Topic 6(b):
Special Court for Sierra Leone: Joint Criminal Enterprise

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Summary

On 2 March 2009, the Trial Chamber of the Special Court for Sierra Leone ("**SCSL**") handed down its judgment in *The Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao*,[1] also known as the "**RUF Case**". On October 2009, the Appeals Chamber for the SCSL handed down its judgment in this case.

Sesay and Kallon were unanimously convicted, pursuant to Article 6(1) and (3) of the Court's Statute, on the basis of their roles in a joint criminal enterprise ("**JCE"**), and on the basis that they personally committed, planned, aided and abetted the commission of crimes and also failed to take the requisite action for the acts of their subordinates. Gbao was convicted of war crimes and crimes against humanity for his role in a JCE and culpability as a superior.

All men were found to have a common criminal purpose which consisted of the objective to gain and exercise political power and control over the territory of Sierra Leone. The Appeals Chamber relied on the Courts decision in *Brima et al.* finding that the common criminal purpose of a JCE is comprised of both the objective of the JCE and the means contemplated to achieve that objective.

The finding extended the existing concept of JCE liability, such that as long as other participants in a JCE commit crimes that are within a common criminal purpose, a defendant charged can be held responsible for all natural and foreseeable consequences of the JCE, whether or not they possessed the intention to commit those crimes.

In a partially dissenting judgment, Justice Fisher expressed concern with the extension of this theory of liability. The extension has also been criticised in the international legal community for the potential implications it may have for the presumption of innocence and the right to a fair trial.

The Appeals Chamber also rejected Kallon's appeal on the basis that he was not a member of the JCE, but was used as a 'tool' by one or more JCE members to commit crimes in furtherance of the JCE.

The defendants argued that there were mitigating factors at play, such as being conscripted or forced to join a JCE, and indirect participation in crimes through involvement in the JCE. These arguments were largely rejected by the Trial Chamber, on the basis that defendants were free to leave after conscription, and due to the seniority of defendants in the JCE. Other mitigating factors argued by the defendants and aggravating factors argued by the Prosecution were rejected on evidential grounds. This decision was upheld by the Appeals Chamber.

[1] *Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao*,[2009] SCSL-04-15-T (Special Court for Sierra Leone, Trial Chamber, Justices Boutet, Itoe and Thompson) 2 March 2009.

1 The Facts of the Case

1.1 Summary of the charges, findings, and sentence

On 2 March 2009, the Trial Chamber of the SCLC handed down its judgment in *The Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao*,[2] ("**RUF Case"**). Each of the three defendants in the case (collectively "**Defendants**") had held senior roles in the Revolutionary United Front ("**RUF"**), which was the main protagonist in the violent civil war that tore apart Sierra Leone between 1991 and 2002. Originally, the indictment had also included other senior members of the RUF, including leader Foday Saybana Sankoh, and Battlefield Commander Sam Bockarie, but both Sankoh and Bockarie died in 2003 before they could be tried.[3]

The Trial Chamber found the Defendants guilty of the majority of the counts under which they were indicted. Sesay and Kallon were each found guilty of sixteen of eighteen counts, and Gbao was found guilty of fourteen of the eighteen. On 8 April 2009, the Trial Chamber sentenced the Defendants to between 6 years and 52 years imprisonment for each offence, with the sentences to run concurrently.[4] Sesay was sentenced to a total of 52 years imprisonment, with an average sentence of approximately 42 years and 6 months of imprisonment per offence. Kallon was sentenced to 40 years (an average of 32 years and 6 months per offence), and Gbao was sentenced to 25 years (an average of 16 years and 2 months per offence).

Both the Prosecution and the Defendants appealed from the findings of the Trial Chamber on numerous grounds, including defects in the indictment, fair trial issues, and errors regarding joint criminal enterprise ("**JCE**"). The majority of the appeal grounds pleaded (including those pertaining to JCE) were dismissed. The Defendants' appeal against their sentences did not result in any reduction.

1.2 The role of the RUF

In order to understand the findings in the RUF Case, particularly in relation to JCE, it is necessary to understand the role of the RUF in the civil war in Sierra Leone. The RUF formed in the 1980s, with the purported aim of overthrowing Sierra Leone's one-party government. Led by Foday Saybana Sankoh, an ex-member of the Sierra Leone Army, the RUF first attacked in March 1991, taking control of districts in the east and south of the country. Following the RUF's attack on the south and east, a military coup overthrew Sierra Leone's Government, and the military governed until 1996. The RUF continued to extend its control over the south eastern portion of Sierra Leone throughout that period.

In 1996, the people of Sierra Leone democratically elected Ahmad Tehan Kabbah as President. A peace accord signed by President Kabbah and the RUF in November 1996 resulted in a short lived ceasefire, with hostilities resuming in January 1997. On 25 May 1997, the Sierra Leone Army overthrew President Kabbah and his Government. Johnny Paul Koroma was installed as the Chairman of the newly formed Armed Forces Revolutionary Council ("**AFRC**") and, on his invitation, the RUF joined forces with the AFRC to form the "Supreme Council", which had legislative and executive power over Sierra Leone. Together, the RUF/AFRC junta controlled Freetown (the capital of Sierra Leone) as well as many major towns and districts, including the

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2 *Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, [2009] SCSL-04-15-T (Special Court for Sierra Leone, Trial Chamber, Justices Boutet, Itoe and Thompson), 2 March 2009 ("*RUF Case*").

3 It has been said that the absence of these two high profile men resulted in the trials of the RUF losing "some of their meaning": see Cecily Rose, "Troubled Indictments at the Special Court for Sierra Leone: The Pleading of Joint Criminal Enterprise and Sex-Based Crimes" (2009) 7 *Journal of International Criminal Law* 353 at 356.

4 *Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, [2009] SCSL-04-15-T (Special Court for Sierra Leone, Trial Chamber, Justices Boutet, Itoe and Thompson), 8 April 2009 ("Sentencing Judgment").

diamond mines in Tongo Fields. Throughout the period of the junta's rule, grave violations of international humanitarian law were perpetrated on the civilian population as the junta attempted to consolidate their power.

During the period of their rule, the junta was widely condemned by the international community. Sanctions were imposed by the Economic Community of West African States ("**ECOWAS**") Security Council and the United Nations Security Council. Between these external pressures and an internally troubled alliance, the junta struggled to maintain power. In 1998, ECOWAS' Ceasefire Monitoring Group, ECOMOG, deployed to enforce the sanctions) joined forces with a civilian militia and regained control of the capital, reinstalling Kabbah as President. After losing power, the RUF/AFRC alliance splintered, although the groups continued to offer some logistical support to each other. After unsuccessful attacks on Freetown by the AFRC and the RUF, the Lome Peace Accord was signed in July 1999, creating a power sharing arrangement between the RUF and President Kabbah's government. Hostilities recommenced shortly afterwards, however, and continued until a final cessation of hostilities was declared in January 2002 following the October 1999 deployment of 6,000 UN peacekeepers under the UN's mission to Sierra Leone ("**UNAMSIL**").

1.3 The roles of Sesay, Kallon and Gbao

Sesay, Kallon and Gbao were indicted in 2003, and charged with crimes against humanity, violations of international humanitarian law, and violations of Common Article III of the Geneva Conventions, and of Additional Protocol II. The indictment alleged that the Defendants, as members of the RUF and in cooperation with the AFRC:

> *shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise.*
>
> *The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize resistance to their geographic control, and to use members of the population to provide support to the members of the joint criminal enterprise. The crimes alleged in this indictment, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.*

In its 2 March 2009 Judgment, the Trial Chamber found that during the period of the AFRC/RUF junta, a joint criminal enterprise existed between the senior leaders of the AFRC and RUF, including the Defendants (with one judge dissenting as to Gbao's participation). The majority found the Defendants guilty of crimes against humanity (for extermination, murder, rape, sexual slavery, other inhumane acts (forced marriages and physical violence) and enslavement), violations of common Article 3 of the Geneva Conventions (violence to life, health and physical or mental well being of persons (in particular acts of terrorism, collective punishments, murder, outrages upon personal dignity, mutilation and pillage) and for other violations of international humanitarian law (for intentional attacks against peacekeepers). Justice Boutet dissented in respect of Gbao in relation to some of these charges. Further, Sesay and Kallon were found guilty of using child soldiers, and for violence against the UNAMSIL peacekeepers.

2 The existing legal doctrine of JCE and types of JCE

2.1 Background and development of JCE

JCE, or the "common purpose doctrine", is a mode of criminal responsibility whereby an accused can be held responsible for a crime carried out by other people, if that crime was committed as part of a common criminal purpose shared by members of a group to which the accused belonged.[5] The doctrine recognises that an individual who makes a significant contribution to the carrying out of a criminal purpose, does not merely "aid and abet" the crime, but actually *commits* the crime - with culpability equal to any members of the group that in fact "pulled the trigger".[6]

The seminal decision on JCE is the *Tadić* case,[7] in which the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia ("**ICTY**") recognised that most international crimes are, by nature, "manifestations of collective criminality" as "the crimes are often carried out by groups of individuals acting in pursuance of a common criminal design."[8] Further, while only some of the group may carry out the physical aspect of the crime, "the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question."[9] While JCE is not explicitly included in the Statute of the ICTY (or the SCSL), the Appeals Chamber held that JCE was included within the Tribunal's jurisdiction as a necessary consequence of the interpretation of the objects and purpose of the Statute.[10]

2.2 The categories of JCE

In *Tadić*, the Appeals Chamber extensively discussed international and domestic laws and judgments, before describing three types of JCE, and the main elements of the doctrine.[11]

The three types of JCE are:

(a) the "basic" form

(b) the "systemic" form; and

(c) the "extended" or "constructive" form.

The three categories of JCE are explained by the *Tadić* Appeals Chamber as follows:

> *First… where all participants in the common design possess the same criminal intent to commit a crime (and one or more of them actually perpetrate the crime, with intent). Secondly, in the so-called "concentration camp" cases, where the requisite mens rea comprises knowledge of the nature of the system of ill-treatment and intent to further the common design of ill-treatment.. … With regard to the third category of cases, it is appropriate to apply the notion of "common purpose" only where the following requirements concerning mens rea are fulfilled: (i) the intention to take part in a joint*

5 See discussion in Gideon Boas, James Bischoff and Natalie Reid, *Forms of Responsibility in International Criminal Law*, (2007) at 8-9.

6 *Prosecutor v Milan Milutinovic, Nikola Sainovic & Dragoljub Ojdanic: Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction - Joint Criminal Enterprise*, [2003] IT-99-37-AR72 (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber) 21 May 2003, [20].

7 *The Prosecutor v Duško Tadić*, IT-94-1-A (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber) 15 July 1999 ("*Tadić*").

8 Ibid, [191].

9 Ibid.

10 Ibid [189].

11 Ibid [195]-[224].

> *criminal enterprise and to further - individually and jointly - the criminal purposes of that enterprise; and (ii) the foreseeability of the possible commission by other members of the group of offences that do not constitute the object of the common criminal purpose. Hence, the participants must have had in mind the intent, for instance, to ill-treat prisoners of war (even if such a plan arose extemporaneously) and one or some members of the group must have actually killed them…. What is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk.*[12]

The actus reus for all three types of JCE is the same. First, there must be a "plurality of persons", acting in concert with one another - although they need not be part of a formal organisation or structure.[13] Second, there must be a "common plan, design or purpose which amounts to or involves the commission of a crime". In the *Tadić* case, the purpose itself was the criminal objective of ethnic cleansing (ridding the region of the non-Serb population, by committing inhumane acts).[14] In the *RUF Case* (as in the preceding *Brima* case), the objective was not inherently criminal: rather, the objective was the non-criminal objective of taking power and control over Sierra Leone, but with an intention to implement that purpose through the commission of crimes.[15] The third element is that the accused must participate in the common purpose. This requires a "significant contribution" to the crimes.[16]

The mens rea for the three categories differs. Basic JCE requires the accused to intend to commit the crime, and to intend to participate in the common plan. The intention to commit the crime must be shared by all participants in the JCE.[17] Systemic JCE, which was not pleaded in the *RUF Case*, requires "personal knowledge of the system of ill-treatment … as well as the intent to further this common concerted system of ill-treatment."[18] The mens rea for Extended JCE is two-fold: - the accused "must have had the intention to take part in and contribute to the common purpose" and, where the crime that was committed was beyond the common purpose, but was "a natural and foreseeable consequence" of the purpose, the accused "must have had sufficient knowledge that the additional crime was a natural and foreseeable consequence to him in particular" and that the additional crime "might be perpetrated by a member of the group".[19] This has also been formulated as a requirement that an accused must "willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise."[20]

Since *Tadić*, JCE has played a prominent role before the ICTY and the International Criminal Tribunal for Rwanda,[21] and has also been key in most of the cases before the SCSL, including in the recent case of *The Prosecutor v Brima, Kamara and Kanu (AFRC Case)*,[22] as well as the *RUF Case*. The popularity of the doctrine, however, has led to criticisms, particularly due to the

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12 Ibid, [220].

13 *RUF Case*, above n 2, [257].

14 *Tadić*, above n 7, 231.

15 *RUF Case*, above n 2, [1979]-[1980].

16 *RUF Case*, above n 2, [261].

17 *RUF Case,* above n 2, [265].

18 *Tadić*, above n 7, 228.

19 *RUF Case*, above n 2, [266].

20 *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgment), 28 February 2005, [83].

21 *RUF Case*, above n 2 at [253], referencing Gacumbitsi Appeal Judgement, [158]-[179]; Stakic Appeals Judgement, [62] referring to Kvocka et al. Appeal Judgement, [79]; Prosecutor v. Ntakirutimana and Ntakirutimana, ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, [463]-[468] [Ntakirutimana Appeal Judgement]; Prosecutor v. Vasiljevic, IT-98-32-A, Judgement (AC), 25 February 2004, [95] [Vasiljevic Appeal Judgement]; Prosecutor v. Krnojelac, IT-97-25-A, Judgement (AC), 17 September 2003, [29]-[32] [Krnojelac Appeal Judgement]; Tadic Appeal Judgement, [220].

22 [2007] SCSL-2004-16-T (Special Court for Sierra Leone, Trial Chamber), 20 June 2007 and [2008] SCSL-2004-16-A (Special Court for Sierra Leone, Appeals Chamber), 22 February 2008.

large number of individuals that can be caught within its net. Extended JCE in particular has been reportedly labelled the "Just-Convict-Everyone" liability concept,[23] and commentators have expressed concern that it may end up having a "broad or limitless application."[24]

3 The key findings

In the *RUF Case*, both Basic JCE and Extended JCE were pleaded.

A number of controversies relating to the second *actus reus* element of JCE, the need for a "common purpose", arose during the appeal. The Defendants challenged the adequacy of the pleadings, and the definition of the common purpose applied by the Trial Chamber. Justice Boutet also strongly dissented from the Trial Chamber's majority finding that Gbao had participated in the JCE, a position supported by partially dissenting Justice Fisher.

The Trial Chamber held that the AFRC and the RUF shared a common purpose to take control of Sierra Leone, which they intended to implement through violence and the commission of crimes against international humanitarian law. The Trial Chamber explicitly acknowledged that the objective of taking control of Sierra Leone was not a criminal purpose in itself. Rather, it came within the scope of JCE as the Defendants shared the intention to achieve the objective through violence, including war crimes and crimes against humanity. As noted above, this application of the "common purpose" element differed from cases like *Tadić*, where the objective itself (ethnic cleansing) was a crime under international humanitarian law. The interpretation of the "common purpose" in the RUF case was not novel, however, as a similar understanding was applied in the AFRC case, and in a number of ICTY cases.

The defendants argued on appeal that the Trial Chamber had erred in its findings on criminal purpose on a number of grounds. Significantly, Sesay's counsel argued that it was necessary that the non-criminal objective (taking control of Sierra Leone) was "inextricably and necessarily" linked to the criminal means. Counsel argued that no such link existed in this case, where the objective of taking power could have been achieved through a number of different (including non-criminal) means.[25]

The Appeals Chamber rejected this ground of appeal. The Appeals Chamber reiterated that all that is required is that the criminal means are "contemplated" as the means to achieve the non-criminal objective.[26] The Appeals Chamber did not elucidate what degree of "contemplation" is required in order to bring a common purpose within the scope of the JCE principle.

The Appeals Chamber also refuted Sesay's assertion that the Trial Chamber had conflated objective and means. Rather, it clarified that, in determining the criminality of the purpose, it was necessary to consider both the objective and the means to achieve that objective.[27]

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[23] See "Professor William Schabas on AFRC Decision", 25 June 2007 <http://www.charlestaylortrial.org/2007/06/25/professor-william-schabas-on-afrc-decision/> at 21 July 2010; see also M.E. Badar, "Just Convict Everyone! - Joint Perpetration: From *Tadic* to *Stakic* and Back Again", (2006) 6 *International Criminal Law Review* 293 at fn 47.

[24] Boas et all, *Forms of responsibility*, above n 5 at 87. Although see Beth Van Schaak, "Atrocity Crimes Litigation: 2008 Year-In-Review", (2009) 7 *Northwestern University Journal of International Human Rights* 170 at 51.

[25] *Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, [2009] SCSL-04-15-A (Special Court for Sierra Leone, Appeals Chamber, Justices Winter, Kamanda, King, Ayoola and Fisher), 26 October 2009 [286] ("Appeal Judgment").

[26] Appeals Judgment, ibid, [296].

[27] Appeals Judgment, ibid, [295].

4 How was the notion of JCE extended in the RUF case and what are the implications for the presumption of innocence and the right to a fair trial?

The Appeals Chamber's findings in relation to the liability of Gbao have developed the notion of JCE such that as long as the accused was part of a JCE with a common purpose or goal, they can be held liable for the crimes of the other participants in the JCE which are within the common purpose or goal of the JCE, whether or not the accused shared the necessary intention.

Although found to have been involved in the enslavement of civilians on RUF farms within the Kailahun district,[28] Gbao was essentially an RUF ideology expert and instructor, and was not found to have the intent to commit many of the crimes with which he was charged. Ultimately, the Appeal Chamber found that Gbao was a member of the JCE, therefore intended the common criminal purpose, and was liable for the commission of the crimes that were within the common criminal purpose, so long as it was "reasonably foreseeable that some members of the JCE or persons under their control would commit crimes."[29]

In a partially dissenting judgment of the Appeals Chamber, Justice Fisher denounced this extension of JCE liability, and found the majority's reasoning to be "not only circular, but dangerous".[30] She found that by eliminating the requirement for a shared common criminal purpose, the majority dangerously expand the scope of potential JCE liability beyond the limits allowed by law, and that as a result, Gbao stands convicted for committing crimes he did not intend, to which he did not significantly contribute, and which were not a reasonably foreseeable consequence of the crimes he did intend.

Justice Fisher noted that the extension of JCE liability had no basis in customary international law at the time the crimes were committed, thereby violating the principle of *nullum crimen sine lege* (that is, that penal law cannot apply retroactively).[31] Justice Fisher also warned that the legal elements of JCE must be strictly construed to safeguard against the doctrine overreaching or lapsing into guilt by association.[32]

Critics of JCE liability who previously argued that without careful and limited application, JCE can violate the fair trial rights of defendants, or allow prosecutors to get around mens rea requirements for serious crimes of specific intent,[33] have criticised this new extended theory of liability. For example, in response to the RUF decision, Mettraux argued that, because so little evidence is needed to expand the crimes for which an accused can be held responsible, the JCE theory effectively "rolls back the presumption of innocence".[34] Secondly, concern has been raised that the broad application of the doctrine could undermine the legitimacy of international criminal law, and that by incorrectly applying its own laws, the International Criminal Court's goals of world justice and accountability would be undermined.[35]

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28 Sentencing Judgment, above n 4, [270].

29 Appeal Judgment, above n 25, [493].

30 Appeal Judgment, above n 25, Partially Dissenting and Concurring Opinion of Justice Fisher [18].

31 Ibid, [19].

32 Ibid [48].

33 Guénaël Mettraux, *International Crimes and the ad Hoc Tribunals* (2005), 293.

34 See Guenael Mettraux "Joint Criminal Enterprise has grown another tentacle!" (18 November, 2009) *International Criminal Law Bureau* <*www.internationallawbureau.com/blog/?p=944*> at 1 December 2009.

35 Jennifer Easterday "Obscuring Joint Criminal Enterprise Liability: The Conviction of Augustine Gbao by the Special Court of Sierra Leone" (2009) 3 *Berkeley Journal of International Law Publicist Online*, <http://bjil.typepad.com/publicist/2010/01/obscuring-joint-criminal-enterprise-liability-the-conviction-of-augustine-gbao-by-the-special-court-.html> at 3 March 2010.

5 Liability of persons who are used as 'tools' by a member of the JCE

One of the obstacles faced by the Trial Chamber in this case was that most of the crimes perpetrated in the course of the civil war had been perpetrated by the "rank and file" of the RUF. As there was insufficient evidence to establish that these individuals were part of the JCE, the Trial Chamber had to rely on the principle that the direct perpetrator of the crime (i.e. the person "pulling the trigger") need not be a member of the JCE, if that person is being used as a "tool" of the JCE.[36] In this case, the Trial Chamber found that the widespread and systematic nature of the crimes committed by these lower ranking individuals showed that they had been used by members of the JCE to commit crimes in furtherance of the common criminal purpose.

Kallon's defence team challenged the use of the "tool" principal as being wrong in law, despite the established use of the principal in previous jurisprudence. The ICTY Appeals Chamber, for instance, has recognised that a member of the JCE can be held responsible for crimes of a non member, where there is a link such as "evidence that a JCE member explicitly or implicitly requested the non-JCE member to commit such a crime or instigated, ordered, encouraged, or otherwise availed himself of the non-JCE member to commit such a crime."[37]

The Appeals Chamber rejected Kallon's appeal on this ground. Significantly, the Appeals Chamber rejected Kallon's contention that JCE required some causal link between the member of the JCE and the principal perpetrator. The Appeals Chamber noted that the actus reus of JCE required that the JCE members make a *significant* contribution, rather than a causal contribution.[38] The rest of his challenges relating to this principle, including reliance on US law regarding the doctrine of conspiracy, were also unsuccessful.

The Defendants alleged, in broad terms, that the Trial Chamber made a number of errors in linking the members of the JCE with the principal perpetrators and individual crimes. This ground was also unsuccessful. The Appeals Chamber noted that the link between the members of the JCE and the principal perpetrators is to be assessed on a case by case basis. It specifically rejected the assertion by Kallon's defence counsel that a JCE member had to exercise "control and influence" over the principal perpetrator. The Appeals Chamber held that this assertion was not supported by the law on this area.[39] Sesay also challenged the purportedly blanket nature of the imputation of crimes, asserting that the Trial Chamber had abandoned the requirement for a connection between specific crimes and the JCE members. The Appeals Chamber rejected this contention, holding that a court could consider the widespread and systematic nature of crimes in order to show that the principal perpetrators were being used by the JCE.[40]

6 The aggravating and mitigating factors and how they affected sentencing

As required by Article 19 of the Statute and Rule 101(B) of the Rules of Procedure and Evidence, the Trial Chamber considered the gravity of the offences, the individual circumstances of the Defendants, and aggravating and mitigating factors in determining the sentences for the Defendants.

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36 *RUF Case*, above n 2 at [233], [236].

37 *Prosecutor v. Krajišnik*, IT-00-39-A, (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgment), 17 March 2009 [226]. See also *Prosecutor v Brdanin*, Case No. IT-99-36-A (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgment), 3 April 2007 at [410], [413], [418], [430].

38 Appeals Judgment above n 25, [401].

39 Appeals Judgment, ibid, [414].

40 Appeals Judgment, ibid, [414].

In response to the Prosecution's arguments of aggravating factors including the use of forced marriage and conscription of child soldiers and attacks against UN Peacekeepers, the Trial Chamber noted that the Prosecution failed to prove any additional aggravating circumstances beyond the circumstances surrounding the crimes for which all three Defendants have been convicted.[41]

In relation to the Defendants' arguments of mitigating factors, the Trial Chamber rejected Sesay's and Kallon's claim of being abducted into the RUF and noted that despite being forcefully recruited, they had the option to withdraw from the movement as here was no evidence to show that after they joined, they had been forced to remain.[42]

The Trial Chamber also did not find that indirect participation for crimes committed as part of a JCE was a mitigating factor for Sesay, due to Sesay's position as a senior military commander meant that he was in full command of his subordinates.[43] This finding differs from the Chamber's previous decision in *Prosecutor v Fofana and Kondewa, SCSL-04·14-T.*[44]

The Trial Chamber further rejected all arguments that that the personal circumstances of the convicted persons, family dependence, lack of prior criminal conduct, good character and contributions and remorse should mitigate the sentences of the Accused, finding that there was either insufficient evidence to prove such arguments, or that little weight should be given to such arguments in light of the gravity of the crimes.[45]

The Appeals Chamber accepted the Trial Chambers findings in relation to aggravating and mitigating factors.

7 Reference List

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41 Sentencing Judgment, above n 4, [219].

42 Sentencing Judgment, ibid, [220].

43 Sentencing Judgment, ibid [213] to [218].

44 Sentencing Judgment, above n 4.

45 Sentencing Judgment, ibid, [221] to [232].

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