

33. Mitigating factors must be established by the Defence on a balance of probabilities and need not relate to the offence. While, under Rule 101(B), the only mitigating factor that the Trial Chamber is required to consider is the substantial cooperation of the Accused with the Prosecution, the practice in international tribunals has been to consider and accept a wide range of circumstances in furtherance of mitigating a sentence.

34. As noted by the Trial Chamber in the CDF Sentencing Judgment, such circumstances have included

[t]he expression of remorse, good character with no prior convictions, personal and family circumstances, behaviour and conduct subsequent to the conflict, particularly with respect to promoting peace and reconciliation, good behaviour in detention and assistance to detainees or victim [...] prevailing circumstances operating at the time of the commission of the crimes, and the motive of the Accused in determining whether there should be a mitigation of the sentence.<sup>46</sup>

<sup>40</sup> CDF Sentencing Judgment, para. 38. *See also*, *Celebići Appeals Judgment*, para. 736.

<sup>41</sup> *Prosecutor v. Serushago*, Sentencing Judgment, 12 June 2006, ICTR-2005-84-1 (*‘Serushago Sentencing Judgment’*), para. 30; *Prosecutor v. Tadić*, Sentencing Judgment, 14 July 1997, IT-94-1-T, para. 55.

<sup>42</sup> *Prosecutor v. Krstić*, Trial Judgment, 2 August 2001, IT-98-33-T (*‘Krstić Trial Judgment’*), para. 711; *Babić Trial Sentencing Judgment*, para. 61; *Prosecutor v. Stakić*, Trial Judgment, 31 July 2003, IT-97-24-T (*‘Stakić Trial Judgment’*), para. 913.

<sup>43</sup> CDF Sentencing Judgment, para. 37 (as well as footnotes 58-61, citing various ICTY Judgments)

<sup>44</sup> CDF Sentencing Judgment, para. 39.

<sup>45</sup> *Prosecutor v. Obrenović*, Trial Judgment, 10 December 2003, IT-02-60/2 (*‘Obrenović Trial Judgment’*). para. 99.

<sup>46</sup> CDF Sentencing Judgment, para. 40.

35. The recognition of the convicted person's role in promoting peace and reconciliation, during or subsequent to the conflict, is linked to the associated aims of deterring future crimes, encouraging compliance with rules of international humanitarian law, the protection of society and the restoration of peace – all of which have been identified as legitimate aims of sentencing.<sup>47</sup> As noted in the CDF Sentencing Judgment, a “credible system of justice and accountability for the very serious crimes committed ... would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.”<sup>48</sup>
36. It follows that a convicted person ought to receive a considerable reduction in sentence in recognition of a valuable contribution to the furtherance of these desired and imperative aims, notwithstanding the commission of grave crimes. As in the *Plavsić* case, the Trial Chamber recognised the convicted person's conduct as a mitigating factor because after the cessation of hostilities she demonstrated considerable support for the 1995 General Framework for Peace in Bosnia-Herzegovina.<sup>49</sup> The Trial Chamber noted other activities in furtherance of peace and accepted the submissions of the defence that these activities were conducted under difficult circumstances and at personal risk, manifesting personal courage. The Trial Chamber therefore attached, “significant weight” to this factor in mitigating the sentence.<sup>50</sup>
37. Additionally, age, antecedents, and the reputation of an accused, the social pressures and hostile environment in which the convicted person as operating and the family situation of the convicted person, may be taken into account.
38. The Defence submits that being aged in one's twenties, or thereabouts, at the time of the commission of crimes can be considered as a mitigating circumstance.<sup>51</sup> The jurisprudence from

---

<sup>47</sup> E.g., CDF Sentencing Judgment, para. 29 and *Blagojević* Trial Judgment, para. 33.

<sup>48</sup> CDF Sentencing Judgment, Para. 29.

<sup>49</sup> *Prosecutor v. Krajišnik*, Sentencing Judgment (TC), 27 February 2006, IT-00-39-T (*Krajišnik* Sentencing Judgment'), para. 85. See also, *Prosecutor v. Miodrag Jokić*, Sentencing Judgment (TC), 18 March 2004 IT-01-42/1-S (*Jokić* Sentencing Judgment'), paras. 90-91 (where the Trial Chamber held the fact that Jokić was instrumental in ensuring a comprehensive ceasefire was agreed upon and implemented was a mitigating factor).

<sup>50</sup> *Krajišnik* Sentencing Judgment, para. 94.

<sup>51</sup> Sesay was born in June 1970 (Transcript/Sesay, 3 May 2007, pp. 30) and, as such, was between 26 and 30 years of age throughout the Indictment period. The Prosecution cites no authority for the proposition that having committed a crime at an age younger than 31 years cannot be considered a mitigation factor.



the international tribunals supports this proposition.<sup>52</sup> In *Erdemović*, for example, the defendant's age the time of the crimes (23 years) was taken into consideration when imposing sentence: "he is reformable and should be given a second chance to start his life afresh upon release, while still young enough to do so."<sup>53</sup>

39. The Appeals Chamber has confirmed that the "level of education and training of a convicted person is part of his individual circumstances which the Trial Chamber is required to take into consideration as an aggravating or mitigating circumstance"<sup>54</sup> and that the lack of training could be a mitigating factor, in circumstances where the convicted person has been propelled from civilian life into war.<sup>55</sup> It is submitted that this might be even more relevant where the convicted person was denied the opportunity or an environment conducive to an ingrained acceptance of the requirements of international law.
40. As an associated factor, the fact that a convicted person gave assistance or protection to vulnerable persons, or took steps to ameliorate the condition of detainees or other prisoners under their control or influence or saved lives, may constitute mitigation.<sup>56</sup> It is logical to assess the cogency of this mitigation as corresponding to the degree of assistance provided and the reputation of the convicted person for these activities.
41. A defendant's voluntary surrender to the Tribunal has also been recognised as a mitigating factor, since it reflects a respect for the international administration of justice.<sup>57</sup> It follows that a defendant is entitled to rely upon this mitigating circumstance even when detained in a "surprise" arrest. The absence of an opportunity to surrender should not deprive a convicted person of this

<sup>52</sup> See, *Prosecutor v. Delalić et al.*, "Judgment," 16 November 1998, IT-96-21-T ('*Celebići* Trial Judgment'), para. 1233, for the general proposition that the young age of an accused should be taken into consideration – per the possibility of being rehabilitated – as a mitigating circumstance:

The factor of rehabilitation considers the circumstances of reintegrating the guilty accused into society. This is usually the case when younger, or less-educated, members of society are found guilty of offences. It therefore becomes necessary to reintegrate them into society so that they can become useful members of it and enable them to lead normal and productive lives upon their release from imprisonment. The age of the accused, his circumstances, his ability to be rehabilitated and availability of facilities in the confinement facility can, and should, be relevant considerations in this regard.

<sup>53</sup> *Erdemović* Trial Judgment, para. 16.

<sup>54</sup> *Prosecutor v. Fofana et al.*, Appeal Judgment, 28 May 2008, SCSL-04-14-A-829 ('CDF Appeals Judgment'), para. 498.

<sup>55</sup> CDF Appeals Judgment, para. 499.

<sup>56</sup> Prosecution Sentencing Brief, para. 43.

<sup>57</sup> *Prosecutor v. Rutaganira*, Judgment and Sentence (TC), 14 March 2005, ICTR-95-1C-T ('*Rutaganira*, Judgment and Sentence'), para. 145.

mitigation, when, despite being aware of the likelihood of an imminent indictment, he had elected to remain in the jurisdiction to face international justice.

42. A convicted person's expression of remorse or sincere expressions of empathy for the victims' suffering or regret for crimes committed, without an acknowledgement of responsibility, can be a mitigating factor.<sup>58</sup>

**Sentencing Practices of the Special Court and other International Tribunals**

43. The Trial Chamber, in its sentencing of the CDF Accused, held that the sentencing practices of both the ICTR and ICTY were instructive but noted their limitations in that the global imposition of sentences make it difficult to determine the sentence for an individual crime and furthermore, that the ICTR sentences related to genocide, which is not within the jurisdiction of the Court.<sup>59</sup>
44. While comparisons between cases as regards sentencing have been held not be reliable as a sole basis for sentencing<sup>60</sup>, a previous decision "may provide guidance if it relates to the same offence and was committed in substantially similar circumstances."<sup>61</sup> Even in such a situation, however, the assistance provided will be limited as "even when comparing a case to the same offence committed in substantially similar circumstances, the Trial Chamber has an overriding obligation to tailor a penalty to fit the gravity of the crime and the individual circumstances of the Accused, which include the consideration of both aggravating and mitigating circumstances."<sup>62</sup>

**Sentencing practice of Sierra Leonean Courts**

45. The Appeals Chamber in the CDF trial held that a Trial Chamber is to have recourse to the national courts of Sierra Leone for convictions under Sierra Leonean law contained in Article 5 of the Statute.<sup>63</sup> The Indictment faced by the Accused<sup>63</sup> in the RUF trial contains none of the offences enumerated under Article 5.

<sup>58</sup> CDF Appeals Judgement, para. 490.

<sup>59</sup> CDF Sentencing Judgment, para. 41.

<sup>60</sup> *Krstić* Appeal Judgment, para. 248, *Celebići* Appeals Judgment, para. 757.

<sup>61</sup> *Celebići* Appeals Judgment, para 719.

<sup>62</sup> *Nikolić-Momir*, Trial Sentencing Judgment, para. 28 citing *Celebići* Appeals Judgment, paras. 717, 719.

<sup>63</sup> CDF Appeals Judgment, para. 476.

46. The Trial Chamber in the CDF Sentencing Judgment held that, given the Accused were neither indicted nor convicted of any offences under said Article 5 and given that the Statute provides neither for a life sentence nor the death penalty, it would be inappropriate to rely on the sentencing practices of the Sierra Leonean Courts in determining the appropriate punishment for the CDF Accused.<sup>64</sup>
47. It is submitted that, for the same reasons, it is inappropriate to rely on the sentencing practices of the Sierra Leonean Courts when sentencing Sesay.

## **SENTENCING SUBMISSIONS**

### **GRAVITY OF THE OFFENCES**

#### **Convictions through the Joint Criminal Enterprise**

48. The Trial Chamber had found Sesay responsible for participation in a joint criminal enterprise.

#### **Form and degree of participation by Sesay in the JCE**

49. The sentence Sesay receives for the finding that he is responsible for crimes pursuant to the JCE must reflect the relative significance of his role.<sup>65</sup> The degree to which his leadership position may affect the relative seriousness of the crimes depends upon his actual authority within the JCE.<sup>66</sup> The authority Sesay possessed during the currency of the JCE was, at all times, subscribed by the relative power and authority of the AFRC in the unequal relationship, the command of the senior men of the AFRC, the separate reporting structures, the dictatorial characteristics of Bockarie, and the *de facto* dominance of others in the RUF hierarchy. This distance from the epicentre of the organising, planning and implementation of the junta government and its administration is much greater than Mr. Sesay's rank and assignment within the RUF might, at first, suggest.<sup>67</sup>
50. The dominant and primary decision makers in the junta period were members of the AFRC. As found by the Trial Chamber, the Supreme Council "did not vote on issues as significant decisions

<sup>64</sup> CDF Sentencing Judgment, para. 43.

<sup>65</sup> *Prosecutor v. Tadić*, Judgment in Sentencing Appeals, Appeals Chamber, 26 January 2000, IT-94-1-A and IT-94-1-Abis, para. 55 and *Babić Appeals Judgment*, para. 40 ("generally ... a finding of secondary or indirect forms of participation in a joint criminal enterprise relative to others may result in the imposition of a lower sentence").

<sup>66</sup> *Krajišnik Trial Judgment*, para. 1156.

<sup>67</sup> The Trial Chamber found that he was "one of the most important and influential RUF representatives on the Supreme Council" (Judgment, para. 1994).

were made by Koroma, SAJ Musa and certain other Honourables.”<sup>68</sup> The Trial Chamber also found that Sesay did not start to attend Supreme Council meetings on a regular basis until August 1997.<sup>69</sup> Further, the Trial Chamber found that Sesay left Freetown in January 1998, as he feared he would be arrested after he had been accused of participating in the looting of the Iranian Embassy.<sup>70</sup>

51. As further found, a “proposal by Bockarie to integrate the armed forces of the RUF and the AFRC, making Bockarie and Sesay respectively second-in-command to the Chief of Defence Staff FSY Koroma and to the Army Chief of Staff SO Williams, was rejected”.<sup>71</sup> Senior RUF officers, including Sesay, were consequently left without official appointments within the Junta military structure.<sup>72</sup> By early September 1997, Bockarie had also become disillusioned with the RUF’s limited role in the AFRC government.<sup>73</sup> In other words, Sesay did not hold any official *public* position, within the junta government, nor was his military command recognised (or appointed) by the joint forces, unlike other members of the JCE.

52. At this time Sesay was reasonably young (27 years old), poorly educated, with little proper training and working alongside more mature, dominant and authoritative individuals (such as, for example, Bockarie, SAJ Musa, FSY Koroma, Mike Lamin, SO Williams, and the Honourables). These individuals and others, holding public positions or gaining respect for their knowledge and education, held influence and effective, far-reaching, autonomous decision-making authority – much of which was denied to Sesay.

53. Sesay’s position and influence within the JCE deteriorated after the intervention. The influence and authority vested in him during his time in Freetown eroded due to a number of factors, including his lack of autonomous command over Kono and the separate reporting structures maintained by the RUF and the AFRC. It is submitted that the true level of his authority – and contribution – at least outside of Kailahun, must be examined within this context. It is arguable

---

<sup>68</sup> Judgment, para. 756

<sup>69</sup> Judgment, para. 772.

<sup>70</sup> Judgment, para. 773.

<sup>71</sup> Judgment, para. 761.

<sup>72</sup> Judgment, para. 762.

<sup>73</sup> Judgment, para. 764.



that Sesay, throughout the junta period and beyond was one of the least influential members of the joint criminal enterprise.<sup>74</sup> The Defence submits the following:

*(i) In relation to conviction for crimes in Bo District, pursuant to the JCE*

54. Sesay was convicted of Counts 1, 3, 4, 5, 10, and 14 in relation to events in specified locations in Bo during June 1997. Sesay was found guilty by virtue of participating in the joint criminal enterprise described above.
55. The Trial Chamber has found that Sesay did not personally or directly commit any of the crimes in Bo District.<sup>75</sup> The Trial Chamber did not find that Sesay was in effective command and control of any of the fighters operating in Bo in that time or that he ordered, planned, instigated or aided and abetted such crimes. The evidence demonstrated that Mr. Sesay's command did not extend to visiting or operating within Bo during the junta period.
56. The fact that Sesay was not present during the currency of the JCE in the Bo district is important. It is submitted that those factors which in law might usually aggravate the offences, for example: any "premeditation," the "discriminatory purposes of the crimes," the "enthusiasm" of the direct perpetrators and other factors not within Sesay's control or knowledge ought not be taken into account in the assessment of an appropriate sentence.

*(ii) In relation to conviction for crimes in Kenema District, pursuant to the JCE*

57. Sesay was convicted of Counts 1, 2, 3, 4, 5, 10, 11, 12, and 13 in relation to events in specified locations in Kenema.
58. The Trial Chamber found that Sesay's contribution to the JCE was significant on the following basis: his position of power, authority and influence, including his role, rank, and close relationship and cooperation with Bockarie.<sup>76</sup> The Trial Chamber inferred, from the evidence, that Sesay, as a member of the Supreme Council, was involved in the planning and organisation of the forced mining in Kenema District and this, alongside the use of child soldiers to guard

---

<sup>74</sup> See Prosecution Sentencing Brief, para. 58.

<sup>75</sup> Judgment, para. 1976.

<sup>76</sup> Judgment, para. 1996.

mining sites and force the miners to work at Tongo Fields, was a significant contribution to the JCE.<sup>77</sup>

59. In determining, beyond these findings, the extent of Sesay's contribution to the overall criminal enterprise and the form and degree of his participation in the individual crimes, the following ought to weigh in the assessment of gravity: the Trial Chamber found that the junta government decided to appoint senior members to supervise alluvial diamond mining in both Kono and Kenema Districts. The revenue was to pay the salaries of members of the Council, the government, and logistics for the military and the fighters, including the procurement of arms and ammunition.<sup>78</sup> None of these appointments were given to Sesay – neither for operations in Kono or the Kenema district.
60. The Trial Chamber found that senior members of the AFRC Supreme Counsel, including SAJ Musa, Zagalo and Gullit, were entrusted with overseeing mining operations<sup>79</sup> and that SAJ Musa was in charge of the Mining Unit of the AFRC Government.<sup>80</sup> In other words, whilst Sesay's contribution to the JCE has been found to be significant, his role in the diamond mines was strictly prescribed by those who made the real decisions, maintained control, and ultimately organised the operations. The role of Sesay was significantly less than these aforementioned men and Bockarie also, and was not critical for the success, or continuance, of the operations. The evidence does not show that Sesay was present at the mining pits in any supervisory capacity. On the contrary, the evidence suggests the operations were tightly controlled by others – not under Sesay's control – and there was, accordingly, no prospect of Sesay being able to override their command to be able to substantially affect the day-to-day implementation of the operations.
61. By September 1997, Bockarie and Eddie Kannah (themselves directly subordinated to the highest authorities, Koroma and Musa) were the *de facto* authorities in Kenema.<sup>81</sup> Kenema town was organised and controlled by these men. Whilst Sesay visited Kenema and enjoyed a degree of authority, this was wholly subordinated to that exercised by the authorities in residence.

---

<sup>77</sup> Judgment, paras. 1997-1998.

<sup>78</sup> Judgment, para. 1088.

<sup>79</sup> Judgment, para. 957.

<sup>80</sup> Judgment, para. 760.

<sup>81</sup> Judgment, para 764.

Sesay's visits were infrequent and the crimes found proven against him, pursuant to the JCE, were in large part committed in his absence. Sesay did not directly or materially commit the vast majority of the crimes in the Kenema Town; in almost all instances they were committed directly by Bockarie, Sesay's superior (for example the physical violence against B.S. Massaquoi and others)<sup>82</sup> or otherwise, by unidentified RUF/AFRC rebels (for example, the killing of the civilian at Lamin street and one Limba man for failing to surrender palm wine).<sup>83</sup> It is submitted that the infrequency of his visits to Kenema, the lack of direct involvement in most of the crimes, and the fact that the perpetrators were not under Sesay's direct command or control, ought to be taken into account in assessing gravity.

62. The Trial Chamber found that Sesay participated directly in the arrest and mistreatment of TF1-129 and, in a separate incident, the Police Commissioner Konneh and Chief Police Officer Issa.<sup>84</sup> The Trial Chamber did not find that the personal mistreatment of TF1-129 by Sesay was sufficiently grave itself to constitute an inhumane act.<sup>85</sup> The Trial Chamber did not find that the treatment of Konneh and Issa amounted to an inhumane act.<sup>86</sup> Further, whilst the Trial Chamber found that Sesay, in the commission of the crime against TF1-129 had abused the "levers of state" power,<sup>87</sup> the arrest was at the behest of Bockarie, who demanded absolute compliance with his instructions. It should be noted that, whilst the Chamber found that both Bockarie and Sesay used police officers and AFRC/RUF fighters to arrest and detain others,<sup>88</sup> any involvement by Sesay was carefully and stringently controlled by the state authorities – including Bockarie. Sesay's involvement was at the military level, rather than the political or administrative level. It is submitted that in these circumstances, Sesay was not responsible for the abuse of a public position or breach of any legitimate expectations attaching to his position.

63. The fact that Sesay was only infrequently present during the currency of the JCE in the Kenema District is important. It is submitted that those factors which in law might usually aggravate the offences – for example, "premeditation," the "discriminatory purposes of the crimes," the

---

<sup>82</sup> Judgment, para 250, 3.1.2 (i), (iii) and (iv).

<sup>83</sup> Judgment, para. 1105.

<sup>84</sup> For example, Judgment, paras. 1048 and 1054.

<sup>85</sup> Judgment, para. 2052.

<sup>86</sup> Judgment, para. 1117.

<sup>87</sup> Judgment, para. 1999.

<sup>88</sup> Judgment, para. 1999

“enthusiasm” of the direct perpetrators and other factors not within Sesay’s control or knowledge – ought not be taken into account in the assessment of an appropriate sentence.

64. Further, it is submitted that the evidence does not show that Sesay displayed a total disregard for the sanctity of human life and dignity during this period, nor was it shown that he enjoyed the commission of these criminal acts nor displayed a desire to inflict pain, unlike others, during the currency of the JCE in Kenema District. As regards the planning and organisation of the mining it cannot be argued that Sesay committed these crimes for wholly gratuitous reasons. The mining operations, in large part, were for utilitarian purposes, related to the survival of the junta government, which however illegitimate had functions which extended to governance and the welfare of civilians.<sup>89</sup> There is thus a lack of aggravating features.<sup>90</sup>

*(iii) In relation to conviction for crimes in Kono District*

65. As concerns the majority of the crimes which were found to have been committed in Kono during the currency of the JCE, Sesay was notably absent. The Prosecution did not prove that Sesay had personally committed any of the crimes in Kono.<sup>91</sup> Apart from those which resulted from the endorsement of JPK’s order to make Koidu Town a no-go area for civilians, as found by the Trial Chamber,<sup>92</sup> which, it is accepted, are serious, Sesay was not found to have been present (or even, recently present) during any of the remaining crimes found committed pursuant to the JCE.

66. Moreover his level of direct or material contribution to the remainder – and majority – of the crimes ought to be assessed as low. As found, Sesay’s contribution to the JCE was largely focused on the issue of forced mining and thus the pursuance of the overall objective of economic survival, rather than the specific criminal activities in Kono. Additionally, the Defence submits the following ought to be considered as relevant to an appropriate assessment of gravity.

---

<sup>89</sup> Judgment, paras. 1359-1360.

<sup>90</sup> For example, CDF Appeals Judgment, para. 524, and *Celebići* Trial Judgment, para. 1268.

<sup>91</sup> Judgment, para. 2066.

<sup>92</sup> Judgment, para. 2084.



67. First, the plan to attack and capture Koidu was formulated by Superman and SAJ Musa. Superman communicated this plan to Bockarie.<sup>93</sup> Whilst the Trial Chamber found that Sesay was “actively involved in the overall planning of this operation” this operation was, in the first instance, in pursuit of the overall objective of the joint criminal enterprise,<sup>94</sup> namely the capturing of a strategically important location. This overall objective was non-criminal.
68. Operation Pay Yourself was announced by Johnny Paul Koroma over the BBC from Masiaka and then endorsed by Superman. It was this which led to the looting onwards into Koidu town and the associated breakdown in the military command structure,<sup>95</sup> which must have been responsible for most, if not all, of the early crimes in Koidu town. Further, the Trial Chamber has found that Sesay did not play an active role in the attack as he had not yet recovered from the injuries he sustained in the Bo district.<sup>96</sup> The finding that Sesay contributed to the looting carried out during this journey and into Koidu Town by his failure to take action to prevent it, “thereby tacitly approving and encouraging the commission of these crimes” must be assessed in light of this injury. His contribution to these crimes, the encouragement, as noted by the Trial Chamber, derived from his “power, authority, rank, position and status as BFC within the RUF and his important membership in the AFRC Supreme Council,”<sup>97</sup> a culpable omission, rather than any direct, or overt or positive acts towards the pillage.
69. Following Sesay’s departure from Kono to Kailahun, during his movement with JPK, he did not return to Kono until December 1998. The Trial Chamber found that Sesay received reports of the crimes committed by RUF and AFRC fighters but, it is apparent from the findings, that his *direct* contribution to the crimes at this time was restricted to his involvement in the mining activities and the associated enslavement of civilians – in order to further the common purpose.<sup>98</sup>
70. It is clear that the activities concerning the military and civilian operations in Kono and thereafter the Guinea Highway were principally organised by Bockarie and the men in Kono. From February to May 1998, while the AFRC/RUF forces were stationed in Kono District,

---

<sup>93</sup> Judgment, para. 790.

<sup>94</sup> Judgment, para. 2083.

<sup>95</sup> Judgment, para. 783.

<sup>96</sup> Judgment, para. 795.

<sup>97</sup> Judgment, para. 2082.

<sup>98</sup> Judgment, paras. 2086 and 2115.

Bockarie remained at the RUF Headquarters in Buedu. Until August 1998, there were only two Area Commanders in the RUF, one for Kono and one for Kailahun. Everyone in the RUF command structure ultimately reported to Bockarie. Bockarie also received reports from the Unit Commanders.<sup>99</sup>

71. It was found that in May 1998 Sesay was assigned as BFI to Pendembu and, although Sesay was an active Commander in Pendembu, Sesay's control was limited to Kailahun District at that time.<sup>100</sup> The Trial Chamber took cognisance of the fact that while Superman was overall Commander for Kono District from March until August 1998, he refused to take orders from Sesay.<sup>101</sup> Further, it was not found that Sesay was in command of the men in Kono, following his retreat to Kailahun and during the remainder of the currency of the JCE.<sup>102</sup> The Chamber found that it was not established beyond reasonable doubt that Sesay was in a superior-subordinate relationship with RUF fighters in Kono District during the period from May to the end of November 1998.<sup>103</sup> It is submitted that these, and related command and control issues, indicating a lack of material or direct involvement in the crimes in Kono during the currency of the JCE, reduces the gravity of the offences.
72. It cannot be said that Sesay acted as the architect of these criminal activities, or that he abused his leadership position, or encouraged *those* crimes – notwithstanding his command role in the RUF. It is submitted that Sesay's significant contribution to the overall criminal enterprise at this time, with the exception of the mining in Kono, was restricted to activities outside of the district. It is significant that in the context of hundreds of crimes committed by others, most – if not all – of whom were not in direct contact with Sesay. Sesay's contribution to *these* crimes (or his involvement in them) must be categorised as minimal and remote: in the context of the breadth of this JCE, one of the broadest – in terms of duration and geographical scope – known to international criminal law.

---

<sup>99</sup> Judgment, para. 821.

<sup>100</sup> TF1-366/Transcript, 8 November 2005, p. 81; DIS-174/Transcript, 21 January 2008, pp. 102-104, 105 (CS).

<sup>101</sup> TF1-071/Transcript, 21 January 2005, pp. 24-25 (CS); TF1-366/Transcript, 8 November 2005, p. 81; DIS-174/Transcript, 21 January 2008, pp. 102-104, 105 (CS).

<sup>103</sup> Judgment, paras. 2123-2125.

73. The Chamber was not satisfied that between 14 February 1998 and beginning of May 1998, CO Rocky, Rambo RUF, AFRC Commander Savage and his deputy, Staff Sergeant Alhaji were members of the joint criminal enterprise. The Chamber found that they were directly subordinated to and used by members of the joint criminal enterprise to commit crimes that were either intended by the members to further the common design, or which were a reasonably foreseeable consequence of the common purpose.<sup>104</sup> The Trial Chamber did not find that these men were used by Sesay to commit crimes, nor that they were his direct subordinates. Conversely, it is significant that Sesay was not in contact with these men and was not present in the region during the commission of the crimes. In other words these men were used by others in the JCE to commit the various crimes arising in Kono.
74. In other words, the crimes can be imputed to other members of the JCE – *these* members used the direct perpetrators as tools. It is submitted that the Trial Chamber should take this into account when assessing Sesay’s culpability for the crimes in Kono committed by those categorised as tools used by other members of the JCE.
75. Further, it is submitted that the crimes committed within Kono during Sesay’s absence ought not to be considered as aggravated for the purposes of sentencing Sesay. Sesay did not initiate these crimes, nor is there evidence of his premeditation. The evidence does not show that Sesay displayed a total disregard for the sanctity of human life and dignity during this period of absence, nor was it shown that he enjoyed the commission of these criminal acts in Kono nor displayed a desire to inflict pain. It is submitted that those factors which in law might usually aggravate the offences, such as the “discriminatory purposes of the crimes,” the “enthusiasm” of the direct perpetrators, and other factors not within the knowledge or control of Sesay, as well as those above, ought not to be taken into account to aggravate the sentence.

*(iv) In relation to conviction for crimes in Kailahun District*

76. The Defence adopts the submissions on Sesay’s form and degree of participation relating to Bo, Kenema and Kono as they might be considered to apply to the crimes found committed in Kailahun pursuant to the JCE. The Chamber found that Sesay did not personally commit any of

---

<sup>104</sup> Judgment para. 2080.

the crimes in Kailahun District.<sup>105</sup> Concerning the killing of the 63 civilians accused of being Kamajors, Sesay was not present.<sup>106</sup>

77. The Trial Chamber found that after Sesay's departure from Koidu Town, he was based primarily in Buedu, Kailahun District, which also served as the RUF headquarters where Bockarie was operating.<sup>107</sup> The Chamber concluded that Sesay's continuing assignment as BFC and his close relationship and proximity to Bockarie gave him a great deal of authority during this period.<sup>108</sup> Nonetheless, it is submitted that this authority was carefully circumscribed and restricted by this relationship, which made his role in the activities ultimately dispensable for the commission of the crimes and the furtherance of the JCE.

78. Even whilst the Chamber found that TF1-362 reported directly to Sesay between 1998 and 2000,<sup>109</sup> the tenor of this witness' evidence recalled that the operating policy decisions were made by Bockarie. The Training Commander, reported to Bockarie through Sesay<sup>110</sup> until Bockarie left the RUF in December 1999; thereafter the Training Commander reported to Sesay only.<sup>111</sup> This was true of all aspects of the RUF activities in Kailahun: it is submitted that being second to Bockarie did not equate to operational or policy level decision making, and this ought to be taken into account when assessing the gravity of Sesay's conduct in relation to the crimes found proven pursuant to the JCE.

#### *Participation of Sesay through other modes of liability*

79. Sesay was found guilty pursuant to Article 6(1) for the planning of Enslavement, a Crime against Humanity, (Count 13), in relation to events in Tombudu and throughout Kono. The Trial Chamber found that the primary purpose behind commission of abductions and forced labour was not to spread terror among the civilian population, but rather was primarily utilitarian or military in nature. Even where abductions and forced labour occurred simultaneously with other acts of violence (otherwise found with regards to the crime of terror), the Chamber was not

---

<sup>105</sup> Judgment, para. 2157.

<sup>106</sup> Judgment, para. 1447.

<sup>107</sup> Judgment, para. 2085.

<sup>108</sup> Judgment, para. 2085.

<sup>109</sup> Judgment, para. 1261.

<sup>110</sup> TF1-362/Transcript, 22 April 2005, p. 16 (CS).

<sup>111</sup> TF1-362/Transcript, 22 April 2005, p. 17 (CS).



satisfied that the acts could be considered to have been committed with the primary intent to terrorise civilians.<sup>112</sup> This is relevant to an assessment of gravity for these offences.

80. Pursuant to Article 6(3) of the Statute, Mr. Sesay was convicted of Enslavement, a Crime against Humanity, (Count 13), in relation to events in Yengema in Kono district. Command responsibility warrants considerably lower sentences than those normally reserved for principal or co-perpetrators.<sup>113</sup> An Accused found guilty of a crime pursuant to Article 6(3) bears responsibility for his failure to act and not the same responsibility as the subordinates who commit the crime.<sup>114</sup> A reduced sentence is therefore justified.

Sesay's Article 6(3) Liability for Counts 15 and 17

81. Sesay was convicted under Article 6(3) for Counts 15 and 17, which are related to the attacks on the United Nations peacekeepers in May 2000. There is clear distinction to be drawn between those who perpetrated this offence and played a part in its commission and intended it and Sesay, who should be sentenced for his failure to act – after the events had commenced. Further – and similarly – the Defence submits that there is an absence of factors which might aggravate this offence.

Comparisons with the AFRC Accused

82. The Prosecution has submitted that the crimes committed by Sesay and the other RUF defendants were “similar crimes ... committed in substantially similar circumstances” in relation to Counts 1-14 as those by the AFRC defendants and invited the Trial Chamber to take into consideration the sentences imposed in the AFRC case.<sup>115</sup> The Defence submits that the comparison is a false one, both in terms of the gravity of the offences found proven and the absence of mitigation available to the AFRC convicted persons.

<sup>112</sup> Judgment, paras. 1359-1360.

<sup>113</sup> “[T]he *sui generis* nature of command responsibility under Article 7(3) of the Statute may justify the fact that the sentencing scale applied to those Accused convicted solely on the basis of Article 7(1) of the Statute, or cumulatively under Articles 7(1) and 7(3), is not applied to those convicted solely under Article 7(3), in cases where nothing would allow that responsibility to be assimilated or linked to individual responsibility under Article 7(1).” *Prosecutor v. Hadzihasanović*, Trial Judgment, 15 March 2006, IT-01-47-T (‘*Hadzihasanović* Trial Judgment’), para. 2076. Command responsibility is exceptional in law in that it allows for a superior to be found guilty of a crime even if he had no part in the *actus reus* and even if he lacked the *mens rea* to commit the crime. *Id.*

<sup>114</sup> *Orić* Trial Judgment, para. 727.

<sup>115</sup> Prosecution Sentencing Brief, para 51.

83. In the main, the AFRC defendants –Brima, Kamara and Kanu – were found guilty of committing, ordering, planning, aiding and abetting and (in the cases of Kanu) instigating the crimes themselves. There was no finding of JCE.<sup>116</sup> The offences found proven were aggravated by a number of Article 6(3) convictions, including those for crimes encompassing unlawful killings and sexual violence, amongst others.
84. Brima was convicted of, amongst other crimes, committing extermination at Karina and ordering murders of civilians in Bombali and Freetown. He was described by the Trial Chamber in its Sentencing Judgment as “zealous participant”<sup>117</sup> and noted that he “was the primary perpetrator of the murder of at least 12 civilians in a mosque during the attack on Karina.”<sup>118</sup> The Trial Chamber also noted Brima’s tactics of extreme coercion used to force his subordinates to engage in criminal conduct.<sup>119</sup>
85. Kamara was convicted of, amongst other crimes, ordering the murder of civilians in Karina and aiding and abetting the murder and mutilation of civilians in Freetown. The Trial Chamber found that Kamara to be “a violent and active participant in the crimes,” noting an instance where Kamara ordered his subordinated to lock civilians in their houses and set the houses ablaze.<sup>120</sup>
86. Kanu was convicted of, amongst other crimes, committing the mutilation of civilians in Freetown, ordering the murder of civilians and persons *hors de combat* in Freetown and aiding and abetting the murder of civilians in Freetown. The Trial Chamber found that Kanu was a “direct participant in unlawful killings, mutilations, the recruitment and use of child soldiers, outrages upon personal dignity and enslavement.”<sup>121</sup>
87. In other words the three convicted persons were found guilty of direct commission of the most serious crimes. The crimes found committed were seriously aggravated and in each case, the convicted persons were found to have no mitigation.<sup>122</sup> Against this background, the Trial

<sup>116</sup> *Prosecutor v. Brima et al.*, Judgment (TC), 21<sup>st</sup> June 2007, SCSL-04-16-T-616, para. 85

<sup>117</sup> AFRC Sentencing Judgment, para. 56.

<sup>118</sup> AFRC Sentencing Judgment, para. 43.,

<sup>119</sup> AFRC Sentencing Judgment, para. 55

<sup>120</sup> AFRC Sentencing Judgment, para. 86.

<sup>121</sup> AFRC Sentencing Judgment, para. 99.

<sup>122</sup> AFRC Sentencing Judgment, paras. 51, 91, and 105.

Chamber sentenced Brima, Kamara and Kanu to 50, 45 and 50 years' imprisonment, respectively.<sup>123</sup>

88. It is submitted that the form and degree of Sesay's participation in the crimes is significantly less and the aggravating factors absent, or few. Moreover, for the reasons outlined below, the mitigation available to reduce Sesay's sentence is cogent and compelling.

### **MITIGATING FACTORS**

#### **Sesay's age, forced conscription and lack of training**

89. Mr. Sesay was only 19 years of age at the time of his forced conscription. It is submitted that this forcible conscription, placing Sesay into a war against his will should mitigate his sentence. It is undoubtedly the case that Sesay suffered the consequences of enslavement and conscription. It is submitted that this lack of free will, the loss of his youth to war and the brutalising effects of armed conflict, ought to be taken into account: in that sense Mr. Sesay was a victim of Sankoh, and others including John Tarnue and TF1-371. It is logical to infer that once conscripted the choices available were irrevocably limited and difficult. It is submitted that this ruinous and irredeemable loss of opportunity, for a normal and peaceful life, ought to mitigate the sentence.
90. The Defence urges the Trial Chamber to accept that the training at Camp Naama, at the hands of older and more experienced men, must have been rudimentary at best – it could not have equated to anything approaching competent, modern-day, professional military training. Consistent with the finding of the Trial Chamber, that the RUF adopted the tactics of the Liberian fighters, who had committed large scale atrocities against the civilian population,<sup>124</sup> it follows that Sesay, an impoverished and inexperienced 19/20 year old, was not schooled in an environment which nurtured respect for, and assimilation of, the dictates of international humanitarian law.<sup>125</sup>

#### **Sesay's (deserved) reputation as the moderate Commander within the RUF**

91. Sesay became Interim Leader of the RUF in August/September 2000 at the behest of the ECOWAS leaders. It is submitted that it was his reputation as a moderate within the RUF

<sup>123</sup> AFRC Sentencing Judgment, Disposition.

<sup>124</sup> Judgment, para. 724.

<sup>125</sup> CDF Appeals Judgment, para. 499.

movement that led to his being approached by the ECOWAS Heads of State to be the Interim Leader, following Sankoh's incarceration.<sup>126</sup>

92. As noted by the then-President Konaré of Mali

the ECOWAS group was looking for someone within the RUF movement who could come forward and bring the RUF forward to fulfil its part of the peace process. Issa Sesay, despite his youth at the time, stood out as being capable of this. He was one of the senior commanders but he was not the only one. I also remember Superman, Gibril Massaquoi and Mike Lamin but it was Sesay's character that made him stand out, that reassured us that he could play that important role.<sup>127</sup>

93. According to UNAMSIL Force Commander, Lt. General Daniel Opande, Sesay was handpicked by the ECOWAS leaders to become the leader of the RUF because he was "moderate and somebody who they could count on to cooperate in the peace process."<sup>128</sup> This sentiment was shared by General Ali Hassan: "I always considered [Sesay] to be the most vital personality who would be with me subsequently in the peace process...<sup>129</sup> [and]... [u]nlike the other veterans, rebels, that I came across he was always moderate, soft spoken, and I had never seen him showing arrogance."<sup>130</sup>

94. George Biguzzi, Bishop of the Diocese of the Northern Province of Sierra Leone, similarly observes in his testimonial reference on behalf of Sesay<sup>131</sup>

As the peace process got underway in earnest, I had occasion to meet with Sesay on several occasions. He struck me as a very young man who had committed himself to the peace process but who was also struggling with a great deal of internal opposition in the RUF. I saw him as a moderate, in the RUF. This was a commonly held feeling as even prior to having accepted the peace process, Sesay was well-regarded in Makeni as a disciplined commander who ensured his men behaved well vis-à-vis the townspeople.<sup>132</sup>

95. The Defence submits that Sesay's reputation as a moderate within the RUF was well founded. It was based upon clear demonstrations of material support for the civilian population: he was

<sup>126</sup> The Trial Chamber accepted that the leaders of ECOWAS approached Sesay to be the Interim Leader (Judgment, para. 916).

<sup>127</sup> Annex A: Statement of His Excellency Alpha Konaré, para. 6.

<sup>128</sup> General Opande/Transcript, 10 March 2008; pp. 99. The only delay on Sesay's part in cooperating with Opande and the UN forces was that Sesay requested time of Opande to sensitise the RUF to allow Opande to carry out his mandate, pp. 104

<sup>129</sup> General Hassan/Transcript, 11 March 2008, pp. 143.

<sup>130</sup> General Hassan/Transcript, 11 March 2008, pp. 159.

<sup>131</sup> Annex C, Statement of Bishop Biguzzi.

<sup>132</sup> Annex C, para. 5



known by those civilian populations as the commander who tried to maintain law and order, “a restraining force within the movement.”<sup>133</sup> Whilst the Trial Chamber has found that “Commanders utilised the disciplinary mechanisms available to them primarily to intimidate their subordinates and compel obedience to superior orders”<sup>134</sup> there is body of evidence, both Prosecution and Defence, which suggests that Sesay’s motives were, at least on a significant number of occasions, less cynical. There is evidence that Sesay was genuinely angry about the abuses themselves and, consequently, became known as the commander who was prepared to – and did – take personal action against fighters to prevent and punish crimes.<sup>135</sup> This was confirmed and accepted by several ex-UNAMSIL peacekeepers, who testified that, from their observations and interactions with RUF fighters, Sesay was a strict disciplinarian.<sup>136</sup>

96. Moreover, it is clear that Sesay’s actions, whether motivated by this genuine concern or otherwise, did save hundreds of lives and countless homes and livelihoods.<sup>137</sup>

<sup>133</sup> Annex D: Statement of Father Victor Bongiovanni.

<sup>134</sup> Judgment, para. 706.

<sup>135</sup> TF1-314 gave evidence about Sesay executing rapists in Makeni in 1999. Sesay also gave orders against burning, looting, and harassing civilians. If a combatant looted, the items would be returned to their civilian owner and the combatant would be flogged or locked in a guard room (TF1-314/ Transcript, 4 November 2005, pp. 52-55); TF1-366 gave evidence that Sesay attempted to prevent and punish fighters from looting and burning during the intervention period (TF1-366/Transcript, 7 November 2005, pp. 97; and Transcript, 10 November 2005, pp. 82); Sesay ordered the execution of RUF soldiers who looted ECOMOG (TF1-366/Transcript, 10 November 2005, pp. 91-92; and Transcript 9 November 2005, pp. 11); during the December 1998 attack on Makeni, Sesay gave orders not to loot or burn Makeni (TF1-366/Transcript, 10 November 2005, pp.84-85). Sesay became angry when he heard about looting (DIS-127/Transcript, 12 February 2008, pp. 89). Sesay disciplined his own fighters: Anyone who violated the law would be punished (DIS-017/Transcript, 18 February 2008, pp. 42-43); Sesay was very strict about raping and looting; meetings were held to explain the laws (DIS031/Transcript, 22 Feb 2008, pp. 121) (DIS-034/Transcript, 18 February 2008, pp. 71); DIS-034 heard that if Sesay found someone actually raping or if the person was found guilty of rape that the person would be shot (DIS-034/Transcript, 18 February 2008, pp. 86); Sesay shot an STF fighter accused of raping a woman (Sesay/Transcript, 22 May 2007, pp. 20-21).

<sup>136</sup> General Hassan/Transcript, 11 March 2008, p. 153 and Judgment, para. 2270. *See also*, General Opande/Transcript, 10 March 2008, pp. 139.

<sup>137</sup> When the AFRC were present in Makeni, the town was jittery; when Superman was present, the town was without law and order (DIS-009/Transcript, 22 February 2008, pp. 84-85); “When Sesay was present, there were no problems because Sesay will not allow [Superman] to bring problems to the township” (DIS-017/Trancript, pp. 52-53, 18 February 2008); when Sesay fled Makeni after the infight with Superman, Superman’s men went on a rampage. In Sesay’s absence, the G5 was not operating. Many of the townspeople fled Makeni (DIS-034/Transcript, 18 February 2008, pp. 78). Those CDF that surrendered to Sesay were at no risk of losing their lives (DIS-009/Transcript, 22 Feb 2008, pp. 87). *See also* Annex H: Statements of Paramount Chief Bai Seboru Kasangma II. TF1-041 testified that Sesay was committed to the welfare of civilians in Makeni including preventing looting, pillage, and setting up investigative units to adjudicate crimes (TF1-041/Transcript, 10 July 2006, p 77, line 19 – pp. 84, line 3); Sesay was committed to the welfare of civilians in Kono “and all RUF areas under his control” (TF1-078/Transcript, 25 October 2004, pp. 83 line 5 – pp. 87, line 17); TF1-114 testified that Sesay ordered that Makeni should not be burnt during the retreat from Freetown in February 1998 (TF1-114/Transcript, 28 April 2005, pp. 111).

97. Father Victor Bongiovanni, an Italian Xaviarian missionary who has lived and worked in Makeni since 1977, recalls that

Issa Sesay was a real disciplinarian in Makeni. He was very serious about punishing his men for crimes against civilians. As this became well-known, the situation in Makeni settled as there was a measure of security when Sesay was there. My seniors in the church wanted to withdraw me from Makeni as it was under rebel control but I told them that I wanted to stay and that I felt, that while Sesay was in command, it was safe to stay there.<sup>138</sup>

98. No other commander in the RUF hierarchy enjoyed a similar reputation for these types of controlling and ameliorating actions. Consequently it is apparent that the horrors of the war and the crimes committed by members of the RUF, the AFRC, the STF and other breakaway factions, would have been considerably worse without Sesay's moderating influence.

99. It is of note that of the 59 witnesses called by the Defence on behalf of Sesay, 42 were civilians who came forward to speak about Sesay's protection of civilians in their area. DIS-031, a religious leader, testified that "what Issa did for us in Makeni, if they had put a ballot box, honestly, it would have been filled to the brim and, in fact, people like me would not be able to take it, to carry it on their head."<sup>139</sup> Civilians who came forward to testify came from districts across Sierra Leone and from a variety of ethnic, tribal and religious backgrounds.

100. As the Chamber also is aware there were many other witnesses who were willing to give evidence on Sesay's behalf – in excess of 250 – whose testimony was either excluded as being repetitive or who were not called due to the constraints of the trial process.<sup>140</sup> Nonetheless, it is

<sup>138</sup> Annex D, para. 7.

<sup>139</sup> DIS-031/Transcript, 22 February 2008, pp. 125; the religious authorities of Makeni would go to Sesay's house and offer prayers for him (DIS-017/Transcript, 18 February 2008, pp. 40). Civilians that live in the towns and villages along the Tonkolili Highway had the same to say about Sesay: DIS-046, from Makali, stated that Sesay was good to the people of his town and ensured peace between Kamajors and the RUF (DIS-046/Transcript, 15 February 2008, pp. 86-88; and 18 February 2008, pp. 29). See, generally, paras. 708-716 of the Sesay Defence Final Brief (SCSL-04-15-T-1210, 31 July 2008) for both Prosecution and Defence witnesses that testified about Sesay preventing crimes against civilians and, in those instances where he learned of those crimes, he took action against the perpetrators.

<sup>140</sup> *Prosecutor v. Sesay*, "Written Decision on Sesay Defence Application for a Week's Adjournment – Insufficient Resources in Violation of Article 17(4)(b) of the Statute of the Special Court", 5<sup>th</sup> March 2008, SCSL-04-15-1031, paras. 41-51. The Trial Chamber found that the Sesay Defence was leading repetitive testimony in the following respects: a) that the civilians who worked on Sesay's and other farms or on RUF projects were well-treated and well-fed by Sesay; b) that Sesay was generous and kind to the civilians; c) that the RUF provided free schooling to

hugely significant that Sesay was able to call upon this many independent civilians – all of whom were motivated in some way because of their experiences with Sesay – to provide testimony attesting to his good acts. Their willingness speaks volumes about the many acts of kindness towards the vulnerable by Sesay during the conflict.

101. The Trial Chamber should also take into account that, despite the finding, pursuant to Article 6(1), that Sesay planned the enslavement of civilians in relation to events in Tombudu and throughout Kono for the purposes of mining to raise revenue, the condition for the majority of civilians in Kono improved upon his arrival in December 1998. Although the Trial Chamber found that civilian camps remained in existence until disarmament in 2001, the Chamber was not satisfied that for the period December 1998 to January 2000 the control over civilians in Kono District was such that the civilians remained enslaved.<sup>141</sup>
102. The Trial Chamber found that the conditions improved generally for civilians following the capture of Koidu Town.<sup>142</sup> This is consistent with both Prosecution and Defence evidence concerning Sesay's activities along the Kono to Makeni Highway during the movement onwards to Makeni; these activities significantly reassured and protected the civilian population.<sup>143</sup> There were many witnesses who confirmed the efforts made by Sesay to implement a more ordered and civilised environment.
103. This was also true of Kailahun District. The Trial Chamber found that the RUF attempted, notwithstanding the crimes, to establish good relationships with the civilian population in order to maintain Kailahun as a defensive stronghold, ensure a steady flow of food supply to its troops, and preserve control over and the loyalty of the civilian population. The RUF opened schools in Kailahun District and provided books and chalk. There was evidence that parents agreed to

---

civilian children and the children of combatants; d) that there were RUF hospitals which provided free medical care to the civilians; e) that civilians who cultivated farms for RUF Commanders did so wilfully, happily, singing and dancing in the process, were very well-fed, and were never forced, least still, at gunpoint, to do the work; and f) that civilians who were involved in diamond mining were not forced at gunpoint but did so voluntarily in their interests taking a share of the proceeds under a conventional 2-pile system. Additionally, the Trial Chamber granted the entry of only 5 of 23 statements of civilian Defence witnesses sought to be tendered by the Sesay Defence under Rule 92bis. *Prosecutor v. Sesay et al.*, "Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis," 15<sup>th</sup> May 2008, SCSL-04-15-1125.

<sup>141</sup> Judgment, footnote 2485.

<sup>142</sup> Judgment, para. 1223.

<sup>143</sup> See, paras. 711-716 of the Sesay Defence Final Brief.



gather food as their contribution for the free education provided.<sup>144</sup> The RUF “government” in Kailahun provided free medical services to civilians and their children at a hospital in Giema.<sup>145</sup> The Trial Chamber noted that there was no apparent discrimination in the distribution of medical care and education to both civilians and fighters.<sup>146</sup>

104. It is instructive that it was Sesay from all of the accused (and from all of the various personnel in the RUF) who was considered by the civilian population to be the commander most associated with the distribution of these types of amenities. It is also instructive that those witnesses who came forward for Mr. Sesay from the Kailahun district are Mendes, whereas Sesay is a Temne. Sesay’s reputation for being helpful and generous to civilians, regardless of their tribal affiliations, must be regarded as cogent mitigation.

### **Peace and Reconciliation**

#### **Disarmament and Demobilisation**

105. At the time that Sesay became Interim Leader, the RUF was in control of approximately half of the territory of Sierra Leone, including the diamond mines in Kono District. Foday Sankoh had been imprisoned following the May 8<sup>th</sup> 2000 incident in Freetown. There were powerful reasons for the RUF to continue the conflict and, in doing so, thereby seek to expand its area of control as leverage to persuade ECOWAS and the international community to arrange the release of Sankoh.
106. It is well-documented that Sesay remained committed to the peace process and the disarmament of the RUF despite considerable internal opposition from his own fighters. Both TF1-045 and TF1-362 spoke of their anger towards Sesay for, what they considered to be, his repudiation of the RUF and their leader, Sankoh.<sup>147</sup> There were many who held that view and, but for the courageous and diligent efforts by Sesay, they might well have prolonged the conflict, providing an environment where further crimes could be perpetrated against the civilian population. As

<sup>144</sup> DIS-047/Transcript, 4 October 2007, pp. 45-52; DAG-110/Transcript, 2 June 2008, pp. 121-122; DAG-080/Transcript, 9 June 2008, pp. 20-21; DAG-110/Transcript, 9 June 2008, pp. 144-146.

<sup>145</sup> DIS-047/Transcript, 4 October 2007, pp. 45-52, 69-70.

<sup>146</sup> Judgment, para. 1384. *See also*, Exhibit 328, Defence Exhibit 173 showing the list of schools operating in Kailahun from September/October 1999; DIS-077/Transcript, 8 October 2007, pp. 62-63; DIS-129/Transcript, 13 March 2008, pp. 53-54.

<sup>147</sup> TF1-045/Transcript, 24 November 2005, pp. 35-37; TF1-362/Transcript, 22 April 2005, pp. 77-78.



noted by ex- President Kabbah in his testimony, there were many key members of the RUF, including Mike Lamin and Gibril Massaquoi, who were “not totally committed to the peace process.”<sup>148</sup> It is with some irony that these key obstructionist members of the RUF (and the JCE) should be enjoying their freedom, whilst Sesay faces continued long-term incarceration.

107. SRSB Adeniji, in his statement provided to Sesay, noted

It was clear at the outset that Sesay did not have a strong hold on the RUF: he did not command the same loyalty that Sankoh did. It was my view that no RUF commander could have hoped for the same grip on the RUF as Sankoh did, such was his deification by the rank and file. What was also clear, however, was that Sesay did not have the unqualified support from the senior RUF commanders. Many of those senior commanders, among them, people like Gibril Massaquoi and Mike Lamin, also saw themselves as potential leaders of the RUF. While Sesay was able to rein in the RUF and bring them to disarmament, it appeared that many RUF remained unhappy about his leadership. ... As the peace process progressed to the disarmament stage, Sesay showed that he was able to make promises and keep them. He was, undoubtedly, directing a lot of his energies towards bringing the RUF to disarmament in the face of internal opposition.<sup>149</sup>

108. At the time Sesay became Interim Leader, therefore, peace was not a foregone conclusion in Sierra Leone. The RUF at the time was in control of almost half the country, including Kono, and had its leader imprisoned in the Government’s custody. Senior commanders such as Mike Lamin and Gibril Massaquoi were actively opposing disarmament. In the circumstances, Sesay’s actions in committing to the obligations contained in the Lomé Accords and bringing the RUF successfully through the disarmament process was a notable achievement for any 29 year old man.

109. It is submitted that Sesay’s conviction pursuant to Article 6(3) of the Statute, for Counts 15 and 17, in relation to events in Bombali, Port Loko, Kono and Tonkolili Districts ought not to detract from this demonstrable and overwhelming contribution to peace and reconciliation. First it is clear, as noted above, that Sesay made an unambiguous decision to bring the conflict to an end as early as May 2000, when he declined to use the UN detainees as hostages. This decision is reflected in the acquittal of the RUF convicted persons’ on Count 18. Second, Sesay’s failure to

---

<sup>148</sup> Former President Kabbah/Transcript, 16<sup>th</sup> May 2008, p. 13, lines 3-10 – p. 14, line 8.

<sup>149</sup> Annex B: Statement of SRSB Adeniji, paras. 8-9.

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

110. It ought to be recognised that this task – to bring many thousands of hardened fighters through to disarmament – required unmitigated dedication and commitment spanning approximately from September 2000 through to the final disarmament ceremonies in January 2002. It required considerable courage and personal risk, as well as hundreds of hours of hard work on a day-to-day basis. Whilst the crimes that Mr. Sesay has been convicted of are serious and span several years, his continuous efforts from 2000-2002 – which not only brought peace to millions of Sierra Leonean civilians but also allowed for the existence of the Special Court and his own prosecution and incarceration – are unquestioningly impressive and ought to attract the most significant of mitigation.
111. Sesay’s indefatigable work as Interim Leader is, in the wider community of Sierra Leone, considered to be one of the principle means by which peace was finally achieved. As Father Victor Bongiovanni states in his attestation, speaking on behalf of thousands of ordinary civilians, “my parishioners and I do not believe that peace would have come to Sierra Leone when it did had it not been for Issa Sesay.”<sup>150</sup>
112. It is no exaggeration to suggest that Sesay’s actions are without precedent in any conflict in our life times. Sesay sought no personal gain from his cooperation with the other stake-holders nor did he set any pre-conditions for the RUF’s disarmament.<sup>151</sup> This explains, at least in part, the huge support Sesay has, both in the civilian population in Sierra Leone and in the wider

---

<sup>150</sup> Annex D, para. 12.

<sup>151</sup> Former President Kabbah/Transcript, 16<sup>th</sup> May 2008, p. 36, line 25 – p. 37, line 12, and Annex A, para. 10.

international community. As Former President Konaré states (once again touching upon the irony which sees the majority of Sesay's colleagues and former detractors enjoying their freedom in the resulting peace):

Sesay was always very honest and reliable. He never created any preconditions for the RUF's disarmament. This was in contrast to some of the other senior commanders who did not want the RUF to disarm unless Sankoh was released from prison. While Sesay was loyal to Sankoh, as all the RUF were, he did not attempt to use the disarmament process as a tool to secure Sankoh's freedom. Neither did he seek any personal gain for himself. He behaved at all times in a straightforward and honourable way. He appeared to be such a contrast to the other commanders and indeed Sankoh himself, that he appeared to be an anomaly in the RUF movement.<sup>152</sup>

*Recipient of National Peace Award*

113. Following on from his role in bringing peace to Sierra Leone, Mr. Sesay was awarded the National All Walks of Life Award, the certificate of which was submitted into evidence at trial as Exhibit 214 and is appended here as Annex I. He was also given an Award recognising him as a "Peacemaker."<sup>153</sup>

*Assistance to authorities in preventing the January 2003 coup attempt*

114. Sesay was also one of those who, in January 2003 alerted UNAMSIL to an imminent coup then being planned by members of the Sierra Leone military.<sup>154</sup> It is submitted that this emphasises Sesay's continued commitment to peace in Sierra Leone.

*Previous good character*

115. Mr. Sesay has no previous convictions. Previous good character was held by the Trial Chamber to be a mitigating factor in the CDF trial.<sup>155</sup>

*Sesay's Treatment by the Prosecution During His Arrest and Interview Process*

116. From 5<sup>th</sup>-22<sup>nd</sup> June 2007, the Trial Chamber presided over proceedings which culminated in the exclusion of his pre-trial statements, following a *voir dire* which sought to determine whether the

<sup>152</sup> Annex A, para. 10.

<sup>153</sup> Exhibit 215; appended as Annex J.

<sup>154</sup> Annex K; this document was first filed as an Annex in *Prosecutor v. Sesay et al.*, Application on behalf of Issa Sesay for Provisional Release, 4 February 2004, SCSL-04-PT-003.

<sup>155</sup> CDF Sentencing Judgment, citing *Blaskić Appeals Judgment*, para. 696, and *Deronjić Sentencing Judgment*, para. 152. See also, *Simić Trial Judgment*, Para 1089.



Prosecution's interviews (and the waiver of rights to Counsel) with Sesay, conducted between 10<sup>th</sup> March – 15<sup>th</sup> April 2003, were voluntary.

117. In its Decision,<sup>156</sup> the Trial Chamber found that Sesay had made the statements involuntarily and they were made out of "fear of prejudice and the hope of advantage," in violation of Article 17(4)(a), (d) and (g) of the Statute and Rules 42 and 63 of the Rules.<sup>157</sup> His Honour Justice Itoe, in his Separate Concurring and Partially Dissenting Opinion, further held that Sesay's waivers to the right to Counsel were "involuntarily and improperly obtained" by the Prosecution.<sup>158</sup> At the conclusion of the *voir dire*, the Defence requested that the Trial Chamber take into account Mr. Sesay's treatment by the Prosecution during the six-week period as a mitigating factor in determining sentence.<sup>159</sup>
118. It is well-established that violations of an Accused's rights are a factor in mitigation of any future sentence. In *Semanza*, the Accused was detained in custody for eighteen days without being informed of the nature of the charges against him. This conduct led to a six-month mitigation of Semanza's sentence.<sup>160</sup>
119. Sesay was questioned by the Prosecution over a 16-day period spread over 6 weeks. The Prosecution conducted the first four days of interview without allowing Sesay to contact his family – he was held incommunicado.<sup>161</sup> The interviews were conducted without it being made

<sup>156</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-1188, "Written Reasons – Decision on the Admissibility of Certain Prior Statements of the Accused Given to the Prosecution", 30 June 2008 ('Admissibility of Sesay Interviews Decision').

<sup>157</sup> Admissibility of Sesay Interviews Decision, para. 66.

<sup>158</sup> Admissibility of Sesay Interviews Decision, Separate Concurring and Partially Dissenting Opinion of Hon. Justice Itoe, paras. 57-58

<sup>159</sup> 21 June 2007, page 18, lines 16-21 ("we would ask Your Honours to consider compensation, whether it's financial, or whether it's on sentence, if it gets to that stage, a reduced sentence because no one should have to go through six weeks of that kind of conduct at the hands of a prosecuting body".)

<sup>160</sup> *Prosecutor v. Semanza*, Trial Judgment. 15<sup>th</sup> May 2003, ICTR-97-20-T ('*Semanza* Trial Judgment'), para. 580. During a second eighteen-day period of detention, the Prosecution again violated Semanza's rights for not properly informing him of the charges against him. However, the Appeals Chamber found this second violation less serious as he was previously informed of substance of charges during his first period of detention. The six month reduction in sentence was for the violations over the collective 36 day period.

<sup>161</sup> After his arrest on the 10<sup>th</sup> of March 2003, the first time that Sesay spoke to any member of his family was when he spoke to his wife on the afternoon of the 14<sup>th</sup> March. Sesay/ Voir Dire Transcript, 19 June 2007, pp. 55-57. During his 10<sup>th</sup> March 2003 custodial interview (at pp. 28349), Sesay was crying about being disconnected from his family and said: "You know, I said, what got me so shattered, when you asked me about my children, because presently they don't even know my whereabouts. You know, that caused me to cry." Morrisette/ Voir Dire Transcript, 13 June 2007, pp. 65.



clear to Sesay that he was a suspect and not a witness. He was offered the hope that he would secure his relatively immediate release by cooperating with the Prosecution in the interviews. The then-Chief of Investigations, Gilbert Morissette stated in his testimony that his purpose was “to develop a rapport ... to build up confidence, and encourage him in order for him to agree to collaborate with us.”<sup>162</sup> At the completion of the process, Sesay was adjudged by a medical expert to be in need of urgent psychiatric care.<sup>163</sup>

120. The Defence submits that this coercive conduct by the Prosecution, throughout the course of the initial detention and the interview process, should be viewed as a substantial mitigating factor. In the alternative, it should be recognised that Sesay was deprived of a real possibility of cooperation – an opportunity which might have, alternatively, allowed for significant mitigation.

**Sesay cooperating with the trial process**

121. Mr. Sesay received an (inadequate) formal education to the age of 16 years and had no experience of being in a courtroom or the exigencies of a lengthy criminal process. Mr. Sesay has substantially cooperated and has, but for a few minor incidents, surrendered himself to the jurisdiction of the court and demands of the process. Mr. Sesay has attended the trial proceedings and contributed substantively, respectfully and courteously to his defence, throughout the currency of the Prosecution and Defence case.
122. The Defence submits that Sesay’s cooperation with proceedings, even whilst suffering pain due to a traumatised hip region, which is exacerbated by sitting for prolonged periods, and even waiving the right to be present in specific situations so that his illness and related absence would not prevent the running of proceedings, should be considered as a mitigating factor.<sup>164</sup> This conduct is consistent with his approach to both the disarmament of the RUF and the respect

<sup>162</sup> Morissette/ Voir Dire Transcript, 12<sup>th</sup> June 2007, p. 70, lines 14-23, p 88 lines 20-29

<sup>163</sup> See Sesay/Voir Dire Transcript, 19 June 2007, pp. 95-96 referring to “Pre-placement Medical Examination” dated 21 April 2003 (Exhibit A17): “Issa needs to [be] assess[ed] by a psychiatrist. He’s very confused and needs to be looked after by appropriately trained personnel for the benefit of both staff, himself and other inmates. He appears to have a lot of problems, both psychological and physical, and he needs to be looked after.” “Spoke to doctor re Issa’s condition of extreme and inappropriate thoughts and confusion and as he said needs to be seen by a psychiatrist and a dentist. Doctor said to start him on Chlopromazine.”

<sup>164</sup> See, e.g., *Stakić* Trial Judgment, para. 922 (in which Stakić was present in court and cooperating with proceedings, despite his illness. Stakić was also present despite illness to allow the cross-examination of Nusret Sivac to take place and allowed testimony of Witness W to be conducted via video link).

shown to the United Nations during that process. It reflects a sincerely held belief in the need for justice and due process, even though such cooperation has ultimately facilitated his own prosecution, incarceration and anticipated punishment.

### Place of enforcement of sentence

123. The Trial Chamber in *Erdemović* recognised as a mitigating factor in sentencing “the fact that the sentence pronounced will be served in a prison far away from his own country.”<sup>165</sup> It is submitted that the place of detention should be considered as a mitigating factor in the sentencing determination – notwithstanding that the transfer to another jurisdiction is open to possible human rights challenges.
124. It is unlikely that Sesay will serve his sentence in Sierra Leone; the Registry’s work to secure a place of detention outside of Sierra Leone is well-known. While no agreements have yet been reached, inquiries are currently focusing on Francophone African nations. In the likely event Sesay’s sentence will be enforced abroad, he will be separated from his family, including his two young sons, friends and from his other support systems. Sesay may find himself in relative isolation, in a culturally unfamiliar environment, for a prolonged period.
125. There is currently no policy, or indeed funding in place, that would allow Mr. Sesay’s family or friends, to visit him in a place of detention abroad. It is to be noted that no such formal mechanism exists at the ICTR or ICTY. As the Trial Chamber is aware, Mr. Sesay has been declared indigent and his family will not be able to fund their own travel to see him, even if he were to be held in another West African state; the enforcement of his sentence represents a separation from his family, friends and culture, and all other usual support structures for the duration of the term of imprisonment.

### Personal Circumstances

126. Mr. Sesay is 38 years old and has been in custody since he was 32 years old. He has two sons, aged 11 and 9 years respectively and an extended family which assist, as best they can, in caring for his children. It is right to note – and take into account – that his continued incarceration has

---

<sup>165</sup> *Erdemović* Trial Judgment, para. 111.

driven his family into further impoverishment. It is submitted that the proceedings have removed the principle “bread winner” from the family home, a situation which has brought dire difficulties for his family. A lengthy prison sentence is a sentence, both financially and socially, visited upon his two young sons and his family as a whole, without fault on their part.

127. Sesay’s mother passed away in 2006, whilst he was in custody – a source of significant regret for Mr. Sesay.
128. As a direct consequence of his long term incarceration Sesay’s marriage has collapsed and he is now permanently separated from his wife.

**Statement of Remorse**

129. When the war began in Sierra Leone in 1991, the country had one of the lowest life expectancy and highest infant mortality rates in the world. The Trial Chamber in its Judgment, stated that “[d]espite its rich natural resources, which include diamonds and other minerals, Sierra Leone experience an economic decline throughout the 1980s, largely attributable to rampant corruption.”<sup>166</sup> Mr. Sesay, initially abducted into the RUF, came to believe that in the absence of a viable democratic means of ousting the then Momoh-led APC government, that the RUF with its stated aims of fighting corruption, nepotism and tribalism within the government and creating a democratic welfare state was the best chance for real change in Sierra Leone.
130. Despite the stated aims of the RUF, Mr. Sesay fully acknowledges that the conflict in Sierra Leone harmed many of his own country-men, women and children, and for that he expresses unqualified regret and remorse. It is the harm that was done to the people of Sierra Leone that motivated Mr. Sesay, once he took the leadership of the RUF, to work to bring the conflict to an end. His commitment to this process was a repudiation of the crimes of the RUF and an expression of remorse for the pain caused to the innocent by the war.

---

<sup>166</sup> Judgment, para 8.

## THE PRINCIPLE AIM OF SENTENCING SESAY

### *Deterring continued conflict*

131. The rationale of special deterrence is to dissuade the wrongdoer of recidivism in the future, whereas general deterrence aims at discouraging others from committing similar kinds of crimes.<sup>167</sup> It is submitted that the chance that Mr. Sesay will commit similar kinds of crimes in the future is negligible. It is clear from his contribution to disarming the RUF that he made the clearest moral choice, rejecting any future commission of similar crimes, as well as the brutalising violence of war. The sentence Sesay receives ought to recognise this fact.
132. Concerning general deterrence, the sentence Mr. Sesay receives ought to be designed to enforce the fragile and evolving international criminal justice system. Individuals who possess the courage and foresight to lay down their arms and reject the brutality of war and the commission of crimes ought to be encouraged by the policy and practices pursued by the international tribunals. Whilst those who believe that they are beyond the reach of international justice must be warned that they have to abide by fundamental norms of substantive criminal law or face prosecution and sanction,<sup>168</sup> those who not only surrender themselves to international justice, but also ensure the disarmament of their armies, ought to receive substantial reductions in their sentences. The Trial Chamber should pass a sentence which provides the clearest message that those, like Sesay, who cooperate with international justice, rehabilitate themselves and their armies, and in doing so alleviate the suffering of millions, will be rewarded. This will strengthen the legal order.

### *Collective Peace and Reconciliation*

133. It is submitted that a more lenient sentence would reflect the community's desire to recognise the good that Sesay did and would move the country further down the path of national reconciliation.
134. This is best summarised by Bishop Biguzzi, speaking on behalf of thousands of ordinary man and women from Sierra Leone:

I would ask that Issa Sesay be treated leniently by the Court in recognition of the good work that he did for the people of my Diocese keeping them and their homes safe while

<sup>167</sup> *Krajišnik* Trial Judgment, para. 1136.

<sup>168</sup> *Krajišnik* Trial Judgment, para. 1137.



he was in charge in this area and, of course, for his work in the peace process. A sentence that would allow Sesay to return to Makeni, to be thanked in person by the people here, would further aid the reconciliation in this country and would be a significant step in repairing the wounds created during the war.<sup>169</sup>

### SENTENCING PROPOSAL

135. It is submitted that the Prosecution's proposal of 60 years is manifestly excessive and contradictory. On the one hand, the Prosecution argues that the crimes committed by the AFRC convicted persons and Sesay and the other RUF defendants were "similar crimes ... committed in substantially similar circumstances"<sup>170</sup> whilst on the other, they argue for a significantly greater penalty for Sesay than those imposed on any of the AFRC convicted persons.
136. It is submitted that, in the event that the Trial Chamber concludes that there is merit to the comparison (concerning gravity), as suggested by the Prosecution, it is clear that the sentence Sesay should receive should be substantially less than 60 years and more in the region of 15-20 years. This would reflect Sesay's cogent and unique mitigation.
137. As noted above, however, the sentences passed on the AFRC defendants flowed from findings of direct and zealous participation in the crimes, as well as other serious aggravating factors and an absence of any mitigation. In the event that the Trial Chamber accepts that the crimes committed by the AFRC were more serious and that Sesay's mitigation is significant or, as the Defence urge, substantial, it is submitted that Sesay's sentence should reflect these differences. In these circumstances Sesay should receive in the region of 10-15 years' imprisonment. This would satisfy the key sentencing aims and would be accepted by the wider Sierra Leonean community as just and fair.

Dated 17<sup>th</sup> March 2009



Wayne Jordash  
Sareta Ashraph

---

<sup>169</sup> Annex C; para. 8

<sup>170</sup> Prosecution Sentencing Brief, para 51.

## BOOK OF AUTHORITIES

### SPECIAL COURT FOR SIERRA LEONE

- Prosecutor v. Sesay et al.*, Scheduling Order for Sentencing Hearing and Judgment, 2 March 2009, SCSL-04-15-T-1235.
- Prosecutor v. Sesay et al.*, Judgment, 2 March 2009, SCSL-04-15-T-1234.
- Prosecutor v. Sesay et al.*, Sesay Defence Final Brief, 31 July 2008, SCSL-04-15-T-1210
- Prosecutor v. Sesay et al.*, “Written Reasons – Decision on the Admissibility of Certain Prior Statements of the Accused Given to the Prosecution”, 30 June 2008, SCSL-04-15-1188
- Prosecutor v. Sesay et al.*, “Written Decision on Sesay Defence Application for a Week’s Adjournment – Insufficient Resources in Violation of Article 17(4)(b) of the Statute of the Special Court”, 5<sup>th</sup> March 2008, SCSL-04-15-1031
- Prosecutor v. Sesay et al.*, “Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis,” 15<sup>th</sup> May 2008, SCSL-04-15-1125
- Prosecutor v. Sesay et al.*, Application on behalf of Issa Sesay for Provisional Release, 4 February 2004, SCSL-04-PT-003.
- Prosecutor v. Brima et al.*, Appeals Judgment, 22 Feb 2008, SCSL-04-16-A-675
- Prosecutor v. Brima et al.*, Trial Chamber Sentencing Judgment, 19 July 2007, SCSL-04-16-T-624
- Prosecutor v. Brima et al.*, Judgment (TC), 21<sup>st</sup> June 2007, SCSL-04-16-T-616
- Prosecutor v. Fofana et al.*, Appeals Judgment, 28 May 2008, SCSL-04-14-A-829
- Prosecutor v. Fofana et al.*, Trial Chamber Sentencing Judgment, 9<sup>th</sup> October 2007, SCSL-04-14-T-796

### ICTY

- Prosecutor v. Aleksovski*, Appeals Judgment, 24 March 2000, IT-95-14-1/A
- Prosecutor v. Babić*, Appeals Judgment, 18 July 2005, IT-03-72-A
- Prosecutor v. Babić*, Trial Sentencing Judgment, 29 June 2004, IT-03-72-S
- Prosecutor v. Blagojević and Jokić*, Trial Judgment, 17 January 2005, IT-02-60-T
- Prosecutor v. Blaskić*, Appeals Judgment, 29 July 2004, IT-95-14-A
- Prosecutor v. Bralo*, Sentencing Judgment, 7 December 2005, IT-95-17-S
- Prosecutor v. Brdanin*, Trial Judgment, 1 September 2004, IT-99-36-T
- Prosecutor v. Češić*, Sentencing Judgment, 11 March 2004, IT-95-10/1-S
- Prosecutor v. Delalić (Celebići case)*, Appeals Judgment, 20 February 2001, IT-96-21-T
- Prosecutor v. Delalić et al. (Celebići case)*, Trial Judgment, 16 November 1998, IT-96-21-T
- Prosecutor v. Deronjić*, Appeals Judgment, 20 July 2005, IT-02-61-A
- Prosecutor v. Deronjić*, Sentencing Judgment (TC), 30 March 2004, IT-02-61
- Prosecutor v. Erdemović*, Trial Judgment, 5 March 1998, IT-96-22-Tbis
- Prosecutor v. Furundžija*, Trial Judgment, 10 December 1998, IT-9-17-1/T
- Prosecutor v. Hadzihasanović*, Trial Judgment, 15 March 2006, IT-01-47-T
- Prosecutor v. Jelisić*, Appeals Judgment, 5 July 2001, IT-95-10-A

*Prosecutor v. Miodrag Jokić*, Sentencing Judgment (TC), 18 March 2004, IT-01-42/1-S  
*Prosecutor v. Kordić and Čerkez*, Appeals Judgment, 17 December 2004, IT-95-14/2-A  
*Prosecutor v. Kordić and Čerkez*, Trial Judgment, 26 February 2001, IT-95-14/2-T  
*Prosecutor v. Krajišnik*, Trial Judgment, 27 September 2006, IT-00-39-T  
*Prosecutor v. Krnojelac*, Appeals Judgment, 17 September 2003, IT-97-25-A  
*Prosecutor v. Krstić*, Appeals Judgment, 19 April 2004, IT-98-33-A  
*Prosecutor v. Krstić*, Trial Judgment, 2 August 2001, IT-98-33-T  
*Prosecutor v. Kupreškić*, Appeals Judgment, 23 October 2001, IT-95-16-A  
*Prosecutor v. Kupreškić*, Trial Judgment, 14 January 2000, IT-96-16-T  
*Prosecutor v. Kvočka*, Trial Judgment, 2 November 2001, IT-98-30/1-T  
*Prosecutor v. Martić*, Appeals Judgment, 8 October 2008, IT-95-11-A  
*Prosecutor v. Martić*, Trial Judgment, 12 June 2007, IT-95-11-T  
*Prosecutor v. Nikolić-Dragan*, Appeals Judgment, 4 February 2005, IT-94-2-A  
*Prosecutor v. Nikolić-Dragan*, Trial Sentencing Judgment, 2 December 2003, IT-94-2  
*Prosecutor v. Momir-Nikolić*, Appeals Judgment, 8 March 2006, IT-02-60/1-A  
*Prosecutor v. Nikolić-Momir*, Trial Chamber Sentencing Judgment, 2 December 2003, IT-02-60/1  
*Prosecutor v. Obrenović*, Trial Judgment, 10 December 2003, IT-02-60/2  
*Prosecutor v. Orić*, Trial Chamber Judgment, 30<sup>th</sup> June 2006, IT-03-68-T  
*Prosecutor v. Blagoje Simić*, Trial Judgment, 17 October 2003, IT-95-9  
*Prosecutor v. Stakić*, Appeals Chamber Judgment, 22 March 2006, IT-97-24-A  
*Prosecutor v. Stakić*, Trial Judgment, 31 July 2003, IT-97-24-T  
*Prosecutor v. Tadić*, Judgment in Sentencing Appeals, Appeals Chamber, 26 January 2000, IT-94-1-A and IT-94-1-Abis  
*Prosecutor v. Tadić*, Sentencing Judgment, 14 July 1997, IT-94-1-T.

### ICTR

*Prosecutor v. Kambanda*, Appeals Judgment, 19 October 2000, ICTR-97-23-A  
*Prosecutor v. Kambanda*, Trial Chamber Judgment and Sentencing, 4 September 1998, ICTR-97-23-S  
*Prosecutor v. Kamuhanda*, Appeals Judgment, 19 September 2005, ICTR-95-54A-T  
*Prosecutor v. Rutaganira*, Judgment and Sentence (TC), 14 March 2005, ICTR-95-1C-T  
*Prosecutor v. Semanza*, Trial Judgment, 15<sup>th</sup> May 2003, ICTR-97-20-T  
*Prosecutor v. Serushago*, Sentencing Judgment, 12 June 2006, ICTR-2005-84-1

**ANNEXES**

- Annex A Statement of His Excellency Alpha Konaré, former President of the Republic of Mali
- Annex B Statement of His Excellency Oluyemi Adeniji, former UN Special Representative to the Secretary General
- Annex C Statements of Bishop George Biguzzi
- Annex D Statement of Father Victor Bongiovanni
- Annex E Statement of Paramount Chief Bai Kurr Kanagbaro Sanka III of Tonkolili
- Annex F Statement of Paramount Chief Mohamed Sama Kailondo Banya of Kailahun
- Annex G Statement of Paramount Chief Sahr F.S. Kaimachiande of Kono
- Annex H Statements of Paramount Chief Bai Sebor Kasangma II
- Annex I AWOL National Achievement Award awarded to Issa Sesay in Merit of Sincere and Diligent Services Rendered to the Republic of Sierra Leone
- Annex J Certificate given to Issa Sesay as a 'Peace-Maker'
- Annex K Letter, dated 17 June 2003, from Ms. Uchegbu, Senior Legal Adviser, UNAMSIL.



33197

**Annex A      Statement of His Excellency Alpha Konaré, former President of Mali**



SPECIAL COURT FOR SIERRA LEONE

WITNESS STATEMENT - Issa Sesay

Family Name: Konaré

First Name: Alpha

Title: His Excellency

Date of Interview: 13<sup>th</sup> March 2007

Language used: French & English

Location: AU HQ, Addis Ababa

Name of Interpreter: AU interpreter

Interviewers: Sareta Ashraph, Andrew Ianuzzi

My name is Alpha Konaré. I am currently Chairperson of the African Union (AU) but was President of the Republic of Mali from 1992 – 2002. During that time I was President of ECOWAS from 1999-2000.

I first came directly into contact with Issa Sesay of the Revolutionary United Front (RUF) following the time of Foday Sankoh’s incarceration in Freetown in 2000. Due to the passage of time, I am unable to confirm the precise dates of my meetings with Issa Sesay but am able to confirm the content of those meetings.

After the Lomé Accord, the ECOWAS Heads of State – which included President Obasanjo of Nigeria, President Jammeh of Gambia, President Éyadema of Togo (now deceased) and President Taylor of Liberia- were keen to see the peace agreement succeed. The conflict in Sierra Leone had had a terrible impact on the citizens of Sierra Leone and its neighbouring countries. We were having a lot of difficulty with Sankoh and it was my view that Sankoh was not acting in a manner which signalled that he was conscious of his responsibilities vis-à-vis the Lomé Accord and the expectations of Sierra Leone and indeed, West Africa. Sankoh thought he would never be arrested. There was a myth of invincibility around Sankoh and he was surrounded by young men who idolised him. It was obvious that Sankoh had the authority to take the RUF through the disarmament process successfully but it was never clear that he was willing to do so. He was given many opportunities but never stepped forward.

Therefore when he was incarcerated in 2000, it was an important moment for the RUF and for the peace agreement. There was a fear that due to Sankoh’s charismatic hold on the RUF, that it might dissolve into anarchy once he was imprisoned. It was also clear, however, that Sankoh could not longer be considered a reliable partner in bringing peace and there were concerns that he would continue to influence the RUF’s decisions from his prison cell, such was his deification by the movement.

and there were concerns that he would continue to influence the RUF's decisions from his prison cell, such was his deification by the movement.

A meeting of the ECOWAS Heads of State mentioned above was convened in Monrovia. Sesay and some other RUF commanders were invited to attend. It was conveyed to them that the consensus of ECOWAS was that Sankoh was no longer considered to be a reliable partner to assist in guiding the RUF through the commitments of the Lomé Accord and that there was general support within ECOWAS to replace Sankoh. Some of the RUF commanders were displeased by this. The suggestion came from within ECOWAS that Sesay assume the role of interim leader of the RUF and assist ECOWAS and the UN in bringing peace to Sierra Leone.

The ECOWAS group was looking for someone within the RUF movement who could come forward and bring the RUF forward to fulfil its part of the peace process. Issa Sesay, despite his youth at the time, stood out as being capable of this. He was one of the senior commanders but he was not the only one. I also remember Superman, Gibril Massaquoi and Mike Lamin but it was Sesay's character that made him stand out, that reassured us that he could play that important role.

Earlier, in 1999, when the Lomé Accord was in draft form, Sankoh would not sign it until he was sure the senior commanders of the RUF accepted it. Some officials present at Lomé travelled to Buedu and met with Sam Bockarie and others including Sesay. Bockarie and the others were not willing to accept the Accord initially – they wanted changes to be made before they would agree. Sesay was said to have been very reasonable and accepted the Accord as drafted and convinced the others to accept it. This news may also have played a part in our perception of him as someone we could work with.

At the meeting in Monrovia, Sesay was very hesitant to accept our suggestion. He asked for some time to confer within the RUF and this seemed sensible as internal support for Sesay would be needed if he were to be able to successfully disarm the RUF. We also sought Sankoh's support. Sankoh was initially against the idea. He did not want to be replaced and did not want anyone else to play such an important role. Eventually however, when he realised he had no real choice, he accepted but he was never happy about it.

There was then a second meeting that I attended which took place not long after the first at the Robertsfield International Airport in Liberia. President Obasanjo was also present. It was at this meeting that Sesay formally accepted our suggestion that he become interim leader of the RUF. We advised him to work to implement the Lomé Accord fully.

Sesay lived up to his promises to us in that regard. He was always very correct in his dealings with the ECOWAS leaders and his actions demonstrated that he was committed to fulfilling the RUF's part of the Accords. Sesay was always very honest and reliable. He never created any preconditions for the RUF's disarmament. This was in contrast to some of the other senior commanders who did not want the RUF to disarm unless Sankoh

was released from prison. While Sesay was loyal to Sankoh, as all the RUF were, he did not attempt to use the disarmament process as a tool to secure Sankoh's freedom. Neither did he seek any personal gain for himself. He behaved at all times in a straightforward and honourable way. He appeared to be such a contrast to the other commanders and indeed Sankoh himself, that he appeared to be an anomaly in the RUF movement.

I saw Sesay one more time that I can recall. After the disarmament of Kono district in Sierra Leone, there was a private meeting followed by a public celebration which was attended by some of ECOWAS Heads of State, including President Obasanjo and myself, the SRSG Adeniji, President Kabbah of Sierra Leone, prominent Sierra Leoneans and some RUF commanders including Sesay and Gibril Massaquoi.

The meeting was a private closed-door meeting. President Kabbah spoke first. He extended his thanks to the ECOWAS leaders for their action in terms of returning peace to Sierra Leone and the changing of the RUF leadership. He said he had experienced no problems with the RUF since Sesay had become its Interim Leader. President Kabbah stated that Sesay was cooperating with the disarmament and peace process and had demonstrated that he loved his country and people.

President Kabbah went on to say that while Sesay was a young man, he had a lot of respect for him because he demonstrated his dedication to the peace process. President Kabbah also commented that men like Gibril Massaquoi were not working in the interests of peace and were undermining the process.

President Obasanjo also spoke and thanked Sesay for his work in the peace process and asked him to continue with it until disarmament was concluded. It was agreed that the decision to stop working with Sankoh and called Sesay forward to lead the RUF had been a good one. The SRSG added his voice in this regard and said that Sesay had always been trustworthy in his dealings and that he appreciated his efforts.

After the meeting closed, there was a public celebration outside. Kono had just disarmed so the presence of dignitaries was meant to inspire confidence in the civilians, which it seemed to. President Obasanjo spoke publicly at the meeting and introduced Sesay to the crowd as the Interim Leader of the RUF who had brought peace to Sierra Leone. Sesay was publicly thanked for his work. The crowd then celebrated.

I did not know Issa Sesay during the war, but during the time I dealt with him I found him to be an exceptional young man - trustworthy and committed to the peace process with no preconditions. He was always very correct in his dealing with the ECOWAS leaders and is to be commended for the significant role he played in bringing peace to Sierra Leone.



33201

**Annex B**      **Statement of His Excellency Oluyemi Adeniji, former UN Special Representative to the Secretary General**



## SPECIAL COURT FOR SIERRA LEONE

### WITNESS STATEMENT - Issa Sesay

Family Name: Adeniji

First Name: Oluyemi

---

Date of Interview: 2<sup>nd</sup> March 2008

Language used: English

Location: Freetown/ Nairobi (telephone i/v)

Name of Interpreter: n/a

Interviewer: Sareta Ashraph

---

My name is Oluyemi Adeniji. I was the Special Representative to the Secretary General (SRSG) to Sierra Leone from December 1999 to early 2003. Since leaving Sierra Leone, I have held the positions of Minister of Foreign Affairs and Minister of Internal Affairs in the Government of Nigeria. In February 2008, His Excellency Alpha Konaré, outgoing Chairman of the African Union, appointed me as the Special Envoy to Sudan. In this role, I am charged with the implementation of the Comprehensive Peace Accord signed in Kenya in 2005.

I arrived in Sierra Leone as SRSG in December 1999, tasked with supervising the implementation of the Lomé peace accord. This involved liaising with the Revolutionary United Front, then headed by Foday Sankoh, and the Government of the Sierra Leone under President Tejan Kabbah.

Prior to Sankoh's arrest in Freetown on 8<sup>th</sup> May 2000, I met with him on many occasions to discuss the RUF's implementation of the Lomé Accord. Sankoh was a charismatic man and commanded strong loyalty from those within the RUF. His influence should have allowed him to implement the peace accord smoothly, but it was my impression that he remained uncommitted to the peace process. Sankoh would make various promises about steps he would have the RUF take, but would then fail to deliver. I raised this issue with him on several occasions. My own view, gained from many discussions with Sankoh, was that he saw the Lomé peace accord as a means of furthering his personal ambitions. While there is no doubt that he had the authority to carry the RUF through the peace process, it was not clear to me that he wanted to do so.

I do not recall meeting Issa Sesay while Sankoh was still Leader of the RUF. Indeed such a meeting would have been unlikely as Mr. Sankoh did not encourage any of his deputies to contact me. His clear preference was that he be the sole point of contact with my Office.

I was in Freetown at the time of the attacks on the UN in May 2000. Following on from the attacks but prior to Sankoh's arrest, I visited Sankoh at his residence on Spur road on several occasions to seek his assistance in arranging the release of the UN troops. I also took delegations from countries such as Nigeria, Libya and other West African nations to his residence to speak with him about bringing the incident to a peaceful conclusion. Again Sankoh made various promises about a quick resolution to the situation but did not keep them.

Following Sankoh's arrest in Freetown, there was a meeting of ECOWAS in Abuja. It was at this meeting that it was agreed that Sankoh was no longer a reliable partner for peace and ECOWAS should find another commander within the RUF to lead the RUF through the peace process. This agreement was on the basis of a report I made about Sankoh's commitment to the peace process. I do not recall any specific recommendations being made at that meeting about which RUF commander should assume leadership of the movement.

I am aware that, not long afterwards, there was a meeting of the ECOWAS Heads of State in Monrovia and that some senior RUF commanders attended that meeting. I cannot remember the details of how Sesay was selected to be the Interim Leader but I know that Sesay was ultimately made the Interim Leader of the RUF and that the ECOWAS Heads of State welcomed his appointment. Sankoh was asked to convey his acceptance of Sesay as Leader of the RUF to the main body of the RUF through a letter. Sankoh agreed to do this but stressed that he would only agree to Sesay being *Interim* Leader.

It was clear at the outset that Sesay did not have a strong hold on the RUF: he did not command the same loyalty that Sankoh did. It was my view that no RUF commander could have hoped for the same grip on the RUF that Sankoh did, such was his deification by the rank and file. What was also clear, however, was that Sesay did not have unqualified support from the senior RUF commanders. Many of those senior commanders, among them people like Gibril Massaquoi and Mike Lamin, also saw themselves as potential leaders of the RUF. While Sesay was eventually able to reign in the RUF and bring them to disarmament, it appeared that many RUF remained unhappy about his leadership. A bone of contention remained the feeling that Sankoh's release should have been a pre-condition of disarmament.

Various staff in my office met with Sesay before I met him officially. The reports from my staff were positive and there was a sense that Sesay was committed to the peace process and was perhaps, on a personal level, ready for peace himself. When I met Sesay, he showed none of the ambitions of Sankoh which has caused a stumbling block to the peace process. He was much more straightforward. As the peace process progressed to the disarmament stage, Sesay showed that he was able to make promises and keep them. He was, undoubtedly, directing a lot of his energies towards bringing the RUF to disarmament in the face of internal opposition. There were some commanders in the provinces who disrupted the disarmament process but I cannot recall their names now.

I recall the closed-door meeting in Kono which occurred immediately after the disarmament of Kono. Presidents Obasanjo, Konaré and Kabbah attended as did members of the RUF, including Sesay. I also attended. In fact, disarmament had leap-frogged to Kono at the request of Sesay. Kono was not listed as the next district to disarm but Sesay had convinced his men that it was important to disarm Kono as it would show the RUF's commitment to peace.

Indeed the disarmament of Kono was seen as a significant step by the RUF as we, in the international community, had felt the RUF would be hesitant to disarm Kono given the district's importance. That Sesay pushed the RUF to an early disarmament in Kono showed a commitment that Sankoh had always lacked. In the meeting, both Presidents Obasanjo and Konaré said that they were impressed with Sesay's actions and thanked him for his role in bringing peace to Sierra Leone.

My understanding of Sesay from having worked with him was that he was trustworthy and genuine in wanting peace to return to Sierra Leone. Sesay worked closely with General Opande, Force Commander of UNAMSIL, during this time and I am aware that General Opande held Sesay in high regard. Later, in 2003, Sesay would assist the Government of Sierra Leone by informing them of rumours of a coup attempt coming out of the army.

Sesay's main difficulty was the challenge to his own leadership of the RUF by the other senior commanders. Many of those commanders refused, at least initially, to recognise Sesay's command as interim leader. ECOWAS however was unequivocal in its support of Sesay and were committed to working with Sesay and Sesay alone as the RUF moved through the disarmament process.



33205

**Annex C      Statements of Bishop George Biguzzi**

SPECIAL COURT FOR SIERRA LEONE

WITNESS STATEMENT - Issa Sesay

Family Name: BIGUZZI

First Name: GEORGE

Title: BISHOP

Date of Interview: 4<sup>th</sup> March 2009

Language used: English

Location: Makeni

Name of Interpreter: -----

Interviewer: Sareta Ashraph

I am George Biguzzi, Bishop of the Diocese of the Northern Province of Sierra Leone. I first came to Makeni in December 1974 as a teacher. I left in August 1984 and returned as a Bishop in February 1987. I am the ultimate head of the Diocese and supervise the work of our mission here. The mission is involved in the running of churches, schools, clinics and hospitals and also run social development programmes relating, for example, to agriculture and womens' education. We work with thousands of Sierra Leoneans, Catholic or not, in the Diocese from the community heads to the school caretakers.

In 2004 I made a statement for the application for provision release of Issa Sesay and I would like that statement to be considered in his sentencing hearing. In addition to that statement, I wish to add the following.

I first met Issa Sesay in Makeni in October 1999. I was staying at one of houses of the Sisters of Charity along with some other priests and NGO workers. One night, some armed men came to the House and stole our vehicles. While they did not harm us, they took my ring which is the Bishop's Ring. The armed men took us at gunpoint to Superman's house where we were held for 2 days. After two days, the situation calmed and we were allowed to leave. I was asked to go to the barracks to meet a General Issa Sesay. I had never met him before and in truth was quite nervous as I did not know what to expect.

Sesay greeted me and asked me to sit down. He apologised for what had happened and said that the matter had been investigated, men arrested and my items retrieved. He returned my ring to me and I continue to wear it every day. The vehicles were also returned to the mission. I saw the men responsible had been tied up outside and had been flogged, which I was not happy about. I told Sesay that the men should be released as they had learnt their lesson. During that time Sesay was very polite, very respectful and

seemed genuinely sorry and embarrassed about what the armed men had done. While initially apprehensive, I was able to relax and discuss the matter with him. He seemed very reasonable and I thought as I left that he would be a good person to call on if there were any future problems. I left Makeni shortly afterwards.

I returned to Makeni after Sankoh had been arrested in Freetown. I believe it was either just before or just after Sesay became the RUF Interim Leader. As the peace process got underway in earnest, I had occasion to meet with Sesay several times. He struck me as a very young man who had committed himself to the peace process but who was also struggling with a great deal of internal opposition in the RUF. I saw him as a moderate, a restraining force on the RUF. This was a commonly held feeling as even prior to having accepted the peace process, Sesay was well-regarded in Makeni as a disciplined commander who ensured his men behaved well vis-à-vis the townspeople. Sesay was liked by the people in Makeni as he had a calm manner and was friendly.

Sesay was far more reasonable than the other senior commanders in Makeni and people, including myself, felt that they had reason to trust him to bring the peace process to a happy conclusion. You must remember that in 2000 the end of the war was not assured. Sankoh was in prison and the RUF were unhappy about it. Some of the senior commanders were actively and publicly opposing the peace process. It was not at all a foregone conclusion that the peace process would succeed but we all believed that Sesay was our best bet, as indeed he was.

I was present at the disarmament ceremony at the stadium in which President Kabbah gave a speech saying that Issa Sesay was to be thanked for bringing the RUF through the peace process. Issa Sesay was still a young man, not highly educated and still very much opposed by commanders such as Gibril Massaquoi and Mike Lamin. In the circumstances, his actions are quite incredible.

Both and I and many of the people in my Diocese (and particularly in Makeni) have been paying attention to the progress of the Court. I would ask that Issa Sesay be treated leniently by the Court in recognition of the good work that he did for the people of my Diocese keeping them and their homes safe while he was in charge in this area and of course for his work in the peace process. A sentence that would allow Sesay to return to Makeni, to be thanked in person by the people here, would further aid the reconciliation in this country and would be a significant step in repairing the wounds created during the war.

33208  
86

APPENDIX F

NAME	BISHOP GEORGE BIGUZZI		
AGE	Over 18	OCCUPATION	Bishop of Makeni

During the war in Sierra Leone unspeakable atrocities were committed against all categories of people throughout the country. I am one of those that suffered personal harassment at the hands of some fighters. It happened once in August 1999 around Masiaka when I had gone with a group of UN observers to collect some child soldiers. We were assaulted and robbed of all our personal belongings.

A second time it happened in Makeni in October 1999. I was staying at the Charity Home with some priests and NGO local heads. One night armed men assaulted us and carried away our belongings and our vehicles. There was firing around the Home and in town. Other armed men came back the following morning to take away whatever had been left behind the previous night. All of us were held at gunpoint. Somebody took away my Episcopal ring and all other properties. We feared for our lives. For security we were taken to a house occupied by Superman. Two days later the then General Sesay sent for me to meet him at Teko Barracks where he was staying. I had never met him until that day and I have no idea of how he reached the position of RUF field commander. Nevertheless he reassured me of our safety, he ordered one of his men to return to me my Episcopal ring and my vehicle, and gave us safe passage to go to Bumbuna.

Months later, when things were safer, I went back to Makeni to carry out my religious duties and to cooperate with other agencies for the welfare of the people. With UN personnel and other religious leaders I met again with Mr. Issa Sesay to promote disarmament and peace. The process was slow and there were ups and downs. Gradually Mr. Sesay kept on course and eventually H.E. the President was able to declare: "War don done".

Signature: [signed by Bishop Biguzzi]

Date: 16<sup>th</sup> December 2003



33209

INTERVIEWEES DECLARATION

Family Name: Biguzzi First Name: \_\_\_\_\_

Date: 4/3/09 Language used: English

Location: Bishop's Residence, Makeni Name of interpreter: \_\_\_\_\_

Other persons present: \_\_\_\_\_

I, BISHOP BIRUZZI, of MAKENI on

this day 4th MARCH 2009 have spoken in person with

SARETA AJURAPPI a representative of the Sesay Defence

Team.

I understand that I may be called to give evidence based on what I have said today before the Special Court. I have not been offered any money or other benefit by the Sesay Defence team in exchange for my testimony. I solemnly declare that I understand the importance of speaking only the truth.

Signature: + Serge Biguzzi

**Annex D      Statement of Father Victor Bongiovanni**

## SPECIAL COURT FOR SIERRA LEONE

## WITNESS STATEMENT - Issa Sesay

Family Name: BONGIOVANNIFirst Name: VICTORTitle: FATHERDate of Interview: 4<sup>th</sup> March 2009

Language used: English

Location: Makeni

Name of Interpreter: -----

Other persons present: -----

My name is Father Victor Bongiovanni and I have lived and worked in Makeni since 1977. I am a Xavarian missionary and am part of a group of 24 missionaries here. During the war, there were about 35 of us. The Xavarian missionaries work within the community in the Diocese (which extends across the Northern Province) and our objective is not to impose religion but to show love to the people in the hope that we will grow together physically, mentally and spiritually. We support schools, clinics, hospitals and social development programmes in the Northern Province. I was the Director of the Diocese Pastoral Centre for 16 years and I continue to travel around the Northern Province, visiting churches, schools and organising workshops with and for community leaders.

I was in Makeni at the time of the intervention in February 1998. One rebel, a man named Joseph Kamara, came to me and said that he wanted to desert but was too frightened to turn himself in to ECOMOG as he believed that they would kill him. He asked me to assist him. He and his family were taken in by the mission and I went to negotiate with ECOMOG for his surrender. I believe ECOMOG helped him to return to his home. It was during the time that Joseph spent in the mission that I first heard of Issa Sesay. I was asking about the rebels and the possibility of bringing the war to an end. Joseph said that if I wanted to speak with a moderate within the RUF, I should try to contact Issa Sesay. I had not heard the name before.

A few days later, rebels came into the compound and were trying to take away some of the lorries but the vehicles would not start. The rebels, frustrated, began to fire into the engines. I came outside to try to reason with them, as we need the vehicles for our missionary work. I decided to take Joseph's advice and spoke to some of the friendlier rebels who were standing around the gate to call their commander Sesay. Sesay came while the rebels were still in the compound. Some of the men who came with Sesay arrested and disarmed the rebels who were firing into the lorries. Sesay asked me if I thought they should be killed as an example and I said that they should not. The men were tied up and taken in the direction of the barracks. Nothing was taken from the mission. Sesay apologised and said he would see to it the men were disciplined and then left. I remember clearly thinking that Sesay was a man who was a restraining force with the rebel groups.

I did not see Sesay for a long time after that as ECOMOG took over Makeni. On 22<sup>nd</sup> December 1998, rebel forces began their attack on Makeni. The other missionaries had already left but I had remained behind with my parishioners. On the evening of the 22<sup>nd</sup> December 1998, I left with my parishioners: there were thousands of us on the road. We walked to Kamakwie which was still under government control and then I went to an ECOMOG base which was near the river. They allowed me to use their radio and I was able to contact Bishop Biguzzi to let him know that I was okay. The bishop sent another Father to meet me and we were taken over the river in a canoe and joined the Bishop near Kambia. I was there for 3 days and then went to Guinea and on to Italy. I was still abroad when RUF Rambo was killed in Makeni.

I returned in late 1999 to Makeni. I was living in the House of the Sisters of Mother Teresa of Calcutta. Makeni was then under rebel control but I am not sure of the hierarchy. I saw Issa Sesay once at the barracks when I took some pasta here that had been sent as a gift to me from Freetown. Issa Sesay retrieved a ring and some vehicles that had been taken from Bishop Biguzzi and punished the rebels who had taken these items but it is better if the Bishop gives details of this, as I was not there.

I also remember that on 1<sup>st</sup> January 2000, the rebels had been given permission to celebrate for an hour before midnight but some of them continued their celebrations until almost 7am. A group of them went to the house of a woman in Makeni named Esther Kanu, who is a member of my congregation. They wanted to enter the house to rape this girl but her father and some other men fought them off. The rebels ran away but left a slipper in the house. The following day, Esther's father, a teacher, took the slipper to the barracks and spoke to Issa Sesay about the incident. Sesay gave orders to find the men who had attempted to rape the girl. I was there when the men that Sesay sent came back with some men who were identified by the father. The men were stripped and had their hands tied behind their backs and were flogged. Other rebels at the barracks were called to witness the beating.

Issa Sesay was a real disciplinarian in Makeni. He was very serious about punishing his men for crimes against civilians. As this became well-known, the situation in Makeni settled as there was a measure of security when Sesay was there. My seniors in the church wanted to withdraw me from Makeni as it was under rebel control but I told them that I wanted to stay and that I felt, that while Sesay was in command, it was safe to stay there.

Sesay forbade raping and looting and I know that some rebels found guilty of these things were publicly executed. No houses were destroyed in Makeni after the rebels took over at the close of 1998. The town looks as it did then. The low ranking fighters who were on the streets were careful to behave themselves. When Sesay was in Makeni, there was less crime in general and where crimes were committed, investigations were going on and people were hearing about punishments being meted out. We in the town could make complaints to the RUF Office of Civilian Affairs. Sesay was very approachable – no one in Makeni was afraid of him. He gave a real sense of security, of stability, to Makeni and people were thankful to him.

I met Issa Sesay a few times, mainly to speak about issues relating to the mission's community work. On a personal level, I found him to be very polite and respectful. He did not speak much but appeared to weigh his words. He was very relaxed and approachable, particularly in



comparison to some of the other senior commanders in the town at that time. During the time of disarmament, he appeared to be working very hard to hold the RUF together and to bring the movement through the peace process.

I was present at the ceremony held in the stadium field in Makeni at the end of disarmament. President Kabbah came to Makeni and entered the ceremony with Issa Sesay, holding his hand. I remember that President Kabbah made a speech saying that Issa Sesay was a promoter of peace in Sierra Leone and should be thanked. I was happy when President Kabbah eventually came to testify for Sesay as I really feel that President Kabbah owes Sesay a debt, as do we all.

I feel a profound moral obligation to make this statement on Issa Sesay's behalf. I feel strongly that Issa Sesay was a force for good while he was in Makeni and that he protected the community while he was in charge here. More than that, I believe that it was through the actions of Sesay when he was made Interim Leader that peace was able to come to Sierra Leone. Sesay was a very young man and was not totally supported by his own men in coming to the peace process. In the circumstances his commitment to the process and his actions in respect of disarmament are extremely courageous as it was not the easiest path to take.

As the trials have progressed and indeed with the recent Judgment, I have spoken to many people in Makeni about Issa Sesay's situation. I feel no hesitancy in speaking on their behalf when I say that, in eyes of the people of Makeni, Issa Sesay is someone to be given the highest thanks for all his good work here and the protection and security he gave to us. My parishioners and I do not believe that peace would have come to Sierra Leone when it did had it not been for Issa Sesay.

I would like the Judges to take these comments into account as they turn their minds towards Issa Sesay's sentencing as I believe that Issa Sesay did a brave and wonderful thing for Sierra Leone and we owe our peace and security today to his work. I keep him and the whole of the Special Court in my prayers during this time.

I will endeavour to attend the sentencing hearing if my work and health allows but if the Trial Chamber wishes to contact me for any purpose I can be reached on a number that I have left with Issa Sesay's Defence team.

**Affirmation:**

I, Father Victor Bongiovanni, affirm that I have read or have had this statement read to me in the English language or a language that I understand. I have given this statement voluntarily and I understand that this statement may be used in legal proceedings before the Special Court of Sierra Leone and that I may be called to give evidence before the Court. I understand that wilfully and knowingly making false statements in this statement could result in proceedings before the Special Court for giving false testimony. I have not wilfully or knowingly made any false statements in this statement. I understand the importance of speaking only the truth, and

33214

the information contained in this statement is true and correct to the best of my knowledge and belief.

Fr Victor Bongiovanni

4<sup>th</sup> March 2009

Father Victor Bongiovanni

**Annex E      Statement of Paramount Chief Bai Kurr Kanagbaro Sanka III of  
Tonkolili**



## SPECIAL COURT FOR SIERRA LEONE

### INVESTIGATOR'S NOTES - Issa Sesay

Family Name: Kanagbaro Sanka III First Name: Bai Kurr

Title: Paramount Chief

Date of Interview: 10<sup>th</sup> January 2008 Language used: ENGLISH  
9<sup>th</sup> March 2009

Location: FREETOWN Name of Interpreter: None

Other persons present: Sareta Ashraph (i/ver)

My name is Chief Bai Kurr Kanagbaro Sanka III from Konkay chiefdom. I am currently Chief of this Chiefdom and have held this position since 29<sup>th</sup> October 1988. I have been a Member of Parliament since 1996 and represent the Tonkolili chiefs there.

I left Masingbi in April 1994 for Freetown. In May 1997 after the AFRC coup, I went to Guinea where I remained until April 1998. I moved between Freetown and Guinea until 2000. During this time I would receive and send messages to my subjects back in Masingbi. In late 2000, when I returned from Guinea to Freetown, Foday Sankoh had been imprisoned in Pademba Road prison and Issa Sesay had become the Interim Leader of the RUF.

Sesay had been in the area around Masingbi since 1999. The other Chiefs and I were getting very positive feedback about Sesay from our subjects who lived behind the rebel lines. I heard that the situation in Masingbi was calm and the townspeople were able to go about their businesses, trading and farming with no problems. Civilians were coming to Freetown from behind the lines but now it was so they could buy sugar and salt in Freetown and return to Masingbi. It was this news that gave me the feeling that Sesay was a compassionate man. I was very impressive with the care he was taking of my subjects.

In the latter part of 2000, after Sesay had been appointed as Interim Leader of the RUF, I decided to write a letter to Sesay asking whether he would allow me to get involved in the peace process as a bridge between himself and the Government in Freetown. The man called David Conteh as he knew Issa from gold-mining days before Sesay joined the RUF. He said Sesay took him as father. I wrote the letter on 27<sup>th</sup> September 2000. He delivered all the letters I sent to Sesay.



Sesay replied in a letter on 1<sup>st</sup> October 2000 (which we got on 2<sup>nd</sup>-3<sup>rd</sup> October 2000). He said that he accepted my proposal but said the RUF felt threatened by the UN and government forces that surrounded. I took the letter to President Kabbah and he was very happy about it. Kabbah decided that the government should be involved in the reply to Sesay's letter.

The government, in my name, wrote another letter thanking him and asking him to open the roads and to allow people to travel freely. To be honest, the Attorney General and some Cabinet ministers wrote it. I was not happy with the letter because they were using very high-handed language, like they were defending a PhD at Harvard. Their letter also seemed to me to imply that the government forces were strong so it seemed like a veiled threat and indeed Sesay was not happy with the letter. It was sent on 5<sup>th</sup> October 2000.

After that, there was no communication for a while. I decided I would try to meet his family. After making some inquiries, I went to where his mother was lived in Freetown. I met with Sesay's mother on the first day. I spoke to her but she told me that her husband had gone to the mosque for prayers and asked me to come back the following day when he would be present.

The following day I met them in the same house and following a conversation, they agreed to assist with putting me in touch with Sesay. I took them to meet President Kabbah at the Presidential Lodge and President Kabbah thanked them for their assistance. This was in October 2000.

Both Sesay's family and I wrote a letter to Sesay. Sesay's mother went with David Conteh to Magburaka where word was sent to Sesay. There was a meeting with Sesay, who initially was annoyed that his mother was being used in this way. The commanders met and decided that they would agree to my being a go-between between them and the government. This was the start of communications between the RUF and the Government, with myself in the middle. This culminated in the Abuja ceasefire in November 2000. I went to Abuja for the meeting.

After the ceasefire agreement, the tripartite meetings started to discuss modalities. I was being briefed and would speak to Sesay over the VHF radio to discuss disarmament. I did not attend the tripartite meetings but I was kept abreast of what was happening and if there were problems I would be informed.

I knew General Opande who was UNAMSIL force commander. He was impressed with Sesay and said that Sesay was a man of his word. The President also said this before me, before his parents and on radio and in the disarmament ceremonies. SRSO Adeniji had the same opinion when I spoke to him. Everyone was very happy about how Sesay was dealing with the government and the UN.

I knew Sesay was very committed to peace. If Sesay had not done what he did there would have been chaos in Sierra Leone until now. I attended the disarmament ceremony in Lungi on 18<sup>th</sup> January 2002. It was the only ceremony I went to. President Kabbah on that day said Issa Sesay had done a fantastic job as the new interim leader of the RUF and was a promoter of peace.

For my own part, I was impressed with Issa Sesay. While not formally educated, he is intelligent and was able to hold his own with the ECOWAS leaders. Sesay was truly committed to peace, despite other senior commanders' active opposition to the peace process. People in the RUF, led by commanders such as Gibril Massaquoi, were not happy about what Sesay was doing particularly given the fact that Sankoh was still imprisoned. Although he was a young man and though he had a lot of trouble holding the RUF together, Sesay kept all his commitments to the peace process and successfully guided the RUF through to disarmament. I do not believe that Sierra Leone would be where it is today without Sesay stepping forward and making the brave decision to disarm the RUF. It would have been easy for Sesay to refuse to disarm and he would have had the support of many people in the RUF but Sesay, thankfully, chose the harder path.

I and my subjects are very grateful to Issa Sesay for his significant contribution to bringing peace to Sierra Leone. I feel whatever prison sentence he receives should allow him to, one day, be free to share in that peace. I think such a sentence will close a chapter of the war and allow us to move even further beyond it.

33219

**Annex F      Statement of Paramount Chief Mohamed Sama Kailondo Banya of  
Kailahun**



SPECIAL COURT FOR SIERRA LEONE

INVESTIGATOR'S NOTES - Issa Sesay

Family Name: Banya

First Name: Mohamed Sama Kailondo

Title: Paramount Chief

Date of Interview: 14 March 2009

Language used: English

Location: Freetown

Name of Interpreter: None

Other persons present: Jared Kneitel

I am the Paramount Chief of Luawa Chiefdom, Kailahun District and the Chairman of Council of Chiefs for Kailahun District. I have been a Member of Parliament since August 2007 and represent the Kailahun chiefs there.

I was in Freetown for much of the war and returned to Kailahun in 2002. While I have never personally met Issa Sesay, I am aware of his role in returning peace to Sierra Leone. Neither Sankoh nor Mosquito were ready to make the sacrifices that needed to be made if the RUF were to disarm and live peacefully amongst the people of Sierra Leone. When Sesay became Interim Leader, a feeling of optimism took hold of the country. It quickly became clear that the disarmament was looking increasingly likely and people started to look forward to a peaceful Sierra Leone.

Issa Sesay is the one who brought peace to Sierra Leone and I feel whatever prison sentence he receives should allow him to, one day, be free to share in that peace. He kept to his word to bring peace into this country and was the driving force behind disarmament at great personal risk to himself. Sesay stood up to senior commanders in his movement and disarmed while Sankoh was in jail.

It is through Sesay's work and commitment, that Sierra Leone found peace and began to develop itself again.



WITNESS STATEMENT

Family Name: Banya

First Name: Mohamed Sama Kailondo

Date: 14 March 2009

Language used: English

Location: Free town

Name of interpreter:

Other persons present: Jared Kneitel

I, Chief Banya of Kailahun on

this day 14 March 2009 have spoken in person with

Jared Kneitel a representative of the Sesay Defence

Team.

I understand that I may be called to give evidence based on what I have said today before the Special Court. I have not been offered any money or other benefit by the Sesay Defence team in exchange for my testimony. I solemnly declare that I understand the importance of speaking only the truth.

Signature: 

33222

**Annex G Statement of Paramount Chief Sahr F.S. Kaimachiande of Kono**



# SPECIAL COURT FOR SIERRA LEONE

## INVESTIGATOR'S NOTES - Issa Sesay

Family Name: Kaimachiande

First Name: Sahr F.S.

Title: Paramount Chief

Date of Interview: 16 March 2009

Language used: English

Location: Freetown

Name of Interpreter: None

Other persons present: Jared Kneitel

My name is the Honourable Paramount Chief Sahr Fengai Korgbende Kaimachiande III and I am the Paramount Chief of Gbense Chiefdom. I became the Paramount Chief of Gbense on 13 January 2002. I have been am a member of the Council of Chiefs since 2002. I became a Member of Parliament, upon my election by the Council of Chiefs in September 2007. As a Member of Parliament, I represent all the people of Kono.

I remained in Kono District throughout the war. While I never met Sesay on a one-to-one basis, I was aware, both by what I saw myself and what I heard from people living in my chiefdom, that when Sesay came to Kono things became calm. Sesay's arrival in Kono brought a new sense of security to the area.

Sesay was very strict with the fighters and warned them against hurting the civilians; he maintained order in Kono. When the citizens of Kono were returning to their homes, Sesay ordered that the rebels should vacate those homes. Many people felt very good about Sesay. I know this because I heard a lot of people speaking about him in conversations in the town. I was told by my citizens that they had no problems with Sesay and that they were happy with him.

Sesay was consistent in disciplining the rebels and persuading them to adhere the principles of protecting the lives and property of the citizenry. Sesay really controlled the movement of rebels and prevented them from committing crimes such as killings. Feared by the fighters, he was respected by the people of Kono.

When Sesay became the Leader of the RUF, serving in place of Foday Sankoh, he continued to enjoy a cordial relationship with the people of Kono. The local authorities under Sesay appropriately administrated within the Kono District. Sesay respected the peace process and

would also seek the advice of the chiefs. Sesay was putting in a lot of working to have the RUF adhere to the obligations of the peace process, as many of the other fighters were not supportive of his efforts.

I was present when former President Obasanjo of Nigeria and other dignitaries came to Kono for a public celebration of the disarmament there. Former President Obasanjo publicly thanked Issa Sesay for all his work in bringing the RUF through the process and acknowledged that Sesay had not had an easy task of many in the RUF were working against him.

I would ask the Judges to show leniency to Sesay, who was a young man who made a significant contribution to bringing Sierra Leone to peace. I believe that Sesay can return to the community and continue to contribute towards society. Sesay believed that the people had a right to live peacefully and he should also be given this chance. Sesay should be shown mercy for his efforts in the peace process. Now is the time for harmony and compromise.



33225

WITNESS STATEMENT

Family Name: Kaimachende III First Name: Sahr Fergai Korgbende

Date: 16 March 2009 Language used: English

Location: Free town Name of interpreter:

Other persons present:

I Chief Kaimachende III of Kono District on

this day 16<sup>th</sup> March 2009 have spoken in person with

Jared Kreitel a representative of the Sesay Defence

Team.

I understand that I may be called to give evidence based on what I have said today before the Special Court. I have not been offered any money or other benefit by the Sesay Defence team in exchange for my testimony. I solemnly declare that I understand the importance of speaking only the truth.

Signature: 

33226

**Annex H      Statements of Paramount Chief Bai Seboru Kasangma II of Bombali**



## SPECIAL COURT FOR SIERRA LEONE

### INVESTIGATOR'S NOTES - Issa Sesay

Family Name: Kasangma II

First Name: Bai Sebor

Title: Paramount Chief

---

Date of Interview: 16 March 2009

Language used: English

Location: Freetown

Name of Interpreter: None

Other persons present: Jared Kneitel

---

My name is Honourable Paramount Chief Bai Sebor Kasangma II.

I am the Paramount Chief of Bombali-Sebor Chiefdom, Bombali District. Makeni is located within Bombali-Sebor Chiefdom. I was elected 30 January 1993 and I have since remained in that post. I was elected Member of Parliament in August 2007. I am also the Regional Chairman, Council of Chiefs, for the Northern Province which includes Bombali, Tonkolili, Koinadugu, Port Loko, and Kambia Districts. There are 53 chiefdoms in the Northern Province and accordingly 53 Paramount Chiefs on that Council.

In 2004 I made a statement for the application for provision release of Issa Sesay and I would like that statement to be considered in his sentencing hearing. In addition to that statement, I wish to add the following:

I left Makeni on 23 December 1998 and returned just weeks prior to the disarmament on 21 December 2001. The day after my return, Sesay and another senior commander went to see the 13 Paramount Chiefs of Bombali District and handed the chiefdoms back to us. From that date, the Paramount Chiefs took over possession of their chiefdoms, some of which were being cared for by RUF administrative chiefs. In those years in which the government was not active in Makeni and Sesay was present, Sesay provided education, medical services, and social services. I believe that Sesay did everything humanly possible for the area without a central government. Sesay was highly respected in Makeni.

When I saw Sesay, I recognised him immediately. Sesay said "Welcome to your Chiefdom, Sir." From the time that Sesay and President Kabbah declared the end of the war in Makeni, I have enjoyed the peace that Sesay ensured by disarming the RUF. I found Sesay to be very respectful. After the disarmament, whenever Sesay came to Makeni, he would visit me. Sesay was very polite and paid me many respects; he wouldn't look at me in my face.

Upon my return to Makeni, the Inter-Religious Council – composed of Christian and Muslim leaders – came to meet the Paramount Chiefs and gave us a general welcome. They came to my compound and informed me that Sesay played a very important role in maintaining order in Makeni. Sesay ensured that civilian properties were protected, that women were not raped, that houses were not burnt, and that if someone was occupying another person's home that that person's property would not be damaged. Even prior to my arrival to Makeni I had heard that Sesay was a firm man and that he took action against his fighters that harmed civilians. Sesay's aim was to ensure the protection of the civilians. If his forces went against the laws, he would do everything to ensure that peace was maintained. The rebels under Sesay respected order. For these reasons, the people of Makeni were very comfortable with Sesay.

I feel that many of my subjects share my sympathy for Sesay. The people of Makeni often came to tell me that it was through Sesay's hard work and dedication to the peace process and disarmament that Makeni is the way it is today. In quiet moments, when I have discussions with imams, pastors, and key stakeholders in the region we speak about the good things Sesay has done. If given the opportunity, the people would say loud and clear that we were not expecting that the man that provided us peace would have been arrested. I can say that many people felt uncomfortable when Sesay was arrested.

I look around at other conflicts throughout the world and worry that rebel leaders elsewhere would not follow Sesay's example by voluntarily laying down their arms if despite all their efforts for peace, they are given a long prison sentence at the end of it. I think whatever sentence Sesay gets should encourage other rebel leaders to follow his example and step forward and commit to a peace process.

Sesay doesn't speak very much but he is a man of action. When he decides to do something, he accomplishes it. I believe this to be true because, after being approached by President Kabbah, he decided that he would bring peace to Sierra Leone and disarm the RUF. Of course, he accomplished this goal prevailing on his senior officers and defeating his detractors. I was told that, because of Sesay's interest in disarming, there were assassination attempts against Sesay and that members of the RUF thought that disarming would have been a betrayal to their cause. Thank God that Sesay survived; through him we are enjoying the peace that he provided by his efforts.

It is remarkable that Sesay, as a very young person, was able to achieve the disarmament of the RUF and bring peace to Sierra Leone. If you compare his age to his actions, you wouldn't have expected that they had come from someone so young. Although he could have abused his leadership position, he didn't encourage anyone to continue the war and accepted the due process of law in good faith. The Special Court should temper Sesay's sentence appreciating that the Court now exists because of Sesay.



I am very careful not to support a cause that I don't believe is a just cause. Sesay is a hero in Makeni. People from every group make this representation to me. Although I sympathise with the victims of crimes, my conscience is clear in giving this statement.

I ask that the Judges have mercy on Sesay. Sesay was the key to the peace in Sierra Leone. I advocate for forgiveness. We have agreed to forgive the RUF through amnesty. I believe that Sesay has already made amends for any crimes he has committed and deserves forgiveness. These crimes are outweighed by Sesay's positive efforts in disarming the RUF and bringing peace. I know that there are many people that think this way.

Thanks to God that within Sesay's time the war ended. It might have been that the war would not have ended had Sesay not been appointed the Leader of the RUF. We thank Sesay. I ask that the judges consider Sesay's role in the peace process and disarmament when considering his plight.

I will never forget about Issa Sesay. The peace we are enjoying today is because of him. My wish is that, one day, he can walk as a free man.

WITNESS STATEMENT

33230

Family Name: Kesangma II

First Name: Bai Sebora

Date: 16 March 2009

Language used: English

Location: Free town

Name of interpreter:

Other persons present: Jared Kreitel

I Chief Kesangma II of Bambali District on

this day 16 March 2009 have spoken in person with

Jared Kreitel a representative of the Sesay Defence

Team.

I understand that I may be called to give evidence based on what I have said today before the Special Court. I have not been offered any money or other benefit by the Sesay Defence team in exchange for my testimony. I solemnly declare that I understand the importance of speaking only the truth.

Signature: Hon. P. C. BSK Kesangma II

33231  
80

APPENDIX D

NAME	PARAMOUNT CHIEF BAI SEBORA KASANGNA II		
AGE	Over 18	OCCUPATION	Paramount Chief of Makeni

My name is Paramount Chief Bai Sebora Kasangna the Second of Makeni. I am the traditional ruler of Makeni elected by the Chiefdom Councillors of the Bombali Sebora Chiefdom. I am the link between my people and the government.

I knew Issa Sesay when he was a small boy but obviously, due to the age gap, we were not close. I used to have a gas station and he would buy fuel from me in order to go gold-mining.

I knew him officially when the AFRC took control of the government of Sierra Leone. He introduced himself to me as "Issa, one of your subjects". This was in 1997 when the soldiers and the army were working together. We met at a meeting for leaders of the town and it seemed to me that he was a security man as when he introduced himself, he whispered it to me.

The next time I met him was in 2001 when we returned to Makeni. I should say that I left Makeni on 23<sup>rd</sup> December 1998 and returned on 20<sup>th</sup> December 2001. Colonel Keru came to see me in order to welcome me on behalf of Issa. He said "Issa Sesay welcomes you back to Makeni". The following day, Issa came to my house to meet me and the five other chiefs of the Bombali district, who were gathered there. He welcomed us but said that there was fighting in Kono and he had to go there to sort it out.

The UNAMSIL First Commander, Colonel Ladipoh came and told me that to succeed I would need to work with Issa Sesay as he was in control of the area. The police also came to me and said that Issa and I needed to work together so that the RUF men would disarm as Issa was trying to encourage them to disarm. Issa seemed bent on peace and was working with me to finally disarm them.



I was told that while I was away in Freetown my house was looted by RUF men. Issa Sesay came and told the men to get out as this was the Paramount Chief's house.

For Issa, his problem was not with the civilians. His problem was with the RUF men and the thieves that were pretending to be RUF for their own purposes.

Issa Sesay punished those men of his party who broke the law harshly. Often they would be shot. Issa would not let his men burn down Makeni. He was working towards reconciliation and would not be seen as committing atrocities.

My subjects told me that if we achieve peace, we owe it to Issa Sesay. People said that if Foday Sankoh were still alive, we would find it difficult to achieve peace because in their view Foday Sankoh was not committed to peace. But when Issa Sesay said that he was committed to peace, there was no reverse until peace was achieved.

When I returned, my subjects who remained in Makeni – who were civilians- came to welcome me back. They said to say thanks to Issa Sesay as he was the reason that they were still here. They were talking about Issa Sesay not the RUF movement. They said that once Issa took over from the AFRC, took control of the area, that things had been better, that things had been fine here.

I should explain that I am normally responsible for the welfare of my subjects. People look up to me and come to me to talk about what has happened to them. In modern times, people will also go to the police and the courts.

In 2002, I went to see Issa in an official capacity, with the Provincial Secretary and UNAMSIL Officers to inform him that President Kabbah was coming to Makeni. We were going to inform him as the RUF had not yet disarmed and as Paramount Chief I did not want to be embarrassed as I wanted to greet the President in grand style.

When I met him, he called me "Pa", as he was always would. Issa would always say



that every Chief was his father and he was here to serve us. 'Pa' is another word for father and it is a term of respect.

On that occasion, he said to me that "you are Chief and we will support you and let the President expect a good reception". He said that he would talk to his men. He called one of his men, Busowa, over and told him to ensure that all of his men behaved properly. I remember him saying that if anyone tried anything, that they would see the wrong side of him. Our meeting was very successful and indeed there were no problems when the President came.

My impression is that Issa Sesay would keep his word. He let President Kabbah come to Makeni before the RUF disarmed without incident and brought peace to this country, as he promised he would.

From the time I returned to Makeni, none of my subjects has said anything bad about Issa. There were problems with some of his men as they were corrupt with Council funds. But we had no problem with Issa and I would speak to him about his men and let me sort it out. We had no problems with Issa. He always supported us even against his own men.

I don't think if Issa Sesay got bail that any of my subjects would be intimidated as only positive things were said about Issa. He treated my subjects well. I foresee no problems with people being afraid. He treated them well in my absence once he was in control. I also foresee no problems with Issa's safety here. People were supportive of him all over. He had a good relationship with civilians here and I do not think they would do him harm.

I do not think he would leave the country if given bail. My impression, because of his commitment to peace is that Issa will keep his word.

For me, in Sierra Leone, the Special Court and the TRC was a surprise. I was nervous. I thought it better to just have peace. I want to commend the government and peace of Sierra Leone for allowing the Special Court and TRC and after my apprehension, I

33234

83

support it and pray that it will continue to succeed and Sierra Leone will make a name in world history as we have had a war and a reconciliation and justice process about what happened. I pray this peace will continue to be as, as a Paramount Chief living out of your Chiefdom, you are not yourself.

I also want to know the international community and government of Kabbah for letting us reach where we are today.

Signature: [signed by Paramount Chief Bai Sebor Kasangna II]

Date: 17<sup>th</sup> December 2004

33235

**Annex I      AWOL National Achievement Award awarded to Issa Sesay in Merit  
of Sincere and Diligent Services Rendered to the Republic of Sierra  
Leone**



# ALL WORKS OF LIFE NATIONAL ACHIEVEMENT AWARD

*In Merit of Sincere And Diligent Services Rendered To The Republic Of Sierra Leone*  
**Awarded To**

# Issa Sesay

*On 29th December 2002 Presented at the Family Kingdom.*

*Senzigie Moseyay Fatika*  
National Chairman  
All Works Of Life Development Association  
(AWOL - Sierra Leone)

*Jimmy Y Bangura*  
Chairman  
Jimmy B. Productions

*Prof. Sidi Alghale*  
Chairman  
National Achievement Awards Committee  
(AWOL - Sierra Leone)



LET'S UNITE AND BUILD A BETTER NATION



**Annex J      Certificate given to Issa Sesay as a 'Peace-Maker'**

00003738

33238

# MITKISHE MAXWELL KHOBE THEATRE

38<sup>A</sup> Kissy Bye Pass Road  
Kissy



37<sup>A</sup> Horton Street  
Central One Area  
Freetown

## Certificate

*This is to certify that*

*Assa Sesay ~ Peace Maker*

has been awarded a Certificate for Actively taking part in the Launching of the above group held at the Young Sport Men Club  
(Y. S. C.) Wilkinson Road.

Date: issued: 14<sup>th</sup> APRIL 2002

  
MANAGER

*A. B. SANU*  
SECRETARY GENERAL

  
DIRECTOR

10

33239

**Annex K Letter, dated 17 June 2003, from Ms. Uchegbu, Senior Legal Adviser,  
UNAMSIL.**

33240

27/10/03 17:43 FAX

OURY CLARK

03

100

UNITED NATIONS  NATIONS UNIES

UNITED NATIONS MISSION IN SIERRA LEONE  
(UNAMSIL)

*Office of the Special Representative of the Secretary General  
Bureau de Représentation Spéciale du Secrétaire Général*

Tel. (231-22) 27 31 83 MAIL: 6554 - Fax (231-22) 22 76 12 and 1 (212) 963 95 86

17 June 2003

Dear Mr. Oury,

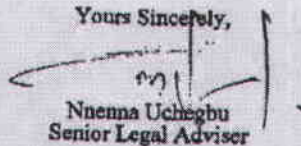
**Re: Mr. Morris Kallon**

This refers to our meeting of 5 June 2003 wherein you requested confirmation that your client, Mr. Morris Kallon, had advised Ambassador Oluyemi Adeniji, the Special Representative of the Secretary-General to Sierra Leone (SRSG), of a possible coup attempt against the Government of Sierra Leone. Your subsequent letter to me on the issue, ref. No. JEO/ajw/1141/1, dated 10 June 2003, also reiterated the request.

As you may recall from the meeting referred to above, the SRSG had stated that his contact with Mr. Kallon was minimal. However, he recalled a meeting with Mr. Kallon when he accompanied Mr. Issa Sesay, leader of the RUFFP, to his office. At that meeting Messrs. Sesay and Kallon informed the SRSG of an imminent coup d'état by some elements in the military.

I hope the above satisfies your requirement of written confirmation of the SRSG's discussion of this issue with your client.

Yours Sincerely,



Nnenna Uchegbu  
Senior Legal Adviser

Mr. James Oury  
Oury Clark Solicitors  
10 John Street  
London  
WC1N2EB