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SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER I

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

Registrar: Mr. Herman von Hebel

Date filed: 17 March 2009

THE PROSECUTOR

against

ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO

Case No. SCSL-2004-15-T

PUBLIC WITH CONFIDENTIAL ANNEXES

SENTENCING BRIEF FOR AUGUSTINE GBAO

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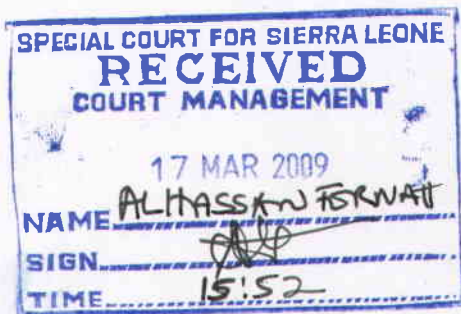


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I. Introduction

1. On 25 February 2009, Trial Chamber I of the Special Court for Sierra Leone rendered its judgement on the case *The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*.¹ By virtue of the convictions found by the Chamber, Rule 100 of the Rules of Procedure permit the Defendant to submit any relevant information to assist the Trial Chamber in determining an appropriate sentence.²

II. Court Findings

2. By a majority decision, Trial Chamber I found Augustine Gbao guilty of participating in a joint criminal enterprise in the following areas under the following Counts:

- i. Bo District (between 1-30 June 1997): Counts 3-5, and 14;³
- ii. Kailahun District (between 25 May 1997-19 February 1998): Counts 1, 2, 3-5, 7-9, and 13;⁴
- iii. Kenema District (between 1-30 June 1997): Counts 3-5, 11, 13;⁵ and
- iv. Kono District (between 14 February-April 1998): Counts 3-5, 6-9, 10-11, 13, and 14.⁶

3. Presiding Judge Pierre Boutet dissented on the above disposition in its entirety.⁷

4. The Court also found the Third Accused guilty under Count 15 for aiding and abetting the attacks directed against Major Salahuedin and Lt Colonel Jaganathan on 1 May 2000.⁸

5. Augustine Gbao was acquitted on the following counts and/or in the following areas:

- i. Count 12: All areas;⁹
- ii. Counts 16-18;¹⁰
- iii. Koinadugu: All Counts;¹¹
- iv. Bombali: All Counts (excepting Counts 15-18);¹²

¹ *Prosecutor v. Sesay, Kallon, and Gbao*, Doc. No. SCSL-04-15-T-1234, Judgement (TC), 2 March 2009 ('Trial Judgement').

² Rules of Procedure and Evidence of the Special Court for Sierra Leone, as amended 27 May 2008 ('Rules').

³ Trial Judgement, para. 2049.

⁴ *Id.* at para. 2172.

⁵ *Id.* at para. 2061.

⁶ *Id.* at para. 2110.

⁷ Trial Judgement, Dissenting Opinion of Justice Pierre G. Boutet, Trial Judgement, pp. 688-96.

⁸ Trial Judgement, para. 2265.

⁹ *Id.* at paras. 2236-37.

¹⁰ *Id.*, Dispositions, pp. 686-87.

¹¹ *Id.* at para. 2178.

- v. Freetown and Western Area: All Counts;¹³ and
- vi. Port Loko: All Counts.¹⁴
- vii. Counts not listed in the majority's findings above relating to Bo, Kenema, Kono and Kailahun.

III. Applicable Law

A. Special Court Statute and Rules of Procedure

6. Article 19 of the Special Court Statute enunciates the general procedure the Court follows in imposing sentences upon those convicted of crimes:

“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 [¹⁵] and the national courts of Sierra Leone.

2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone”.¹⁶

7. Rule 101 further supports the procedure provided by the Statute. It states, in relevant part, that:

“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 Statute, as well as such factors as:

- (i) Any aggravating circumstances;

¹² *Id.* at para. 2181.

¹³ *Id.* at paras. 2183, 2212, 2216, 2217.

¹⁴ *Id.* at para. 2219.

¹⁵ It is the understanding of the Third Accused that this Trial Chamber has discretion to also instruct itself using the sentencing practices at the International Criminal Tribunal for the Former Yugoslavia. *Prosecutor v. Fofana and Kondewa*, Doc. No. SCSL-04-14-T-796, Sentencing Judgement (TC), 9 October 2007, para. 41 ('CDF Sentencing Judgement').

¹⁶ Statute of the Special Court for Sierra Leone, annexed to the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, United Nations and Sierra Leone, 16 January 2002 ('Special Court Statute'), Article 19.

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

(iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same has already been served, as referred to in Article 9(3) of the Statute.

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

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

8. Each of these considerations is addressed below. However, since Augustine Gbao was not convicted of any crimes under Article 5 of the Special Court Statute that addresses crimes pursuant to Sierra Leonean law “it would be inappropriate to rely on the sentencing practices of Sierra Leonean Courts in determining the punishment imposed” on Gbao.¹⁷

B. Sentencing Factors

1. Gravity of the Offence

9. This Chamber, in the CDF case, wrote that determining the gravity of the offences for which an Accused has been found guilty during trial is the “litmus test for the appropriate sentence”.¹⁸ In determining the sentence, it has been found that “[a] sentence must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender”.¹⁹

10. This Court has also written that “[i]n assessing the role of the Accused in the crime, the Chamber has taken into account the mode of liability under which the Accused was convicted, as well as the nature and degree of his participation in the offence. In particular, the Chamber has considered whether the Accused was held liable as an indirect or a secondary

¹⁷ *Prosecutor v. Fofana and Kondewa*, Doc. No. SCSL-04-14-A, Judgement (AC), 28 May 2008, para. 476 (‘CDF Appeal Judgement’); CDF Sentencing Judgement, para. 43; *also see Prosecutor v. Kamara, Brima and Kanu*, Case No. SCSL-04-16-T, Sentencing Judgement (TC), 19 July 2007 (‘AFRC Sentencing Judgement’), para. 32, where the Court agreed that, since “none of the Accused was indicted for, nor convicted of, offences under Article 5 of the Statute” it was not appropriate to consider the sentencing practice in the national courts of Sierra Leone.

¹⁸ CDF Sentencing Judgement, para. 33 (other citations omitted).

¹⁹ *Prosecutor v. Dragan Nikolic*, Case No. IT-94-2-S, Sentencing Judgement (TC), 18 December 2003, para. 144.

perpetrator”.²⁰ International tribunals have generally concurred with this assessment, finding that the gravity of an offence is reduced when done indirectly. “It may be said that 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”.²¹

11. Additionally, as stated by the Prosecution, and agreed by the Third Accused, “[w]here an accused has been convicted as a participant in a joint criminal enterprise, the level of contribution as well as the category of joint criminal enterprise under which responsibility attaches are to be considered in assessing the appropriate sentence”.²² The Rules of Procedure for the International Criminal Court ‘codifies’ the “degree of participation of the convicted person”, as well as the “degree of intent” as important factors to consider when making a determination of the proper sentence for a Defendant.²³

12. Considering the direct or indirect nature of the Defendant’s participation and his degree of intent (as well as other relevant factors), there exists a range of sentences that can be imposed for membership in a joint criminal enterprise. “Gradations of fault within the [joint criminal enterprise] doctrine are possible, and may be reflected in the sentences given”.²⁴ The doctrine of joint criminal enterprise “offers no formal distinction between JCE members who make overwhelmingly large contributions and JCE members whose contributions, though significant, are not as great. However, the Appeals Chamber recalls that any such disparity is adequately dealt with at the sentencing stage.”²⁵

13. In determining Gbao’s role in the joint criminal enterprise, it is cardinal to the guarantee of a fair trial that the gravity of the offences for which Gbao has been convicted are

²⁰ CDF Sentencing Judgement, para. 34, citing *Prosecutor v. Ntagerura, Bagambiki and Iminishimwe*, Case No. ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004, para. 813; *Prosecutor v. Vasiljevic*, Case No. IT-98-32-A, Judgement (AC), 25 February 2004, para. 182 (‘Vasiljevic Appeal Judgement’).

²¹ *Prosecutor v. Babic*, Case No. IT-03-72-A, Sentencing Judgement (AC), 18 July 2005, para.40 (‘Babic Appeal Sentencing Judgement’), citing *Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-T, Judgement and Sentence (TC), para. 963 (‘Kajelijeli Trial Judgement’); *Prosecutor v. Krstic*, Case No. IT-98-33-A, Judgement (AC), 19 April 2004, para. 268 (‘Krstic Appeal Judgement’).

²² Doc. No. SCSL-04-15-T-1238, Confidential Prosecution Sentencing Brief, 10 March 2009, para. 20, citing *Prosecutor v. Martić*, Case No. IT-95-11-A, Judgement (AC), 8 October 2008, para. 350.

²³ Rules of Procedure and Evidence of the International Criminal Court, 3-10 September 2002, Rule 145.

²⁴ *Prosecutor v. Krajnisk*, Case No. IT-00-39-T, Judgement (TC), 27 September 2006, para.886.

²⁵ *Prosecutor v. Brđjanin*, Case No. IT-99-36-A, Judgment (AC), 3 April 2007, para. 432.

the *only* factors the Trial Chamber considers in relation assessing the gravity of the offences in the imposition of a sentence. This is an especially important principle in response to the Prosecution's sentencing brief, as the Prosecution has made many assertions against Gbao *without support in the Court's findings*.

14. In regards to Gbao's conviction for aiding and abetting under Count 15, this Chamber found in the CDF case that "[t]he jurisprudence of the ICTY and ICTR indicates that aiding and abetting as a mode of liability generally warrants a lesser sentence than that imposed for more direct forms of participation".²⁶ In the ICTY and ICTR "the sentence of a person who aided a principal perpetrator to commit a crime can be reduced to a sentence less than the one given to the principal perpetrator".²⁷

2. Mitigating Circumstances

15. Mitigating circumstances have a much lower threshold than aggravating factors; in general, they require only to be proven on a balance of probabilities.²⁸

16. While there is only one mitigating factor that the Trial Chamber is obliged to take into account—whether the Accused cooperated with the Prosecution—the Court may consider more. We submit that there are a wealth of mitigating factors relevant to Mr Gbao. These will be detailed in the paragraphs below for the Trial Chamber's consideration.

17. Gbao's level of participation in the joint criminal enterprise and the UNAMSIL counts should be carefully considered. It has been found in other cases that "[t]he Appeals Chamber

²⁶ CDF Sentencing Judgement, para. 50 (other citations omitted); *also see* Vasiljevic Appeal Judgement, para. 182; *Prosecutor v. Muhimana*, Case No. ICTR-95-1B-T, Judgement and Sentence (TC), 28 April 2005, para. 593; *Prosecutor v. Krstic*, Case No. IT-98-33-T, Judgement (TC), 2 August 2001, para. 714 ('Krstic Trial Judgement'); *Krstic Appeal Judgement*, para. 268.

²⁷ *Krstic Appeal Judgement*, para. 268; *also see* Vasiljevic Appeal Judgement, para. 182.

²⁸ CDF Sentencing Judgement, para. 40, *citing* *Prosecutor v. Blaskic*, Case No. IT-95-14-A, Judgement (AC), 29 July 2004, para. 697 ('Blaskic Appeal Judgement'); *also see* *Prosecutor v. Kunarac, et. al*, Case No. IT-96-23-T & IT-96-231-T, Judgement (TC), 22 February 2001, para. 847 ('Kunarac Trial Judgement'), which states that "fairness requires the Prosecutor to prove aggravating circumstances beyond a reasonable doubt, and that the Defence needs to prove mitigating circumstances only on the balance of probabilities"; *Prosecutor v. M. Simic*, Case No. IT-95-9/2-S, Sentencing Judgement (TC), 17 October 2002, para. 40 ('M Simic Trial Sentencing Judgement'), which states that "mitigating circumstances need only be proven on the balance of probabilities and not beyond a reasonable doubt".

recalls that the indirect nature of a convicted person's participation in the crimes can indeed be accepted as a mitigating circumstance'.²⁹ In the alternative, of course, the indirect nature is calculated in evaluating the gravity of the offence against a Defendant.

3. Aggravating Circumstances

18. Only those circumstances proved beyond reasonable doubt can be considered by the Trial Chamber as aggravating factors.³⁰ The principle is very important in relation to the Prosecution's sentencing brief, as it suggests aggravating factors that have not satisfied this threshold requirement.

19. The Court cannot consider the same factors for aggravating and gravity of the offence.³¹

IV. Argument

A. Gravity of the Offence

20. While Gbao acknowledges that the Trial Chamber convicted him for making a significant contribution to the joint criminal enterprise, primarily in his role as an RUF ideology expert, and aiding and abetting the attacks directed against Major Salahuedin and Lt Colonel Jaganathan on 1 May 2000 at the Makump DDR camp, it is respectfully suggested that the specific role he played in the crimes for which he was convicted in the Trial Chamber was limited. We submit that a review the findings with an emphasis on the degree of Gbao's intent, of the overall degree of his participation in the underlying criminal conduct, as well as other factors found by the Trial Court necessitates consideration of a substantially lower sentence than that suggested by the Prosecution in its sentencing brief.

1. Gbao's Role in the Court's Findings on the Joint Criminal Enterprise

21. It does not appear that the Prosecution has adequately exhibited consideration of the suggested 'gradations of fault within the joint criminal enterprise'³² in its proposed sentence

²⁹ *Prosecutor v. Strugar*, Case No. IT-01-42-A, Judgement (AC), 17 July 2008, para.381 ('Strugar Appeal Judgement'); also see *Blaskic Appeal Judgement*, para. 696; *Babic Appeal Sentencing Judgement*, para. 43; *Krstic Trial Judgement*, which states that "indirect participation is one circumstance that may go to mitigating a sentence", para. 714.

³⁰ *AFRC Sentencing Judgement*, para. 9; *CDF Sentencing Judgement*, para. 36.

³¹ *CDF Sentencing Judgement*, para. 35; *Prosecutor v. Deronjic*, Case No. IT-02-61-A, Judgement on Sentencing Appeal (AC), 20 July 2005, para. 106.

³² See *supra*, para 12.

for Gbao. The Third Accused submits that, had the Prosecution thoroughly considered the findings, it would accept that Gbao's level of participation and the degree of his intent places him at the lower end of the sentencing continuum. Some of the findings in the case that the Defence submits are worthy of consideration regarding the nature of Gbao's participation and intent are described below. The Third Accused suggests that these findings be reflected upon by the Trial Chamber in deciding upon the appropriate sentence for Augustine Gbao in relation to the majority's conviction under joint criminal enterprise.

i. Communication and Other Interactions with AFRC During the Junta Period

22. Gbao was never a member of the AFRC/RUF Supreme Council.³³ During the Junta period, the Supreme Council discussed major issues, including looting and the harassment of civilians.³⁴

23. There "has not been any evidence that Gbao [] commuted to Freetown, met with the AFRC leaders or communicated with the Junta leaders during the Junta period".³⁵ Further, the Court found that from the time of the Intervention until February 1999, Gbao remained in Kailahun District.³⁶

ii. Gbao's Intent in the Joint Criminal Enterprise in Various Locations

24. The degree of intent is relevant to an assessment of the gravity of the offences found by the Trial Chamber. Regarding the Counts for which Gbao was convicted of as a member of the joint criminal enterprise, in Bo District the Court found that Gbao "did not share the intent of the principal perpetrators to commit the crimes committed against civilians under Counts 3-5".³⁷ In Bo, Kenema and Kono Districts he did not "intend [crimes found by the Trial Chamber] as a means of achieving the common purpose".³⁸ Neither was it found that he shared this intent with other members of the joint criminal enterprise, including the other two Defendants, in these three locations.

³³ Trial Judgement, paras. 755, 2010.

³⁴ *Id.* at para. 756.

³⁵ *Id.* at paras. 775, 2010.

³⁶ *Id.* at para. 2153.

³⁷ *Id.* at para. 2040.

³⁸ *Id.* at paras. 2048, 2060, 2109.

iii. *Personal Participation in Crimes Committed*

25. Notably, the Court also found the following that Gbao “was not directly involved or did not directly participate in any of the crimes committed” in Bo, Kenema and Kono Districts.³⁹

26. The Court also found that Gbao did not “personally commit any of the crimes” in any district of Sierra Leone.⁴⁰

27. Gbao did not shoot or otherwise directly participate in the shooting of the 64 in Kailahun Town on 19 February 1998.⁴¹

iv. *Superior Responsibility over Fighters and Security Units*

28. There were no findings that Gbao exercised command and control over RUF fighters or Overall Commanders of the various security units.⁴² The Court also found that, as overall security commander, “the evidence is insufficient to conclude that Gbao had effective control over” the IDU, MPs, IO and G5.⁴³

29. Additionally, while the Court did not specifically consider questions of superior responsibility for each location in Sierra Leone, it did find that from April 1998 – 30 January 2000, Gbao did *not* have a superior-subordinate relationship over the RUF fighters in Kono.⁴⁴ There were also negative findings on superior responsibility for Gbao in Freetown and the Western Area between 6 January 1999 and 28 February 1999,⁴⁵ Koinadugu,⁴⁶ Bombali,⁴⁷ Port Loko,⁴⁸ and in any location in Sierra Leone in relation to Count 12.⁴⁹

³⁹ *Id.* at paras. 2010, 2057 (adopting the same finding *mutatis mutandis* in Kenema District about Gbao’s lack of direct participation) and 2105 (adopting the same finding *mutatis mutandis* for Kono District as Bo and Kenema).

⁴⁰ *Id.* at paras. 1976, 2053, 2066, 2157, 2178, 2181, 2183, 2216, 2219.

⁴¹ *Id.* at paras. 1393, 1395.

⁴² Negative findings can be found at *Id.*, paras. 2041, 2153.

⁴³ *Id.* at para. 2034.

⁴⁴ *Id.* at para. 2155.

⁴⁵ *Id.* at para. 2217.

⁴⁶ *Id.* at para. 2178.

⁴⁷ *Id.* at para. 2181.

⁴⁸ *Id.* at para. 2219.

⁴⁹ *Id.* at para. 2237.

v. *Gbao's Role in Military Operations*

30. There were no findings in the Trial Chamber's judgement that Gbao, in his role as IDU commander and overall security commander, was involved in military planning.⁵⁰ In particular, it found that Gbao was not present for the December 1998 meeting in Buedu.⁵¹ In general, the IDU as a unit had no power or authority regarding military activities.⁵²

31. Beyond planning, during military operations there are no findings that Gbao visited the frontlines.⁵³ The Court found that he did not have a personal radio⁵⁴ nor a radio call name.⁵⁵ It does not appear in the Court's findings that Gbao received military promotions at certain noted times during the Indictment period. This includes March 1997,⁵⁶ sometime after Johnny Paul Koroma was removed from power in 1998⁵⁷ and in February 1999, around the time he was sent to Makeni.⁵⁸

vi. *The Role of Security Units in Investigating Misconduct*

32. The Court found that in his role as overall IDU commander and overall security commander, Gbao could not initiate investigations of misconduct against RUF fighters.⁵⁹ The Chamber also found that "Gbao's ability to exercise his powers effectively in areas where Bockarie ordered the commission of crimes is doubtful".⁶⁰

33. The Court also found that no evidence indicated Gbao received reports on unlawful killings in Bo, Kenema, or Kono.⁶¹ There was also insufficient evidence to conclude that Gbao was involved with the operation of the security units in Kono.⁶²

⁵⁰ For a negative finding, *see Id.* at para. 844.

⁵¹ *Id.* at para. 861.

⁵² *Id.* at para. 682.

⁵³ For a negative finding, *see Id.* at para. 844.

⁵⁴ *Id.* at para. 844.

⁵⁵ *Id.* at para. 717.

⁵⁶ *Id.* at paras. 737-38.

⁵⁷ *Id.* at para. 806.

⁵⁸ *Id.* at para. 904.

⁵⁹ *Id.* at para. 684.

⁶⁰ *Id.* at para. 2041.

⁶¹ *Id.* at paras. 2041, 2057 (applying *mutatis mutandis* the Court's findings on Gbao's participation and significant contribution in Kenema) and 2105 (applying *mutatis mutandis* the Court's findings on Gbao's participation and significant contribution in Kono).

⁶² *Id.* at para. 2154.

2. Gbao's Role in the Court's Findings on Aiding and Abetting under Counts 15-18

34. As the Trial Chamber is well aware, Augustine Gbao was convicted of Count 15 for aiding and abetting the attacks directed against Major Salahuedin and Lt Colonel Jaganathan on 1 May 2000.⁶³ The conviction was based upon actions that took place at the Makump DDR camp near Makeni on 1 May 2000.

35. What is most notable about the Trial Chamber's finding relating to the gravity of the conviction against Gbao is that, while it found that there were fourteen attacks that took place under Counts 15-18, he was only convicted for aiding and abetting the attacks directed against Major Salahuedin and Lt Colonel Jaganathan on 1 May 2000 under Count 15.⁶⁴

36. Thus, Gbao was convicted for just two of the fourteen attacks found by the Court, an important note for purposes of considering the gravity of the offence. Therefore, Mr Gbao was not convicted based upon other findings under Counts 15-18 relating to the UN abductions, including:

- i. The abduction of Mendy and Gjellesdad;
- ii. The abduction of Odhiambo's group;
- iii. The abduction of Rono's group;
- iv. Any findings that took place regarding the peacekeeper's treatment at Teko Barracks; and
- v. The transfer of the peacekeepers from Teko Barracks to Small Sefadu.

37. Regarding attacks against UNAMSIL camps on 2 May 2000 and following, Gbao was not convicted for the following attacks found by the Court:

- i. On 2 May 2000 on the Makump DDR camp;
- ii. On 2 May 2000 at B Company Base at the Magburaka Islamic Centre;
- iii. On 2 May 2000 at KENBATT peacekeepers at the DDR Camp near a place called Waterworks;
- iv. On 3 May 2000 against ZAMBATT peacekeepers;

⁶³ *Id.* at para. 2265.

⁶⁴ *Id.* It also found that Gbao's presence "at the abduction of Rono is not sufficient to establish" his participation in the abduction of Rono. *See* Trial Judgement, para. 2266.

- v. On 3 May 2000 for the abduction of Kasoma and 10 ZAMBATT peacekeepers;
- vi. On 3 May 2000 for the abduction of other ZAMBATT peacekeepers;
- vii. On 3 May 2000 of the transfer of ZAMBATT peacekeepers from Makeni to Yengema; and
- viii. In May 2000 of holding the UNAMSIL peacekeepers in various locations throughout Kono District.

38. Thus, Gbao was only convicted for aiding and abetting two of the fourteen attacks against UNAMSIL personnel under Counts 15-18. We suggest that this, as well as the mode of liability under which Gbao was convicted, illustrate clearly that Gbao's overall level of participation was low. This places into context the gravity of the offence relating to the findings made against Gbao in Counts 15-18 for the Court's consideration.

i. Gbao's Superior Responsibility During Conflict with UNAMSIL

39. In Gbao's role as overall security commander during the UNAMSIL events the Court found that he did not formally possess the ability to effectively control troops in the conduct of their operations.⁶⁵ Therefore, the Court found that "the Prosecution has failed to prove beyond reasonable doubt that Gbao was in a superior-subordinate relationship with the perpetrators of the twelve attacks directed against UNAMSIL personnel in May 2000 in which he did not directly participate".⁶⁶

3. Response to Prosecution's Argument Regarding Gravity of the Offence

i. Joint Criminal Enterprise

40. The Prosecution's sentencing brief presented findings of crimes by the Court in an effort to demonstrate the high gravity of the offences by the three Accused as members of the joint criminal enterprise. The Prosecution organised its filing largely by grouping the three Accused together. However, as the Prosecution is aware, gravity of the offences must be assessed on an individual basis.⁶⁷ Besides being important to guarantee Gbao a fair trial, this

⁶⁵ *Id.* at para. 2294.

⁶⁶ *Id.* at para. 2299.

⁶⁷ The Prosecution agrees with this principle and has cited as such in its draft. See Prosecution Sentencing Brief, para. 16, citing AFRC Sentencing Judgement, para. 19; *Prosecution v. Blagojevic*, Case No. IT-02-60-T, Judgement (TC), 17 January 2005, para. 832.

is highly relevant because whilst the Court found Sesay and Kallon guilty of certain offences, it acquitted Gbao of the same. Thus, the three should be individually assessed as to the gravity of the offences for which they themselves were convicted in the Trial Chamber.

41. For example, Gbao was not found guilty of Count 1 and 2 in Bo, Kenema and Kono Districts. As a consequence, many assertions made by the Prosecution to assist the Trial Chamber are unsustainable against Gbao. Based upon the Trial Chamber's findings, the following assertions should not be considered in its assessment against Gbao:

i. Paragraph 113: The entire paragraph of findings (except the sentence that pertains to Kailahun District) must be removed from consideration as against Gbao, as he was not convicted for Counts 1 and 2 in Bo or Kono;

ii. Paragraph 114: The entire paragraph of findings (except the sentence that pertains to Kailahun District) must be removed from consideration as against Gbao, as he was not convicted for Count 1 in Kono;

iii. Paragraph 115: The entire paragraph must be removed from consideration as against Gbao, as he was not convicted of Counts 1 and 2 in Kenema or Kono;

iv. Paragraph 116: The entire paragraph must be removed from consideration against Gbao, as he was not convicted of Count 1 in Kenema District;

v. Paragraph 117: The entire paragraph must be removed from consideration against Gbao, as he was not convicted of Counts 1 and 2 in Kono or Bo;

vi. Paragraph 118: The entire paragraph must be removed from consideration against Gbao, as he was not convicted of Count 1 in Bo or Kono; and

vii. Paragraph 116, which stated that "[i]t is to be noted that it was found that the enslavement of hundreds of civilians by AFRC/RUF fighters at Cyborg Pit was an act of violence committed with the specific intent to spread terror among the civilian population. The Trial Chamber explained that 'the massive scale of the enslavement, the indiscriminate manner in which civilians were enslaved and the brutal treatment of the victims were circumstances capable of instilling, and intending to evoke, extreme

fear in the civilian population of Tongo Field”,⁶⁸ as Gbao was not found guilty for Count 1 in Kenema District.

42. Finally, in paragraph 114 of the Prosecution’s sentencing brief, it discusses “acts of rape” in Kailahun District in an effort to enhance the gravity of the offences against Gbao. However, paragraph 1405 of the Trial Chamber’s judgement expressly prohibits this suggestion by the Prosecution. It states that while “evidence of rapes and other forms of sexual violence committed by RUF fighters was adduced,[] the Chamber recalls that the Prosecution *did not plead these crimes* in respect of Kailahun District”.⁶⁹ Paragraph 1459 reiterated this finding: “rape was not particularised as a crime charged in the Indictment...for Kailahun District. We therefore decline to consider whether the crime of rape has been proved in Kailahun District”.

43. The Prosecution should not be permitted to include incidents that they never pled in the Indictment and, consequently, that were not considered by the Court.

ii. *UNAMSIL*

44. The Prosecution again aggregates findings against the Three Accused regarding Counts 15-18. However, Gbao did not directly participate in most of the attacks found by the Court as directed against UNAMSIL personnel.⁷⁰ Additionally, he was not in a superior-subordinate relationship with the perpetrators of the attacks.⁷¹ Thus, certain findings should not pertain to Gbao in calculating the gravity of the offence against him. These include:

- i. Paragraphs 184 and 185: Subsection (b): Scale and Brutality of the Offences Committed: All findings except for the attacks directed against Major Salahuedin and Major Ganese, for which Gbao was found guilty as an aider and abettor;⁷²
- ii. Paragraph 186: Subsection (c): Number of Victims: All findings relating to the RUF attacks that “resulted in the death of four peacekeepers”;⁷³

⁶⁸ Trial Judgement, para. 1130.

⁶⁹ *Id.* at para. 1405 (emphasis added).

⁷⁰ *Id.* at paras. 2265, 2299.

⁷¹ *Id.* at para. 2299.

⁷² Prosecution Sentencing Brief, paras. 184-85.

⁷³ *Id.* at para. 186.

- iii. Paragraph 186: Subsection (c): All findings relating to the “injury to 13 other peacekeepers”, except Kallon’s attack directed against Major Salahuedin, for which Gbao was found guilty as an aider and abettor;
- iv. Paragraph 186: Subsection (c): All findings relating to the “capture and detention of 130 peacekeepers”, except the abduction of Major Jaganathan by Kallon, for which Gbao was found as an aider and abettor; and
- v. Paragraphs 187-88: Subsection (d): All findings, as this subsection relates to the confinement of the UN peacekeepers, as there are no findings which indicate Gbao was aware of the conditions of the peacekeepers.⁷⁴

45. Thus, we suggest to the Court that, besides paragraph 182 of the Prosecution’s Sentencing Brief that discussed the “Personal Role of Gbao”, only the findings that relate to the attack on Major Salahuedin and the abduction of Lt Colonel Jaganathan can be considered in evaluating the gravity of the offence in relation to Gbao’s conviction as an aider and abettor.

B. Mitigating Circumstances

46. In the jurisprudence, certain mitigating factors are sometimes considered in evaluating the gravity of the offence against a Defendant, and vice versa. For the sake of completeness, we incorporate the findings presented in gravity of the offence into mitigating circumstances. In this way the Trial Chamber may assess whether a particular argument is better suited for consideration as going either to the gravity or mitigation of the found offences.

1. Individual Circumstances of Gbao

i. Personal and Family Circumstances of Augustine Gbao

47. Annexe I describes the general personal and family circumstances of Mr Gbao and should be treated in the Trial Chamber’s consideration of mitigating factors.

ii. Advanced Age of the Accused

48. Augustine Gbao was born on 13 October 1948. As a 60 year-old man in a country where the average life expectancy is 41.8 (as well as the last-ranked country in the world on

⁷⁴ *Id.* at paras. 187-88.

the UN's Human Development Index of 2007-08),⁷⁵ there is a significant likelihood that a lengthy sentence will keep him in prison the rest of his life.

49. The AFRC Trial Chamber agreed that the age of the Accused is a mitigating factor that Courts have discretion to consider.⁷⁶ While the AFRC Chamber did not ultimately mitigate the sentences based upon age (the AFRC Accused were all much younger than Gbao), it has been used routinely as a mitigating factor in the ICTR and ICTY.⁷⁷

50. The *Plavsic* Judgement explained the policy reasons for mitigating a sentence due to the age of the Accused:

“the Trial Chamber considers that it should take account of the age of the accused and does so for two reasons: First, **physical deterioration associated with advanced years makes serving the same sentence harder for an older than a younger accused. Second...an offender of advanced years may have little worthwhile life left upon release**”.⁷⁸

51. A 40 year sentence, as proposed by the Prosecution, would mean that Gbao would not be released from prison until he was over 100 years old (as he turns 61 in October 2009). We suggest that this would be manifestly unfair and significantly harder than an even higher sentence for a younger individual. In all likelihood, the practical result of this sentence would lead to Gbao dying in prison.

⁷⁵ Human Development Report 2007/2008, United Nations Development Programme, Table 1, p. 232. Note that the average life expectancy worldwide is 68.1 and that Sierra Leone ranks last in the world (177th of 177) on the Human Development Index, the well-known barometer of a country's overall well-being.

⁷⁶ AFRC Sentencing Judgement, para. 25.

⁷⁷ *Prosecutor v. Bisengimana*, Case No. ICTR 00-60-T, Judgement (TC) ('Bisengimana Trial Judgement'), 13 April 2006, paras. 173-75, where the Court found that the 57 year-old Accused's age should be considered a mitigating circumstance; also see *Prosecutor v. Krnojelac*, Case No. IT-97-25-T, Judgement (TC), 15 March 2002, para. 533, where the Court found that the 62 year old Accused's age should mitigate his sentence; upheld on appeal, Case No. IT-97-25-A, Judgement (AC), 17 September 2003, para. 251; *Prosecutor v. Ntakirutimana and Ntakirutimana*, Case No. ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence (TC), 21 February 2003 ('Ntakirutimana Trial Judgement'), para 898; upheld on appeal, Judgement, 13 December 2004, para 569 ('Ntakirutimana Appeal Judgement'); *Prosecutor v. B. Simic, Miroslav Tadic, et al*, Case No. IT-95-9-T, Judgement (TC), 17 October 2003, para. 1099, where the Court stated that “the Trial Chamber also takes into account Miroslav Tadic's age, 66 years old” ('B. Simic et al Trial Judgement'); *Prosecutor v. Strugar*, Case No. IT-01-42-T, Judgement (TC), 31 January 2005, para. 469 ('Strugar Trial Judgement').

⁷⁸ *Prosecutor v. Plavsic*, Case No. IT-00-39 & 40/1-S, Sentencing Judgement (TC), 27 February 2003, paras 105-06 (emphasis added).

a. *A 40 Year Sentence Would Amount to Life Imprisonment*

52. As stated, the Prosecution has suggested a 40 year sentence for Augustine Gbao.⁷⁹ As alluded to above, for a sixty year-old man this amounts to life imprisonment. However, it is submitted that life imprisonment was never anticipated by the drafters of the Special Court Statute. According to the statute for the Special Court, “[t]he Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment *for a specified number of years*”.⁸⁰

53. If the drafters of the Special Court statute intended to imbue the Trial Chambers with the power to issue life sentences to the various Accused in these cases, it should have been indicated in the Statute. The strength of this submission is clear on comparing the Special Court statute with the enabling statutes of the ICTR, ICTY and ICC. Both the ICTR and ICTY statutes declare that “the Trial Chamber shall pronounce judgements and impose sentences and penalties on persons...”⁸¹ Each continue by stating that “[t]he penalty imposed by the Trial Chamber shall be limited to imprisonment”.⁸² It is notable that neither the ICTR or ICTY statutes limited itself to imposing sentences ‘for a specified number of years’.

54. Article 77 of the Statute of the ICC is even more explicit. It states:

“Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:

(a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person”.⁸³

⁷⁹ Prosecution Brief, p. 81.

⁸⁰ Special Court Statute, Article 19(1) (emphasis added).

⁸¹ Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Other Such Violations Committed in the Territory of Neighbouring States, UN SC Res. 955 (1994), Article 22 (‘ICTR Statute’); Updated Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, UN SC Res. 1660 (2006), Article 23. (‘ICTY Statute’).

⁸² ICTR Statute, Article 23; ICTY Statute, Article 24.

⁸³ Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90 (entered into force July 1, 2002), Article 77 (‘ICC Statute’). Article 110, as referenced above, is entitled “Review by the Court Concerning Reduction of Sentence” and is not relevant for the purpose of the argument made above.

55. The ICTR and ICTY statutes were in existence prior to the drafting of the Special Court Statute. The ICC Statute entered into force on 1 July 2002, but was in existence well before this time. Therefore, we submit that one can assume the drafters of the Special Court Statute reviewed these three statutes as guidance before drafting the Statute for the Special Court for Sierra Leone. Delineating sentences only 'for a specified number of years' when other International Tribunals indicated the possibility of life sentences is a relevant consideration for the Court to contemplate in deciding an appropriate sentence.

56. An anticipated counter by the Prosecution is that it has not suggested a life sentence; instead, it has complied with the terms of the Special Court statute by suggesting a sentence for a "specified number of years". However, taking this argument to its logical conclusion, the Prosecution could have proposed a 120 year sentence for any one of the Accused in the RUF, AFRC or CDF cases, knowing that it functionally amounts to a sentence of life imprisonment. While technically complying with the terms of the Statute, it could be seen to circumvent the intent of the drafters. This should not be permitted.

iii. *Family Circumstances*

57. Mr Gbao has four children with his wife Hawa. Matters relating to his family's personal circumstances-the abject poverty, lack of sustainable income for Hawa, and other considerations-are detailed in Annexe I to this brief.

58. International tribunals have mitigated sentences due to the poverty of the Defendant. In the *Tadic* case, the Trial Chamber stated that "in determining the appropriate sentence...the Trial Chamber has taken into account Dusko Tadic's indigence and the effect of the length of sentence on his family".⁸⁴

59. More generally, the ICTY and ICTR have supported the fact that if an Accused is married with children it can be seen as a mitigating factor in assessing the appropriate sentence.⁸⁵

⁸⁴ *Prosecutor v. D. Tadic*, Case No. IT-94-1-T, Sentencing Judgement (TC), 14 July 1997, para. 62. ('D. Tadic Sentencing Trial Judgement')

⁸⁵ *Ntakirutimana Trial Judgement*, para. 896; *Prosecutor v. Alekovski*, Case No. IT-95-14/I-T, Judgement (TC), 25 June 1999, para. 238 ('Alekovski Trial Judgement'), where the Court accounted for the fact that the Accused was married with two young children; *Prosecutor v. Hadzihasanovic, et al*, Case No. IT-01-47-T, Judgement (TC), 15 March 2006, para. 2079 ('Hadzihasanovic Trial Judgement'), where the Court found the fact that the Defendant was married and the father of two

iv. *Health Considerations*

60. Annex II is a confidential medical report submitted by Dr. Harding of the Special Court staff. It details Gbao's current medical condition and prognosis for the future. We submit that this should be taken into account as a mitigating factor, especially considering his age and the comparatively difficult living conditions for him in a detention facility.

61. To preserve the confidentiality of the report, there will be no further discussion of his health condition outside of Annex II; however, we urge the Trial Chamber to review the information, with special attention to Gbao's deteriorating health condition since his incarceration, concluding that his current medical condition should be treated as a mitigating factor.

v. *Lack of Prior Convictions*

62. The Defence for Augustine Gbao submits that Gbao has no prior convictions and that this should be taken into account as a mitigating factor.⁸⁶ This mitigating factor is well-established in the ICTY and ICTR.⁸⁷

children to be a mitigating circumstance; *Prosecutor v. Jelusic*, Case No. IT-95-10-T, Judgement (TC), 14 December 1999, para. 124, ('Jelusic Trial Judgement') where the Trial Chamber accorded some weight to the Accused's role as a father with a young child; *M. Simic Trial Sentencing Judgement*, para. 102; *Prosecutor v. Kunarac*, Case No. IT-96-23 & IT-96-23/1-A, 12 June 2002 ('Kunarac et al. Appeal Judgement'), para. 362, where the Court found that the Accused being a father of three young children a mitigating factor according to the caselaw at the ICTY; *Prosecutor v. Vasiljevic*, Case No. IT-98-32-T, Judgement (TC), 29 November 2002, para. 300, where the court took into account that the Accused was married with two children; *Prosecutor v. Serushago*, Case No. ICTR-98-39-S, Sentence (TC), 5 February 1999 ('Serugasho Trial Sentencing Judgement'), para. 39, where the Court found that the six children, two of whom were very young, should be considered as a mitigating factor for the Accused; *Prosecutor v. Rutaganira*, Case No. ICTR-95-1C-T, Judgement and Sentence (TC), 14 March 2005, paras. 120-21 ('Rutaganira Trial Judgement'); *Prosecutor v. Limaj, et al*, Case No. IT-03-66-T, Judgement (TC), 30 November 2005, para. 732, where the Court mitigated the sentence of one of the Accused in part because he was the father of seven children, one of whom required particular assistance due to a disability; *Bisengimana Trial Judgement*, para. 144, where the personal and family situation of the Accused, a married man with children, lead the Chamber to believe in his chances of rehabilitation, and the Chamber therefore finds this situation to be a mitigating circumstance.

⁸⁶ See Confidential Annex III. In any event, Counsel for Gbao objects that the onus is on the Defence to prove Mr Gbao has no previous convictions, and avers that it is for the Prosecution to prove otherwise. Certainly in both the English and US jurisdictions, placing the burden on the Defence to prove a lack of previous convictions would be deemed offensive.

⁸⁷ See *Bisengimana Trial Judgement*, para. 165; *Prosecutor v. Serugendo*, Case No. ICTR-2005-84-T, Judgement and Sentence (TC), 12 June 2006, para. 65; *Aleksovski Trial Judgement*, para. 236; *Prosecutor v. Erdemovic*, Case No. IT-96-22/Tbis, Sentencing Judgement (TC), 5 March 1998, para. 16 ('Erdemovic Trial Sentencing Judgement'); *Jelusic Trial Judgement*, para. 124; *M. Simic Trial*

vi. *General Character of Gbao*

63. Gbao's character, as evidenced by the Gbao defence witnesses and some Prosecution witnesses throughout the trial, should be considered a mitigating factor. A detailed discussion of Gbao's character can be also be found in Annexe I.

64. The Defence rejects the Prosecution's argument that the character of Augustine Gbao, coupled with his lack of prior convictions, should not be taken into account in view of the gravity of the offence for which he stands convicted. This goes against jurisprudence at both the ITCY and ICTR where good character and lack of prior convictions have been considered to be mitigating factors.⁸⁸

65. In addition, the Defence argues that Gbao's personal circumstances shows his potential for rehabilitation, which is one of the primary objectives for sentencing.⁸⁹

2. Other Matters

i. *Serving Sentence in a Foreign Country*

66. Gbao may have to serve his sentence far from his family and support structure (if the sentence exceeds the time he has already served in prison). It appears that this decision may contravene the rights of the detainees under the Rules Governing the Detention of Persons

Sentencing Judgement, para.108; D. Tadic Sentencing Trial Judgement, para. 63; B. Simic et al Trial Judgement, paras.1089, 1100 and 1113.

⁸⁸ Good character has been considered a mitigating circumstance in the following cases: *Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004, para. 352; *Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006, para. 398; *Prosecutor v. Muvunyi*, Case No. ICTR-2000-55A-T, Judgement and Sentence (TC), 12 September 2006, para. 543; Bisengimana Trial Judgement, para. 150; Hadzihasanovic Trial Judgement, para. 2080; *Prosecutor v. Jokic*, Case No.IT-01-42/1-S, Sentencing Judgement (TC), 18 March 2004, paras. 101-02; *Prosecutor v. M. Nikolic*, Case No. IT-02-60/1-S, Sentencing Judgement (TC), 2 December 2003, para. 164; *Prosecutor v. Obrenovic*, Case No. IT-02-60/2-S, Sentencing Judgement (TC), 10 December 2003, para. 134. It was 'taken into account' in: *Prosecutor v. Kvocka et al*, Case No. IT-98-30/1-T, Judgement (TC), 2 November 2001, para. 716; Strugar Trial Judgement', para. 468; Ntakirutimana Trial Judgement, para. 750. Lack of prior convictions as mitigating factor: Bisengimana Trial Judgement, para. 165; Serugendo Trial Judgement, para. 65; Aleksovski Trial Judgement, para. 236; M. Simic Trial Sentencing Judgement, para. 108; B. Simic et al Trial Judgement, paras.1089, 1100, 1113. It was also 'taken into account' in the following cases: Erdemovic 1998 Trial Sentencing Judgement para. 16; Jelusic Trial Judgement, para. 124.

⁸⁹ CDF Sentencing Judgement, paras. 26 and 28; AFRC Sentencing Judgement paras. 14, 17; *also see* Blaskic Appeal Judgement, para. 678; *Prosecutor v. Delalic et al* ('*Celibici case*'), Case No. IT-96-21-T, Judgement (TC), 16 November 1998, para. 1233; *Prosecutor v. Hadzihasanovic*, Case No. IT-47-A, Judgement (AC), 22 April 2008, paras. 325, 328; *See also* Bisengimana Trial Judgement, para. 144, which discusses the concept of rehabilitation in terms of personal and family circumstances.

Awaiting Trial or Appeal before the Special Court for Sierra Leone or Otherwise Detained on the Authority of the Special Court for Sierra Leone.⁹⁰ For example, Rule 41(a) of the rules states:

“Detainees *shall be allowed...*to receive visits from their families and others *at regular intervals* under such restrictions and supervision as the Chief of Detention, in consultation with the Registrar, may deem necessary in the interests of administration of justice or the security and good order of the Detention Facility”.

67. Rule 39 is also relevant if the detainees are sent to a Francophone country: “[i]f a Detainee does not speak or understand neither the working language of the Special Court nor that spoken by the staff of the Detention facility, he shall be provided with the services of an interpreter as soon as practicable”. It is unclear how the Special Court will accommodate these ostensible mandates.

68. It is understood that the Statute for the Special Court contemplates sending the “convicted persons” to another country. Article 22 of the Statute makes that clear.⁹¹ However, should Gbao have to serve a further prison sentence in a foreign country, it is hard to understand how the Statute comports with the Rules of Detention.

69. If Gbao must serve a prison sentence far from his family, his ultimate sentence should take this into account. The ICTY can provide guidance on this matter. The “Practice Direction on the Procedure for the International Tribunal’s Designation of the State in which a Convicted Person is to Serve his/her Sentence of Imprisonment” provides that “particular consideration shall be given to the proximity to the convicted person’s relations”.⁹² If Gbao is sent to Rwanda, Benin, Senegal, or any of the other rumoured foreign countries,⁹³ he will be far from his wife and children. This factor should greatly reduce his eventual sentence, it is

⁹⁰ Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Special Court for Sierra Leone or Otherwise Detained on the Authority of the Special Court for Sierra Leone, as amended on 14 May 2005 (‘Rules of Detention’).

⁹¹ It is worth noting, however, that the United Nations Report on the Establishment of the Special Court states that “[w]hile imprisonment shall normally be served in Sierra Leone, particular circumstances, *such as the security risk* entailed in the continued imprisonment of some of the convicted persons on Sierra Leonean territory, may require their relocation to a third State”. Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000, para. 49. There is no indication that the detainees will be moved based upon a security risk to their detention in Sierra Leone.

⁹² Dated 9 July 1998, para. 4.

⁹³ These are countries that Counsel for the Third Accused has heard over the past year that have demonstrated a potential interest in housing the detainees at the Special Court.

submitted, as the prison sentence imposed will be significantly harder than if he were to serve it in Sierra Leone.

70. In the *Mrda* case, the Court concluded that serving a sentence in a foreign country would not be as a considered mitigating factor; however, it did state that it “takes into account this factor in determining the length of imprisonment”⁹⁴ and found that serving a sentence “in a state different from the one his or her family resides in whose language he or she does not speak may constitute an additional hardship”.⁹⁵ We suggest that the Court consider this as a mitigating factor in its sentencing determination. In the alternative, we suggest that the Court factor it into its overall sentencing determination, similar to the *Mrda* case.

71. In their sentencing brief, the Prosecution made no reference to the likelihood of Mr Gbao serving his sentence abroad. We assume that had the Prosecution considered this important matter they would have proposed a sentence significantly less than 40 years.

ii. *Gbao had a Productive Working Relationship with UNAMSIL Peacekeepers Before the Conflict of 1 May 2000*

72. Before the UNAMSIL conflict with the RUF on 1 May 2000, Gbao was working productively with various groups within the UNAMSIL contingent. The Court found that “Gbao was heavily involved in the disarmament of RUF fighters”.⁹⁶ “Gbao was one of the Commanders with whom the UNAMSIL commanders regularly met to discuss disarmament”.⁹⁷ Gbao was also known to interact with external delegations and non-governmental organisations in Makeni on behalf of the RUF.⁹⁸

73. In particular, Gbao met regularly with Brigadier Leonard Ngondi. During these meetings, Gbao discussed the DDR programme, freedom of movement and humanitarian aid with him. The Court found that RUF representatives also attended regular meetings of the local Ceasefire Monitoring Committee.⁹⁹

⁹⁴ *Prosecutor v. Mrda*, Case No. IT-02-59-S, Sentencing Judgement (TC), 31 March 2004, para. 109.

⁹⁵ *Id.* at para. 107.

⁹⁶ Trial Judgement, para. 940.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Trial Judgement, para. 1773.

74. After the abduction of Lt Colonel Jaganathan, it is important to note that Ngondi maintained a belief that Gbao and others would be able to work out an arrangement between the RUF and UNAMSIL, as their negotiations had been successful in the past.¹⁰⁰ It is equally important to note that Ngondi and Force Headquarters had not yet considered that the situation had escalated and turned hostile.¹⁰¹

iii. *Gbao was Working to Rebuild Makeni Town After the Lome Peace Agreement was Signed*

75. UN witnesses for the Prosecution testified to Gbao's cooperation and productiveness during the trial. Ngondi found Gbao "handy" in solving local matters.¹⁰² He held meetings with Gbao every Monday. They had a fruitful understanding and rapport.¹⁰³ Partly as a result of the cooperative relationship between Gbao and UNAMSIL, Makeni had been returning to normality in February-May 2000. According to Ngondi, Gbao was a significant factor in that success.¹⁰⁴ This improvement came in the form of "the population gain[ing] confidence, particularly in Makeni and Magburaka and the business was going on in the town as far as shops opening, markets opening and the sales of goods within the market area being seen happening. The humanitarian organisations were also doing their work..."¹⁰⁵

76. Ngondi testified anecdotally about how Gbao was helpful in Makeni:

"I recall one case where World Food Programme were distributing their foods within their programme and their vehicles were seized by RUF combatants. In charge of that operation by name Julie, a French national, came to me and we just took off and went and met Gbao, explained what had happened, and he went and ensured the vehicles were released and there the operation continued. I also remember a case where Roman Catholics had their vehicle seized on its way to Kabala, and the same talked to Gbao and he organised such kind of things. So he was very helpful, and we had an understanding as far as the work was concerned with Gbao".¹⁰⁶

77. Ngondi also discussed a problem at CARITAS that he and Gbao resolved together:

¹⁰⁰ *Id.* at para. 1801.

¹⁰¹ *Id.*

¹⁰² Brigadier Leonard Ngondi, Transcript 29 March 2006, p.10; 31 March 2006, p. 15.

¹⁰³ *Id.* at 31 March 2006 p.16.

¹⁰⁴ *Id.* at pp.14-15.

¹⁰⁵ *Id.* at 29 March 2006, p.18.

¹⁰⁶ *Id.* at 31 March 2006, pp.13-14.

“A: Even there was one time in Caritas that children who had been demobilised and other children from a school, they had a scuffle.

Q. They what, sorry?

A. They had a scuffle. A scuffle. All of us moved in, the RUF and even us, trying to see what it was, and there we were with Gbao, with his people. We saw then -- you know, we could talk, so there was no problem. It was the boys' issue, children's issue and the operations of Caritas continued and the RUF went back to their bases”.¹⁰⁷

78. Even on 17 April 2000, the day the disarmament process was due to commence, Gbao was actively assisting Ngondi and UNAMSIL. On that date, the RUF were staging demonstrations throughout Makeni over their concerns about the Lome Peace Accord's implementation. Ngondi's account of his meeting with Gbao under the particular circumstances is powerful:

“A. On the 17th, and they weren't even ganged up or gathered up at the reception centre[for disarmament], which was at Makeni. There, the topmost person who I met there was Augustine Gbao. He couldn't give me the reason why they're not going to do that [disarm]. **And as usual, we had a lot of understanding and respect for one another with Augustine Gbao.** We talked about it and he said he so sensed that our reception centre should remain and **since the disarmament is for long term**, we should -- each party should report, give a report to their higher headquarters on what is going on in the crowd, **that there was no need of having combatants demonstrating in town.**

Q. I think those combatants, or many of them, were armed during that demonstration, weren't they?

A. They were armed.

Q. Would you agree it was **Augustine Gbao, on the RUF side, who was instrumental in urging those people to disperse peacefully on the 17th?**

A. Yes, yes. Yes, Gbao, I commend him for that”.¹⁰⁸

79. These examples show that, according to Ngondi, Gbao was active in assisting UNAMSIL with working to suppress armed demonstrations of RUF on 17 April 2000, just before the conflict erupted with UNAMSIL.

iv. Gbao Assisted in the Rehabilitation of Child Soldiers

80. Gbao was sent to Makeni in 1999 just before the signing of the Lome Peace Accord. In Makeni, Gbao went out of his way to persuade some in the RUF to return their ex-child combatants to the ICC.¹⁰⁹ In the same vein, Ngondi stated that Gbao was very helpful with NGO operations in Makeni in 2000. He confirmed the operations of CARITAS had been

¹⁰⁷ *Id.* at pp.15-16.

¹⁰⁸ *Id.* at p.17 (emphasis added).

¹⁰⁹ TF1-174, Transcript 28 March 2006, p. 102-03.

authorised by Gbao.¹¹⁰ According to TF1-174, the authorisation was given without the knowledge or consent of Gbao's colleagues and superiors.¹¹¹ This caused Gbao a great deal of embarrassment, as he was not permitted to make this decision.¹¹² However, we submit that it is indicative of the extent to which he was working to facilitate disarmament and rehabilitation of former child soldiers.

81. Providing assistance to the victims of war is found to be a mitigating circumstance in other international tribunals.¹¹³

v. *Gbao Played an Instrumental Role in Releasing the First Group of Alleged Kamajors*

82. The Trial Chamber makes findings on the killing of 64 in Kailahun Town. While recognising the Court's findings on this matter, it is important to note the role that Gbao played in relation to the first set of alleged Kamajors investigated. As the Court found, Gbao was chair of this particular joint security board investigation.¹¹⁴ The Board jointly decided to release the first group. According to the Court's findings, they did not have time to complete the second investigation before Sam Bockarie ordered the killing of these men.¹¹⁵ The release of this first group of men should be seen as a mitigating factor.

C. Response to Prosecution's Argument Regarding Aggravating Factors

1. UNAMSIL

i. *Aggregating the Three Accused to Strengthen Argument Against Gbao is Impermissible*

83. In the section on UNAMSIL, the Prosecution consolidates its argument by grouping the three Accused on aggravating circumstances in a similar manner as in gravity of the offences. However, most of the assertions against Gbao in this section do not comport with

¹¹⁰ Leonard Ngondi, Transcript 31 March 2006, p. 17.

¹¹¹ TF1-174, Transcript 28 March 2006, p. 71.

¹¹² *Id.*

¹¹³ Rutaganira Trial Judgement paras. 153-55; *Prosecutor v. Sikirica*, Case No. IT-95-8-S, Sentencing Judgement (TC), 13 November 2001, para. 229, where the Defendant received a "significant reduction" in his sentence for his benevolent treatment of victims of the war; Serushago Trial Judgement, para. 38; *Prosecutor v. Ruggiu*, Case No. ICTR-97-32-I, Judgement and Sentence (TC), 1 June 2000, paras. 73-74; *Prosecutor v. Blaskic*, Case No. IT-95-14-T, Judgement (TC) 3 March 2000, para. 781.

¹¹⁴ Trial Judgement, para. 1391.

¹¹⁵ *Id.* at paras. 1391-93.

the Trial Chamber's findings on Counts 15-18. Since he was not found responsible under Article 6(3) and there is no joint criminal enterprise for Counts 15-18, only actions taken by Gbao and found by the Trial Chamber as proven beyond reasonable doubt can be considered as aggravating factors.

84. Thus, only assertions relevant to Gbao's aiding and abetting conviction can be considered as aggravating factors. The following assertions related to Gbao in paragraphs 189-90 should therefore be removed:

- i. That "[t]he captured peacekeepers were physically abused at Teko Barracks in Makeni";
- ii. The captured peacekeepers "were subjected to humiliating and degrading treatment";
- iii. "On the night of 2 May 2000, the detainees were removed from their room and one by one were forced to strip to their underwear, were knocked to the ground, stepped on and had their hands bound behind their backs with electrical wire";
- iv. Ill-treatment during the transport to Kono District;
- v. "During the night of 3 May 2000, while travelling in a truck from Makeni to Yengema in Kono District, RUF fighters harassed the captured peacekeepers, walked on top of them, sat on them and confiscated their belongings";
- vi. Treatment of the captives at Yengema; and
- vii. At "Yengema, captive peacekeepers were told to follow Sesay's instructions or face execution".

85. Especially offensive in paragraph 189 is that the Prosecution reprehensibly impute Gbao with having issued death threats. It states that "[i]n addition to threats from the Accused themselves, the RUF leadership and fighters threatened their captives with execution on a number of occasions".¹¹⁶ The Court's findings do not suggest Gbao was involved. The Prosecution should have made these allegations in its case-in-chief and proven it beyond reasonable doubt against Gbao if it seeks to use this threat as an aggravating factor against Gbao.

¹¹⁶ Prosecution Sentencing Brief, para. 189.

86. In Paragraph 190, the Prosecution continues its unproven assertions against Gbao. Consequently, the following sentence should be removed as against Gbao:

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

87. Unless Counsel for the Third Accused misunderstands the Court’s findings, the Prosecution is wrongly attempting to utilise findings that bear no relevance to the actions of Gbao in relation to Counts 15-18.

- ii. *Prosecution is Only Permitted to Include Findings by the Court Proved Beyond Reasonable Doubt*

88. As the Prosecution is aware, it can only present aggravating factors to a crime if they are not constituent elements to the underlying crime and are facts that have been proven beyond reasonable doubt. Nevertheless, it appears that it has presumed certain findings in an effort to unfairly bolster its argument on aggravating factors against Gbao.

89. For example, in paragraph 202 in the section “Gbao Initiated the Crimes”, the Prosecution begins by recounting the Trial Chamber’s findings on the events at the Makump DDR camp on 1 May 2000.¹¹⁷ However, it concludes this section by writing that “[t]he behaviour [of Gbao at the Makump DDR camp] set the stage for the attack [by Kallon and others] and should be seen as aggravating”.¹¹⁸

90. A review of the findings relating to the incident at the Makump DDR camp does not lend itself to that conclusion. At the least, it does not appear that the Court made such a finding. The Court considered the events at the Makump camp primarily in two sections of the brief—paragraphs 1784-94 and 2261-65. There is no indication that Gbao ‘set the stage for the attack’ on the camp by Kallon and other RUF. In fact, in some respects he did the opposite. When Kallon arrived at the camp, the Court found that Gbao was “trying to cool down Kallon”.¹¹⁹ More generally, there is also no finding that Gbao contacted Kallon before he arrived at the camp, thereby ‘setting’ the stage for him.

¹¹⁷ *Id.* at para. 202.

¹¹⁸ *Id.*

¹¹⁹ Trial Judgement, para. 1790.

iii. *Prosecution Misreads the Findings on Gbao's Ability to Command Fighters at the Makump DDR Camp*

91. The Prosecution appeared to misread the Court's findings when seeking to prove an aggravating factor against Gbao relating to the UNAMSIL confrontation on 1 May 2000. In paragraph 199 of its brief, it cites to paragraph 2297 of the Judgement which found that Gbao "possessed greater authority and influence over RUF fighters than previously in Kailahun District". Therefore, the Prosecution concluded, his ability to command fighters at the Makump Camp on 1 May 2000 should be seen as an aggravating factor.¹²⁰

92. However, paragraph 2297 of the Judgement actually states that:

"the Prosecution has not adduced evidence to establish the extent to which Gbao was integrated into the RUF command structure at this point in time nor the effect of his new functions on his ability to control RUF fighters. The fact that Gbao was able to command fighters at the Makump DDR camp on 1 May 2000 *does not* establish that he possessed the material ability to prevent or punish the RUF perpetrators of the subsequent attacks". (emphasis added)

93. It appears that in this section the Prosecution is attempting to suggest that, due to Gbao's superior role, an aggravating factor should be found against him. The full context of the Court's findings, in our submission, demonstrate otherwise.

iv. *Prosecution Should not Be Permitted to Add Unproven 'Commentary' to Findings in an Effort to Aggravate the Gbao Aiding and Abetting Conviction*

94. Paragraph 191 of the Prosecution sentencing brief reads that "the three Accused [were working] with UNAMSIL commanders, *pretending* that they were interested in cooperation". This is one of the few sentences in the Prosecution's brief without attribution to the Court's Judgement, as there appears to be nothing in this Judgement that leads one to believe that the Gbao's efforts to work cooperatively with UNAMSIL prior to 1 May 2000 were something other than genuine. While conflict arose on 1 May 2000 between the RUF and UNAMSIL and the Court made certain findings prior to 1 May, there is nothing in the evidence to indicate that Gbao was only pretending to cooperate. Ngondi's testimony above, we suggest, make Gbao's actions clear.

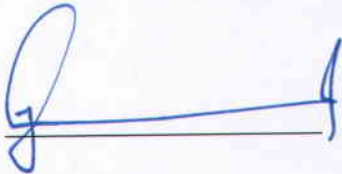
¹²⁰ Prosecution Sentencing Brief, para. 199.

V. Conclusion

95. Based upon an assessment of the gravity of the offences in the majority's judgement against Gbao, the lack of aggravating factors, and a wealth of mitigating factors, the Defence for Augustine Gbao respectfully requests that Gbao be given a sentence for time served up until the date the sentencing judgement is rendered.

Filed on Tuesday, 17 March 2009, Freetown, Sierra Leone.

Counsel for Augustine Gbao,



John Cammegh



Scott Martin

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Table of Authorities Pursuant to Article 7 (A) of the Practice Direction on Filing Documents before the Special Court for Sierra Leone.

TABLE OF AUTHORITIES

I. Special Court For Sierra Leone

Full Citation	Short Name (If Applicable)
<i>Basic Documents</i>	
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Rules of Procedure and Evidence of the Special Court for Sierra Leone, as amended 27 May 2008. Rule 100.	Rules
Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Special Court for Sierra Leone or Otherwise Detained under the Authority of the Special Court for Sierra Leone, as amended on 15 May 2005. Rules 39, 41(a).	Rules of Detention
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<i>Basic Documents</i>	
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<i>Judgements</i>	
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<p><i>Prosecutor v. Ntakirutimana and Ntakirutimana</i>, Case No. ICTR-96-10-T & ICTR-96-17-T, Judgement and Sentence (TC), 21 February 2003. Paragraphs 732, 750, 896, 898.</p> <p>http://69.94.11.53/ENGLISH/cases/NtakirutimanaE/judgement/index.htm</p>	Ntakirutimana Trial Judgement
<p><i>Prosecutor v. Ntakirutimana and Ntakirutimana</i>, Case No. ICTR-96-10-A & ICTR-96-17-A, Judgement (AC), 13 December 2004. Paragraph 569.</p> <p>http://69.94.11.53/ENGLISH/cases/NtakirutimanaE/judgement/Arret/Index.htm</p>	Ntakirutimana Appeal Judgement
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<p><i>Prosecutor v. Hadzihasanovic and Kubura</i>, Case No. IT-01-47-T, Judgment (TC), 15 March 2006. Paragraphs 2079, 2080.</p> <p>http://www.icty.org/x/cases/hadzihasanovic_kubura/tjug/en/had-judg060315e.pdf</p>	Hadzihasanovic Trial Judgement
<p><i>Prosecutor v. Hadzihasanovic and Kubura</i>, Case No. IT-01-47-A, Judgment (AC), 22 April 2008. Paragraphs 325, 326, 328, 329.</p> <p>http://www.icty.org/x/cases/hadzihasanovic_kubura/acjug/en/had-judg080422.pdf</p>	Hadzihasanovic Appeal Judgement
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<p><i>Prosecutor v. Jelusic</i>, Case No. IT-95-10-T, Judgment (TC), 14 December 1999. Paragraph 124.</p> <p>http://www.icty.org/x/cases/jelusic/tjug/en/jel-tj991214e.pdf</p>	Jelusic Trial Judgement
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<i>Prosecutor v. Mrda</i> , Case No. IT-02-59-S, Sentencing Judgement (TC), 31 March 2004. Paragraphs 107, 109. http://www.icty.org/x/cases/mrda/tjug/en/sj-040331.pdf	Mrda Trial Sentencing Judgement
<i>Prosecutor v. Dragan Nikolic</i> , Case No. IT-94-2-S, Sentencing Judgement (TC), 18 December 2003. Paragraph 144. http://www.icty.org/x/cases/dragan_nikolic/tjug/en/nik-sj031218e.pdf	Dragan Nikolic Trial Sentencing Judgement
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<i>Prosecutor v. Strugar</i> , Case No. IT-01-42-A, Judgement (AC), 17 July 2008. Paragraph 381. http://www.icty.org/x/cases/strugar/acjug/en/080717.pdf	Strugar Appeal Judgement
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Rules of Procedure and Evidence, as Adopted by the Assembly of States Parties, First session, 3-10 September 2002. Rule 145.	ICC Rules of Procedure and Evidence

V. Other Documents

Human Development Report 2007/2008, United Nations Development Programme. Table 1, page 232. The full report can be found at http://hdr.undp.org/en/reports/global/hdr2007-2008/	Human Development Report 2008
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**Copies of Authorities filed pursuant to Article 7 (b) and (d) of the Practice Direction on
Filing Documents before the Special Court for Sierra Leone.**

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

IT/137

9 July 1998

Original: English & French

PRACTICE DIRECTION
ON THE PROCEDURE FOR THE INTERNATIONAL TRIBUNAL'S
DESIGNATION OF THE STATE IN WHICH A CONVICTED PERSON IS TO SERVE
HIS/HER SENTENCE OF IMPRISONMENT

9 July 1998

United Nations
Nations Unies

International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

PRACTICE DIRECTION
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INTRODUCTION

1. In accordance with Rule 19(B) of the Rules of Procedure and Evidence, pursuant to Article 27 of the Statute and Rule 103(A) of the Rules of Procedure and Evidence, considering Article 2 paragraph 1 of the Model Agreement on the Enforcement of Sentences and having consulted with the Bureau, the Registrar and the Prosecutor, I issue this Practice Direction in order to establish an internal procedure for the International Tribunal's designation of the State in which a convicted person is to serve his/her sentence of imprisonment:

PROCEDURE

2. After the sentence of the convicted person has become final, the Registrar of the International Tribunal shall make a preliminary inquiry of the States that, pursuant to Article 27 of the Statute, have declared their willingness to accept convicted persons and have signed an agreement with the International Tribunal to that effect. The Registrar will ask the Governments concerned to give, before a certain date, a preliminary indication on their preparedness to carry out the sentence of the convicted person. The Registrar shall provide the following documents with the inquiry:

- a) a certified copy of the judgement;
- b) a statement indicating how much of the sentence has already been served, including information on pre-trial detention;
- c) any other documents of relevance.

3. On the basis of the Governments' indications on their willingness to accept the convicted person, the Registrar shall prepare a confidential memorandum for the President of the International Tribunal. This memorandum will enumerate the States in which the sentence of the convicted person can be carried out and shall contain information concerning:

- a) the convicted person's marital status, his/her dependants and other family relations, their usual place of residence and, when appropriate, the financial resources they have available to visit the convicted person;
- b) whether the convicted person is expected to serve as a witness in further proceedings of the International Tribunal;
- c) whether the convicted person is expected to be relocated as a witness and, in such case, which States have entered into relocation agreements with the International Tribunal;
- d) when appropriate, any medical or psychological reports on the convicted person;
- e) linguistic skills of the convicted person;
- f) if possible, general conditions of imprisonment and rules governing security and liberty in the State concerned;
- g) any other considerations related to the case.

4. The President of the International Tribunal will, on basis of the submitted information and on any other inquiries he/she chooses to make, determine the State in which imprisonment is to be served. Particular consideration shall be given to the proximity to the convicted person's relations. Before deciding the matter, the President may consult with the Sentencing Chamber or with its Presiding Judge. The President may, furthermore, request the opinion of the convicted person and/or of the International Tribunal's Office of the Prosecutor.

5. The President shall transmit the decision to the Registrar. The President may decide that the designation of the State shall not be made public.

REQUEST TO THE DESIGNATED STATE

6. The Registrar shall, in accordance with the relevant provisions of the agreement on the enforcement of sentences between the International Tribunal and the State that has been determined by the President, request the Government of that State to enforce the sentence of the convicted person. The request shall be signed by both the Registrar and the President.

NOTIFICATION OF THE ADOPTED DECISION

7. If the requested Government, after the request has been decided upon in accordance with national law, accepts the International Tribunal's request to receive the convicted person, the Registrar will notify the President and, when appropriate, the Sentencing Chamber or its Presiding Judge accordingly. The Registrar will furthermore inform the convicted person of the State that has been designated, the contents of the agreement on the enforcement of sentences between the International Tribunal and the State concerned, and on any other issues of relevance for the matter.

REFERRAL TO THE PRESIDENT

8. If the requested Government, after the request has been decided upon in accordance with national law, rejects the International Tribunal's request to enforce the sentence of the convicted person, the Registrar shall refer the issue back to the President, who will designate another State in accordance with paragraph 4 of this Practice Direction.

Gabrielle Kirk McDonald
President

**Human Development Report 2007/2008, United Nations Development Programme.
Table 1, page 232**

The present authority exceeds 30 p. In accordance with the Practice Direction on Filing Documents before the Special Court for Sierra Leone, article 7 (E), a copy of the first page of the authority as well as a copy of the relevant section are filed.

33287



Human Development Report **2007/2008**

Fighting climate change:
Human solidarity in a divided world



Published for the
United Nations
Development
Programme
(UNDP)

TABLE 1

Human development index

HDI rank ^a	Human development index (HDI) value	Life expectancy at birth (years)	Adult literacy rate (% aged 15 and above)	Combined gross enrolment ratio for primary, secondary and tertiary education (%)	GDP per capita (PPP US\$)	Life expectancy index	Education index	GDP index	GDP per capita (PPP US\$) rank minus HDI rank ^c	
	2005	2005	1995-2005 ^b	2005	2005					
160	Guinea	0.456	54.8	29.5	45.1 ^e	2,316	0.497	0.347	0.524	-30
161	Rwanda	0.452	45.2	64.9	50.9 ^e	1,206 ⁿ	0.337	0.602	0.416	-1
162	Angola	0.446	41.7	67.4	25.6 ^{e,h}	2,335 ⁿ	0.279	0.535	0.526	-33
163	Benin	0.437	55.4	34.7	50.7 ^e	1,141	0.506	0.400	0.406	-2
164	Malawi	0.437	46.3	64.1	63.1 ^e	667	0.355	0.638	0.317	13
165	Zambia	0.434	40.5	68.0	60.5 ^e	1,023	0.259	0.655	0.388	3
166	Côte d'Ivoire	0.432	47.4	48.7	39.6 ^{e,h}	1,648	0.373	0.457	0.468	-17
167	Burundi	0.413	48.5	59.3	37.9 ^e	699 ⁿ	0.391	0.522	0.325	9
168	Congo (Democratic Republic of the)	0.411	45.8	67.2	33.7 ^{e,h}	714 ⁿ	0.346	0.560	0.328	7
169	Ethiopia	0.406	51.8	35.9	42.1 ^e	1,055 ⁿ	0.446	0.380	0.393	-5
170	Chad	0.388	50.4	25.7	37.5 ^e	1,427 ⁿ	0.423	0.296	0.444	-17
171	Central African Republic	0.384	43.7	48.6	29.8 ^{e,h}	1,224 ⁿ	0.311	0.423	0.418	-13
172	Mozambique	0.384	42.8	38.7	52.9	1,242 ⁿ	0.296	0.435	0.421	-16
173	Mali	0.380	53.1	24.0	36.7	1,033	0.469	0.282	0.390	-8
174	Niger	0.374	55.8	28.7	22.7	781 ⁿ	0.513	0.267	0.343	-1
175	Guinea-Bissau	0.374	45.8	..	36.7 ^{e,h}	827 ⁿ	0.347	0.421	0.353	-4
176	Burkina Faso	0.370	51.4	23.6	29.3	1,213 ⁿ	0.440	0.255	0.417	-17
177	Sierra Leone	0.336	41.8	34.8	44.6 ^h	806	0.280	0.381	0.348	-5
Developing countries										
Least developed countries										
Arab States										
East Asia and the Pacific										
Latin America and the Caribbean										
South Asia										
Sub-Saharan Africa										
Central and Eastern Europe and the CIS										
OECD										
High-income OECD										
High human development										
Medium human development										
Low human development										
High income										
Middle income										
Low income										
World										

NOTES

a. The HDI rank is determined using HDI values to the sixth decimal point.

b. Data refer to national literacy estimates from censuses or surveys conducted between 1995 and 2005, unless otherwise specified. Due to differences in methodology and timeliness of underlying data, comparisons across countries and over time should be made with caution. For more details, see <http://www.uis.unesco.org/>.

c. A positive figure indicates that the HDI rank is higher than the GDP per capita (PPP US\$) rank, a negative the opposite.

d. For purposes of calculating the HDI, a value of 99.0% was applied.

e. National or UNESCO Institute for Statistics estimate.

f. For purposes of calculating the HDI, a value of 40,000 (PPP US\$) was applied.

g. For purposes of calculating the HDI, a value of 100% was applied.

h. Data refer to a year other than that specified.

i. Statec 2006. Data refer to nationals enrolled both in the country and abroad and thus differ from the standard definition.

j. In the absence of recent data, estimates from UNESCO Institute for Statistics 2003, based on outdated census or survey information, were used and should be interpreted with caution: Bahamas 95.8, Barbados 99.7, Comoros 56.8, Djibouti 70.3, Eritrea 60.5, Fiji 94.4, Gambia 42.5, Guinea-Bissau 44.8, Guyana 99.0, Haiti 54.8, Hong Kong, China (SAR) 94.6, Hungary 99.4, Lebanon 88.3, Poland 99.8 and Uzbekistan 99.4.

k. Data are from national sources.

l. UNESCO Institute for Statistics estimates based on its Global age-specific literacy projections model, April 2007.

m. Heston, Summers and Aten 2006. Data differ from the standard definition.

n. World Bank estimate based on regression.

o. Efforts to produce a more accurate estimate are ongoing (see Readers guide and notes to tables for details). A preliminary estimate of 6,000 (PPP US\$) was used.

p. Data are from the Secretariat of the Organization of Eastern Caribbean States, based on national sources.

q. Data are from the Secretariat of the Caribbean Community, based on national sources.

r. Because the combined gross enrolment ratio was unavailable, the following HDRO estimates were used: Antigua and Barbuda 76, Bhutan 52, Ecuador 75, Haiti 53 and Turkmenistan 73.

s. UNDP 2007.

t. World Bank 2006.

u. World Bank estimate based on a bilateral comparison between China and the United States (Ruen and Kai 1995).

v. UNICEF 2004.

w. Data refer to 18 of the 25 states of the country only.

x. In the absence of an estimate of GDP per capita (PPP US\$), the HDRO estimate of 2,056 (PPP US\$) was used, derived from the value of GDP in US\$ and the weighted average ratio of PPP US\$ to US\$ in the Arab States.

y. Heston, Summers and Aten 2001. Data differ from the standard definition.

z. In the absence of an estimate of GDP per capita (PPP US\$), the HDRO estimate of 3,413 (PPP US\$) was used, derived from the value of GDP per capita in PPP US\$ estimated by Heston, Summers and Aten 2006 adjusted to reflect the latest population estimates from UN 2007e.

aa. Data refer to North Sudan only.

ab. UNDP 2006.

ac. For the purposes of calculating the HDI, a national estimate of 1,033 (PPP US\$) was used.

SOURCES

Column 1: calculated on the basis of data in columns 6-8; see *Technical note 1* for details.

Column 2: UN 2007c, unless otherwise specified.

Column 3: UNESCO Institute for Statistics 2007a, unless otherwise specified.

Column 4: UNESCO Institute for Statistics 2007c, unless otherwise specified.

Column 5: World Bank 2007b, unless otherwise specified; aggregates calculated for the HDRO by the World Bank.

Column 6: calculated on the basis of data in column 2.

Column 7: calculated on the basis of data in columns 3 and 4.

Column 8: calculated on the basis of data in column 5.

Column 9: calculated on the basis of data in columns 1 and 5.

Human development indicators



SPECIAL COURT FOR SIERRA LEONE
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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the *Confidential* Case File.

Case Name: **The Prosecutor – v-Sesay, Kallon & Gbao**
Case Number: **SCSL-04-15-T**
Document Index Number: **1243**
Document Date: **17 March 2009**
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Number of pages: **65**
Page Numbers: **33289-33305**

Document Type: -

- Application
- Indictment
- Motion
- Order
- Corrigendum
- Decision
- Other

Document Title:

**PUBLIC WITH CONFIDENTIAL ANNEXES SENTENCING BRIEF FOR
AUGUSTINE GBAO**

Name of Officer:

Alhassan Fornah

Signed: 