

(XIV) SENTENCING**(EEF) OVERVIEW OF RECOMMENDED SENTENCES**

2806. Each of the Accused committed unspeakable crimes against the Muslim population of Srebrenica and Žepa. The vast scale of the crimes and the immense suffering inflicted on the Muslims of Srebrenica and Žepa is almost beyond comprehension; over 7,000 people were systematically murdered and the entire population was forcibly removed. The crimes committed by these men rank among the very worst acts of inhumanity. None of the Accused has shown a shred of remorse. All the Accused have been proven responsible for these crimes as charged in the Indictment.

2807. Based on the gravity of their criminal conduct, the Prosecution recommends the following sentences:

Vinko PANDUREVIĆ: The Prosecution recommends a sentence of life imprisonment and that the Accused serve 46 years in custody in the State where he serves his sentence before becoming eligible for early release;

Ljubomir BOROVIČANIN: The Prosecution recommends a sentence of life imprisonment and that the Accused serve 46 years in custody in the State where he serves his sentence before becoming eligible for early release;

Milan GVERO: The Prosecution recommends a sentence of life imprisonment and that the Accused serve 30 years in custody in the State where he serves his sentence before becoming eligible for early release;

Radivoje MILETIĆ: The Prosecution recommends a sentence of life imprisonment and that the Accused serve 30 years in custody in the State where he serves his sentence before becoming eligible for early release;

Ljubiša BEARA: The Prosecution recommends a sentence of life imprisonment and that the Accused serve 46 years in custody in the State where he serves his sentence before becoming eligible for early release;

Vujadin POPOVIĆ: The Prosecution recommends a sentence of life imprisonment and that the Accused serve 46 years in custody in the State where he serves his sentence before becoming eligible for early release;

Drago NIKOLIĆ: The Prosecution recommends a sentence of life imprisonment and that the Accused serve 46 years in custody in the State where he serves his sentence before becoming eligible for early release;

2808. Penalties and sentencing factors are addressed in Article 24 of the Statute of the Tribunal and Rule 101 of the Rules. The factors to be considered by a Trial Chamber in determining a sentence include the gravity of the crimes committed;⁶¹²⁰ the individual circumstances of the convicted person;⁶¹²¹ aggravating and mitigating circumstances,⁶¹²² and the general sentencing practice of the former Yugoslavia.⁶¹²³ Prior sentencing practice of the ICTY may also be considered where the same offence is committed in substantially similar circumstances.⁶¹²⁴

(FFF) GRAVITY OF THE OFFENCES

2809. The gravity of the crime is “by far the most important consideration” in determining a sentence.⁶¹²⁵ “The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the Accused in the crime.”⁶¹²⁶

2810. The Appeals Chamber in *Aleksovski* confirmed that “[c]onsideration of the gravity of the conduct of the Accused is normally the starting point for consideration of an appropriate sentence. The practice of the International Tribunal provides no exception.”⁶¹²⁷ In *Galić*,⁶¹²⁸ *Aleksovski* and *Čelebići*, the Appeals Chamber increased, or recommended the increase of the sentence imposed on certain of the convicted persons,

⁶¹²⁰ Article 24(2) of the ICTY Statute.

⁶¹²¹ Article 24(2) of the ICTY Statute.

⁶¹²² Rule 101(B)(i) and (ii). *See also* *Blagojević* AJ, para. 320; *Čelebići* AJ, paras 429, 716; *Krstić* AJ, para. 267.

⁶¹²³ Rule 101(B)(iii), Article 24(1) of the ICTY Statute.

⁶¹²⁴ *Jelić* AJ, para. 101; *Čelebići* AJ, paras. 756-57.

⁶¹²⁵ The gravity of the crime is “by far the most important consideration, which may be regarded as the litmus test for the appropriate sentence.” *Čelebići* AJ, para. 731 *citing* *Čelebići* TJ, para. 1225. *See also* *Galić* AJ, para. 442; *Blagojević* TJ, para. 832; *Krstić* TJ, para. 698. *See also* *Stakić* TJ, para. 892; *Milutinović* Trial Judgment (Vol. 3), para. 1147. *See also* *Plavšić* TJ, para. 25; *Kupreškić* TJ, para. 852; *Aleksovski* AJ, para. 182; *Todorović* TJ, para. 31.

⁶¹²⁶ *Čelebići* AJ, para. 731 (*citing* *Kupreškić* TJ, para. 852; *Aleksovski* AJ, para. 182). *See also* *Mrkšić* TJ, para. 684. On 20 July 2009, Milan Lukić was sentenced to life imprisonment upon being found guilty of extermination, persecutions, at least 132 murders, and inhumane acts as crimes against humanity, as well as murder and cruel treatment as a violation of the laws and customs of war. *See* *Lukić* TJ, paras. 1099-1101. Sredoje Lukić was sentenced to 30 years imprisonment upon being found guilty of committing, as well as aiding and abetting with respect to, inhumane acts and cruel treatment, as well as aiding and abetting persecutions and murder. *See* *Lukić* TJ, paras 1104-1106.

⁶¹²⁷ *Aleksovski* AJ, para. 182.

⁶¹²⁸ “Although the Trial Chamber did not err in its factual findings and correctly noted the principles governing sentencing, it committed an error in finding that the sentence imposed adequately reflects the level of gravity of the crimes committed by Galić and his degree of participation. The sentence rendered was taken from the wrong shelf. Galić’s crimes were characterized by exceptional brutality and cruelty, his participation was systematic, prolonged and premeditated and he abused his senior position of VRS Corps commander. In the Appeals Chamber’s view, the sentence imposed on Galić by the Trial Chamber falls outside the range of sentences available to it in the circumstances of this case. The Appeals Chamber considers that the sentence of only 20 years was so unreasonable and plainly unjust, in that it underestimated the gravity of Galić’s criminal conduct, that it is able to infer that the Trial Chamber failed to exercise its discretion properly.” *Galić* AJ, para. 455.

holding that the Trial Chamber had not given adequate weight to the gravity of the crimes for which they were convicted.⁶¹²⁹

2811. The gravity of the crimes perpetrated by the Accused in this case is staggering; through the commission of the crimes charged in the Indictment, each Accused played a critical role in the premeditated and systematic destruction of the Muslim population of Srebrenica and Žepa through the murder of over 7000 people and the forcible removal of 25,000 to 35,000. The pain and damage inflicted upon the survivors, as chronicled in paras. 1105-1128, continues to this day. The individual culpability of each Accused for the commission of these war crimes and crimes against humanity, as set forth in this brief, demonstrates their individual responsibility for crimes which are amongst the gravest committed during the war in the former Yugoslavia.

2812. Each of the Accused is guilty of crimes of the highest gravity. **POPOVIĆ, BEARA, NIKOLIĆ, BOROVCANIN** and **PANDUREVIĆ** are individually responsible for genocide, “the crime of crimes.”⁶¹³⁰ The *Krstić* Trial Chamber held that genocide is arguably the most serious crime because of its requirement of the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.⁶¹³¹

2813. **GVERO** and **MILETIĆ**, along with the other Accused, are responsible for the crimes against humanity of murder,⁶¹³² persecution, forcible transfer and deportation. The evidence presented at trial proves that **GVERO** and **MILETIĆ**, in addition to their culpability for the forcible removal of the Muslim population of Srebrenica and Žepa, are personally liable for 68 to 129 murders.⁶¹³³ **POPOVIĆ, BEARA, NIKOLIĆ, BOROVCANIN** and **PANDUREVIĆ** are additionally charged with extermination.⁶¹³⁴

2814. Crimes involving intentional deprivation of life, such as murder and extermination, are universally considered especially grave. The need for deterrence and retribution for such crimes is thus particularly important – so important that many jurisdictions impose a mandatory maximum sentence for such offences. Moreover,

⁶¹²⁹ See *Galić* AJ, para. 455; *Aleksovski* AJ, para. 183; *Čelebići* AJ, paras 742, 755.

⁶¹³⁰ *Blaškić* TJ, para. 800, citing *Kambanda* TJ, paras 9, 16.

⁶¹³¹ *Krstić* TJ, para. 700. The crime of conspiracy to commit genocide is no less serious, requiring the same intent as the crime of genocide. *Nahimana et al.* AJ, para. 894.

⁶¹³² Each of the Accused is also responsible for the crime of murder under Article 3, violations of the laws or customs of war.

⁶¹³³ See Section III(D)(xxx) and III(E)(xlvii), *supra*.

⁶¹³⁴ The Appeals Chamber has held that “there is in law, no distinction between the seriousness of a crime against humanity and a war crime”; *Furundžija* AJ, para. 247; *Tadić Sentencing* AJ, para. 69. See also *Mrkšić* TJ, para. 684-687; *Stakić* TJ, para. 929.

countries with special legislation to deal with international crimes have made the most severe punishment applicable to such crimes.⁶¹³⁵

2815. The crime of persecution, committed by all of the Accused, has been described as “particularly grave”⁶¹³⁶ and warrants a more severe penalty, given that it is the only Article 5 crime which also requires a discriminatory intent and which by its nature may incorporate other crimes.⁶¹³⁷

(GGG)AGGRAVATING CIRCUMSTANCES

2816. Rule 101(B)(i) of the Rules requires the Trial Chamber to consider any aggravating circumstances when determining appropriate penalties. There are multiple aggravating circumstances which the Trial Chamber should take into account when considering the appropriate sentence for each of the Accused. These include: the enormity of the scale of the crimes; the high number of victims; the status, vulnerability, and impact on the victims; the senior position of the Accused and their abuse of authority; and the willingness of the Accused to participate in these crimes.

Scale of Crimes

2817. The Tribunal's jurisprudence repeatedly refers to the aggravating factors of gravity of the crimes, the number of victims and the particularly vicious nature of the crimes.⁶¹³⁸

The enormity of the scale of the crimes perpetrated by these men has been amply set out in this brief and will not be repeated here; as pled in the Indictment they are responsible

⁶¹³⁵ England and Wales: The *International Criminal Court Act 2001* remits for the purposes of determining the applicable sentence in cases of a crime under the jurisdiction of the ICC involving murder to the *Murder Act 1965*. That Act establishes a mandatory sentence of life imprisonment for murder. Canada: Under the *Crimes Against Humanity and War Crimes Act 2001*, a life sentence is mandatory if an intentional killing forms the basis of a conviction for genocide, crimes against humanity or war crimes. France: Article 212-1 of the *Code Pénal* prescribes life imprisonment for crimes against humanity. Germany: Sections 7 and 8 of the *Code of Crimes Against International Law*, provides for mandatory life sentences for crimes against humanity and war crimes when they involve murder. New Zealand: The *International Crimes and International Criminal Court Act 2000* provides that concerning the crimes of genocide, crimes against humanity and war crimes the legislation is the same. If the offence includes wilful killings then the penalty will be the same as for murder. According to Article 172 of the *Crimes Act 1961* a sentence of imprisonment for life is mandatory in the case of murder. Rwanda: Article 2 of the Law No. 8 of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes against Humanity, defines four categories of perpetrators of genocide. Accused who are found to fall within the first or second categories of genocide receive mandatory death and life sentences respectively.

⁶¹³⁶ *Blagojević* TJ, para. 834.

⁶¹³⁷ *Blagojević* TJ, para. 834; *Obrenović* Sentencing Judgment, para. 65; *M.Nikolić* Sentencing Judgement, para. 105; *Blaškić* TJ, para. 785.

⁶¹³⁸ *Čelebići* TJ, para. 1268; *Furundžija* TJ, paras 281-283; *Kordić* TJ, para. 852; *Krstić* TJ, para. 698; *Kunarac* TJ, paras 874-875; *Kupreškić* TJ, para. 852; *Kvočka* TJ, paras 712-713; *Tadić* Sentencing Judgment II, para. 19; *Vasiljević* TJ, paras 276-278; *Blaškić* TJ, paras 783-784; *Plavšić* Sentencing Judgment, para. 58; *Kambanda* TJ, para. 42; *Serushago Sentence*, para. 27; *Kayishema* TJ, para. 18; *Rutaganda* TJ, para. 468; *Musema* TJ, para. 980; *Ruggiu* TJ, para. 48, 49; *Semanza* TJ, para. 571; *Niyitegeka* TJ, para. 499(iii)-(vi); *Aleksovski* AJ, para. 182.

for forcibly removing, murdering, and ultimately destroying the Muslim population of Srebrenica and Žepa.

Number of Victims

2818. The Trial Chamber in *Blaškić* held that the number of victims reflects the scale of the crimes committed and is an aggravating sentencing factor.⁶¹³⁹ The number of victims in this case is of appalling magnitude. Demographic evidence shows that a minimum of 7,661 persons went missing from Srebrenica following the enclave's fall in July 1995. DNA evidence shows that currently at least 6,006 persons reported as missing from Srebrenica have been identified in Srebrenica-related mass graves or as surface remains.⁶¹⁴⁰ The number of DNA identifications is still growing. From the gathering at Potočari alone, Serb forces expelled some 25,000 to 35,000.⁶¹⁴¹ Because all of the Accused committed crimes of enormous scope, which victimised so many, the vast number of victims is an aggravating sentencing factor.

2819. The Prosecution has proven that **MILETIĆ** and **GVERO** are individually criminally responsible for 68 to 129 murders. This number of opportunistic murders, for which all the Accused are liable, is based on the evidence of opportunistic killings in Potočari, Bratunac, Kravica and Petkovci.⁶¹⁴²

Status, Vulnerability of the Victims and Impact on the Victims

2820. When evaluating the gravity of the crimes, the Trial Chamber must also consider the status and vulnerability of the victims;⁶¹⁴³ the suffering of the victims who died,⁶¹⁴⁴ and the physical and mental suffering of the survivors and their families.⁶¹⁴⁵ The vulnerability of the victims in this case cannot be overstated; captured men were bound, blindfolded, and systematically murdered while women, children and the elderly were deprived forever of their loved ones and forced from their homes.

2821. The victims targeted were predominantly civilian and included women, children and elderly people.⁶¹⁴⁶ The Trial Chamber must consider not only the fate of those

⁶¹³⁹ *Blaškić* TJ, para. 784. See also *Blagojević* TJ, para. 841; *Krstić* TJ, para. 702; *Erdemović* TJ, para. 15; *Kambanda* TJ, para. 42; *Kayishema* Sentence, para. 569; *Kordić* TJ, para. 852.

⁶¹⁴⁰ See Section III(D)(iv)i. As of 31 January 2009, 6,006 individuals have been identified via DNA matching.

⁶¹⁴¹ See paras. 364, 497, *supra*.

⁶¹⁴² See Sections III(D)(xxx) and III(E)(xlvii).

⁶¹⁴³ *Blaškić* TJ, para. 786; *Blagojević* TJ, paras 842-845; *Krstić* TJ, para. 702.

⁶¹⁴⁴ *Erdemović* Sentencing Judgement II, para. 20.

⁶¹⁴⁵ *Tadić* Sentencing Judgement I, para. 70.

⁶¹⁴⁶ The mistreatment of women and children is an aggravating factor. See *Krstić* TJ, para. 702, citing *Furundžija* Judgement, para. 283.

victims who lost their lives during the murder operation, but also the suffering of the displaced victims who survived. The survivors suffered great mental and physical trauma from the horrors they experienced.⁶¹⁴⁷

Senior Position of the Accused and Abuse of Authority

2822. One of the chief aggravating factors consistently highlighted in the jurisprudence of the ICTY and the ICTR is the senior position held by the Accused⁶¹⁴⁸ and the abuse of the Accused's position, authority or influence in order to commit crimes.⁶¹⁴⁹ "The consequences of a person's acts are necessarily more serious if he is at the apex of a military or political hierarchy and uses his position to commit crimes."⁶¹⁵⁰

2823. This factor is especially significant in this case, as each of the Accused perpetrated the crimes charged through the abuse of his position and authority in the VRS. **GVERO** and **MILETIĆ** were key member of the VRS Main Staff and perpetrated crimes through their positions at the apex of the VRS. **BEARA** perpetrated the crimes he is charged with while acting in his capacity as Chief of Security of the Main Staff of the VRS. **PANDUREVIĆ**, as Commander of the Zvornik Brigade, and **BOROVČANIN**,⁶¹⁵¹ as Deputy Commander of the RS MUP Special Police Brigade, were both in senior command positions and abused their command authority through the crimes attributed to them under Articles 7(1) and 7(3). **POPOVIĆ** and **NIKOLIĆ** perpetrated the crimes through their respective positions as Chief of Security of the Drina Corps and Chief of Security of the Zvornik Brigade. For each of the Accused, their senior position in the

⁶¹⁴⁷ Physical and psychological suffering inflicted upon witnesses to the crime is an aggravating factor. See *Krstić* TJ, para. 703, citing *Jelišić* Judgement, para. 132. See Section III(E)(ix), *supra*.

⁶¹⁴⁸ *Galić* AJ, paras 411-412; *Blagojević* AJ, paras 324-326; *Krstić* TJ, paras 706-709.

⁶¹⁴⁹ *Krajišnik* TJ, para. 1156, *Milutinović* TJ (Vol. 3), para. 1147; *Čelebići* TJ, para. 1251-1252; *Kordić* TJ, para. 855; *Krstić* TJ, para. 709; *Kupreškić* TJ, para. 862; *Kvočka* TJ, para. 714; *Simić (Blagoje)* Sentencing Judgment, para. 67; *Blaškić* TJ, para. 788; *Plavšić* Sentencing Judgment, para. 57; *Jelišić* TJ, para. 131; *Todorović* Sentencing Judgement, paras 60-62; *Naletilić* TJ, para. 751; *Stakić* TJ, paras 912-913; *Krnjelac* TJ, para. 514; *Nikolić (Momir)* Sentencing Judgement, para. 135; *Kambanda* TJ, paras 40, 61(B)(vii); *Rutaganda* TJ, paras 469, 470; *Musema* TJ, paras 1002-1004, *Serushago Sentence*, paras 28-29; *Akayesu* Sentence, paras. 532, 534; *Kayishema* TJ, paras 15, 26; *Semanza* TJ, para. 573; *Niyitegeka* TJ, para. 499(i) and (ii); *Ntagerura* TJ, para. 819.

⁶¹⁵⁰ *Krstić* TJ, para. 709, citing *Rutaganda* TJ, para. 469: "the fact that a person in a high position abused his authority and committed crimes is to be viewed as an aggravating factor." *Kambanda* TJ, para. 44. In this regard, the Appeal Chamber reduced the sentence imposed on Duško Tadić from 25 to 20 years stating that "there is a need for sentences to reflect the relative significance of the role of the [accused] and [...] to take into account] his level in the command structure, [which] was law." (*Tadić* Sentencing Judgement III, paras 55-57).

⁶¹⁵¹ **BOROVČANIN** held additional positions of authority in 1995, including as Commander of the joint police forces on the Trnovo front (Exh. P02852, p. 19), Commander of the police forces staff on Mount Jahorina (Exh. 4D66, Information by Goran Sarić, Commander of the Bijeljina Special Police Brigade re Mladenko Borovčanin dated 13 June 1995; **STOJČINOVIĆ**, T. 27588-89) and Staff Commander of the newly established Tron facility in Pale (Exh. 4D139, Letter from Head of Office of MUP Nenad Radović to Head of RDB and Head of RJB dated 17 Jun 1995 and Conclusions from a MUP meeting in Pale dated 16 Jun 1995. **STOJČINOVIĆ**, T. 27594).

VRS is an aggravating factor. Although **NIKOLIĆ** held the lowest rank among the Accused in this case, this should not in any way diminish the aggravating circumstance that his criminal acts were perpetrated through his senior position and authority as Chief of Security.

2824. In *Galić*, the Appeals Chamber held that, given that Galić's crimes – murder under Article 5, as well as attack on and terrorizing of civilians under Article 3 - “were characterized by exceptional brutality and cruelty, his participation was systematic, prolonged and premeditated and he abused his senior position of VRS Corps commander ... the sentence of only 20 years was so unreasonable and plainly unjust, in that it underestimated the gravity of Galić's criminal conduct.”⁶¹⁵²

2825. In *Stakić*, the Trial Chamber held that “in cases where the factual circumstances are such that a Trial Chamber could reasonably find that specific acts *could* satisfy the requirements of both Articles [Articles 7(1) and 7(3) of the Statute], if a conviction is entered under Article 7(1) only, the Accused's position as a superior, when proved beyond reasonable doubt, must be taken into account as an aggravating factor.”⁶¹⁵³

Further, the Trial Chamber in *Čelebići* noted that if an Accused is liable under both Article 7(1) and 7(3) it should be sufficient to regard his conduct as an aggravating circumstance attracting enhanced punishment, to avoid the imposition of double sentencing for the same conduct.⁶¹⁵⁴

Willingness of the Accused's Participation in the Crimes and the Prolonged Basis of the Crimes

2826. The willing participation of the Accused in the murder operation and forcible transfer perpetrated against the Muslims of Srebrenica and Žepa should be considered as an aggravating circumstance. There is no evidence that the participation of the Accused in any of the crimes was indirect,⁶¹⁵⁵ reluctant⁶¹⁵⁶ or forced⁶¹⁵⁷ in any way. On the contrary, the evidence has shown that each of the Accused willingly contributed to the accomplishment of the purposes of the joint criminal enterprises as pled in the Indictment. **BEARA** even discussed the fall of Srebrenica publicly, deliberately trying to conceal his

⁶¹⁵² *Galić* AJ, para. 455.

⁶¹⁵³ *Stakić* TJ, para. 912; *See also Čelebići* AJ, para. 745.

⁶¹⁵⁴ *Čelebići* TJ, paras 1221-1223.

⁶¹⁵⁵ *Krstić* TJ, para. 714.

⁶¹⁵⁶ *Krstić* TJ, para. 711.

⁶¹⁵⁷ *Krstić* TJ, para. 714.

involvement, while at the same time trying to propagate a false account of the events of July 1995.⁶¹⁵⁸

2827. The Tribunal has previously held that a crime is aggravated where it was committed on a prolonged basis, systematically, with premeditation, with zeal, or where the crimes were widespread.⁶¹⁵⁹ Although the premeditated and systematic forcible transfer and murder operations occurred with great speed, these crimes were carried out over a gruelling period of days, weeks and even months as survivors of the murder operation were hunted down. The sections of this brief outlining the individual responsibility of each Accused leave no doubt as to their major contributions to the premeditated, systematic and widespread crimes.

(HHH) MITIGATING CIRCUMSTANCES

2828. No mitigating circumstances exist in this case to substantially reduce the sentence that should be imposed on any of the Accused. The ICTY and the ICTR have both held that mitigating circumstances relate to the assessment of a penalty but do not derogate the gravity of the crime: “[i]t is more a matter of grace than a defence.”⁶¹⁶⁰ According to the Tribunal jurisprudence, the only mitigating factor which the Trial Chamber is obliged to take into account is “substantial co-operation with the Prosecutor by the convicted person before or after the conviction” as stated in Rule 101 (B)(ii).⁶¹⁶¹

(ccl) Expressions of Remorse

2829. None of the Accused has expressed even the slightest remorse for his crimes.⁶¹⁶²

⁶¹⁵⁸ See, e.g. Exh. P00480, Accused BEARA’s interview with Belgrade journalist Sredoje Simić, published on 29 October 2002 in journal “Svedok,” in which he stated, among other things: “I am not ashamed of any of my actions... I was involved in intelligence work... on the Bihać front. I returned when it was over.” BEARA also referred to mass graves as “nonsense,” stating that “it is not possible to carry out killings on such a mass scale in the presence of UN representatives, even if someone had such an insane idea. In order to kill so many people in such a short time one would need to engage a brigade.” He further stated that he was convinced that Srebrenica was in fact “engineered” by the Muslims, just like the Markale massacre; explained away the intercept in which he is heard talking about the “parcels;” and stated that he, NIKOLIĆ and POPOVIĆ would not confirm false accusations against Mladić. Simić testified that BEARA was extremely satisfied with the interview, and had no objections to its contents. S.SIMIĆ, T.12412-12414.

⁶¹⁵⁹ *Brdanin* TJ, para. 1111; *Krstić* TJ, paras 711-712; *Simić* TJ, para. 74; *Blaškić* TJ, para. 784; *Jelisić* TJ, para. 131; *Todorović* TJ, paras 63-64; *Stakić* TJ, para. 917; *Vasiljević* TJ, para. 279; *Tadić Sentencing Judgement*, para. 20. *Serushago* TJ, para. 25(i); *Kambanda*, para. 61(B)(vi) in particular; *Kayishema* TJ, paras. 16-23; *Ruggiu* TJ, para. 20; *Niyitegeka* TJ, para. 499(vi).

⁶¹⁶⁰ *Kambanda* TJ, para. 56 (quoting *Erdemović* Sentencing Judgement I).

⁶¹⁶¹ *Babić* TJ, para. 48; *Jokić* Sentencing Judgement, paras 95-96; *Todorović* Sentencing Judgement, para. 88; Rule 101(B)(ii).

⁶¹⁶² *Babić* TJ, para. 84; *Blajojević* AJ, paras 327-331; *Blajojević* TJ, para. 850; *Krstić* TJ, para. 715; *Erdemović* First Sentencing Judgement, paras 15-17; *Jokić* Sentencing Judgement, para. 89; *Simić* Sentencing Judgement, para. 94.

(ccli) Cooperation with the Tribunal

2830. None of the Accused cooperated with the Prosecution, other than the extent to which **BOROVČANIN** can be said to have cooperated by consenting to be interviewed by the Prosecution. This single and unsubstantial mitigating circumstance is negligible when viewed in light of the serious aggravating circumstances described above. Consenting to be interviewed by to the Prosecution and providing statements should not reduce **BOROVČANIN**'s sentence given the extreme gravity of his criminal conduct.

(cclii) Evidence of Voluntary Surrender to the Tribunal

2831. The Accused **BEARA**, **NIKOLIĆ**, **BOROVČANIN**, **POPOVIĆ**, and **PANDUREVIĆ** were fugitives from justice for anywhere from almost two to almost four years.⁶¹⁶³ The Accused **MILETIĆ** and **GVERO** were transferred to the Tribunal soon after their joint indictment became public, and within 20 days to approximately 45 days before the transfer of **PANDUREVIĆ**, **BOROVČANIN**, **NIKOLIĆ** and **POPOVIĆ**.⁶¹⁶⁴ The circumstances surrounding these transfers to The Hague are unknown. It is highly doubtful that these fugitives decided at almost the same time to "voluntarily" surrender, since each had failed to surrender to the Tribunal at the time that his indictment was unsealed and spent years evading justice.

⁶¹⁶³ The Indictments against **BEARA**, **POPOVIĆ**, and **NIKOLIĆ** all became public on 21 October 2002. See *Prosecutor v. Ljubiša BEARA*, Case No. IT-02-58-I, Order to Vacate in Part the Order for Non-Disclosure on 26 March 2002, 21 October 2002; *Prosecutor v. Vujadin Popović*, Case No. IT-02-57-I, Order to Vacate in Part the Order for Non-Disclosure on 26 March 2002, 21 October 2002; *Prosecutor v. Drago Nikolić*, Case No. IT-02-63-I, Order to Vacate in Part the Order for Non-Disclosure Issued on 6 September 2002, 21 October 2002. **BEARA** was a fugitive from justice for almost two years, until he was transferred to the ICTY on 10 October 2004. See *Prosecutor v. Ljubiša BEARA*, Case No. IT-02-58-I, Decision by the Registrar Regarding Assignment of Duty of Counsel, 12 October 2004. Both **POPOVIĆ** and **BEARA** were fugitives from justice for two and a half years, until being transferred to the ICTY on 14 April and 17 March 2005, respectively. See *Prosecutor v. Vujadin Popović*, Case No. IT-02-57-I, Scheduling Order for Initial Appearance, 15 April 2005; *Prosecutor v. Drago Nikolić*, Case No. IT-02-63-I, Order Assigning a Case to a Trial Chamber, 18 March 2005. The Indictments against **BOROVČANIN** and **PANDUREVIĆ** became public on 27 September 2002 and 7 December 2001, respectively. See *Prosecutor v. Ljubomir Borovčanin*, Case No. IT-02-64-I, Order to Lift the Seal of Confidentiality of the Indictment, Arrest Warrant and non-disclosure Warrant, 27 September 2002; *Prosecutor v. Radislav Krstić, Vinko Pandurević, and Vidoje Blagojević*, Case No. IT-98-33-PT, Order to Vacate Portion of Order of 2 November 1998, 7 December 2001. After initial, separate contacts with the Prosecutor, both became fugitives for two and a half, and three and a half years, respectively. *Prosecutor v. Ljubomir Borovčanin*, Case No. IT-02-64-I, Order Assigning a Case to a Trial Chamber, 1 April 2005; *Prosecutor v. Vinko Pandurević and Milorad Trbić*, Case No. IT-05-86-PT, Scheduling Order for Initial Appearance, 24 March 2005, p. 2.

⁶¹⁶⁴ The Indictment against **GVERO** and **MILETIĆ** became public on 25 February 2005. *Prosecutor v. Zdravko Tolimir, Radivoje Miletic and Milan GVERO*, Case No. IT-04-80-I, Decision on Motion of the Prosecution to Further Vacate the Order for Non-Disclosure, 25 February 2005. They were transferred, respectively, on 24 and 28 February 2005. See *Prosecutor v. Zdravko Tolimir, Radivoje Miletic and Milan GVERO*, Case No. IT-05-88-T, Decision on Defence Motions for Provisional Release of Radivoje Miletic and Milan GVERO, 7 December 2006.

2832. Indeed, this Trial Chamber has denied requests for provisional release of the Accused **PANDUREVIĆ**, **BOROVČANIN**, **POPOVIĆ** and **NIKOLIĆ** based, in large part, on their failure to explain why they had been fugitives from justice for such extended periods of time.⁶¹⁶⁵ Under the same rationale, the “surrender” of the Accused should not constitute mitigating circumstances. Additionally, **BOROVČANIN** failed to honour his pledge to report to the Prosecution on a date certain for arrest, choosing instead to grow a beard, dye his hair, and go on the run. **BEARA** bragged in an interview about how he would not surrender and derided the Tribunal.⁶¹⁶⁶

(c) **Assistance to Potential Victims**

2833. It has been held by Trial Chambers in this Tribunal and in the ICTR that the Accused’s assistance to certain potential victims constitutes a mitigating factor in sentencing.⁶¹⁶⁷ In this light, the **PANDUREVIĆ** Defence presented limited evidence concerning three instances where **PANDUREVIĆ** opened a corridor to allow Bosnian Muslims to pass through freely. First, **PANDUREVIĆ** attempted to portray himself favourably for opening corridors at Kamenica and Usiprača in 1993. Second, the **PANDUREVIĆ** Defence attempted to argue that on 16 July 1995, **PANDUREVIĆ** opened a corridor for the ABiH to pass through on “humanitarian” grounds. For the reasons set out in paras. 1284-1288 and 1595-1607, the Prosecution submits that the evidence holds zero value. **PANDUREVIĆ**’s sentence should not be reduced based on this evidence.

⁶¹⁶⁵ *Prosecutor v. Popović et al*, Case No. IT-05-88-PT, Decision on Drago Nikolić’s Request for Provisional Release, 9 November 2005, para. 20 (the Trial Chamber consider that the reasons provided by the Accused as to “why the Accused took no step to appear before the trial during the course of these two years and five month” were not satisfactory); *See also Prosecutor v. Vujadin Popović*, Case No. IT-02-57-PT, Decision on Motion for Provisional Release, 22 July 2005 (The Trial Chamber found that the Accused’s failure to surrender after the Indictment was made public without any clear explanation constituted grounds for denying the provisional release); *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Decision of Defence Application for Provisional Release of the Accused Ljubomir Borovčanin, 10 May 2006, para. 21 (In a decision denying provisional release, the Trial Chamber placed considerable weight on the Accused providing “only generalized, unsubstantiated and unconvincing reasons for not surrendering ... at any point between September 2002 and April 2005”); *Id.*, Case No. IT-05-88-PT, Decision on Pandurević’s Renewed Motion for Provisional Release, 6 June 2006, p. 3. In other cases where considerable time had elapsed between the initial indictment and the voluntary surrender of the Accused without a clear explanation, the Trial Chamber used its discretion in determining that surrender will not be used as a mitigating circumstance. *See also Martić* TJ, para. 510 (noting that Martić’s surrender wasn’t “necessarily fully voluntary” because of the delay in his surrender and concluding that, although it is a mitigating factor, it will be given only minimal weight).

⁶¹⁶⁶ *See* Exh. P00480, Accused **BEARA**’s interview with Belgrade journalist Sredoje Simić, published on 29 October 2002 in journal “Svedok.”

⁶¹⁶⁷ *Rutaganda* Judgement and Sentence, para. 470; *See also Erdemović* Sentencing Judgement II, pp. 14-15; *Aleksovski* TJ, paras 235-238.

2834. Similarly, **BEARA**'s weak and ineffectual attempts to falsely portray himself as a humanitarian who helped potential victims should carry no weight.⁶¹⁶⁸

(ccliv) Personal Circumstances

2835. **MILETIĆ**, **GVERO** and **BEARA** are of advanced age. All of the Accused have families. However, whatever meagre mitigating value these commonplace personal circumstances may have, in the balance they are trivial, and should not materially decrease the appropriate sentences for the grave crimes perpetrated by these men and the massive and intense suffering they inflicted on thousands of people.

(III) GENERAL SENTENCING PRACTICES IN THE FORMER YUGOSLAVIA.

2836. Although the Trial Chamber is required to consider the sentencing practices of the former Yugoslavia, these sentencing practices as set out in the SFRY Criminal Code⁶¹⁶⁹ are not binding upon the Trial Chamber, nor do they restrict a Trial Chamber from determining an appropriate sentence.⁶¹⁷⁰ The Criminal Code of BiH provides that genocide, crimes against humanity and war crimes against civilians, "the gravest forms of criminal offences," are punishable by a term of imprisonment of up to 45 years.⁶¹⁷¹

(JJJ) PROSECUTOR'S RECOMMENDED SENTENCE

2837. The Prosecution recommends that **PANDUREVIĆ**, **BOROVČANIN**, **BEARA**, **POPOVIĆ** and **NIKOLIĆ** be sentenced to life imprisonment and serve 46 years in custody in the State where they serve their sentences before becoming eligible for early release. This recommendation reflects the extreme gravity of the crimes for which the Accused are responsible and will ensure that they spend the rest of their lives incarcerated. **PANDUREVIĆ**, **BOROVČANIN**, **BEARA**, **POPOVIĆ** and **NIKOLIĆ** should never be released from prison.

2838. The Prosecution recommends that **GVERO** and **MILETIĆ** be sentenced to life imprisonment and serve 30 years in custody in the State where they serve their sentences

⁶¹⁶⁸ [REDACTED]; J.BIENENFELD, T. 25554-25559.

⁶¹⁶⁹ The Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY Criminal Code), adopted by the SFRY Assembly at the session of the Federal Council held on 28 September 1976; declared by decree of the President of the Republic on 28 September 1976; published in the Official Gazette SFRY No. 44 of 8 October 1976; took effect on 1 July 1977.

⁶¹⁷⁰ *Galić* AJ, para. 398; *Blagojević* TJ, para. 827; *Krstić* AJ, paras 260-63; *Plavšić* Sentencing Judgement, para. 115; *Jokić* Sentencing Judgment, para. 38; *Nikolić* Sentencing Judgement, para. 96; *Tadić* Sentencing Appeal Judgement, para. 20; *Furundžija* TJ, para. 294; *Aleksovski* TJ, para. 242; *Kupreškić* AJ, para. 418; *Jelisić* AJ, para. 117; *Čelebići* AJ, para. 813.

⁶¹⁷¹ Criminal Code of BiH, Official Gazette of BiH No.3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, articles 42(2), 171, 172 and 173. Additionally, organizing or instigating the crimes of genocide, crimes against humanity and war crimes is punishable by 10 years. *Id.* Article 176.

before becoming eligible for early release. This recommendation reflects the fact that **GVERO** and **MILETIĆ** are not charged with counts I through III of the Indictment.

2839. The *D.Nikolić* Trial Chamber commissioned a research report from the Max Planck Institute on sentencing guidelines and practices in the former Yugoslavia as well as other countries. That report indicated that in many countries, a “life sentence” will not be fully executed. In China and Belgium, for example, an Accused sentenced to “life” may be released after only ten years, and in many other countries an Accused may be released after 25 years.⁶¹⁷²

2840. As noted by the *D.Nikolić* Appeals Chamber:

Under the International Tribunal’s law, eligibility for early release is dependent on the applicable law of the State in which the convicted person is imprisoned, which State shall notify the International Tribunal of such eligibility. Ultimately, the President determines, in consultation with the members of the sentencing chamber and the Bureau, whether or not early release should be granted.⁶¹⁷³

2841. Due to the uncertainty of how long an Accused sentenced to “life” imprisonment by this Tribunal will actually spend incarcerated, the Prosecution recommends terms of life imprisonment with minimum sentences of 46 years for **PANDUREVIĆ**, **BOROVČANIN**, **BEARA**, **POPOVIĆ** and **NIKOLIĆ** and life imprisonment with minimum sentences of 30 years for **GVERO** and **MILETIĆ**.⁶¹⁷⁴

2842. The Prosecution urges that should the Trial Chamber determine that the most appropriate sentence for **PANDUREVIĆ**, **BOROVČANIN**, **BEARA**, **POPOVIĆ** and **NIKOLIĆ** is that they remain incarcerated for the remainder of their lives, then it is imperative that the Chamber express this clearly and unambiguously, so that the intentions of the Chamber may be fully understood and considered if and when these Accused may be considered for early release according to the requirements of the national laws where they ultimately serve their sentence.

2843. Each of the men tried in this case willingly took part and played a critical role in the crimes which inflicted such immense suffering on the Muslim population of Srebrenica and Žepa. For these crimes, a sentence of life imprisonment is the only just verdict.

⁶¹⁷² See “The Punishment of Serious Crimes: a comparative analysis of sentencing law and practice” provided by Prof. Dr. Ulrich Sieber from the Max Planck Institute, filed on 12 November 2003, particularly Section 4.2.1.4.

⁶¹⁷³ *D.Nikolić* SAJ, para.94, citing Article 28 of the Statute, Rules 123 & 124 of the Rules, and Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Tribunal (IT/146/Rev.1), 15 August 2006.

⁶¹⁷⁴ *D.Nikolić* SAJ, para.95; *Krstić* SAJ, para.274; *Tadić* SAJ, para.28.