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SCSL-03-01-T
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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before:	Justice Richard Lussick, Presiding Judge Justice Teresa Doherty Justice Julia Sebutinde	
Registrar:	Binta Mansaray	
Date:	30 May 2012	
Case No.:	SCSL-03-01-T	
PROSECUTOR	v.	Charles Ghankay TAYLOR

SPECIAL COURT FOR SIERRA LEONE
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SENTENCING JUDGEMENT

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I. INTRODUCTION

1. On 26 April 2012, the Trial Chamber rendered its Judgement, delivered in summary form, finding the Accused, Charles Ghankay Taylor, guilty of aiding and abetting the commission of the crimes set forth in Counts 1 to 11 of the Indictment pursuant to Article 6.1 of the Statute, as well as planning the commission of the crimes set forth in Counts 1 to 11 of the Indictment pursuant to Article 6.1 of the Statute which took place during the attack on Kono and Makeni in December 1998 and in the invasion of and retreat from Freetown between December 1998 and February 1999.[1] On 18 May 2012, the Trial Chamber filed its Judgement.[2]

2. The Trial Chamber scheduled a sentencing hearing for 16 May 2012, and the Parties submitted relevant information for the assistance of the Trial Chamber pursuant to Rule 100(A) of the Rules. The "Prosecution Submission Pursuant to Rule 100(A) of the Rules of Procedure and Evidence" ("Prosecution Sentencing Brief")[3] was filed on 3 May 2012. The "Defence Submission Pursuant to Rule 100(A) of the Rules of Procedure and Evidence" ("Defence Sentencing Brief"),[4] was filed on 10 May 2012. At a sentencing hearing on 16 May 2012[5] oral submissions were made by the Parties and a statement was made by the Accused.

3. The Prosecution submits that considering the extreme magnitude and seriousness of the crimes that were committed against the people of Sierra Leone for which Mr Taylor has been found responsible, the appropriate sentence for Charles Taylor is imprisonment for a term of not less than 80 years.[6]

4. The Defence did not specify what sentence should be imposed but submits that despite the gravity of the underlying crimes for which Mr Taylor has been convicted,

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[1] Transcript, 26 April 2012.

[2] *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012 ("Judgement").

[3] SCSL-03-01-T-1276.

[4] SCSL-03-01-T-1278.

[5] See *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 26 April 2012 ("Summary Judgement").

[6] Prosecution Sentencing Brief, para. 8.

the 80-year sentence proposed by the Prosecution is "manifestly disproportionate and excessive".[7]

5. The Trial Chamber considered the written and oral submissions of the Parties and the statement of the Accused in the determination of an appropriate sentence.

II. APPLICABLE LAW

1. Applicable Provisions

6. Sentencing in the Special Court for Sierra Leone is governed by Article 19 of the Statute of the Special Court ("Statute") and Rule 101 of the Rules of Procedure and Evidence ("Rules").

Article 19 of the Statute provides:

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

Rule 101 of the Rules provides:

> (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
>
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:
>
> (i) Any aggravating circumstances;
>
> (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

[7] Defence Sentencing Brief, paras 226, 243, 244 ; Transcript 16 May 2012, p. 49697.

> (iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.
>
> (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
>
> (D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

7. According to the above provisions, the Trial Chamber is obliged to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. Aggravating and mitigating circumstances and the general practice regarding prison sentences in the International Criminal Tribunal for Rwanda (ICTR) and the national courts of Sierra Leone shall, where appropriate, be taken into account. These requirements are not exhaustive and the Trial Chamber has the discretion to determine an appropriate sentence depending on the individual circumstances of the case.[8]

8. The Trial Chamber recognises the universally accepted principle that a person who has been convicted of many crimes should generally receive a higher sentence than a person convicted of only one of those crimes.[9]

9. According to Rule 101(C) of the Rules, the choice as to concurrent or consecutive sentencing is a matter within the Trial Chamber's discretion.[10] Such discretion must be exercised with reference to the fundamental consideration that the sentence to be served by an accused must reflect the totality of the accused's criminal conduct.[11] In this respect, the Trial Chamber acknowledges that the sentence should be individualised and also proportionate to the conduct of the Accused, reflecting the

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[8] *Prosecutor v. Momir Nikolić*, IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006, ("*Nikolić* Appeal Sentencing Judgement"), para. 106: "Sentencing decisions are discretionary and turn on the particular circumstances of each case."

[9] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-1251, Sentencing Judgement, 8 April 2009, para. 18 ("RUF Sentencing Judgement"); *Prosecutor v. Delalić, Mucić, Delić and Landžo*, IT-96-21-A, Judgement (AC), 20 February 2001 para. 771 ("*Delalić* Appeal Judgement"),.

[10] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-A-675, Judgement (AC), 22 February 2008, para. 309 ("*AFRC* Appeal Judgement").

[11] *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A-829, Judgement (AC), 28 May 2008 para. 547 ("*CDF* Appeal Judgement"); *Delalić* Appeal Judgement, para. 771.

inherent gravity of the totality of the criminal conduct of the convicted person, taking into consideration the particular circumstances of the case, the form and degree of participation of the Accused.[12]

10. The practice of imposing a single 'global' sentence for multiple convictions is well established in the jurisprudence of the international criminal tribunals,[13] as well as that of the Special Court.[14] The Trial Chamber has accepted the ICTR Appeal Chamber holding in *Prosecutor v. Kambanda* that it is within the discretion of the Trial Chamber to impose a global sentence in respect of all counts for which an accused has been found guilty.[15] The governing criteria is that the final or aggregate sentence should reflect the totality of the criminal conduct, or generally that it should reflect the gravity of the offence and the overall culpability of the offender, so that it is both just and appropriate.[16]

11. In the present case, the Trial Chamber finds that it is appropriate to impose a global sentence for multiple convictions in respect of Mr Taylor.

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[12] *CDF* Appeal Judgement, para. 546; *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T-796, Sentencing Judgment, 9 October 2007, para. 31 ("*CDF* Sentencing Judgement"); *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, Judgement (AC), 28 November 2007 para. 1038 ("*Nahimana* Appeal Judgement"); *Prosecutor v. Furundžija*, IT-95-17/1-A, Judgement (AC), 21 July 2000, para. 249 ("*Furundžija* Appeal Judgement"); *Prosecutor v. Krajišnik*, IT-00-39-A, Judgement (AC), 17 March 2009, para. 774 ("*Krajišnik* Appeal Judgement"); *Prosecutor v. Blaškić*, IT-95-14-A, Judgement (AC), 29 July 2004, para. 683 ("*Blaškić* Appeal Judgement"); *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement (AC), 24 March 2000, para. 182 ("*Aleksovski* Appeal Judgement"); *Delalić* Appeal Judgement, para. 731.

[13] *Prosecutor v. Kambanda*, ICTR-97-23-A, Judgement (AC), 19 October 2000, paras 106-108 ("*Kambanda* Appeal Judgement"); *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement (TC), 2 September 1998, para. 41 ("*Akayesu* Trial Judgement and Sentence"); *Prosecutor v. Musema*, ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000, p. 285 ("*Musema* Trial Judgement and Sentence"), *Prosecutor v. Serushago*, ICTR-98-39-S, Judgement and Sentence, 5 February 1999, p. 15 ("*Serushago* Trial Judgement"); *Prosecutor v. Jelisić*, IT-95-10-T, Judgement (TC), 14 December 1999, para. 137 ("*Jelisić* Trial Judgement").

[14] *AFRC* Appeal Judgement, para 322; *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T-624, para. 12 ("*AFRC* Sentencing Judgement").

[15] *AFRC* Sentencing Judgement para. 12; *Kambanda* Appeal Judgement, para. 103.

[16] *AFRC* Sentencing Judgement, para. 12; *AFRC* Appeal Judgement, para. 322; *CDF* Appeal Judgement, para. 546; *Delalić* Appeal Judgement, paras 429-430.

2. Sentencing Objectives

12. The Trial Chamber notes the content of the Preamble of the United Nations Security Council Resolution 1315 (2000) establishing the Court which recognises that

> [...]in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.[17]

13. The SCSL Appeals Chamber has stated that, in relation to legitimate sentencing purposes, "the primary objectives must be retribution and deterrence".[18] This is also acknowledged by the ICTY Appeals Chamber which stated that "it is well established that at the ICTY and the ICTR, retribution and deterrence are the main objectives in sentencing".[19] In the context of international criminal justice, retribution is not to be understood as fulfilling a desire for revenge, but as duly expressing the outrage of the international community at these crimes,[20] and it is meant to reflect a fair and balanced approach to punishment for wrongdoing. The penalty imposed must be proportionate to the wrongdoing. In other words, the punishment must fit the crime.[21]

14. International criminal tribunals have held that a sentence should make plain the condemnation of the international community of the behaviour in question and show that the international community is not ready to tolerate serious violations of

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[17] UN Sec Res 1315 (2000), 14 August 2000, para. 7.

[18] *CDF* Appeal Judgement, para. 532.

[19] *Aleksovski* Appeal Judgement, para. 185; *Krajišnik* Appeal Judgement, para. 775.

[20] *AFRC* Sentencing Judgement, para. 15; *RUF* Sentencing Judgement, para. 13; *Aleksovski* Appeal Judgement, para. 185; *Prosecutor v. Dragan Nikolić*, IT-94-2-S, Sentencing Judgement, 18 December 2003, para. 140, ("*Nikolić* Sentencing Judgement"), stating that retribution should solely be seen as: "an objective, reasoned and measured determination of an appropriate punishment which properly reflects the [...] culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more", *R. v. M. (C.A.)* (1996) 1 S.C.R. 500, para. 80 (emphasis in original).

[21] *Prosecutor v. Tadić*, IT-94-1-A/IT-94-1-A*bis*, Judgement in Sentencing Appeals, 26 January 2000 para. 48 ("*Tadić* Appeal Sentencing Judgement"),; *Aleksovski* Appeal Judgement, para. 185; *Delalić* Appeal Judgement, para. 803; *Prosecutor v. Todorović*, IT-95-9/1-S, Setencing Judgement, 31 July 2001, para. 30 ('*Todorović* Sentencing Judgement").

international humanitarian law and human rights.[22] Thus, the penalties imposed by the Trial Chamber must be sufficient to deter others from committing similar crimes.[23] Deterrence is both general, referring to the notion that a convicted person who is punished can serve as an example to others, who will then desist from committing or will be unlikely to commit the said crimes for fear of being punished, and also specific deterrence or incapacitation, which describes the objective of preventing future criminal conduct by restraining or incapacitating convicted persons.

15. Although rehabilitation is considered as an important objective of punishment, it is more relevant in domestic jurisdictions than in international criminal tribunals.[24]

16. The Trial Chamber endorses the principle that:

> One of the main purposes of a sentence is to influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody.[25]

17. In deciding the appropriate sentences, the Trial Chamber has taken into account all the factors that are likely to contribute to achievement of these objectives.

3. Sentencing Factors

18. Article 19 of the Statute and Rule 101(B) require the Trial Chamber to take into account certain factors in determining an appropriate sentence. These include the gravity of the offence, the individual circumstances of the convicted person, any

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[22] *AFRC* Sentencing Judgement, para. 16 (citing *Aleksovski* Appeal Judgement, para. 66); *Nikolić* Sentencing Judgement, para. 86; *Kambanda* Trial Judgement, para. 28.

[23] *AFRC* Sentencing Judgement, para. 16. See also *Prosecutor v. Tadić*, Case No. IT-94-1-A/IT-94-1-A*bis*, Judgement in Sentencing Appeals, 26 January 2000 ("*Tadić* Appeal Sentencing Judgement"), para. 48; *Aleksovski* Appeal Judgement, para. 185; *Delalić* Appeal Judgement, para. 803; *Todorović* Sentencing Judgement, para. 30.

[24] *AFRC* Sentencing Judgement, para 17; *RUF* Sentencing Judgement, para. 16; *CDF* Sentencing Judgement, para. 28.

[25] *AFRC* Sentencing Judgement, para. 16; citing *Nikolić* Sentencing Judgement, para. 139.

aggravating and mitigating factors, and where appropriate the general practice regarding prison sentences of the ICTR and the national courts of Sierra Leone.[26]

3.1. Gravity of the Offence

19. The gravity of the offence is the primary consideration in imposing a sentence,[27] and is the "litmus test" in determination of an appropriate sentence.[28] The gravity of the offence is determined by assessing the inherent gravity of the crime and the criminal conduct of the accused,[29] a determination that requires consideration of the particular circumstances of the case and the crimes for which the person was convicted, as well as the form and degree of participation of the Accused in the crime.[30]

20. In assessing the gravity of the offence, the Trial Chamber has taken into account such factors as (i) the scale and brutality of the offences committed;[31] (ii) the role played by the Accused in the commission of the crime;[32] (iii) the degree of suffering, impact or consequences of the crime for the immediate victim in terms of physical, emotional and psychological effects;[33] (iv) the effects of the crime on relatives of the

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[26] *AFRC* Appeal Judgement, para. 308.

[27] *Delalić* Appeal Judgement, para 731; *Kupreskić* Appeal Judgement, para. 442; *Nikolić* Appeal Judgement, para. 18.

[28] *AFRC* Sentencing Judgement, para. 19; *RUF* Sentencing Judgement, para. 19; *CDF* Sentencing Judgement, para 33; *Blaškić* Appeal Judgement; para. 683; *Prosecutor v. Delalić, Mucić, Delić and Landžo*, IT-96-21-T, Judgement (TC), 16 November 1998, para. 1225 ("*Delalić* Trial Judgement"); *Aleksovski* Appeal Judgement, para. 182; *Prosecutor v. Krstić*, IT-98-33-A, Judgement (AC), 19 April 2004, para. 431 ("*Krstić* Appeal Judgement").

[29] *Blaškić* Appeal Judgement, para. 683; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Judgement (TC), 17 January 2005, para. 833 ("*Blagojević* Trial Judgement").

[30] *RUF* Sentencing Judgement, para. 19; AFRC Sentencing Judgement, para. 19; *Furundžija* Appeal Judgement, para. 249; Blaškić Appeal Judgement, para. 683; *Prosecutor v. Galić*, IT-98-29-A, Judgement (AC), 30 November 2006, para. 442 ("*Galić* Appeal Judgement"); *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Judgement (AC), 17 December 2004, para. 1061 ("*Kordić* Appeal Judgement"); *Prosecutor v. Perišić*, IT-04-81-T, Judgement (TC), 6 September 2011, para. 1799 ("*Perišić* Trial Judgement";

[31] *Prosecutor v. Stakić*, IT-97-24-A, Judgement (AC), 22 March 2006, para. 380 ("*Stakić* Appeal Judgement"); *Prosecutor v. Orić*, IT-03-68-T, Judgement (TC), 30 June 2006, para. 729 ("*Orić* Trial Judgement").

[32] *AFRC* Sentencing Judgement, para. 19; *Delalić* Appeal Judgement, para 847; *Blaškić* Appeal Judgement, para. 683; *Blagojević* Trial Judgement, para. 833.

[33] *Blaškić* Appeal Judgement, para. 683; *Stakic* Appeal judgement, para. 380; *Orić* Trial Judgement, para. 729; *Blagojević* Trial Judgement, para. 833.

immediate victims and/or the broader targeted group;[34] (v) the vulnerability and number of victims;[35] and (vi) the length of time during which the crime continued.[36]

21. With respect to the assessment of the criminal conduct of the convicted person, the Trial 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.[37] In this regard, the Trial Chamber adopts the jurisprudence of ICTY and ICTR that aiding and abetting as a mode of liability generally warrants a lesser sentence than that to be imposed for more direct forms of participation.[38] However, the Trial Chamber will also take into account the unique circumstances of this case in applying this principle and determining an appropriate sentence.

3.2. Individual Circumstances of the Convicted Person

22. The Trial Chamber notes that "the individual circumstances of the convicted person" can be either mitigating or aggravating. Family concerns should in principle be a mitigating factor.[39] The convicted person's behaviour before, during and after the offence, his motives for the offence and demonstration of remorse thereafter are all factors that can be taken into account.[40] The purpose of taking the individual circumstances of the convicted person into account is to individualise the penalties concerned. For this purposes, the unfettered discretion of judges to evaluate the facts

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[34] *AFRC* Sentencing Judgement, para. 19; *Blaškić* Appeal Judgement, para. 683; *Perišić* Trial Judgement, para. 1799; *Galić* Trial Judgement, para. 758; *Prosecutor v. Delić*, IT-04-83-T, Judgement (TC), 15 September 2008, para. 563 ("*Delić* Trial Judgement").

[35] *AFRC* Sentencing Judgement, para. 19; *Kunarac* Appeal Judgement, para. 352; *Blaškić* Appeal Judgement, para. 683.

[36] *Blaškić* Appeal Judgement, para. 686; (citing *Kunarac* Appeal Judgement, para. 356.)

[37] *RUF* Sentencing Judgement, para. 20; *Prosecutor v. Vasiljević*, IT-98-32-A, Judgement (AC), 25 February 2004, para. 182 ("*Vasiljević* Appeal Judgement"); *Prosecutor v. Ntagerura*, ICTR-96-10A, Judgement and Sentence, 1 September 2009, para. 813 ("*Ntagerura* Sentencing Judgement").

[38] *CDF* Sentencing Judgement, para. 50; *Vasiljević* Appeal Judgement, para. 182; *Prosecutor v. Muhimana*, ICTR-95-1B, Judgement and Sentence, 28 April 2005, para. 593 ("*Muhimana* Trial Judgement").

[39] *Kunarac* Appeals Judgement, para. 362.

[40] *Kambanda* Judgement and Sentence, para. 34.

and attendant circumstances should enable them to take into account any other factor that they deem pertinent.[41]

23. As a general principle, a convicted person's motive can be considered as a factor in sentencing, either as an aggravating factor or a mitigating factor.[42] Among those motives that have been considered as aggravating factors are enjoyment of criminal acts, sadism and desire for revenge, group hatred or bias, and a desire to cause terror. Desire for pecuniary gain, desire to inflict pain or harm and a desire to escape punishment may also be considered aggravating circumstances.[43] The Appeals Chamber opined that while as a general principle a convicted person's motive can be considered a mitigating factor, it does not amount to a legal excuse for criminal conduct.[44] It held that:

> allowing mitigation for a convicted person's political motives, even where they are considered by the Chamber to be meritorious, undermines the purposes of sentencing rather than promotes them. In effect, it provides implicit legitimacy to conduct that unequivocally violates the law.[45]

3.3. Aggravating Circumstances

24. It is a widely accepted practice that aggravating factors should be established by the Prosecution beyond reasonable doubt,[46] and that only circumstances directly related to the commission of the offence charged, and for which the Accused has been convicted, can be considered to be aggravating.[47]

25. The Statute and the Rules do not provide an enumeration of the circumstances that the Trial Chamber may consider as aggravating.[48] Thus, the Trial Chamber is tasked with weighing the individual circumstances of each case and has discretion to

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[41] *Kambanda* Judgement and Sentence, para. 30.

[42] *CDF* Appeal Judgement, paras. 524-525.

[43] *CDF* Appeal Judgement, para 524.

[44] *CDF* Appeal Judgement, paras 523, 528; *RUF* Sentencing Judgement, para. 30.

[45] *CDF* Appeal Judgement, para. 534.

[46] *RUF* Sentencing Judgement, para. 24; (citing *Delalić* Appeal Judgement, para. 763.)

[47] *Kunarac* Trial Judgement, para. 850; *Prosecutor v. Hadžihasanović and Kubura,* IT-01-47-T, Judgement (TC), 15 March 2006, para. 2069 ("*Hadžihasanović* Trial Judgement").

[48] Article 19 of the SCSL Statute; Rule 101 (B) SCSL RPE.

identify the relevant factors. Based on the established jurisprudence, the Trial Chamber may consider factors such as:

> (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict [...]; (ii) the discriminatory intent or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime; (iii) the length of time during which the crime continued; (iv) active and direct criminal participation, if linked to a high-rank position of command, the accused's role as fellow perpetrator, and the active participation of a superior in the criminal acts of subordinates; (v) the informed, willing or enthusiastic participation in crime; (vi) premeditation and motive; (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims; (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them; (ix) the character of the accused; and (x) the circumstances of the offences generally.[49]

26. In addition to the above aggravating factors, the Trial Chamber has also taken into account the fact that attacks committed in traditional places of civilian sanctuary such as churches, mosques, schools, and hospitals are generally considered as being more serious.[50]

27. The Trial Chamber has also taken into account as an aggravating factor the extraterritoriality of the criminal acts of the Accused. The International Court of Justice has held that acts of intervention by a State in support of an opposition within another State constitute "a breach of the customary principle of non-intervention [and] will also, if they directly or indirectly involve the use of force, constitute a breach of the principle of non-use of force in international relations".[51] The International Court of Justice also held that support given to military and paramilitary activities including "financial support, training, supply of weapons, intelligence and logistic support constitutes a clear

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[49] *Blaškić* Appeal Judgement, para. 686 (citing *Delalić* Appeal Judgement, para. 763); *Jokić* Sentencing Judgement, paras 61-62; *Tadić* Appeal Judgement, paras 55-56; *Vasiljević* Appeal Judgement, paras 172-173; *Vasiljević* Trial Judgement, para. 277; *Kunarac* Appeal Judgement, paras 356, 357; *Todorović* Sentencing Judgement, paras 57,,65; *Prosecutor v. Krstić*, IT-98-33-T, Judgement (TC), 2 August 2001, paras 708, 711-712 ("*Krstić* Trial Judgement"); *Prosecutor v. Anto Furundžija*, IT-95-17/1-T, Judgement, 10 December 1998 ("*Furundžija* Trial Judgement"), paras 281, 283; *Delalić* Appeal Judgement, paras 736-737, 788; *Jelisić* Appeal Judgement, para. 86; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1, 1 June 2001, para. 361 ("*Kayishema* Appeal Judgement"); *Krstić* Appeal Judgement, para. 258; *Kunarac* Trial Judgement, paras 864, 866 867; *Kunarac* Appeal Judgement, paras 353, 355; *Tadić* Sentencing Judgement, para. 19.

[50] *AFRC* Trial Judgement, para. 22; *RUF* Trial Judgement, para. 25.

[51] *Military and Paramilitary Activities in and against Nicaragua* [Nicaragua v. United States] Merits Judgment, ICJ Reports, 27 June 1986, para. 209.

breach of the principle of non-intervention".[52] While these provisions of customary law govern conduct between States, the Trial Chamber considers that the violation of this principle by a Head of State individually engaging in criminal conduct can be taken into account as an aggravating factor.

28. Facts which go to proof of the gravity of the offence and facts which constitute aggravating factors may overlap.[53] The practice of some international criminal trial chambers has been to consider the gravity of the offence together with aggravating circumstances.[54] The Trial Chamber considers that, regardless of the approach, where a factor has already been taken into account in determining the gravity of the offence, it cannot be considered additionally as an aggravating factor and *vice versa*.[55] Similarly, if a factor is an element of the underlying offence, then it cannot be considered as an aggravating factor.[56]

29. The Trial Chamber is of the view that the position of leadership of an accused held criminally responsible for a crime under Article 6(1) of the Statute can be considered to be an aggravating circumstance.[57] Furthermore, breach of trust or authority, where the accused was in a position that carries with it a duty to protect or

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[52] *Nicaragua v. United States*, Merits Judgment, para. 242. See also *Case Concerning Armed Activities on the Territory of the Congo* [DRC v. Uganda] Merits Judgment, 19 December 2005, ICJ Reports 2005, paras 161-165.

[53] *Prosecutor v. Bralo*, IT-95-17, Judgement and Sentence, 2 April 2007, para. 27 ("*Bralo* Trial Judgement").

[54] *Gacumbitsi v. Prosecutor*, ICTR-01-64, Judgement and Sentence, 17 June 2004, paras 58-59 ("*Gacumbitsi* Trial Judgement); *Prosecutor v. Ruggiu*, ICTR-97-32-I, Judgement and Sentence, 1 June 2000, para. 48 ("Ruggiu Trial Jugement").

[55] *Prosecutor v. Deronjić*, IT-02-61, Judgement (AC), 20 July 2005, paras 106-107 ("*Deronjić* Appeal Judgement").

[56] *Kordić* Appeal Judgement, para. 1089; *Blagojević* Trial Judgement, para. 849; *Blaškić* Appeal Judgement, para. 693.

[57] *RUF* Trial Judgement, para. 26; *CDF* Sentencing Judgement, para. 38 (citing *Jokić* Sentencing Appeal, paras 28-29); *Prosecutor v. Obrenović*, IT-02-60/2, Sentencing Judgement, 10 December 2003, para. 99 ("*Obrenović* Trial Judgement");, *Prosecutor v. Babić*, IT-03-72, Judgement on Sentencing Appeal, 18 July 2005, para. 80 ("*Babić* Sentencing Appeal Judgement").

defend the victims, such as in the case of a government official, police chief or commander, can be an aggravating factor.[58]

30. The Trial Chamber notes the Defence submission that a Trial Chamber may only consider aggravating circumstances that have been pleaded in the Indictment.[59] However, the line of authority cited for this assertion begins with the ICTR in the *Simba* Appeal Judgement,[60] which cites in support of this assertion a number of earlier precedents, which state much more broadly that aggravating circumstances are "those circumstances directly related to the commission of the offence charged".[61] The Trial Chamber notes that in accordance with these precedents, specifically the *Delalić* Appeal Judgement and the *Kunarac* Trial Judgement, it is only the circumstances and their direct relation to the offences charged, and not necessarily their statement in the Indictment, that is required for them to be considered as aggravating factors. The *RUF* Sentencing Judgement, which is also cited by the Defence, does not mention the Indictment in this regard, and is in line with the *Delalić* and *Kunarac* precedents. Moreover, the Trial Chamber notes that these precedents are drawn from the ICTR and the ICTY where judgement and sentencing are consolidated, whereas in this Court sentencing is the subject of a separate proceeding subsequent to delivery of the judgement.

3.4. Mitigating Circumstances

31. Mitigating circumstances need only be proven on a balance of probabilities, and need not be related to the offence.[62]

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[58] *Kambanda* Judgement and Sentence, para. 44; *Seromba v. Prosecutor*, ICTR-2001-66-A, Judgement (AC), 12 March 2008, para. 230 ("*Seromba* Appeal Judgement"); *Ndindabahizi v. Prosecutor*, ICTR-01-71-A, Judgement (AC), 16 January 2007, para. 136 ("*Ndidabahizi* Appeal Judgement").

[59] Defence Submissions on Sentencing, para. 92 and footnote 109.

[60] *Simba v. Prosecutor*, ICTR-01-76-A, Judgement (AC), 27 November 2007, para. 82 ("*Simba* Appeal Judgement"), para 82.

[61] *Delalić* Appeal Judgement, para. 763; *Kunarac et al.* Trial Judgement, para. 850.

[62] *Babić* Sentencing Appeal Judgement, para. 43; *Delalić* Appeal Judgement, para. 590; *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Judgement (AC), 9 May 2007, para. 328 ("*Blagojević* Appeal Judgement); *Prosecutor v. Limaj, Bala and Musliu*, IT-03-66-T, Judgement (TC), 30 November 2005, para. 729 ("*Limaj* Trial Judgement"); *Prosecutor v. Stakić*, IT-97-24-T, Judgement (TC), 31 July 2003, para. 920 ("*Stakić* Trial Judgement").

32. The Trial Chamber notes that neither the Statute nor the Rules define the factors that may be considered to be mitigating. Accordingly, what constitutes a mitigating factor is a matter for the Trial Chamber to determine in the exercise of its discretion.[63]

33. Under Rule 101(B), the only mitigating circumstance that the Trial Chamber is required to consider is the substantial cooperation of the Accused with the Prosecutor.[64]

34. It is generally within the discretion of the Trial Chamber to determine whether or not a factor will be accepted as a mitigating circumstance, and what weight the factor should be granted. Such factors include but are not limited to (i) the expression of remorse or acknowledgement of responsibility;[65] (ii) good character with no prior convictions;[66] (iii) personal and family circumstances;[67] (iv) the good behaviour or conduct of the accused subsequent to the conflict, particularly with respect to promoting peace and reconciliation;[68] (v) good behaviour in detention;[69] (vi) assistance to detainees and victims;[70] (vii) the accused's lack of education or training;[71] (viii) the

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[63] *Prosecutor v. Musema*, ICTR-96-13, Judgement (AC), 16 November 2001, para. 395 ("*Musema* Appeal Judgement").

[64] *AFRC* Sentencing Judgement, para. 25; *CDF* Sentencing Judgement, para. 40.

[65] *CDF* Appeal Judgement, paras 489-490. The Appeals Chamber stated that "[a]n accused's acknowledgement of responsibility can be a mitigating circumstance in sentencing because it makes an important contribution to establishing the truth and, thereby, an accurate and accessible historical record. Moreover, such an acknowledgement of responsibility may contribute to peace and reconciliation, may set an example for other persons to make the same moral choice, and alleviate the pain and suffering of victims...". Furthermore, the Appeal Chamber opined that the Trial Chamber could consider genuine and sincere expressions of empathy for the victim's suffering or regret for crimes committed, without an acknowledgement of responsibility as a mitigating circumstance. See also *Babic* Sentencing Judgement, paras 81-84; *Orić* Trial Judgement, para. 752.

[66] *CDF* Appeal Judgement, para. 511; *Blaškić* Appeal Judgement, para. 696; *Erdemović* Trial Judgement, para. 16(i); *Delalić* Appeal Judgement, para. 788; *Prosecution v. Deronjić*, IT-02-61 30 March 2004, para. 156 ("*Deronjić* Sentencing Judgement").

[67] *Kunarac* Appeal Judgement, para. 362; *Blaškić* Appeal Judgement, para. 708.

[68] *Babić* Sentencing Appeal Judgement, paras 56-59; *Plavsić* Sentencing Judgement, paras 85-93.

[69] *Blaškić* Appeal Judgement, para. 696.

[70] *Blaškić* Appeal Judgement, para. 696; *Babić Sentencing* Appeal Judgement, para. 43; *Deronjić* Sentencing Judgement, para. 156.

[71] *CDF* Appeal Judgement, para. 498 (where the Appeals Chamber considered 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).

advanced age of the accused;[72] (ix) voluntary surrender;[73] (x) duress and indirect participation;[74] and (xi) in exceptional circumstances poor or frail health.[75]

35. The Trial Chamber considers that certain factors do not constitute mitigating circumstances and will therefore not take them into account. These include but are not limited to (i) the fact that convictions relate to crimes committed in less districts than those particularised in the Indictment in no way lessens the seriousness of the offences;[76] (ii) the fact that a sentence is to be served in a foreign country should not be considered in mitigation;[77] (iii) the guerrilla nature of the conflict does not lessen the grievous nature of the offences,[78]and (iv) whilst motive may shade the individual perception of culpability, it does not amount to a legal excuse for criminal conduct.[79]

3.5. Sentencing Practice in the National Courts of Sierra Leone and other International Tribunals

3.5.1. Sentencing Practice at other International Tribunals

36. Article 19(1) of the Statute directs the Trial Chamber to consider, where appropriate, the sentencing practices adopted at the ICTR.[80] The Trial Chamber will also consider the sentencing practice of the ICTY as its statutory provisions are analogous to those of the Special Court and the ICTR.[81] The Trial Chamber is of the view that the sentencing practices of ICTR and ICTY are instructive and has considered these practices where appropriate. The Trial Chamber notes that the jurisprudence of the ICTR and ICTY holds that aiding and abetting as a mode of liability generally warrants

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[72] *AFRC* Sentencing Judgement, para. 25; *Muhimana* Trial Judgement, para. 593.

[73] *Blagojević* Appeal Judgement, para. 344; *Babić* Sentencing Appeal Judgement, paras 43, 74; *Perišić* Trial Judgement, para. 1802.

[74] *AFRC* Sentencing Judgement, para. 25.

[75] *AFRC* Sentencing Judgement, para. 25; *Muhimana* Trial Judgement, para. 593.

[76] *AFRC* Sentencing Judgement, para. 66.

[77] *RUF* Appeal Judgement, paras 1246, 1316.

[78] *AFRC* Sentencing Judgement, para. 47.

[79] *CDF* Appeal Judgement, paras 523, 524, 528; *RUF* Sentencing Judgement, para. 30.

[80] *AFRC* Appeal Judgement, para. 311; *AFRC* Sentencing Judgement, para. 33; *RUF* Sentencing Judgement, para. 31; *CDF* Sentencing Judgement, para. 41.

a lesser sentence than that imposed for more direct forms of participation.[82] The Trial Chamber further notes that the pronouncement of global sentences is a well established practice at those tribunals.[83] The mitigating and aggravating factors that the Trial Chamber has considered in the instant case have also been widely considered by the ICTR and ICTY.[84]

3.5.2. Sentencing Practice of Sierra Leonean Courts

37. Article 19(1) of the Statute directs the Trial Chamber to consider, where appropriate, the sentencing practices of Sierra Leonean national courts. This does not oblige the Trial Chamber to conform to that practice, but rather to take into account that practice as and when appropriate.[85] In the present case, the Trial Chamber notes that Mr Taylor was not indicted for, nor convicted of, offences under Article 5 of the Statute in the Sierra Leonean law. Nevertheless, it has noted with regard to its consideration of the appropriate relative penalties for different modes of liability that the law of Sierra Leone provides that an accessory to a crime "may be indicted, tried, convicted and punished in all respects as if he were a principal felon".[86]

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[81] *AFRC* Sentencing Judgement, para. 33.

[82] *CDF* Sentencing Judgement, para. 50; *Vasiljević* Appeal Judgement, para. 182; *Muhimana* Trial Judgement, para. 593.

[83] *Kambanda* Appeal Judgement, para. 113; *Gacumbitsi* Trial Chamber Judgement, para. 356; *Nahimana* Trial Judgement, paras 1105, 1106, 1108; *Muvunyi v. Prosecutor*, ICTR-00-55, Judgement, 11 February 2010, para. 545 *("Muvunyi*, Trial Judgement"); Prosecutor v. Simba, ICTR-01-76, Judgement and Sentence, 13 December 2005, para. 445 ("Simba Trial Judgement").

[84] *Blaškić* Judgement, *supra* note 22, at para. 686 (citing *Delalić* Appeal Judgement, para. 763); *Jokić* Sentencing Judgement, paras 61-62; *Tadić* Appeal Judgement, paras 55-56; *Vasiljević* Appeal Judgement, paras 172-173; *Vasiljević* Trial Judgement, para. 277; *Kunarac* Appeal Judgement, para. 357; *Todorović* Sentencing Judgement, paras 57, 65; *Kunarac* Appeal Judgement, para. 356; *Krstić* Trial Judgement, paras 708, 711-712; *Furundžija* Trial Judgement, para. 281; *Delalić* Appeal Judgement, paras 736-737; *Jelisic* Appeal Judgement, para. 86; *Kayishema* Appeal Judgement, para. 351; *Krstić* Appeal Judgement, para. 258; *Kunarac* Trial Judgement, paras 864, 866, 867; *Kunarac* Appeal Judgement, paras 353, 355; *Furundžija* Trial Judgement, para. 283; *Delalić* Appeal Judgement, para. 788; *Tadić* Sentencing Judgement, para. 19.

[85] *CDF* Appeal Judgement, para. 476; *AFRC* Sentencing Judgement, para. 32. See also Prosecutor v. Serushago, ICTR-98-39, 6 April 2000, para. 30 ("*Serushago* Appeal Judgement"); *Semanza v. Prosecutor*, ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 377 ("*Semanza* Appeal Judgement").

[86] Section 1 of the Accessories and Abettors Act, 1861, which applies in Sierra Leone, cited in *The State v. Archilla and Others*, March 16, 2009, para. 4.

4. Credit for Time Served in Custody

38. In accordance with Rule 101 (D) of the Rules, "Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing".[87]

III. DETERMINATION OF THE SENTENCE

1. Submissions of the Parties

39. The Prosecution made submissions concerning: 1) the gravity of the crimes; 2) the aggravating circumstances; 3) the absence of any significant mitigating circumstances; 4) cumulative convictions; and 5) recommended sentencing.

40. Concerning the gravity of the crimes, the Prosecution submits that the scale and brutality of the crimes for which Mr. Taylor has been convicted were on a "massive scale" that spread throughout seven of Sierra Leone's twelve districts plus Freetown and the Western Area, affecting almost the entire population of Sierra Leone.[88] The Prosecution further submits that Mr. Taylor's victims were so numerous that they cannot be quantified, and that the crimes themselves were "the most grave that the world has ever witnessed".[89] The Prosecution recounts that many of the crimes were "characterised by particular violence and humiliation",[90] and notes the vulnerability of the victims, which included hospital patients, the elderly, unborn children, pregnant women, the handicapped, children, and people gathered in places of sanctuary.[91]

41. The Prosecution argues that the impact of the crimes was immeasurable and without remedy. For example, family homes were burned, rape victims suffered injuries that have required surgery or left them incontinent, sexual violence victims are shunned by their communities and families, amputees are unable to care for themselves or others,

[87] Rules of Procedure and Evidence, Rule 101(D).

[88] Prosecution Sentencing Brief, para. 51.

[89] Prosecution Sentencing Brief, para. 58.

[90] Prosecution Sentencing Brief, para. 59.

[91] Prosecution Sentencing Brief, paras 60-62.

and scar victims carry the memories of what they endured and in some cases are stigmatised as having been a part of a rebel faction.[92] The Prosecution further submits that because the crimes in Counts 2 through 8 were found to have been committed as part of the AFRC/RUF's campaign of terror, this should add to the weight of the underlying offences.[93]

42. The Prosecution also argues that the Trial Chamber's finding that Charles Taylor and Sam Bockarie jointly planned the attacks on Kono and Makeni which culminated in the Freetown Invasion shows his "critical role in the most shocking chapter of the entire conflict".[94] Further, the Trial Chamber's finding that Mr. Taylor aided and abetted an extensive list of crimes that extend over 5 years of the conflict "throws into stark relief the absolutely central and 'indispensable' role he played."[95] Therefore the pervasive quality of the support he provided to the AFRC/RUF, in conjunction with its scale and importance, make the gravity of his crimes rise to the highest level.[96]

43. Concerning aggravating factors, the Prosecution submits that the fact that Taylor's crimes occurred over a 5 year time period in at least one or more areas of Sierra Leone should be an aggravating factor.[97] Further, the Prosecution argues that because Taylor had knowledge of the atrocities being committed by the RUF/AFRC forces from at least August 1997, and of the RUF's criminal *modus operandi* from the beginning of the Sierra Leonean war, and because during this time he was leader of the NPFL and then President of Liberia, he cannot argue that he was unaware of the crimes or that he was simply following orders. Therefore, the Prosecution submits that he participated "willingly and enthusiastically", and that this participation in crimes on a massive scale over such a long period of time should be an aggravating factor.[98] Moreover, the Prosecution argues that rather than using his positions as President of

[92] Prosecution Sentencing Brief, paras 63-64.

[93] Prosecution Sentencing Brief, para. 65.

[94] Prosecution Sentencing Brief, para. 66.

[95] Prosecution Sentencing Brief, para. 69.

[96] Prosecution Sentencing Brief, para. 75.

[97] Prosecution Sentencing Brief, para. 76.

[98] Prosecution Sentencing Brief, para. 79.

Liberia, as a member of the ECOWAS Committee of Five, and his inherent authority over the AFRC/RUF for positive change, he instead used his authority to sustain the conflict and to continue the commission of the crimes.[99] Taylor also went against the international community's efforts to protect peace and security by "flouting" ECOWAS and UN arms embargoes and by actively working against the Sierra Leonean peace process.[100]

44. Concerning mitigating circumstances, the Prosecution submits that no significant mitigating circumstances exist as: 1) Mr. Taylor did not cooperate with the Prosecution; 2) Mr. Taylor's assistance in securing the release of the UNAMSIL peacekeepers was voided by his simultaneous clandestine actions that fuelled the conflict; 3) Mr. Taylor did not express remorse for his role in the commission of the crimes; and 4) his good character, personal and/or family circumstance, health, level of education, training and experience should not carry weight and do not amount to mitigating circumstances.[101]

45. Concerning cumulative convictions, the Prosecution argues that although a convicted person cannot be punished more than once for the same conduct, conduct which fulfils the elements of more than one crime is weightier than conduct which satisfies the elements of only one crime. The Prosecution therefore submits that this principle should be reflected in the Trial Chamber's sentence.[102]

46. Lastly, the Prosecution submits that Mr. Taylor's sentence "should reflect the extraordinary suffering caused by [his] knowing, willing, and long enduring participation in the crimes committed in Sierra Leone and recognize the critical role he played in a criminal campaign of atrocities which lasted years." Therefore, the Prosecution recommends a global sentence of 80 years in prison or a sentence for each

[99] Prosecution Sentencing Brief, paras 83-84.

[100] Prosecution Sentencing Brief, paras 86-89.

[101] Prosecution Sentencing Brief, paras 90-94.

[102] Prosecution Sentencing Brief, para. 95.

individual count ranging from 80 years for Count 1, 75 years for each of Counts 2 through 10, and 40 years for Count 11.[103]

47. The Defence made submissions concerning the: 1) gravity of the offences; 2) aggravating circumstances; 3) mitigating factors and 4) time to be served.

48. The Defence argues that the gravity of the offence should be the primary consideration when determining the sentence, and that the Trial Chamber must "go beyond the abstract gravity of the crime" in making its determinations. The Trial Chamber should evaluate the circumstances of Taylor's case and the form and degree of his participation, and impose a sentence that is proportionate to the seriousness of the crimes and his degree of participation.[104]

49. In regards to aiding and abetting the Defence submits that as aiding and abetting is an indirect mode of liability and "the lowest form of participation" under Article 6(1) of the Statute", it warrants a lesser sentence. The Defence notes that Trial Chamber I has consistently applied the principle that a conviction under this form generally warrants a lower sentence than that which would be appropriate for a co-perpetrator in order to reflect the weight of the criminal conduct of the accused and not that of the direct perpetrators. This is in accordance with the precedent of ICTR and ICTY case law.[105]

50. The Defence submits that by arguing that Mr. Taylor's actions underwrote the RUF's entire 'criminal war policy', the Prosecution is conflating aiding and abetting, which must be crime-specific, with joint criminal enterprise (JCE), which the Trial Chamber did not find. Further, the Defence argues that as Mr. Taylor did not share the intent of the direct perpetrators, his criminal culpability should be less than that of one convicted of acting pursuant to a JCE who does share the intent of the direct perpetrators. Even if the Trial Chamber does find that Mr. Taylor did directly intend the crimes that were committed pursuant to his planning of the Freetown invasion, "that

[103] Prosecution Sentencing Brief, paras 96, 103-104.

[104] Defence Sentencing Brief, para. 40.

[105] Defence Sentencing Brief, paras 43-46.

would still limit his direct intent to the crimes committed during the Freetown invasion and would exclude all other crimes".[106]

51. The Defence provided the Trial Chamber with a survey of sentences meted out to others convicted of aiding and abetting at the ICTR and ICTY in order to illustrate that there is a gradation of sentencing within aiding and abetting, and that sentencing jurisprudence for aiding and abetting places an emphasis on the proximity of the convicted person with the crime scene and direct perpetrators. In this regard, the Defence argues that Mr. Taylor's remote location from the actual crimes should act as a mitigating factor.[107]

52. In regards to planning, the Defence submits that Mr. Taylor's culpability for planning the attacks on Kono, Kenema and Freetown was much diminished compared to that of Sam Bockarie, as he was found guilty of designing the overall plan but not its operational implementation, and he did not direct or control the operation, or plan the actual crimes that were perpetrated. Therefore, Mr. Taylor should not "bear the full and crude brunt of the law for all the atrocities...."[108] Further, although the Trial Chamber found that Mr. Taylor designed the attack to be fearful, for the purposes of sentencing he cannot be punished for all of the crimes committed subsequent to the plan, as this would be tantamount to equating planning with JCE, of which he was found not guilty.[109]

53. Concerning the gravity in relation to the nature of the crimes and the impact on victims, the Defence submits that although the crimes in this case were brutal and widespread in nature, the Trial Chamber must focus on Mr. Taylor's conduct in relation to those crimes. Specifically, the Trial Chamber has found that Mr. Taylor was not a part of a JCE to terrorize Sierra Leone and pillage its resources, that he did not have command or control over the RUF and/or AFRC, and that he did not have the capacity to issue orders nor did he issue orders to the RUF and AFRC. These findings should

[106] Defence Sentencing Brief, paras 46-49.

[107] Defence Sentencing Brief, paras 50-67.

[108] Defence Sentencing Brief, paras 68-71.

[109] Defence Sentencing Brief, para. 72.

lessen his individual culpability for the purposes of sentencing.[110] Moreover, the Defence argues that some of the Prosecution's allegations in relation to gravity are instead "merely elements of the crimes in hyperbole, and are therefore impermissible on the basis of double-counting....[and that] the Trial Chamber should be wary of blurring the clear line between acts going towards a mode of liability and gravity".[111]

54. Concerning aggravating circumstances, the Defence submits that while mitigating factors must only be proven by a preponderance of the evidence, aggravating factors must be proved beyond reasonable doubt. Further, once the facts underlying the aggravating circumstances are established, the Trial Chamber still has discretion to decide what weight to attach to those circumstances.[112] The Trial Chamber cannot use the same factor to detrimentally influence a sentence more than once, and where a factor is an element of an offence for which the sentence is imposed, it cannot be considered an aggravating factor for sentencing purposes. Similarly, a factor that has already been considered to determine the gravity of the offence cannot be additionally considered as an aggravating factor.[113]

55. The Defence submits that the jurisprudence of the Special Court establishes that only circumstances directly related to the offence charged, and for which Mr. Taylor has been convicted, can be considered aggravating, and that the Trial Chamber may only consider aggravating circumstances that are pleaded in the Indictment.[114] The Defence argues that the evolving jurisprudence of the ICTR and ICTY also puts an emphasis on the notice requirement as a fair trial guarantee, and provided many examples to that effect.[115]

56. The Defence addresses each of the three specific aggravating factors identified by the Prosecution. Concerning the temporal scope of Mr. Taylor's criminal conduct

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[110] Defence Sentencing Brief, paras 76-81.

[111] Defence Sentencing Brief, paras 83-86.

[112] Defence Sentencing Brief, para. 89.

[113] Defence Sentencing Brief, para. 90.

[114] Defence Sentencing Brief, para. 92.

[115] Defence Sentencing Brief, paras 93-99.

which spanned over a period of five years, the Defence argues that the scope alone should not be determinative, and that the Prosecution's argument is misleading as the majority of the underlying crimes extended over a time period of approximately 18 months, rather than 60 months. Therefore, the Defence argues that "the Prosecution has irresponsibly embellished the Trial Chamber's findings".[116]

57. In regard to the Prosecution's argument that Mr. Taylor willingly and enthusiastically participated in the crimes, the Defence argues that according to the jurisprudence of the ICTR and ICTY this characterization can only apply "to direct perpetrators and/or to those who carry out the underlying crimes, or assist in their commission, with a heightened and demonstrable degree of sadistic zeal". The Defence further argues that the Prosecution's reliance on Mr. Taylor's knowledge of the crimes that the AFRC/RUF were committing cannot evidence his willing and enthusiastic participation in the crimes, as that would impermissibly constitute double counting.[117]

58. Concerning the argument that Mr. Taylor abused the trust of his office, the Defence submits that the notice requirement is not met as the Prosecution did not plead that Mr. Taylor undertook the role of a "two-headed Janus" when he acted as a peace-broker for ECOWAS, and the pleading of Mr. Taylor's position as the President of Liberia cannot cure this defect.[118]

59. The Defence presents nine mitigating factors that, either individually or together, would justify a lighter sentence than the Trial Chamber might otherwise impose upon Mr. Taylor. The Defence submits that these need only be established on the balance of probabilities and not beyond reasonable doubt, and that the weight to be attached to the mitigating circumstances is in the broad discretion of the Trial Chamber. Further, if the Trial Chamber does take a mitigating circumstance into account, it is then obligated to provide a reasoned opinion as to how it did so.[119]

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[116] Defence Sentencing Brief, paras 102-104.

[117] Defence Sentencing Brief, paras 105-107.

[118] Defence Sentencing Brief, paras 108-109.

[119] Defence Sentencing Brief, paras 112-117.

60. First, the Defence submits that the Prosecution has downplayed what the Trial Chamber has found was Mr. Taylor's "selfless" role in the Sierra Leonean peace process where Mr. Taylor was found to have: i) played a critical role in securing the release of the hostages held by the West Side boys in 1999; ii) negotiated the release of the UNAMSIL peacekeepers held as hostages by the RUF in 2000; iii) taken Sam Bockarie out of Sierra Leone in December 1999 when he was in conflict with Foday Sankoh; iv) brokered Issa Sesay's appointment as Interim Leader of the RUF, which culminated in disarmament; and v) played a constructive role in the Lome Peace Accord.[120] Further, the Defence argues that the law firmly establishes "that significant weight should be given in mitigation of a sentence when an accused makes a considerable contribution to the peace process", citing the Appeals Chamber in the RUF case, and ICTR and ICTY precedent to that effect.[121]

61. Second, the Defence submits that Mr. Taylor should be given credit for voluntarily stepping down from his role as President of Liberia for three reasons: i) his act of stepping down kept the conflict in Liberia from escalating, saving many lives; ii) Mr. Taylor was the first West African leader to voluntarily step down from the presidency out of concern for his people and in the interests of stability and peace; and iii) crediting him for this action would encourage others similarly situated to step down in the future because it would send a message that the international justice system supports actions taken to promote peace.[122] Therefore, his stepping down should be considered in mitigation.

62. Third, the Defence argues that the Trial Chamber should take into account Mr. Taylor's good character and public service to Liberia as a mitigating factor. Specifically, in his six years as President of Liberia he was involved in numerous projects intended to bring peace and stability to the country as well as to lift the general standards of living of the Liberian population. His efforts included establishing a Human Rights Commission, working with the International Committee on polio

[120] Defence Sentencing Brief, paras 119-125.

[121] Defence Sentencing Brief, paras 132-139.

[122] Defence Sentencing Brief, paras 140-143.

eradication to institute the vaccination of Liberian children, assistance and protection for orphanages.[123]

63. Fourth, while Mr. Taylor does not accept responsibility for the crimes for which he was convicted, and seeks to appeal his conviction, the Defence submits that he does have "a real and sincere sense of regret and sympathy for the victims of the Sierra Leonean conflict, the Liberian conflict, and indeed any other conflict involving civilian casualties". The Defence notes that the SCSL, ICTR, and ICTY Appeals Chambers have held that an accused can express sincere regrets without admitting to his participation in a crime, and that this can be a factor taken into account in mitigation.[124] Further, Mr. Taylor's spiritual disciplines have strengthened his sense of compassion and feelings of sympathy for the victims of the Sierra Leone conflict in addition to other wars. Therefore, his expressions of sympathy should be considered as a mitigating factor.[125]

64. Fifth, Mr. Taylor's age, health and family circumstances may be regarded as mitigating factors as they constitute the essence of the individual circumstances contemplated in Article 19(2) of the Statute. As Mr. Taylor is 64 an 80 year sentence would effectively be a life sentence, and according to SCSL and ICTY practice, the advanced age of a convicted person is considered in mitigation. Additionally, the Defence submits that international law establishes that family circumstances can also be considered as mitigating factors, and that Mr. Taylor's incarceration will cause financial stress to his large family, add an additional strain on family relations, and make it difficult for him to raise his young children. The Defence also asks that the Trial Chamber give weight to Mr. Taylor's ill health, of which it is already apprised, when considering mitigation.[126]

65. Sixth, the Defence submits that it is compulsory for the Trial Chamber to consider Mr. Taylor's cooperation with the Prosecution as a mitigating factor, and that it

[123] Defence Sentencing Brief, paras 170-175.

[124] Defence Sentencing Brief, paras 176-177.

[125] Defence Sentencing Brief, para. 181.

[126] Defence Sentencing Brief, paras 184-188.

may also consider his cooperation with the Court in its entirety. The Defence notes that Mr. Taylor was cooperative during the proceedings, that he testified under oath for eighty-one days, and that he answered questions asked by both parties and the Bench forthrightly and directly. Mr. Taylor also regularly attended court and actively participated in the conduct of his defence case. Further, Mr. Taylor attempted to expedite the proceedings by not contesting the crime base, and by restricting his cross examination of the witnesses, most of whom were victims, to testing the veracity of their testimony concerning linkage. Unlike other high profile political figures, Mr. Taylor also did not use his trial as a political platform, and did not disrupt the proceedings. In contrast, he acted subserviently toward the Trial Chamber, and "demonstrably vested his trust in the international justice system and the integrity of this court". This conduct should be given weight in mitigation.[127]

66. Seventh, the Defence argues that Mr. Taylor's lack of a prior criminal record, a well-established mitigating factor under ICTR and ICTY jurisprudence, should be given weight in mitigation.[128]

67. Eighth, the Defence submits that Mr. Taylor's good behaviour while in detention shows that he has good prospects for rehabilitation, and should be a mitigation factor. Specifically, the Chief Detention Officer described Mr. Taylor as polite and respectful, noted that he had not been subject to disciplinary charges, and stated that Mr. Taylor discusses any concerns he has in a direct and constructive manner. Mr. Taylor also has made efforts to keep himself mentally, physically and spiritually sound.[129]

68. Ninth, the Defence argues that the likelihood that Mr. Taylor will serve out his sentence in the United Kingdom, a culturally and geographically remote location thousands of miles from his home, should also be considered as a mitigating circumstance. This will frustrate Mr. Taylor's ability to receive family and friends as visitors as is his right under Rule 41(a) because expensive travel costs and strict visa requirements will make it difficult for his visitors to reach him. Mr. Taylor will be the

[127] Defence Sentencing Brief, paras 189-196.

[128] Defence Sentencing Brief, para. 197.

[129] Defence Sentencing Brief, paras 198-199.

first individual convicted by an international criminal tribunal to serve a long sentence on another continent, where he will experience the hardship of being relocated at an advanced age to a socially and culturally different world, all the while being isolated from his family and other support systems. Additionally, if Mr. Taylor does indeed serve out his sentence in the United Kingdom, he will be placed in a system wherein he is intermixed with domestic prisoners thereby making him vulnerable to attack from other prisoners. The Defence argues that these circumstances make the conditions that he will serve his sentence in a "punishment within a punishment", and asks that the Trial Chambers considers them in mitigation.[130]

69. In regard to the time that Mr. Taylor has already served, the Defence submits that it is indisputable that Mr. Taylor be given credit for the 6 years and one month that he has already served in the custody of the Special Court. The Defence also argues that Mr. Taylor should be given credit for the 2 years and 7 months that he was under de facto house arrest in Nigeria because while there the Nigerian government placed serious restrictions on his liberties and movement, and monitored his communications and activities. The Defence argues that giving Mr. Taylor credit for the time that he was in exile in Nigeria would also be in line with ICTR precedent and British sentencing guidelines.[131]

2. Deliberations

2.1. Gravity of the Offence

70. The Accused has been found responsible for aiding and abetting as well as planning some of the most heinous and brutal crimes recorded in human history. The Trial Chamber is of the view that the offences for which the Accused has been convicted – acts of terrorism, murder, rape, sexual slavery, cruel treatment, recruitment of child soldiers, enslavement and pillage – are of the utmost gravity in terms of the scale and brutality of the offences, the suffering caused by them on victims and the families of victims, and the vulnerability and number of victims.

[130] Defence Sentencing Brief, paras 200-211.

[131] Defence Sentencing Brief, paras 212-225.

71. In determining an appropriate sentence for the Accused, the Trial Chamber has taken into account the tremendous suffering caused by the commission of the crimes for which the Accused is convicted of planning and aiding and abetting, and the impact of these crimes on the victims, physically, emotionally and psychologically. The Trial Chamber recalls the tremendous loss of life - innocent civilians burned to death in their homes, or brutally killed by maiming and torture. The amputation of limbs was a hallmark of terror and cruelty visited upon innocent civilians. For those who survived these crimes, the long-term impact on their lives is devastating – amputees without arms who now have to live on charity because they can no longer work; young girls who have been publicly stigmatized and will never recover from the trauma of rape and sexual slavery to which they were subjected, in some cases resulting in pregnancy and additional stigma from the children born thereof; child soldiers, boys and girls who are suffering from public stigma, highlighted by the identifying marks carved on their bodies, and enduring the after-effects of years of brutality, often irreparable alienation from their family and community, all as a consequence of the crimes for which Mr. Taylor stands convicted of aiding and abetting and planning. The Defence aptly described "the pain of lost limbs, the agony of not only rape in its commonly understood sense, but also the rape of childhood, the rape of innocence, possibly the rape of hope".[132] The Trial Chamber witnessed many survivors weeping as they testified, a decade after the end of the conflict. Their suffering will be life-long.

72. In assessing the gravity of the crimes committed, the Trial Chamber recalls the evidence of several witnesses whose testimony highlights the brutality of the crimes committed, the suffering caused by these crimes on the victims, and their vulnerability. Witness TF1-064 was forced to carry a bag containing human heads to Tombodu.[133] On the way, the rebels ordered her to laugh as she carried the bag dripping with blood. TF1-064 testified that when they arrived at Tombodu, the bag was emptied and she

[132] Transcript, 16 May 2012, p. 49714.

[133] Prosecution Sentencing Brief, para. 59; TF1-064, Transcript 30 September 2008, pp. 17656-17657. The children were killed in Foendor and their heads were taken to Tombodu. See TF1-064, Transcript 30 September 2008, pp. 17652-17653.

saw the heads of her children.[134] Witness TF1-143 was 12 years old[135] when he and 50 other boys and girls were captured by RUF rebels in September 1998 in Konkoba. The rebels turned him into a child soldier after carving the letters "RUF" on his chest.[136] Having been told to amputate the hands of those who resisted him, this 12 year-old subsequently used a machete to amputate the hands of men who had refused to open the door of their shop.[137] When ordered on a food-finding mission to rape an old woman they found at a farmhouse, the boy cried and refused, for which he was punished.[138] The Trial Chamber recalls the testimony of TF1-358, who treated a young nursing mother whose eyes had been pulled out from their sockets after she was gang raped by seven armed rebels, so that she would not be able to later identify them.[139]

73. The scale and brutality of the crimes committed in Sierra Leone, as demonstrated by these individual incidents, is also clearly demonstrated by the code names given by the perpetrators to the military campaigns in which the crimes were committed. Names such as Operation Spare No Soul and Operation No Living Thing, indicating the indiscriminate killing of anything that moved, speak for themselves as to the gravity of the crimes committed.

74. The Trial Chamber notes that the effects of these crimes on the families of the victims, as well as the society as a whole, are devastating. A large number of physically handicapped Sierra Leoneans have been left unable to do the simplest tasks we take for granted as a direct result of amputation. Many of the victims were productive members of society, breadwinners for their families, and are now reduced to beggars, unable to work as a result of the injuries inflicted on them. They are no longer productive members of society.

75. Particularly reprehensible were the crimes committed against vulnerable groups. Girls and women were raped, subjected to sexual slavery, and in many cases

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[134] Prosecution Sentencing Brief, para. 59; TF1-064, Transcript 30 September 2008, p. 17657.
[135] Prosecution Sentencing Brief, para. 61; TF1-143, Transcript 5 May 2008, p. 8970.
[136] Prosecution Sentencing Brief, para. 64; TF1-143, Transcript 5 May 2008, pp. 8970-8977.
[137] Prosecution Sentencing Brief, para. 61, 64; TF1-143, Transcript 5 May 2008, pp. 9035-9036.
[138] Prosecution Sentencing Brief, para. 61; TF1-143, Transcript 5 May 2008, p. 8979.
[139] Prosecution Sentencing Brief, para. 59; TF1-358, Transcript 19 November 2008, pp. 20648-20649; Transcript 20 November 2008, pp. 20724-20726.

unwanted pregnancy. Pregnant women were cut open to settle bets as to the sex of the unborn child. Child soldiers, both boys and girls, had their innocence stolen and were forced to commit murders, rapes and mutilations at a very young age, their lives permanently marred by these traumatic experiences. Elderly men and women, a particularly vulnerable group, were also affected by the crimes committed, their dignity violated by brutal attacks and cruel treatment.

76. In assessing the role of Mr. Taylor, the Trial Chamber has considered the modes of liability under which he was convicted, as well as the nature and degree of his participation. The Trial Chamber recalls that Mr. Taylor's conviction for aiding and abetting the commission of crimes by the AFRC/RUF is based on a number of interventions. In addition to supplying arms and ammunition, and providing military personnel, Mr. Taylor provided various forms of sustained operational support, including communications and logistical support. In addition to this practical assistance, Mr. Taylor also provided encouragement and moral support through ongoing consultation and guidance. The cumulative impact of these various acts of aiding and abetting heightens the gravity of Mr. Taylor's criminal conduct, in the view of the Trial Chamber. Moreover, the steady flow of arms and ammunition that he supplied extended the duration of the Sierra Leone conflict, and the commission of crimes it entailed. Had the RUF/AFRC not had this support from Mr. Taylor, the conflict and the commission of crimes might have ended much earlier.

77. With regard to Mr. Taylor's conviction for planning the commission of crimes in the attacks on Kono and Makeni, and in the invasion of and retreat from Freetown between December 1998 and February 1999, the Trial Chamber notes the submission by the Defence distinguishing the design of the overall operation from the planning of the actual crimes that were perpetrated.[140] The Trial Chamber does not accept this distinction and recalls its finding that having drawn up the plan with Bockarie, Mr. Taylor followed its implementation closely via daily communications, either directly or through Benjamin Yeaten.[141]

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[140] Defence Sentencing Brief, para. 69.

[141] Taylor Trial Judgement, Factual Findings on the Role of the Accused: The Freetown Invasion.

78. The Prosecution argues that the length of time over which the crimes were committed, spanning up to five years, should be taken into account as an aggravating factor. The Trial Chamber has considered this issue in the context of its consideration of the gravity of the offence rather than as an aggravating factor. With regard to the duration of the crimes committed, the Defence submits that the bulk of crimes occurred within an eighteen month period in 1998 and 1999, not the longer period of five years set forth by the Prosecution.[142] The Trial Chamber notes that the Prosecution has outlined various time periods for various crimes, with the time periods as a whole spanning five years.[143] The Trial Chamber notes the Defence acknowledgement that the full time span of crimes committed is five years, as documented on its own chart of the temporal range of counts.[144] In the Trial Chamber's view, it is clear from the evidence, as supported by the submissions of both Parties, that the length of time over which the crimes were committed was five years, with a concentration of the crimes having been committed during an eighteen month or two year period within the five year time span. In the Trial Chamber's view, the length of time over which the crimes continued heightens the gravity of the offence.

2.2. Individual Circumstances of the Convicted Person

79. The Defence submits that Mr. Taylor's age, health and family circumstances "constitute the essence of the individual circumstances contemplated in Article 19(2) of the Statute" and that they may be regarded as mitigating factors.[145] Mr. Taylor is 64 years old. The Trial Chamber is not aware of any serious concerns relating to Mr. Taylor's health, and no medical evidence has been submitted relating to his health. The Trial Chamber notes that Mr. Taylor has and will continue to have access to medical attention as needed throughout the period of his sentence. His age and the fact that he is married with children are not, in the Trial Chamber's view, mitigating factors in this case. Further, his social, professional and family background, which the Defence

[142] Prosecution Sentencing Brief, para. 76; Transcript, 16 May 2012, p. 49716.

[143] Prosecution Sentencing Brief, para. 77.

[144] Defence Sentencing Brief, Annex F.

[145] Defence Sentencing Brief, paras 184-188.

submits shows the likelihood of rehabilitation,[146] is not a mitigating factor in the Trial Chamber's view. The Trial Chamber recalls that the SCSL Appeals Chamber, as well as the ICTY Appeals Chamber, has held that the primary objectives in sentencing must be retribution and deterrence".[147] Moreover, in the absence of Mr. Taylor's acceptance of responsibility or remorse for the crimes committed, the Trial Chamber does not consider the likelihood of rehabilitation to be significant, nor is it demonstrated by his social, professional and family background.

80. In light of these considerations, the Trial Chamber finds that nothing in Mr. Taylor's personal circumstances justifies any mitigation of his sentence.

2.3. Alleged Selective Prosecution

81. The Defence and Mr. Taylor have both highlighted their contention that the Accused was singled out for selective prosecution. The Trial Chamber has addressed this issue in its Trial Judgement and found that Mr. Taylor was not singled out for selective prosecution.[148] In the Trial Chamber's view, this issue is not relevant to sentencing.

2.4. Time Served

82. On 7 March 2003, the Indictment against Mr. Taylor was approved by the Special Court under seal, and a warrant for Mr. Taylor's arrest was issued. On 4 June 2003, the Indictment and Warrant of Arrest were publicly disclosed, and formally unsealed one week later.[149] On 11 August 2003, Mr. Taylor stepped down from the Presidency. He went into exile to Nigeria where he remained until 29 March 2006 when he was arrested by Nigerian authorities, following a request by Liberian President Johnson Sirleaf that he be surrendered to the Special Court pursuant to his Warrant of Arrest. On the same day he was handed over to the Liberian authorities who in turn transferred him to the custody of the Special Court. For security reasons, by order of the

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[146] Defence Sentencing Brief, para. 114.

[147] *CDF* Appeal Judgement, para. 532.

[148] *Taylor* Trial Judgement, paras 83-84.

[149] *Taylor* Trial Judgement, Annex B: Procedural History.

President of the Court, in June 2006 Mr. Taylor was transferred from Freetown to The Netherlands to stand trial in The Hague, where he has been on remand since.[150]

83. The Defence submits that in addition to the time he has spent in the custody of the Court, Mr. Taylor should be credited for time that he spent in Nigeria prior to his transfer, an additional 2 years and 7 months.[151] The Defence submits that during this time Mr. Taylor was effectively under house arrest and that the time therefore constitutes detention, highlighting the conditions of his stay in Nigeria as set forth in Exhibit D-406.[152] The Prosecution submits that Mr. Taylor was not under house arrest, highlighting his own testimony that he was free to go where he wanted during this time.[153]

84. Rule 101(D) of the Special Court's Rules of Procedure and Evidence provides that credit for time served shall be taken into consideration for any period "during which the convicted person was *detained in custody pending his transfer to the Special Court or pending trial or appeal*" [emphasis added].[154] The Trial Chamber notes that house arrest has been recognized as a form of detention pending surrender which might be considered for purposes of crediting a convicted person for time served.[155] However, in the case of Mr. Taylor, the period of time he spent in Nigeria cannot be considered, in the Trial Chamber's view, as having taken place pending his transfer to the Court and therefore does not fall within the scope of Rule 101(D). Mr. Taylor's time in Nigeria was not unrelated to his effort to avoid the jurisdiction of the Court, and during his time in Nigeria, the Court was in no way involved in the conditions governing his stay there. It is from 29 March 2006 that Mr. Taylor was detained in custody pending his transfer to the Court.

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[150] *Taylor* Trial Judgement, paras. 9-10.

[151] Defence Sentencing Brief, paras 212-225.

[152] Exhibit D-406, "Letter from the Minister of Foreign Affairs in Nigeria, Ambassador Olu Adeniji, to Mr. Charles Taylor, August 11 2003", paras 212-220.

[153] Transcript, 16 May 2012, p. 49694.

[154] Rules of Procedure and Evidence, Rule 101 (D).

[155] *Blaškić* Judgement, para 18; Defence Sentencing Brief, Annex S.

85. The Trial Chamber further notes, as highlighted by the Prosecution, that Mr. Taylor himself testified that he was not under house arrest during the period of time he was in Nigeria following his departure from Liberia. Exhibit D-406 is cited by the Defence as listing the conditions of his stay in Nigeria and including serious restrictions on his movement and liberty.[156] The Trial Chamber notes that the conditions listed in Exhibit D-406 are set forth as "Conditions of Asylum for Former President Charles Taylor". They list a number of obligations of Mr. Taylor, and of Nigeria. The obligations of Mr. Taylor include his abstention from subversive activities against Nigeria, and from political activities in or military incursions into Liberia. The restrictions on his movement are the requirement that he obtain clearance to leave the city limits of Calabar and that he be accompanied on any travel outside Calabar by a Nigerian escort officer. Security is listed as an obligation of Nigeria, to provide protection to Mr. Taylor.[157] The Trial Chamber does not find that these conditions governing the asylum offered to Mr. Taylor by the Government of Nigeria can be considered to constitute "house arrest", as alleged by the Defence.

86. In light of these considerations, for reasons of fact and law, the Trial Chamber does not credit Mr. Taylor for the period of time he spent in Nigeria prior to his arrest and finds that his detention for the purpose of credit for time served commenced on 29 March 2006.

2.5. Mitigating Factors

87. The Defence has set forth a number of factors to be considered in mitigation of sentence, while the Prosecution submits that there are no significant mitigating factors.

88. The Trial Chamber has addressed the role of Mr. Taylor in the peace process for Sierra Leone at length in its Judgement, finding that while Mr. Taylor publicly played a substantial role in this process, including as a member of the ECOWAS Committee of Five, later Committee of Six, secretly, he was fuelling hostilities between the AFRC

[156] Defence Sentencing Brief, para. 215.

[157] Exhibit D-406, "Letter from the Minister of Foreign Affairs in Nigeria, Ambassador Olu Adeniji, to Mr. Charles Taylor, August 11 2003".

/RUF and the democratically elected authorities in Sierra Leone, by urging the former not to disarm and by actively providing them with arms and ammunition. For this reason, the Trial Chamber does not find Mr. Taylor's role in the peace process to be a mitigating factor in sentencing. The Trial Chamber notes the constructive role Mr. Taylor played in the release of UN peacekeepers and other hostages, but in light of the gravity of the crimes does not consider this intervention a significant mitigating factor.

89. The Defence submits that Mr. Taylor's record of public service to his country, and his resignation from office, are mitigating factors. With regard to his resignation from office and departure from Liberia, the Trial Chamber notes the circumstances at the time, including his indictment by this Court, and does not find that his public service, or his resignation from office and departure from Liberia, to be mitigating factors in sentencing.

90. The Defence suggests that the cooperation of Mr. Taylor with the Prosecution and the Court should be considered in mitigation. The Trial Chamber recalls that Mr. Taylor directed his counsel to disregard orders of the Trial Chamber and does not consider that Mr. Taylor cooperated with the Prosecution and the Court. For this reason cooperation cannot be considered a mitigating factor for sentencing.

91. The Defence submits that expressions of sympathy and compassion by Mr. Taylor for the victims of the crimes committed should be taken into account as a mitigating factor.[158] Although the Defence accepted that crimes were committed in Sierra Leone, it nevertheless put the Prosecution to proof beyond reasonable doubt of the crimes charged in the Indictment, necessitating the testimony of numerous victims who relived in this Court the pain and suffering they experienced. In his statement to this Court, Mr. Taylor stated that "Terrible things happened in Sierra Leone and there can be no justification for the terrible crimes."[159] Mr. Taylor has not accepted responsibility for the crimes of which he stands convicted, and the Trial Chamber does not consider this statement, and the other comments made by Mr. Taylor, to constitute remorse that would merit recognition for sentencing purposes.

[158] Defence Sentencing Brief, paras 176-183.

92. The Defence submits that Mr. Taylor's lack of a prior criminal record and his good conduct in detention should be considered as mitigating factors. The Trial Chamber notes the report submitted by the Defence of Mr. Taylor's good conduct in detention and has taken this report into account, although it does not consider this factor to have great significance in light of the gravity of the crimes committed. Similarly, with regard to Mr. Taylor's lack of a prior criminal record, in light of the gravity of the crimes committed, this is not, in the Trial Chamber's view, a significant factor. Moreover, the Trial Chamber notes the question raised by the Prosecution – who was in a real position of power or authority to prosecute the President of Liberia?[160] The Trial Chamber considers that while not impossible, it is difficult to prosecute a Head of State.

93. The Defence submits that the hardship on Mr. Taylor of serving a sentence outside his country of origin should be a mitigating factor. The Trial Chamber notes that the determination as to where Mr. Taylor will serve his sentence shall be made by the President of the Court following sentencing, pursuant to Rule 103 of the Rules of Procedure and Evidence,[161] and recalls the determination of the Appeals Chamber that the fact that a sentence is to be served in a foreign country should not be considered in mitigation.[162]

94. The Trial Chamber recalls that Mr. Taylor was found not guilty of participation in a joint criminal enterprise, and not guilty of superior responsibility for the crimes committed. A conviction on these principal or significant modes of liability might have justified the sentence of 80 years' imprisonment proposed by the Prosecution. However, the Trial Chamber considers that a sentence of 80 years would be excessive for the modes of liability on which Mr. Taylor has been convicted, taking into account the limited scope of his conviction for planning the attacks on Kono and Makeni in December 1998 and the invasion of and retreat from Freetown between December 1998 and February 1999.

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[159] Transcript, 16 May 2012, p. 49725.

[160] Transcript, 16 May 2012, p. 49697.

[161] Practice Direction for Designation of State for Enforcement of Sentence, para. 5.

[162] *RUF* Appeal Judgement, paras 1246, 1316.

2.6. Aggravating Factors

95. The Prosecution argues that Mr. Taylor's "willing and enthusiastic participation" in the crimes constitutes an aggravating factor, citing his detailed knowledge of the crimes that were committed.[163] The Defence contends that to consider this an aggravating factor would amount to "double counting" elements of the offences for which Mr. Taylor was convicted.[164] The Trial Chamber agrees that Mr. Taylor's knowledge of the crimes is an element of his conviction and cannot be considered an aggravating factor.

96. The Prosecution argues that Mr. Taylor's leadership role, as President of Liberia and as a member of the ECOWAS Committee of Five, imbued him with inherent authority, which he abused to "fan the flames of conflict".[165] The Defence contends that this argument fails the pleading requirement and cites jurisprudence which the Trial Chamber has considered in its discussion of Applicable Law.[166] The Trial Chamber notes that the precedents cited state, more broadly than suggested by the Defence, that aggravating circumstances are "those circumstances directly related to the commission of the offence charged".[167] As the leadership role of Mr. Taylor during the Indictment period is directly related to the commission of the offences with which he was charged, the Trial Chamber has considered this role as an aggravating factor.

97. The Trial Chamber notes that as President of Liberia, Mr. Taylor held a position of public trust, with inherent authority, which he abused in aiding and abetting and planning the commission of the crimes for which he has been convicted. As a Head of State, and as a member of the ECOWAS Committee of Five and later the Committee of Six, Mr. Taylor was part of the process relied on by the international community to bring peace to Sierra Leone. But his actions undermined this process, and rather than promote peace, his role in supporting the military operations of the AFRC/RUF in various ways, including through the supply of arms and ammunition, prolonged the

[163] Prosecution Sentencing Brief, paras 79-81.

[164] Defence Sentencing Brief, para. 107.

[165] Prosecution Sentencing Brief, paras 83-84.

[166] See Applicable Law, *supra* para. 28.

conflict. The lives of many more innocent civilians in Sierra Leone were lost or destroyed as a direct result of his actions. As President and as Commander-in-Chief of the Armed Forces of Liberia, Mr. Taylor used his unique position, including his access to state machinery and public resources, to aid and abet the commission of crimes in Sierra Leone, rather than using his power to promote peace and stability in the sub-region. The Trial Chamber finds that Mr. Taylor's special status, and his responsibility at the highest level, is an aggravating factor of great weight. There is no relevant sentencing precedent for Heads of State who have been convicted of war crimes and crimes against humanity, but as Mr. Taylor himself told the Trial Chamber "I was President of Liberia. I was not some petty trader on the streets of Monrovia".[168]

98. The Trial Chamber notes that the actions of Mr. Taylor, then President of Liberia, caused and prolonged the harm and suffering inflicted on the people of Sierra Leone, a neighbouring country not his own. While Mr. Taylor never set foot in Sierra Leone, his heavy footprint is there, and the Trial Chamber considers the extraterritoriality of his criminal acts to be an aggravating factor.

99. The Trial Chamber found that there was a continuous supply by the AFRC/RUF of diamonds mined from areas in Sierra Leone to Mr. Taylor, often in exchange for arms and ammunition. Mr. Taylor repeatedly advised the AFRC/RUF to capture Kono, a diamondiferous area, and to hold Kono and to recapture Kono, so that they would have access to diamonds which they could use to obtain from and through him the arms and ammunition that were used in military operations to target civilians in a campaign of widespread terror and destruction. Mr. Taylor benefited from this terror and destruction through a steady supply of diamonds from Sierra Leone. His exploitation of the conflict for financial gain is, in the view of the Trial Chamber, an aggravating factor.

100. The Trial Chamber notes that although the law of Sierra Leone provides for the sentencing of an accessory to a crime on the same basis as a principal, the jurisprudence of this Court, as well as the ICTY and ICTR, holds that aiding and abetting as a mode of

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[167] *Delalić* Appeal Judgement, para. 763; *Kunarac* Trial Judgement, para. 850.

[168] *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T-1280, Statement of Dakhpannah Dr. Charles Ghankay Taylor, 18 May 2012, Annex A, para 36.

liability generally warrants a lesser sentence than that imposed for more direct forms of participation.[169] While generally, the application of this principle would indicate a sentence in this case that is lower than the sentences that have been imposed on the principal perpetrators who have been tried and convicted by this Court, the Trial Chamber considers that the special status of Mr. Taylor as a Head of State puts him in a different category of offenders for the purpose of sentencing.

101. Although Mr. Taylor has been convicted of planning as well as aiding and abetting, his conviction for planning is limited in scope. However, Mr. Taylor was functioning in his own country at the highest level of leadership, which puts him in a class of his own when compared to the principal perpetrators who have been convicted by this Court.

102. Leadership must be carried out by example, by the prosecution of crimes not the commission of crimes. As we enter a new era of accountability, there are no true comparators to which the Trial Chamber can look for precedent in determining an appropriate sentence in this case. However, the Trial Chamber wishes to underscore the gravity it attaches to Mr. Taylor's betrayal of public trust. In the Trial Chamber's view this betrayal outweighs the distinctions that might otherwise pertain to the modes of liability discussed above.

103. Accordingly, the Trial Chamber is of the view that his unique status as Head of State, and the other aggravating factors set forth above, should be reflected in his sentence.

[169] *See* Applicable Law, *supra* para. 21.

IV. DISPOSITION

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER UNANIMOUSLY SENTENCES Charles Ghankay Taylor to a **SINGLE TERM OF IMPRISONMENT OF FIFTY (50) YEARS** for all the Counts on which he has been found **GUILTY**. Credit shall be given to him for the period commencing from 29 March 2006 during which he was detained in custody pending this trial.

Done in The Hague, Netherlands, this 30th day of May 2012.

Justice Teresa Doherty | Justice Richard Lussick, Presiding Judge | Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]