



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE APPEALS CHAMBER**

**Case No:** STL-11-01/S-2/AC

**Before:** Judge Ivana Hrdličková, Presiding  
Judge Ralph Riachy  
Judge David Baragwanath  
Judge Afif Chamseddine  
Judge Daniel David Ntanda Nsereko

**Registrar:** Mr David Tolbert  
**Acting Registrar:** Ms Marian Kashou

**Date:** 16 June 2022

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**  
v.  
**HASSAN HABIB MERHI**  
**HUSSEIN HASSAN ONEISSI**

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**SENTENCING JUDGMENT**

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## I. INTRODUCTION

1. The case originates from an explosion that occurred on Monday, 14 February 2005 in Beirut, near the St Georges Hotel, killing the former Lebanese Prime Minister Mr Rafik Hariri and 21 others and injuring at least another 226 people. Following this attack, the United Nations (“UN”) Security Council, acting under Chapter VII of the UN Charter, created the Special Tribunal for Lebanon (“STL” or “Tribunal”).<sup>1</sup> On 10 March 2022, following *in absentia* trial and appeal, the Appeals Chamber issued its Judgment in the case of *Prosecutor v. Merhi and Oneissi*, Case No. STL-11-01.<sup>2</sup> The Appeals Chamber unanimously reversed the acquittals of Messrs Merhi and Oneissi and found them guilty of all the crimes they were charged with in the Amended Consolidated Indictment.<sup>3</sup> Specifically, Messrs Merhi and Oneissi were convicted of being co-perpetrators of the crime of conspiracy to commit a terrorist act (Count 1) and of being accomplices to a terrorist act (Count 6), intentional homicide (Counts 7 and 8), and attempted intentional homicide (Count 9).

2. On 23 March 2022, the Legal Representative of Victims (“LRV”) filed observations on sentencing.<sup>4</sup> On 25 March 2022, the Prosecution filed submissions on sentencing.<sup>5</sup> On 8 April 2022, Counsel for Mr Merhi and Counsel for Mr Oneissi filed submissions in response.<sup>6</sup>

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<sup>1</sup> SC Res. 1757, UN Doc. S/RES/1757, 30 May 2007.

<sup>2</sup> STL, *Prosecutor v. Merhi and Oneissi*, STL-11-01/A-2/AC, F0051, Appeal Judgment, 10 March 2022 (“Appeal Judgment”).

<sup>3</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F3813, Notice of Filing of Updated Redacted Version of F2720 “Amended Consolidated Indictment”, Filed 12 July 2016, 23 January 2020, Annex: Updated Public Redacted Version of Amended Consolidated Indictment (“Amended Consolidated Indictment”).

<sup>4</sup> STL, *Prosecutor v. Merhi and Oneissi*, STL-11-01/S-2/AC, F0055, Corrected Version of “The Legal Representative of Victims’ Observations on Sentencing” Dated 23 March 2022, 14 June 2022 (“LRV Observations”).

<sup>5</sup> STL, *Prosecutor v. Merhi and Oneissi*, STL-11-01/S-2/AC, F0057, Prosecution Submissions on Sentence, 25 March 2022 (“Prosecution Submissions”).

<sup>6</sup> STL, *Prosecutor v. Merhi and Oneissi*, STL-11-01/S-2/AC, F0059, Merhi Defence Submissions on Sentence, 8 April 2022 (“Merhi Submissions”); STL, *Prosecutor v. Merhi and Oneissi*, STL-11-01/S-2/AC, F0058, Oneissi Defence Response to the Prosecution’s Submissions on Sentencing, 8 April 2022 (“Oneissi Submissions”).

## II. APPLICABLE LAW

### A. Purposes of Sentencing

3. Sentencing has multiple purposes. The two primary aims are retribution and deterrence.<sup>7</sup> As a form of retribution, the sentence reflects a punishment that the convicted person deserves because of what he or she has done or omitted to do. For this reason, the sentence must be proportionate to the crimes committed, as judged from their gravity and from the nature and degree of harm they occasioned.<sup>8</sup> The sentence should not be understood as a means of expressing revenge or vengeance but must rather reflect the outrage of the international community at the crimes.<sup>9</sup> Deterrence, on the other hand, encompasses two forms: individual and societal. For individual deterrence to be achieved, the penalties imposed by the Tribunal must be capable of dissuading the wrongdoer from repeating the offence in the future. As for societal deterrence, the sentence must similarly be of such a nature as to discourage others from committing similar offences, lest they be visited with the same punishment.<sup>10</sup> The sentence, particularly where apparently powerful individuals are involved, also serves as a warning to all and sundry that no one is above the law. The overarching goal of both retribution and deterrence is thus prevention of crime and, ultimately, protection of the public.

4. A secondary purpose of sentencing is rehabilitation.<sup>11</sup> The aim here is to assist the erstwhile offender to mend his or her ways, to become a responsible and law-abiding member of the community, and thereby to facilitate his or her reintegration into society. The attainment of this goal of punishment depends invariably on the type of sentence that the court imposes on the convicted offender. Nevertheless, for offenders convicted of heinous crimes and sentenced to particularly severe punishments, rehabilitation is almost unattainable or unsuitable as a goal of sentencing. The courts attach preponderant consideration to the need to protect the community and have stressed retribution and deterrence as goals of sentencing. Thus,

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<sup>7</sup> *Ntaganda* Sentencing Judgment, paras 9-10; *Krajišnik* Appeal Judgment, para. 775; *Bralo* Judgment on Sentencing Appeal, para. 82; *Stakić* Appeal Judgment, para. 402; *Čelebići* Appeal Judgment, para. 806.

<sup>8</sup> *Bemba et al.* Judgment on Sentencing Appeal, para. 113; *Krajišnik* Appeal Judgment, para. 775; *D. Nikolić* Judgment on Sentencing Appeal, para. 21; *Rutaganda* Appeal Judgment, para. 591.

<sup>9</sup> *Mladić* Trial Judgment, para. 5182; *Karadžić* Trial Judgment, para. 6026; *Taylor* Appeal Judgment, para. 663; *Krajišnik* Appeal Judgment, para. 775; *Fofana and Kondewa* Appeal Judgment, para. 564; *Kordić and Čerkez* Appeal Judgment, para. 1075; *Aleksovski* Appeal Judgment, para. 185.

<sup>10</sup> *Ntaganda* Sentencing Judgment, para. 10; *Krajišnik* Appeal Judgment, paras 776, 805; *D. Nikolić* Judgment on Sentencing Appeal, para. 45; *Kordić and Čerkez* Appeal Judgment, paras 1077-1078.

<sup>11</sup> *Karadžić* Trial Judgment, para. 6025; *Popović et al.* Trial Judgment, para. 2130; *Nahimana et al.* Appeal Judgment, para. 1057; *Stakić* Appeal Judgment, para. 402; *D. Nikolić* Sentencing Judgment, paras 133, 282; *Čelebići* Appeal Judgment, paras 805-806.

international tribunals dealing with such persons tend to attach little or no weight to the need for the rehabilitation of such offenders.

## **B. The Tribunal's Legal Framework**

### 1. Relevant Provisions

5. Articles 2 and 24 of the Tribunal's Statute ("Statute") and Rules 171 and 172 of the Tribunal's Rules of Procedure and Evidence ("Rules") govern sentencing proceedings.

6. Article 2 of the Statute sets out the law applicable to the prosecution and punishment of the crimes falling within the Tribunal's jurisdiction. It states that:

The following shall be applicable to the prosecution and punishment of the crimes referred to in article 1, subject to the provisions of this Statute:

(a) The provisions of the Lebanese Criminal Code [{"LCC"}] relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy; and

(b) Articles 6 and 7 of the Lebanese law of 11 January 1958 on "Increasing the penalties for sedition, civil war and interfaith struggle" [{"Law of 11 February 1958"}].

7. Article 24 of the Statute on penalties provides that:

1. The Trial Chamber shall impose upon a convicted person imprisonment for life or for a specified number of years. In determining the terms of imprisonment for the crimes provided for in this Statute, the Trial Chamber shall, as appropriate, have recourse to international practice regarding prison sentences and to the practice of the national courts of Lebanon.

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

8. Rule 171 of the Rules describes the sentencing procedure before the Tribunal and states in relevant part:

(D) The Trial Chamber shall impose a sentence in respect of each count in the indictment upon which the accused has been convicted and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused.

9. Rule 172 of the Rules mirrors the language of Article 24 of the Statute and sets out as follows:

(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24 (2), of the Statute, as well as factors such as:

- (i) any aggravating circumstances;
- (ii) any mitigating circumstances, including substantial cooperation with the Prosecutor by the convicted person before or after conviction;
- (iii) the general practice regarding prison sentences in Lebanon;
- (iv) 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.

10. These provisions are also applicable to sentencing before the Appeals Chamber by virtue of Rule 176 (B) of the Rules, according to which “[t]he rules of procedure and evidence that govern proceedings in the Trial Chamber shall apply *mutatis mutandis* to proceedings in the Appeals Chamber.”

## 2. Recourse to International Practice on Prison Sentences and the Practice in Lebanese Courts

11. Article 24 of the Statute specifies that a chamber, when determining the terms of imprisonment, “shall, as appropriate, have recourse to international practice regarding prison sentences and to the practice of the national courts of Lebanon.”<sup>12</sup> The statutes of other international criminal tribunals and courts contain provisions comparable to Article 24.<sup>13</sup> The phrase “have recourse to the general practice” has been consistently interpreted in these judicial fora to mean that, while a chamber must take account of such practice, it is not bound by it.<sup>14</sup> A chamber is therefore entitled to impose a greater or lesser sentence than that which would have been imposed by domestic courts.<sup>15</sup> However, a sentence must be founded on the law.<sup>16</sup>

12. The Appeals Chamber notes that the phrase “have recourse to” in Article 24 of the Statute refers both to the practice of Lebanese courts and of international criminal tribunals.

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<sup>12</sup> Art. 24 (1) STL St.

<sup>13</sup> See Art. 24 (1) ICTY St.; Art. 23 (1) ICTR St.; Art. 19 (1) SCSL St.; Art. 22 (2) IRMCT St.

<sup>14</sup> *Nahimana et al.* Appeal Judgment, para. 1063; *Stakić* Appeal Judgment, para. 398; *Semanza* Appeal Judgment, paras 377, 393; *D. Nikolić* Judgment on Sentencing Appeal, para. 69; *Akayesu* Appeal Judgment, para. 420; *Čelebići* Appeal Judgment, para. 813; *Serushago* Reasons for Judgment, para. 30.

<sup>15</sup> *Nahimana et al.* Appeal Judgment, para. 1063; *Semanza* Appeal Judgment, para. 393; *Krstić* Appeal Judgment, para. 262.

<sup>16</sup> *Čelebići* Appeal Judgment, para. 817.

### 3. Determining the Sentence

13. With respect to penalties, Article 24 (1) of the Statute provides that the Tribunal “shall impose upon a convicted person imprisonment for life or for a specified number of years”.<sup>17</sup> Accordingly, life imprisonment is the maximum penalty that the Tribunal may impose. The penalties of death or forced labour, which Lebanese law prescribes, under varying permutations for the crimes under the Tribunal’s mandate, cannot therefore be imposed under the Statute.<sup>18</sup> They do nonetheless serve to indicate how high on the criminal hierarchy Lebanon considers these crimes to be—among the most serious.

14. In order to determine the appropriate sentence to impose, the Appeals Chamber must consider the factors listed in Article 24 (2) of the Statute and Rule 172 (B) of the Rules. These factors will be elaborated upon below.

15. Moreover, in light of Messrs Merhi and Oneissi’s convictions on several counts, the Appeals Chamber will also consider the issue of sentencing following multiple convictions.

#### C. **Lebanese Law**

16. Messrs Merhi and Oneissi were both found guilty of the following crimes charged in the Amended Consolidated Indictment: (a) **Count 1** (being a co-perpetrator of conspiracy aimed at committing a terrorist act); (b) **Count 6** (being an accomplice to the felony of committing a terrorist act); (c) **Counts 7 and 8** (being an accomplice to the felony of intentional homicide of Mr Rafik Hariri and 21 other persons); and (d) **Count 9** (being an accomplice to the felony of attempted intentional homicide of 226 persons).

17. The offences under the five counts with which Messrs Merhi and Oneissi were charged are defined under the LCC, and the penalties prescribed for each of them and modes of liability are detailed below.

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<sup>17</sup> Rule 172 (A) mirrors Article 24 (1) of the Statute and states that “[a] convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person’s life.”

<sup>18</sup> See Art. 24 STL St.; Rule 172 (A) STL RPE; *Report of the Secretary-General on the Establishment of a Special Tribunal for Lebanon*, UN Doc. S/2006/893, 15 November 2006, para. 22.

### 1. Conspiracy

18. Conspiracy is defined in Article 270 of the LCC. The penalty for the crime of conspiracy aimed at committing a terrorist act is hard labour for life.<sup>19</sup>

### 2. Terrorism

19. Terrorism is defined in Article 314 of the LCC. The penalty prescribed for a terrorist act is hard labour for life.<sup>20</sup> The penalty is increased to the death penalty if the terrorist act results in (a) the death of one or more individuals; (b) the total or partial destruction of a building having one or more individuals inside it; (c) the total or partial destruction of a public building, an industrial plant, a ship, or other facilities; or (d) the disruption of the functioning of telecommunication or transport services.<sup>21</sup>

### 3. Intentional Homicide

20. Intentional homicide is defined in Article 547 of the LCC. The penalty prescribed for the offence is hard labour for a term between 15 and 20 years. The penalty is increased to death when the intentional homicide is committed with premeditation or carried out with the use of explosive materials.<sup>22</sup>

### 4. Attempt

21. Attempt is defined in Article 200 of the LCC. Pursuant to this article, the penalties prescribed by law for the felony or felonies attempted may be commuted in the following manner: (a) the death penalty may be replaced with hard labour for life or a fixed-term of hard labour for seven to 20 years; (b) hard labour for life may be replaced with a fixed-term of hard labour for at least five years; (c) life imprisonment may be replaced with a fixed-term of imprisonment for at least five years; and (d) any other penalty may be commuted by one-half to two-thirds.

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<sup>19</sup> Law of 11 February 1958, Art. 7.

<sup>20</sup> Law of 11 February 1958, Art. 6.

<sup>21</sup> Law of 11 February 1958, Art. 6.

<sup>22</sup> Art. 549 (1) and (7) LCC.

## 5. Perpetration and Accomplice Liability

22. With respect to the penalty prescribed for a co-perpetrator, Article 213 of the LCC states that “[e]ach of the co-perpetrators of an offence shall be liable to the penalty prescribed by law for the offence.”<sup>23</sup>

23. As to the sentence applicable to an accomplice, Article 220 of the LCC provides that:

An accomplice without whose assistance the offence would not have been committed shall be punished as if he himself were the perpetrator.

Other accomplices shall be punishable by hard labour for life or by fixed-term hard labour for 10 to 20 years if the perpetrator is sentenced to death.

If the perpetrator is sentenced to hard labour for life or life imprisonment, accomplices shall be sentenced to the same penalty for 7 to 15 years.

In other cases, they shall incur the same penalty as the perpetrator, with a reduction in its duration of between one sixth and one third.

[...]

24. We recall that hard labour and the death penalty are not available penalties before the Tribunal. The Appeals Chamber will therefore not apply provisions prescribing either penalty when determining the sentences to impose on Messrs Merhi and Oneissi. However, the Appeals Chamber notes that the LCC provides for the severest penalties in relation to the crimes of which Messrs Merhi and Oneissi were convicted.

### **D. Sentencing Factors**

25. A sentence must be individualized and based solely on the facts of a particular case, including the nature and gravity of the offence of which an individual has been convicted, his or her criminal conduct, and his or her individual circumstances.<sup>24</sup> The Statute’s reference to the “gravity of the offence” and “individual circumstances” as sentencing factors mirrors similar language used in the statutes of other international criminal courts and tribunals.<sup>25</sup> The

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<sup>23</sup> All quotations of the LCC contained in this Sentencing Judgment are STL official translations.

<sup>24</sup> *Taylor* Appeal Judgment, para. 664; *Simić* Appeal Judgment, para. 238; *Babić* Judgment on Sentencing Appeal, para. 32; *D. Nikolić* Judgment on Sentencing Appeal, para. 19; *Jelisić* Appeal Judgment, para. 101; *Čelebići* Appeal Judgment, paras 717, 821.

<sup>25</sup> See Art. 24 (2) ICTY St.; Art. 23 (2) ICTR St.; Art. 19 (2) SCSL St.; Art. 78 (1) ICC St.; Art. 22 (3) IRMCT St.; Art. 44 (5) KSC Law.

Appeals Chamber will therefore refer to the jurisprudence of these tribunals when examining those factors.

### 1. Gravity

26. It is well established in international jurisprudence that the dominant or primary factor for sentencing is the gravity of the offence for which the accused has been convicted.<sup>26</sup> Sentences must reflect the inherent gravity of the totality of the convicted person's criminal conduct.<sup>27</sup>

27. The notion of gravity in the context of sentencing encompasses several elements: (a) the particular circumstances of the case;<sup>28</sup> (b) the seriousness of the offence as reflected by the maximum sentence prescribed by the legislature; (c) the mode or manner in which the offence was committed; and (d) the nature, degree, and extent of the foreseeable harm resulting from the offence, including the number of victims afflicted and the degree and extent of the damage to property.<sup>29</sup> Whether a person was convicted for being an accomplice or a principal perpetrator has no bearing on the determination of the gravity of the offence.<sup>30</sup>

### 2. Individual Circumstances

28. In addition to the gravity of the offence, the Appeals Chamber must also consider individual circumstances of the convicted person when determining the condign sentence to impose. These circumstances can either increase the sentence (aggravating circumstances) or reduce it (mitigating circumstances). Aggravating circumstances must be proved by the

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<sup>26</sup> See, e.g., *Nuon Chea and Khieu Samphân* Appeal Judgment, para. 1118; *Nahimana et al.* Appeal Judgment, para. 1060; *Galić* Appeal Judgment, para. 442; *Stakić* Appeal Judgment, para. 375; *Musema* Appeal Judgment, para. 382; *Kayishema and Ruzindana* Appeal Judgment, paras 352, 363; *Čelebići* Appeal Judgment, para. 731; *Aleksovski* Appeal Judgment, para. 182. See also *Krstić* Trial Judgment, para. 698; *Todorović* Sentencing Judgment, para. 31; *Kupreškić et al.* Trial Judgment, para. 852; *Čelebići* Trial Judgment, para. 1225.

<sup>27</sup> *Taylor* Appeal Judgment, paras 662-664; *Sesay et al.* Appeal Judgment, para. 1229; *Blaškić* Appeal Judgment, para. 683; *Aleksovski* Appeal Judgment, para. 182; *Kupreškić et al.* Trial Judgment, para. 852.

<sup>28</sup> *Taylor* Appeal Judgment, para. 662; *Furundžija* Appeal Judgment, para. 249; *Aleksovski* Appeal Judgment, para. 182.

<sup>29</sup> See *Ntaganda* Sentencing Judgment, para. 16; *Bemba et al.* Judgment on Sentencing Appeal, paras 263, 334; *Nuon Chea and Khieu Samphân* Appeal Judgment, para. 1118; *Taylor* Appeal Judgment, paras 682-683.

<sup>30</sup> *Bemba et al.* Judgment on Sentencing Appeal, para. 264; *Taylor* Appeal Judgment, para. 666.

Prosecution beyond reasonable doubt.<sup>31</sup> On the other hand, the accused bears the burden of establishing mitigating factors on a balance of probabilities.<sup>32</sup>

29. The Statute does not enumerate what can constitute an aggravating or mitigating circumstance. The Rules only mention “substantial cooperation with the Prosecutor by the convicted person before or after conviction” as an example of mitigating circumstances.<sup>33</sup>

30. Lebanese law, on the other hand, identifies a number of aggravating and mitigating circumstances, some of which were pleaded by the Prosecution in the Amended Consolidated Indictment. Lebanese law distinguishes among different types of individual circumstances: material, personal, or mixed. Material circumstances relate to the commission of the offence and apply to accomplices and accessories to the offence.<sup>34</sup> Personal circumstances relate to the individual who commits or helps commit the offence and only applies to that individual, unless the circumstance facilitated the commission of the offence. Mixed circumstances are those that relate both to the commission of the offence and to the individual. Like personal circumstances, mixed circumstances apply to the perpetrator and accomplice if they facilitated the commission of the offence.<sup>35</sup>

31. Furthermore, the jurisprudence of other international criminal tribunals has identified some additional factors that may be considered to be aggravating circumstances. These factors include the duration of the criminal episode;<sup>36</sup> premeditation and motive;<sup>37</sup> the zealotry with which a crime was committed;<sup>38</sup> a discriminatory state of mind;<sup>39</sup> the violent and humiliating nature of the acts and the vulnerability of the victims;<sup>40</sup> the status of the victims, their age and number, and the effect of the crimes upon them;<sup>41</sup> the position of superior authority or leadership of the accused;<sup>42</sup> the active and direct criminal participation, if linked to a high-rank

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<sup>31</sup> *Nahimana et al.* Appeal Judgment, para. 1038; *Kajelijeli* Appeal Judgment, para. 294; *Blaškić* Appeal Judgment, paras 686, 688; *Čelebići* Appeal Judgment, para. 763.

<sup>32</sup> *Nahimana et al.* Appeal Judgment, para. 1038; *Muhimana* Appeal Judgment, para. 231; *Babić* Judgment on Sentencing Appeal, para. 43; *Kajelijeli* Appeal Judgment, paras 294, 299; *Blaškić* Appeal Judgment, para. 697; *Čelebići* Appeal Judgment, para. 590.

<sup>33</sup> Rule 172 (B) (ii) STL RPE.

<sup>34</sup> Art. 216 LCC. *See also* 2011 Interlocutory Decision on Applicable Law, para. 174.

<sup>35</sup> Art. 216 LCC.

<sup>36</sup> *Blaškić* Appeal Judgment, para. 686; *Kunarac et al.* Appeal Judgment, para. 356.

<sup>37</sup> *Blaškić* Appeal Judgment, para. 686; *Krstić* Trial Judgment, paras 711-712.

<sup>38</sup> *Simba* Appeal Judgment, para. 320; *Kvočka et al.* Trial Judgment, para. 705.

<sup>39</sup> *Vasiljević* Appeal Judgment, para. 172.

<sup>40</sup> *Blaškić* Appeal Judgment, para. 686; *Kunarac et al.* Appeal Judgment, para. 352.

<sup>41</sup> *Ntaganda* Sentencing Judgment, para. 121; *Blaškić* Appeal Judgment, para. 686; *Kunarac et al.* Appeal Judgment, para. 355.

<sup>42</sup> *Blaškić* Appeal Judgment, para. 686.

position of command;<sup>43</sup> and the character of the convicted person.<sup>44</sup> Potential mitigating circumstances include voluntary surrender;<sup>45</sup> the admission of guilt or a guilty plea;<sup>46</sup> the expression of remorse or sympathy for the victims of the crimes;<sup>47</sup> good character with no prior criminal convictions;<sup>48</sup> good or exemplary conduct while in detention;<sup>49</sup> personal and family circumstances;<sup>50</sup> duress;<sup>51</sup> diminished mental responsibility;<sup>52</sup> age;<sup>53</sup> and assistance to detainees or victims.<sup>54</sup>

32. Finally, while a sentence must be tailored to the individual circumstances of the case and of the convicted person, a sentence may not be “capricious” and out of line with sentences in similar cases, for similar crimes, and with similar circumstances.<sup>55</sup>

### 3. Relationship Among Gravity of the Offence, Individual Circumstances, and Elements of the Offence

33. Other international tribunals have prohibited “double counting” so that a fact taken into account when assessing the gravity of an offence cannot also be taken into account when assessing aggravating circumstances.<sup>56</sup> The Appeals Chamber adopts this principle.

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<sup>43</sup> *Blaškić* Appeal Judgment, para. 686; *Čelebići* Appeal Judgment, para. 736.

<sup>44</sup> *Blaškić* Appeal Judgment, para. 686; *Čelebići* Appeal Judgment, para. 788.

<sup>45</sup> *Hadžihasanović and Kubura* Appeal Judgment, para. 325; *Babić* Judgment on Sentencing Appeal, paras 43, 75; *Kordić and Čerkez* Appeal Judgment, para. 1090; *Jokić* Sentencing Judgment, para. 73; *Plavšić* Sentencing Judgment, para. 84; *Kupreškić et al.* Appeal Judgment, para. 430.

<sup>46</sup> *Jokić* Sentencing Judgment, para. 76; *Jelisić* Appeal Judgment, para. 122.

<sup>47</sup> *Strugar* Appeal Judgment, paras 365-366; *Jokić* Sentencing Judgment, para. 89; *Kunarac et al.* Trial Judgment, para. 869; *Erdemović* Sentencing Judgment, para. 16 (iii).

<sup>48</sup> *D. Milošević* Trial Judgment, para. 1002; *Blaškić* Appeal Judgment, para. 696; *Kupreškić et al.* Appeal Judgment, para. 459; *Erdemović* Sentencing Judgment, para. 16 (i).

<sup>49</sup> *Ntaganda* Sentencing Judgment, para. 22; *Babić* Judgment on Sentencing Appeal, para. 43; *Blaškić* Appeal Judgment, para. 696; *Jokić* Sentencing Judgment, para. 100; *D. Nikolić* Sentencing Judgment, para. 268.

<sup>50</sup> *Simić et al.* Trial Judgment, para. 1088; *Kunarac et al.* Appeal Judgment, paras 362, 408; *Erdemović* Sentencing Judgment, para. 16 (i).

<sup>51</sup> *Ongwen* Sentencing Judgment, para. 108; *Babić* Judgment on Sentencing Appeal, para. 43; *Blaškić* Appeal Judgment, para. 696; *Erdemović* Sentencing Judgment, para. 17; *Erdemović* Appeal Judgment, para. 19.

<sup>52</sup> *Ongwen* Sentencing Judgment, para. 92; *Čelebići* Appeal Judgment, para. 590.

<sup>53</sup> *Babić* Judgment on Sentencing Appeal, para. 43; *Blaškić* Appeal Judgment, para. 696; *Jokić* Sentencing Judgment, para. 100; *Plavšić* Sentencing Judgment, para. 106.

<sup>54</sup> *Babić* Judgment on Sentencing Appeal, para. 43; *Blaškić* Appeal Judgment, para. 696; *Sikirica et al.* Sentencing Judgment, paras 195, 229.

<sup>55</sup> *Kvočka et al.* Appeal Judgment, para. 681; *Krstić* Appeal Judgment, para. 248; *Jelisić* Appeal Judgment, para. 96; *Čelebići* Appeal Judgment, paras 719, 721; *Furundžija* Appeal Judgment, para. 250.

<sup>56</sup> *Bemba et al.* Judgment on Sentencing Appeal, paras 112, 333; *D. Milošević* Appeal Judgment, paras 306, 309; *M. Nikolić* Judgment on Sentencing Appeal, para. 58; *Deronjić* Judgment on Sentencing Appeal, para. 106, fn. 242. See also *Ntaganda* Sentencing Judgment, para. 14; *Nyiramasuhuko et al.* Appeal Judgment, paras 3356, 3385; *Sesay et al.* Appeal Judgment, para. 1234; *Brima et al.* Appeal Judgment, paras 213, 317.

34. In the same vein, if a fact satisfies an element of one of the crimes for which the accused was convicted, it cannot also constitute an aggravating circumstance for that crime.<sup>57</sup> It can, however, be taken into account as an aggravating circumstance for another crime that does not contain this fact as a constitutive element.<sup>58</sup>

### **E. Sentencing Following Multiple Convictions**

35. Messrs Merhi and Oneissi were convicted of all the crimes they were charged with in the Amended Consolidated Indictment. The different crimes for which each of them was convicted are based on the same underlying conduct. The Appeals Chamber recalls that cumulative conviction for the same conduct is permissible if each crime has a materially distinct element not contained in the other, *i.e.*, if it requires proof of a fact not required by the other.<sup>59</sup> All the offences for which Messrs Merhi and Oneissi were convicted contain distinct elements.<sup>60</sup>

36. Pursuant to Rule 171 (D) of the Rules, the Tribunal “shall impose a sentence in respect of each count in the indictment upon which the accused has been convicted and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused”.<sup>61</sup> Whether to impose a sentence for each count or a single sentence reflecting the totality of the criminal conduct lies within the discretion of the chamber.<sup>62</sup>

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<sup>57</sup> *Dorđević* Appeal Judgment, para. 936. See also *Ntaganda* Sentencing Judgment, para. 20; *Bemba* Sentencing Judgment, para.14; *Nzabonimana* Appeal Judgment, para. 464; *Deronjić* Judgment on Sentencing Appeal, para. 127; *Blaškić* Appeal Judgment, para. 693.

<sup>58</sup> *Vasiljević* Appeal Judgment, paras 172-173.

<sup>59</sup> *Čelebići* Appeal Judgment, para. 412. See also *Popović et al.* Appeal Judgment, para. 537; *Karemura and Ngirumpatse* Appeal Judgment, para. 710; *Gatete* Appeal Judgment, para. 259; *Nahimana et al.* Appeal Judgment, para. 1019.

<sup>60</sup> See Appeal Judgment, paras 634-637. See also 2011 Interlocutory Decision on Applicable Law, paras 271, 301.

<sup>61</sup> See also Art. 205 LCC.

<sup>62</sup> *Čelebići* Appeal Judgment, para. 430.

### III. DETERMINING THE SENTENCE

37. The Appeals Chamber will now examine the sentencing factors discussed above in light of the submissions of the Parties and LRV and the circumstances of this case.

#### A. Submissions of the Parties

38. The Prosecution requests that the Appeals Chamber impose life imprisonment for each of the five counts of which Messrs Merhi and Oneissi have been convicted, to be served concurrently.<sup>63</sup> The Prosecution argues that the nature of the crimes, their severity and impact, and the significant role played by Messrs Merhi and Oneissi justify the imposition of a life sentence.<sup>64</sup> With respect to the conduct of Messrs Merhi and Oneissi, the Prosecution submits that Mr Merhi had a leading role as one of the three members of the Green Network, the “mission command of the attack”,<sup>65</sup> and that Mr Oneissi was entrusted with the critical role of disseminating the false claim of responsibility, which he did knowingly.<sup>66</sup> According to the Prosecution, Messrs Merhi and Oneissi’s acts were “callous and manipulative”, and there is no distinction to be made between them based on the subjective elements of the crimes of which they were convicted.<sup>67</sup> Similarly, the Prosecution argues that the difference in their roles in the attack is not sufficient to reduce either of their sentences given the circumstances of the case.<sup>68</sup>

39. The Prosecution further posits that the attack, in which Messrs Merhi and Oneissi conspired and assisted, was “extremely grave”<sup>69</sup>—taking into account the quantity of explosives involved and the indiscriminate loss of life, destruction, and widespread terror caused by the attack.<sup>70</sup> In addition to the gravity of the crimes committed, the Prosecution claims that aggravating factors prescribed by the LCC, in themselves, justify the imposition of the severest penalty.<sup>71</sup> According to the Prosecution, the following aggravating circumstances apply to Messrs Merhi and Oneissi: (a) the death of one or more individuals and the partial destruction of a building with one or more individuals inside with respect to Count 6;<sup>72</sup> (b) the

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<sup>63</sup> Prosecution Submissions, paras 2, 66.

<sup>64</sup> Prosecution Submissions, para. 2.

<sup>65</sup> Prosecution Submissions, paras 19-20.

<sup>66</sup> Prosecution Submissions, paras 21-23, 27.

<sup>67</sup> Prosecution Submissions, paras 24, 27.

<sup>68</sup> Prosecution Submissions, para. 29.

<sup>69</sup> Prosecution Submissions, para. 31.

<sup>70</sup> Prosecution Submissions, paras 31-32.

<sup>71</sup> Prosecution Submissions, para. 8.

<sup>72</sup> Prosecution Submissions, paras 47, 50.

use of an explosive device with respect to Counts 7–9;<sup>73</sup> and (c) premeditation.<sup>74</sup> The Prosecution adds that no mitigating circumstances exist in relation to Messrs Merhi and Oneissi that would justify any reduction of the sentence.<sup>75</sup>

40. The LRV submits that the crimes of which Messrs Merhi and Oneissi were convicted are “of extreme gravity” and that the sentence imposed on them should take into account the harm suffered by the victims.<sup>76</sup> According to the LRV, the absence of clear guidelines as to what constitutes gravity and individual circumstances in the Tribunal’s Statute and Rules should prompt the Appeals Chamber to have regard to some of the parameters listed in the International Criminal Court (“ICC”) Rules of Procedure and Evidence relating to the determination of the sentence.<sup>77</sup> In relation to gravity, the LRV argues that the harm suffered by the victims and the impact of the crimes upon them are relevant components.<sup>78</sup> In this regard, the LRV states that the harm suffered by the victims participating in the proceedings (“VPPs”) was “longstanding”<sup>79</sup> and that the Appeals Chamber should have regard to the testimony of Dr Letschert, who explained “the extent of the damages and the hardship VPPs have been enduring since the attack”.<sup>80</sup> In light of the relevant provisions of Lebanese law, the LRV submits that the Appeals Chamber should impose the highest possible penalty under international criminal law and in accordance with the Tribunal’s Rules.<sup>81</sup> Finally, the LRV avers that Messrs Merhi and Oneissi should receive the same sentence as Mr Ayyash in relation to Count 1.<sup>82</sup>

41. Counsel for Mr Merhi submit that the sentence suggested by the Prosecution is unjustified and disproportionate in the circumstances of the case and that reversing the acquittal of Mr Merhi on appeal and imposing a sentence in his absence are unfair.<sup>83</sup> According to Counsel for Mr Merhi, the sentencing proceedings are unfair because the sentence will not be subject to review and because Counsel are not able to present individual circumstances of

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<sup>73</sup> Prosecution Submissions, paras 48, 50.

<sup>74</sup> Prosecution Submissions, paras 51-56.

<sup>75</sup> Prosecution Submissions, paras 7, 57.

<sup>76</sup> LRV Observations, para. 3.

<sup>77</sup> LRV Observations, para. 21.

<sup>78</sup> LRV Observations, para. 23.

<sup>79</sup> LRV Observations, para. 41.

<sup>80</sup> LRV Observations, para. 42.

<sup>81</sup> LRV Observations, paras 28-33, 45.

<sup>82</sup> LRV Observations, para. 46.

<sup>83</sup> Merhi Submissions, paras 6, 12.

Mr Merhi in his absence and without his instructions.<sup>84</sup> Emphasizing that they do not accept the Appeals Chamber's findings on Mr Merhi's guilt, Counsel for Mr Merhi recount these findings and argue that the conduct underlying the convictions of Mr Merhi on all counts is the same.<sup>85</sup> Counsel for Mr Merhi conclude that the sentence imposed on Mr Merhi should reflect this in a single sentence, as opposed to the Prosecution's request, which would be clearly disproportionate to Mr Merhi's culpable conduct.<sup>86</sup> With respect to aggravating circumstances alleged by the Prosecution, Counsel for Mr Merhi contend that it would be impermissible double counting to consider them in aggravation when they also constitute elements of the crimes of which Mr Merhi was convicted.<sup>87</sup> With respect to mitigating circumstances, Counsel for Mr Merhi argue that Mr Merhi's lack of a prior criminal record, his family circumstances, and his age should be taken into account.<sup>88</sup> Finally, Counsel for Mr Merhi state that Mr Ayyash's culpable conduct is of a completely different nature and gravity compared to that found in respect of Mr Merhi and that Mr Merhi should thus receive a lesser sentence than Mr Ayyash.<sup>89</sup>

42. Counsel for Mr Oneissi request the Appeals Chamber to declare the sentencing proceedings against Mr Oneissi purposeless and illegal. They ask the Appeals Chamber not to proceed further because, in their submission and given the present *in absentia* nature of the case, the sentencing proceedings fail to meet their purposes and breach the underlying principles of sentencing and fair trial rights of Mr Oneissi.<sup>90</sup> According to Counsel for Mr Oneissi, the sentencing proceedings in this case will not lead to deterrence or retribution and will not bring relief to the victims.<sup>91</sup> Moreover, Counsel for Mr Oneissi argue that the sentencing proceedings against Mr Oneissi breach: (a) the principle of legality because a sentence should only be imposed by a trial chamber according to the provisions applicable before the Tribunal<sup>92</sup> and (b) the principle of individualized sentencing because mitigating circumstances can only be assessed in the presence and with the advice of the person convicted.<sup>93</sup> Finally, Counsel for Mr Oneissi argue that these proceedings infringe

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<sup>84</sup> Merhi Submissions, paras 12-13, 16, 57, 63.

<sup>85</sup> Merhi Submissions, paras 34, 47.

<sup>86</sup> Merhi Submissions, paras 49-51, 56.

<sup>87</sup> Merhi Submissions, paras 52-55.

<sup>88</sup> Merhi Submissions, paras 59-60.

<sup>89</sup> Merhi Submissions, paras 66-67.

<sup>90</sup> Oneissi Submissions, paras 2-3, 33.

<sup>91</sup> Oneissi Submissions, paras 4-8.

<sup>92</sup> Oneissi Submissions, paras 11-16.

<sup>93</sup> Oneissi Submissions, paras 17-23.

Mr Oneissi's fair trial rights as his *in absentia* conviction and sentencing create an imbalance between the Prosecution and the Defence, which is not in a position to put forward any mitigating circumstance.<sup>94</sup>

## B. Discussion

### 1. Preliminary Remarks

43. As a preliminary matter, the Appeals Chamber will address Defence Counsel's arguments that the sentencing proceedings conducted *in absentia* are illegal on the basis that they allegedly infringe the rights of the convicted persons and create imbalance between the Parties. The Appeals Chamber recalls that the Tribunal is mandated by the Statute to conduct proceedings *in absentia* when, *inter alia*, the accused "[h]as absconded or otherwise cannot be found and all reasonable steps have been taken to secure his or her appearance before the Tribunal and to inform him or her of the charges confirmed by the Pre-Trial Judge".<sup>95</sup> This determination was duly made in the case of Messrs Merhi and Oneissi, and the proceedings against them have therefore been conducted *in absentia*.<sup>96</sup> The legal framework of *in absentia* proceedings before the Tribunal has been carefully designed with a view at ensuring that the rights of accused persons are safeguarded, for instance by appointing Counsel to represent the accused's interests.<sup>97</sup> The current sentencing proceedings ensue from this framework and are being conducted in full compliance with the provisions of the Statute and the Rules and with international human rights standards. That is sufficient basis in law for the Appeals Chamber therefore to dismiss the claim that the proceedings are "purposeless and illegal".

44. With respect to both Messrs Merhi and Oneissi, the Appeals Chamber further emphasizes that, pursuant to Rule 109 (E) of the Rules, a person who appears after having been convicted *in absentia* by the Appeals Chamber has a right to: "(i) accept in writing the conviction or sentence; (ii) request a retrial; (iii) accept in writing the conviction and request a new hearing in respect of his sentence; or (iv) accept the Trial Chamber's judgment of acquittal

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<sup>94</sup> Oneissi Submissions, paras 24-32.

<sup>95</sup> Art. 22 (1) (c) STL St.

<sup>96</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/I/TC, F0112, Decision to Hold Trial *In Absentia*, 1 February 2012; STL, *Prosecutor v. Merhi*, STL-13-04/I/TC, F0037, Decision to Hold Trial *In Absentia*, 20 December 2013. Rule 107 of the Rules states that "[t]he rules on pre-trial, trial, and appellate proceedings shall apply *mutatis mutandis* to proceedings *in absentia*."

<sup>97</sup> Art. 22 (2) (c) STL St.

and request a new hearing on appeal”.<sup>98</sup> These provisions do therefore adequately remove any risk of unfairness for Messrs Merhi and Oneissi.

## 2. Hassan Habib Merhi

45. The Appeals Chamber has found Mr Merhi guilty of the following crimes: (a) being a co-perpetrator of a conspiracy aimed at committing a terrorist act; (b) being an accomplice to a terrorist act; (c) being an accomplice to the intentional homicide of Mr Rafik Hariri and 21 other persons; and (d) being an accomplice to the attempted intentional homicide of 226 persons.<sup>99</sup>

### a. Gravity of the Offences

46. The terrorist act in which Mr Merhi conspired and of which he was an accomplice consisted in the killing of Mr Hariri on 14 February 2005. The attack involved the use of a large amount of military-grade explosives, which were detonated in a busy public place, in broad daylight.<sup>100</sup> As a result, 22 people were killed and 226 others were injured, and many buildings were destroyed.<sup>101</sup> Since the death of individuals, the destruction of buildings, and the use of an explosive device were pleaded as aggravating circumstances, the Appeals Chamber, in order to avoid “double counting”, will assess whether these facts are established in the section on aggravating circumstances below.

47. The Appeals Chamber has carefully reviewed the submissions regarding the extent of the harm caused to the victims of the attack. We note that victims of the attack suffered from physical, material, and mental harm. The Appeals Chamber refers to the Trial Chamber’s findings in relation to the victims of the attack on 14 February 2005.<sup>102</sup> We note that the list of victims in the Trial Judgment is not necessarily exhaustive of all the people who may have suffered harm in connection with the attack.

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<sup>98</sup> See also Art. 22 (3) STL St.

<sup>99</sup> Appeal Judgment, para. 644.

<sup>100</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F3839, Judgment, 18 August 2020 (“Trial Judgment”), paras 1006, 1250, 6383. Based on the forensic evidence heard at trial, the Trial Chamber found that the quantity of explosives used in the attack was in the range of 2500 to 3000 kilograms of TNT equivalent and can be described as military-grade explosives.

<sup>101</sup> Trial Judgment, paras 1006, 1129, 1134, 1208, 1452.

<sup>102</sup> Trial Judgment, paras 1452-1556.

48. The evidence also demonstrates that the attack terrorized, not only the direct victims, but more generally the people of Lebanon.<sup>103</sup> This further adds to the gravity of the offences.<sup>104</sup>

49. It is therefore undeniable that the offences of which Mr Merhi was found guilty are extremely grave. Terrorism, which Mr Merhi has been convicted of conspiring with others to commit, is a particularly heinous crime. As is apparent from the facts of this case, terrorism constitutes a callous disregard of human life. It is a brazen disrespect for the rights of others. It is an intolerable threat to the peace, safety, and harmony of the community. It destabilizes the country and its social and governmental institutions. At its core, it is employed to spread fear or to coerce governmental authorities to do or to refrain from doing that which its perpetrators wish. It is thus antithetic to democratic governance and to the rule of law. Worse still, terrorism has the potential to disturb international peace and security, with all the attendant evil consequences that ensue from this. Thus in the instant case, the UN Security Council characterized the terrorist attack of 14 February 2005 as a threat to international peace and, acting under Chapter VII of the UN Charter, established this Tribunal with the mandate to bring to justice those responsible for the attack as a means of maintaining or restoring the peace that was threatened by that attack. Therefore, given the evil nature of terrorism, the sentence that we shall impose on the persons convicted as being responsible for the attack of 14 February 2005 must be such as not only to reflect the revulsion of the international community to such attacks but also to deter those persons and others, both in Lebanon and worldwide, from committing similar attacks and to sound a warning that involvement in such conduct does not pay.

b. Individual Circumstances

i. Aggravating Circumstances

50. In the Amended Consolidated Indictment, the Prosecution pleaded certain aggravating circumstances *vis-à-vis* Mr Merhi. They pertain to: (a) the death of individuals and the partial destruction of buildings with people inside them as a consequence of the terrorist act; and (b) premeditation and the use of an explosive device in carrying out the intentional homicides and attempted intentional homicides.<sup>105</sup>

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<sup>103</sup> Trial Judgment, paras 1557-1560, 6335-6340, 6764.

<sup>104</sup> *Galić* Appeal Judgment, paras 449, 455; *Galić* Trial Judgment, para. 764.

<sup>105</sup> Amended Consolidated Indictment, paras 63, 65, 67, 69.

51. As mentioned above, Mr Hariri and 21 other persons died as a result of the terrorist act that occurred on 14 February 2005.<sup>106</sup> The detonation of the explosive device also caused significant damage to surrounding buildings with people inside them.<sup>107</sup> As one of the three members of the Green Network, the mission command of the attack,<sup>108</sup> Mr Merhi was fully aware that the planned attack involved the killing of Mr Hariri by means of an explosive device in a busy place, the centre of Beirut, in broad daylight on 14 February 2005.<sup>109</sup> Mr Merhi knew that Mr Hariri would be killed, other people would die and be injured, and buildings would be destroyed.<sup>110</sup> We therefore hold that the following aggravating circumstances have been established beyond reasonable doubt: the death of individuals and the partial destruction of buildings with people inside them as a consequence of the terrorist act and the use of an explosive device in carrying out the intentional homicides and attempted intentional homicides.

52. The Appeals Chamber recalls that premeditation is an aggravating circumstance.<sup>111</sup> A premeditated act is one that does not occur by happenstance or coincidentally. Rather, it is a thought-out and carefully planned act. In the present case, we have found that Mr Merhi was one of the three members of the Green Network from September 2004<sup>112</sup> and that he was in charge of the preparation and dissemination of the false claim of responsibility aimed at shielding the perpetrators of the attack from justice.<sup>113</sup> In order to fulfil his role, Mr Merhi coordinated Mr Oneissi and the user of Purple 018 from at least December 2004.<sup>114</sup> The false claim of responsibility was an elaborate, planned act, aimed at shielding the perpetrators from justice. The Appeals Chamber therefore finds that it has been established beyond reasonable doubt that Mr Merhi acted with premeditation as an accomplice to intentional homicide and attempted intentional homicide.

ii. Mitigating Circumstances

53. The Appeals Chamber notes that Mr Merhi does not have any prior criminal convictions.<sup>115</sup> While this has been recognized by international jurisprudence to be a potential

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<sup>106</sup> The Parties agreed to this fact during the trial. Trial Judgment, para. 1006.

<sup>107</sup> Trial Judgment, paras 1007-1016.

<sup>108</sup> Appeal Judgment, para. 641.

<sup>109</sup> Appeal Judgment, para. 643.

<sup>110</sup> Appeal Judgment, para. 643.

<sup>111</sup> 2011 Interlocutory Decision on Applicable Law, paras 168-174.

<sup>112</sup> Appeal Judgment, para. 304.

<sup>113</sup> Appeal Judgment, para. 641.

<sup>114</sup> Appeal Judgment, para. 641.

<sup>115</sup> Prosecution Submissions, Annex A.

mitigating circumstance, we hold that in the present circumstances the lack of prior conviction does not militate in favour of a lesser sentence.<sup>116</sup> Balanced against other factors in the case germane to sentencing, the gravity of the offences of which Mr Merhi was convicted and the aggravating circumstances as established in foregoing paragraphs by far outweigh and pale into insignificance Mr Merhi's prior clean criminal record, his age, and his family circumstances at the time of the attack. It would here be disproportionate for these otherwise favourable factors to be accepted as mitigating his sentence.

c. Accomplice Liability

54. Mr Merhi was also convicted as an accomplice with respect to Counts 6–9. In light of the wording of Article 220 of the LCC, the Appeals Chamber will assess whether the offences of which he was an accomplice would have been committed without his assistance.

55. The assistance provided by Mr Merhi consisted of directing and coordinating one of the two prongs of the attack, namely, the false claim of responsibility. It has not been proved that Mr Merhi provided the explosive device, nor was he found to have informed the perpetrators of where Mr Hariri would be on 14 February 2005. However, those in charge of the preparation for and planning of the attack devised and implemented, months in advance of the attack, an intricate plan to identify a scapegoat to feature in the videotape of the false claim of responsibility. Moreover, one of the three members of the mission command network was put in charge of the preparation and dissemination of the false claim. Finally, the aim of the false claim was to deflect attention and ultimate responsibility from those who planned and perpetrated the attack. The Appeals Chamber therefore finds that the false claim of responsibility was an essential part of the planned attack and that, had the videotape not been ready to be disseminated on 14 February 2005, the crimes would not have been committed. Mr Merhi must therefore be sentenced following the guidelines provided for perpetrators as per Article 220 of the LCC. There is nothing in the present circumstances that justifies commuting his sentence based on his conviction as an accomplice.

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<sup>116</sup> The lack of a previous criminal record has been found to be a common characteristic among many convicted persons, which is accorded little to no weight in mitigation in the absence of exceptional circumstances. *Ntabakuze* Appeal Judgment, para. 284; *Ntagerura et al.* Appeal Judgment, para. 439; *Babić* Judgment on Sentencing Appeal, paras 49-50.

3. Hussein Hassan Oneissi

56. The Appeals Chamber has found Mr Oneissi guilty of the following crimes: (a) being a co-perpetrator of a conspiracy aimed at committing a terrorist act; (b) being an accomplice to a terrorist act; (c) being an accomplice to the intentional homicide of Mr Rafik Hariri and 21 other persons; and (d) being an accomplice to the attempted intentional homicide of 226 persons.<sup>117</sup>

a. Gravity of the Offences

57. The terrorist act in which Mr Oneissi conspired and of which he was an accomplice consisted in the killing of Mr Hariri on 14 February 2005. The attack involved the use of a large amount of military-grade explosives, which were detonated in a busy public place, in broad daylight.<sup>118</sup> As a result, 22 people were killed and 226 others were injured, and many buildings were destroyed.<sup>119</sup> Since the death of individuals, the destruction of buildings, and the use of an explosive device were pleaded as aggravating circumstances, the Appeals Chamber, in order to avoid “double counting”, will assess whether these facts are established in the section on aggravating circumstances below.

58. The Appeals Chamber has carefully reviewed the submissions regarding the extent of the harm caused to the victims of the attack. We have noted that victims of the attack suffered from physical, material, and mental harm. The Appeals Chamber refers to the Trial Chamber’s findings in relation to the victims of the attack on 14 February 2005.<sup>120</sup> We note that the list of victims in the Trial Judgment is not necessarily exhaustive of all the people who may have suffered harm in connection with the attack.

59. The evidence also demonstrates that the attack terrorized, not only the direct victims, but more generally the people of Lebanon.<sup>121</sup> This further adds to the gravity of the offences.<sup>122</sup>

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<sup>117</sup> Appeal Judgment, para. 651.

<sup>118</sup> Trial Judgment, paras 1006, 1250, 6383. Based on the forensic evidence heard at trial, the Trial Chamber found that the quantity of explosives used in the attack was in the range of 2500 to 3000 kilograms of TNT equivalent and can be described as military-grade explosives.

<sup>119</sup> Trial Judgment, paras 1006, 1129, 1134, 1208, 1452.

<sup>120</sup> Trial Judgment, paras 1452-1556.

<sup>121</sup> Trial Judgment, paras 1557-1560, 6335-6340, 6764.

<sup>122</sup> *Galić* Appeal Judgment, paras 449, 455; *Galić* Trial Judgment, para. 764.

60. It is therefore again undeniable that the offences of which Mr Oneissi was found guilty are extremely grave.

b. Individual Circumstances

i. Aggravating Circumstances

61. In the Amended Consolidated Indictment, the Prosecution pleaded certain aggravating circumstances *vis-à-vis* Mr Oneissi. They pertain to: (a) the death of individuals and the partial destruction of buildings with people inside them as a consequence of the terrorist act; and (b) premeditation and the use of an explosive device in carrying out the intentional homicides and attempted intentional homicides.<sup>123</sup>

62. We have mentioned that Mr Hariri and 21 other persons died as a result of the terrorist act that occurred on 14 February 2005.<sup>124</sup> Having been involved in the preparation and dissemination of the false claim of responsibility, Mr Oneissi was fully aware that the planned attack involved the killing of Mr Hariri.<sup>125</sup> With the knowledge of the perpetrators' intent and with the intent to help further the terrorist act and the intentional homicide of Mr Hariri, Mr Oneissi accepted the fact that other people would die and be injured.<sup>126</sup> We therefore hold that the following aggravating circumstance has been established beyond reasonable doubt: the death of individuals as a consequence of the terrorist act.

63. We recall that premeditation is an aggravating circumstance.<sup>127</sup> We have noted that a premeditated act is one that does not occur by happenstance or coincidentally. Rather, it is a thought-out and carefully planned act. In the present case, we have found that Mr Oneissi was one of the persons tasked with assisting in the preparation and execution of the false claim of responsibility aimed at shielding the perpetrators from justice.<sup>128</sup> To this end, Mr Oneissi was involved in the preparation of the false claim of responsibility under the instructions of Mr Merhi during the COLA phase, *i.e.*, since at least December 2004.<sup>129</sup> The false claim of responsibility was an elaborate, planned act, aimed at shielding the perpetrators from justice.

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<sup>123</sup> Amended Consolidated Indictment, paras 63, 65, 67, 69.

<sup>124</sup> The Parties agreed to this fact during the trial. Trial Judgment, para. 1006.

<sup>125</sup> Appeal Judgment, paras 647-650.

<sup>126</sup> Appeal Judgment, para. 650.

<sup>127</sup> 2011 Interlocutory Decision on Applicable Law, paras 168-174.

<sup>128</sup> Appeal Judgment, paras 647-648.

<sup>129</sup> Appeal Judgment, paras 536-538. The Prosecution uses the term "COLA phase" to refer to the Purple Phones' activity in the area of COLA1, COLA2, and COLA3 between 29 December 2004 and 7 January 2005. *See* Trial Judgment, para. 5170.

The Appeals Chamber therefore finds that that it has been established beyond reasonable doubt that Mr Oneissi acted with premeditation as an accomplice to intentional homicide and attempted intentional homicide.

ii. Mitigating Circumstances

64. The Appeals Chamber notes that Mr Oneissi does not have any prior criminal convictions.<sup>130</sup> While this has been recognized by international jurisprudence to be a potential mitigating circumstance, we again hold that in the present circumstances the lack of prior conviction does not militate in favour of a lesser sentence.<sup>131</sup> Balanced against other factors in the case germane to sentencing, the gravity of the offences of which Mr Oneissi was convicted and the aggravating circumstances as established in the foregoing paragraphs by far outweigh and pale into insignificance Mr Oneissi's prior clean criminal record. It would here be disproportionate for this otherwise favourable factor to be accepted as mitigating his sentence.

c. Accomplice Liability

65. Mr Oneissi was also convicted as an accomplice with respect to Counts 6–9. In light of the wording of Article 220 of the LCC, the Appeals Chamber must assess whether the offences of which he was an accomplice would have been committed without his assistance.

66. The assistance provided by Mr Oneissi consisted of actively participating in one of the two prongs of the attack, namely, the preparation and dissemination of the false claim of responsibility. As in the case of Mr Merhi, it has not been proved that Mr Oneissi provided the explosive device nor informed the perpetrators of where Mr Hariri would be on 14 February 2005. However, those in charge of the attack devised and implemented, months in advance of the attack, an intricate plan to identify a scapegoat to feature in the videotape of the false claim of responsibility. Mr Oneissi was party to performing the task overseen by Mr Merhi who had been put in charge as one of the three members of the mission command network of the preparation and dissemination of the false claim. Finally, the aim of the false claim was to deflect attention and ultimate responsibility from those who planned and perpetrated the attack. The Appeals Chamber therefore finds that the false claim of responsibility was an essential part

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<sup>130</sup> Prosecution Submissions, Annex B.

<sup>131</sup> The lack of a previous criminal record has been found to be a common characteristic among many convicted persons, which is accorded little to no weight in mitigation in the absence of exceptional circumstances. *Ntabakuze* Appeal Judgment, para. 284; *Ntagerura et al.* Appeal Judgment, para. 439; *Babić* Judgment on Sentencing Appeal, paras 49-50.

of the planned attack and that, had the videotape not been ready to be disseminated on 14 February 2005, the crimes would not have been committed. Mr Oneissi must therefore be sentenced following the guidelines provided for perpetrators as per Article 220 of the LCC. There is nothing in the present circumstances that justifies commuting his sentence based on his conviction as an accomplice.

### **C. Conclusion**

67. In the present case, the Appeals Chamber decides to exercise its discretion to impose a sentence for each crime of which Messrs Merhi and Oneissi were convicted in order to reflect their criminal responsibility for each of these crimes and the factors that were taken into account in order to reach the appropriate sentence for each crime.<sup>132</sup>

68. For the reasons detailed above, the Appeals Chamber sentences Messrs Merhi and Oneissi to life imprisonment, the heaviest sentence under the Statute and Rules, for each of the following counts: Count 1 and 6–9. The Appeals Chamber orders that these sentences be served concurrently.

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<sup>132</sup> This conclusion is consistent with Rule 171 (D) of the Rules and Article 205 of the LCC.

#### IV. COMPENSATION SCHEME FOR THE VICTIMS

69. The LRV recalls that the Trial Chamber recommended the creation of both a national scheme for compensation within Lebanon and an international fund for reparations to be administered by the Tribunal.<sup>133</sup> The LRV invites the Appeals Chamber “to endorse and reaffirm the Trial Chamber’s recommendations in this regard”.<sup>134</sup>

70. The Appeals Chamber recalls its previous decision on the admissibility of an appeal from the LRV in 2021. In that decision, we determined that the imposition of a fine on a convicted person and the granting of compensation to VPPs are not matters that fall within our jurisdiction.<sup>135</sup>

71. The Appeals Chamber is generally sympathetic to the notion that victims should have access to adequate compensation schemes. However, the authority of the Appeals Chamber and the jurisdiction of the Tribunal are limited by the Statute. Accordingly, the Appeals Chamber’s function is strictly judicial and primarily consists in deciding appeals of which it is seised.<sup>136</sup> Regarding victim compensation, the Statute provides that a victim of one of the crimes within the Tribunal’s jurisdiction may bring an action for compensation before a national court or other competent body.<sup>137</sup> Before the Tribunal, VPPs are allowed to participate in order to present their views and concerns in relation to matters that affect their interests.<sup>138</sup> These views and concerns, as well as the harm suffered by the victims of the 14 February attack, were duly noted and taken into account by the Appeals Chamber in determining the sentences in the present decision. In this regard, the LRV submits that the imposition of a proportionate sentence serves as an acknowledgment of the victims’ harm.<sup>139</sup>

72. In light of the statutory provisions governing victim participation and the Appeals Chamber’s limited jurisdiction, we find that we do not have the authority to endorse or reaffirm the recommendations made by the Trial Chamber. The LRV’s request in this regard is therefore dismissed. The Appeals Chamber acknowledges that, pursuant to Article 25 of the Statute, a victim or persons claiming through the victim, whether or not such victim has been identified

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<sup>133</sup> LRV Observations, para. 48, *referring to* STL, *Prosecutor v. Ayyash*, STL-11-01/S/TC, F3855, Sentencing Judgment, 11 December 2020, paras 260-302, 308.

<sup>134</sup> LRV Observations, para. 49.

<sup>135</sup> STL, *Prosecutor v. Merhi and Oneissi*, STL-11-01/A-2/AC, F0012, Decision on the Admissibility of the LRV Appeal Against Sentence and Modalities of Victim Participation, 24 February 2021, para. 40.

<sup>136</sup> Art. 26 STL St.

<sup>137</sup> Art. 25 (3) STL St.

<sup>138</sup> Art. 17 STL St.

<sup>139</sup> LRV Observations, para. 11.

as such by the Tribunal, may bring an action for compensation before a national court or other competent body. We emphasize that, for this purpose, the Trial Judgment and the Appeal Judgment are final and binding as to the criminal responsibility of Messrs Ayyash, Merhi, and Oneissi pursuant to Article 25 (4) of the Statute.

**V. DISPOSITION****FOR THESE REASONS,**

**PURSUANT TO** Articles 2, 24, and 26 of the Statute; Rules 171, 172, 176 (B), and 188 of the Rules of Procedure and Evidence; Articles 200, 205, 213, 220, 270, 314, 547, and 549 (1) and (7) of the Lebanese Criminal Code; and Articles 6 and 7 of the Law of 11 February 1958,

**THE APPEALS CHAMBER**, deciding unanimously,

**SENTENCES** Hassan Habib Merhi to:

**Count 1** – Conspiracy aimed at committing a Terrorist Act: life imprisonment;

**Count 6** – Being an Accomplice to the felony of Committing a Terrorist Act by means of an explosive device: life imprisonment;

**Count 7** – Being an Accomplice to the felony of Intentional Homicide (of Rafik HARIRI) with premeditation by using explosive materials: life imprisonment;

**Count 8** – Being an Accomplice to the felony of Intentional Homicide (of 21 persons in addition to the Intentional Homicide of Rafik HARIRI) with premeditation by using explosive materials: life imprisonment;

**Count 9** – Being an Accomplice to the felony of Attempted Intentional Homicide (of 226 persons in addition to the Intentional Homicide of Rafik HARIRI) with premeditation by using explosive materials: life imprisonment;

**ORDERS** that these sentences run concurrently;

**SENTENCES** Hussein Hassan Oneissi to:

**Count 1** – Conspiracy aimed at committing a Terrorist Act: life imprisonment;

**Count 6** – Being an Accomplice to the felony of Committing a Terrorist Act: life imprisonment;

**Count 7** – Being an Accomplice to the felony of Intentional Homicide (of Rafik HARIRI) with premeditation: life imprisonment;

**Count 8** – Being an Accomplice to the felony of Intentional Homicide (of 21 persons in addition to the Intentional Homicide of Rafik HARIRI) with premeditation: life imprisonment;

**Count 9** – Being an Accomplice to the felony of Attempted Intentional Homicide (of 226 persons in addition to the Intentional Homicide of Rafik HARIRI) with premeditation: life imprisonment;

**ORDERS** that these sentences run concurrently.

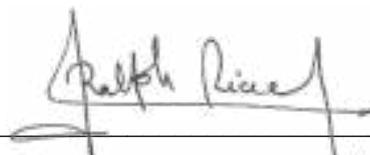
Done in Arabic, English, and French, the English version being authoritative.

Dated 16 June 2022

Leidschendam, the Netherlands



Judge Ivana Hrdličková, Presiding



Judge Ralph Riachy



Judge David Baragwanath



Judge Afif Chamseddine



Judge Daniel David  
Ntanda Nsereko

**VI. ANNEX A: TABLE OF ABBREVIATIONS AND ACRONYMS**

Amended Consolidated Indictment	STL, <i>Prosecutor v. Ayyash et al.</i> , STL-11-01/T/TC, F3813, Notice of Filing of Updated Redacted Version of F2720 “Amended Consolidated Indictment”, Filed 12 July 2016, 23 January 2020, Annex: Updated Public Redacted Version of Amended Consolidated Indictment
ICC	International Criminal Court
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Between 1 January 1994 and 31 December 1994
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia Since 1991
IRMCT	International Residual Mechanism for Criminal Tribunals
KSC	Kosovo Specialist Chambers and Specialist Prosecutor’s Office
Law of 11 February 1958	Lebanese law of 11 February 1958 on “Increasing the penalties for sedition, civil war and interfaith struggle”
LCC	Lebanese Criminal Code
LRV	Legal Representative of Victims
LRV Observations	STL, <i>Prosecutor v. Merhi and Oneissi</i> , STL-11-01/S-2/AC, F0055, Corrected Version of “The Legal Representative of Victims’ Observations on Sentencing” Dated 23 March 2022, 14 June 2022
Merhi Submissions	STL, <i>Prosecutor v. Merhi and Oneissi</i> , STL-11-01/S-2/AC, F0059, Merhi Defence Submissions on Sentence, 8 April 2022
Oneissi Submissions	STL, <i>Prosecutor v. Merhi and Oneissi</i> , STL-11-01/S-2/AC, F0058, Oneissi Defence Response to the Prosecution’s Submissions on Sentencing, 8 April 2022
Prosecution Submissions	STL, <i>Prosecutor v. Merhi and Oneissi</i> , STL-11-01/S-2/AC, F0057, Prosecution Submissions on Sentence, 25 March 2022

Rules or RPE	Rules of Procedure and Evidence of the Special Tribunal for Lebanon
SCSL	Special Court for Sierra Leone
Statute	Statute of the Special Tribunal for Lebanon
STL or Tribunal	Special Tribunal for Lebanon
UN	United Nations
VPP	Victim Participating in the Proceedings

## VII. ANNEX B: TABLE OF CASES

### A. Special Tribunal for Lebanon

2011 Interlocutory Decision on Applicable Law	STL, <i>Prosecutor v. Ayyash et al.</i> , STL-11-01/I, F0936, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011
Appeal Judgment	STL, <i>Prosecutor v. Merhi and Oneissi</i> , STL-11-01/A-2/AC, F0051, Appeal Judgment, 10 March 2022
Trial Judgment	STL, <i>Prosecutor v. Ayyash et al.</i> , STL-11-01/T/TC, F3839, Judgment, 18 August 2020

### B. International Criminal Tribunal for the former Yugoslavia

<i>Aleksovski</i> Appeal Judgment	ICTY, <i>Prosecutor v. Aleksovski</i> , IT-95-14/1-A, Judgement, 24 March 2000
<i>Babić</i> Judgment on Sentencing Appeal	ICTY, <i>Prosecutor v. Babić</i> , IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005
<i>Blaškić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Blaškić</i> , IT-95-14-A, Judgement, 29 July 2004
<i>Bralo</i> Judgment on Sentencing Appeal	ICTY, <i>Prosecutor v. Bralo</i> , IT-95-17-A, Judgement on Sentencing Appeal, 2 April 2007
<i>Čelebići</i> Appeal Judgment	ICTY, <i>Prosecutor v. Delalić et al.</i> , IT-96-21-A, Judgement, 20 February 2001
<i>Čelebići</i> Trial Judgment	ICTY, <i>Prosecutor v. Delalić et al.</i> , IT-96-21-T, Judgement, 16 November 1998
<i>D. Milošević</i> Appeal Judgment	ICTY, <i>Prosecutor v. D. Milošević</i> , IT-98-29/1-A, Judgement, 12 November 2009
<i>D. Milošević</i> Trial Judgment	ICTY, <i>Prosecutor v. D. Milošević</i> , IT-98-29/1-T, Judgement, 12 December 2007
<i>D. Nikolić</i> Judgment on Sentencing Appeal	ICTY, <i>Prosecutor v. D. Nikolić</i> , IT-94-2-A, Judgement on Sentencing Appeal, 4 February 2005
<i>D. Nikolić</i> Sentencing Judgment	ICTY, <i>Prosecutor v. D. Nikolić</i> , IT-94-2-S, Sentencing Judgment, 18 December 2003
<i>Deronjić</i> Judgment on Sentencing Appeal	ICTY, <i>Prosecutor v. Deronjić</i> , IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005

<i>Dorđević</i> Appeal Judgment	ICTY, <i>Prosecutor v. Dorđević</i> , IT-05-87/1-A, Judgement, 27 January 2014
<i>Erdemović</i> Appeal Judgment	ICTY, <i>Prosecutor v. Erdemović</i> , IT-96-22-A, Judgement, 7 October 1997
<i>Erdemović</i> Sentencing Judgment	ICTY, <i>Prosecutor v. Erdemović</i> , IT-96-22-Tbis, Sentencing Judgement, 5 March 1998
<i>Furundžija</i> Appeal Judgment	ICTY, <i>Prosecutor v. Furundžija</i> , IT-95-17/1-A, Judgement, 21 July 2000
<i>Galić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Galić</i> , IT-98-29-A, Judgement, 30 November 2006
<i>Galić</i> Trial Judgment	ICTY, <i>Prosecutor v. Galić</i> , IT-98-29-T, Judgement and Opinion, 5 December 2003
<i>Hadžihasanović and Kubura</i> Appeal Judgment	ICTY, <i>Prosecutor v. Hadžihasanović and Kubura</i> , IT-01-47-A, Judgement, 22 April 2008
<i>Jelisić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Jelisić</i> , IT-95-10-A, Judgement, 5 July 2001
<i>Jokić</i> Sentencing Judgment	ICTY, <i>Prosecutor v. Jokić</i> , IT-01-42/1-S, Sentencing Judgement, 18 March 2004
<i>Karadžić</i> Trial Judgment	ICTY, <i>Prosecutor v. Karadžić</i> , IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016, 24 March 2016
<i>Kordić and Čerkez</i> Appeal Judgment	ICTY, <i>Prosecutor v. Kordić and Čerkez</i> , IT-95-14/2-A, Judgement, 17 December 2004
<i>Krajišnik</i> Appeal Judgment	ICTY, <i>Prosecutor v. Krajišnik</i> , IT-00-39-A, Judgement, 17 March 2009
<i>Krstić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Krstić</i> , IT-98-33-A, Judgement, 19 April 2004
<i>Krstić</i> Trial Judgment	ICTY, <i>Prosecutor v. Krstić</i> , IT-98-33-T, Judgement, 2 August 2001
<i>Kunarac et al.</i> Appeal Judgment	ICTY, <i>Prosecutor v. Kunarac et al.</i> , IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002
<i>Kunarac et al.</i> Trial Judgment	ICTY, <i>Prosecutor v. Kunarac et al.</i> , IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001
<i>Kupreškić et al.</i> Appeal Judgment	ICTY, <i>Prosecutor v. Kupreškić et al.</i> , IT-95-16-A, Appeal Judgement, 23 October 2001

<i>Kupreškić et al.</i> Trial Judgment	ICTY, <i>Prosecutor v. Kupreškić et al.</i> , IT-95-16-T, Judgement, 14 January 2000
<i>Kvočka et al.</i> Appeal Judgment	ICTY, <i>Prosecutor v. Kvočka et al.</i> , IT-98-30/1-A, Judgement, 28 February 2005
<i>Kvočka et al.</i> Trial Judgment	ICTY, <i>Prosecutor v. Kvočka et al.</i> , IT-98-30/1-T, Judgement, 2 November 2001
<i>M. Nikolić</i> Judgment on Sentencing Appeal	ICTY, <i>Prosecutor v. M. Nikolić</i> , IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006
<i>Mladić</i> Trial Judgment	ICTY, <i>Prosecutor v. Mladić</i> , IT-09-92-T, Judgement, 22 November 2017
<i>Plavšić</i> Sentencing Judgment	ICTY, <i>Prosecutor v. Plavšić</i> , IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003
<i>Popović et al.</i> Appeal Judgment	ICTY, <i>Prosecutor v. Popović et al.</i> , IT-05-88-A, Judgement, 30 January 2015
<i>Popović et al.</i> Trial Judgment	ICTY, <i>Prosecutor v. Popović et al.</i> , IT-05-88-T, Judgement, 10 June 2010
<i>Sikirica et al.</i> Sentencing Judgment	ICTY, <i>Prosecutor v. Sikirica et al.</i> , IT-95-8-S, Sentencing Judgement, 13 November 2001
<i>Simić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Simić</i> , IT-95-9-A, Judgement, 28 November 2006
<i>Simić et al.</i> Trial Judgment	ICTY, <i>Prosecutor v. Simić et al.</i> , IT-95-9-T, Judgement, 17 October 2003
<i>Stakić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Stakić</i> , IT-97-24-A, Judgement, 22 March 2006
<i>Strugar</i> Appeal Judgment	ICTY, <i>Prosecutor v. Strugar</i> , IT-01-42-A, Judgement, 17 July 2008
<i>Todorović</i> Sentencing Judgment	ICTY, <i>Prosecutor v. Todorović</i> , IT-95-9/1-S, Sentencing Judgement, 31 July 2001
<i>Vasiljević</i> Appeal Judgment	ICTY, <i>Prosecutor v. Vasiljević</i> , IT-98-32-A, Judgement, 25 February 2004

### C. International Criminal Tribunal for Rwanda

<i>Akayesu</i> Appeal Judgment	ICTR, <i>Prosecutor v. Akayesu</i> , ICTR-96-4-A, Judgment, 1 June 2001
<i>Gatete</i> Appeal Judgment	ICTR, <i>Gatete v. Prosecutor</i> , ICTR-00-61-A, Judgement, 9 October 2012

<i>Kajelijeli</i> Appeal Judgment	ICTR, <i>Kajelijeli v. Prosecutor</i> , ICTR-98-44A-A, Judgement, 23 May 2005
<i>Karemera and Ngirumpatse</i> Appeal Judgment	ICTR, <i>Karemera and Ngirumpatse v. Prosecutor</i> , ICTR-98-44-A, Judgement, 29 September 2014
<i>Kayishema and Ruzindana</i> Appeal Judgment	ICTR, <i>Prosecutor v. Kayishema and Ruzindana</i> , ICTR-95-1-A, Judgment (Reasons), 1 June 2001
<i>Muhimana</i> Appeal Judgment	ICTR, <i>Muhimana v. Prosecutor</i> , ICTR-95-1B-A, Judgement, 21 May 2007
<i>Musema</i> Appeal Judgment	ICTR, <i>Musema v. Prosecutor</i> , ICTR-96-13-A, Judgement, 16 November 2001
<i>Nahimana et al.</i> Appeal Judgment	ICTR, <i>Nahimana et al. v. Prosecutor</i> , ICTR-99-52-A, Judgement, 28 November 2007
<i>Ntabakuze</i> Appeal Judgment	ICTR, <i>Ntabakuze v. Prosecutor</i> , ICTR-98-41A-A, Judgement, 8 May 2012
<i>Ntagerura et al.</i> Appeal Judgment	ICTR, <i>Prosecutor v. Ntagerura et al.</i> , ICTR-99-46-A, Judgement, 7 July 2006
<i>Nyiramasuhuko et al.</i> Appeal Judgment	ICTR, <i>Prosecutor v. Nyiramasuhuko et al.</i> , ICTR-98-42-A, Judgement, 14 December 2015
<i>Nzabonimana</i> Appeal Judgment	ICTR, <i>Nzabonimana v. Prosecutor</i> , ICTR-98-44D-A, Judgement, 29 September 2014
<i>Rutaganda</i> Appeal Judgment	ICTR, <i>Rutaganda v. Prosecutor</i> , ICTR-96-3-A, Judgement, 26 May 2003
<i>Semanza</i> Appeal Judgment	ICTR, <i>Semanza v. Prosecutor</i> , ICTR-97-20-A, Judgement, 20 May 2005
<i>Serushago</i> Reasons for Judgment	ICTR, <i>Serushago v. Prosecutor</i> , ICTR-98-39-A, Reasons for Judgment, 6 April 2000
<i>Simba</i> Appeal Judgment	ICTR, <i>Simba v. Prosecutor</i> , ICTR-01-76-A, Judgement, 27 November 2007

#### **D. International Criminal Court**

<i>Bemba et al.</i> Judgment on Sentencing Appeal	ICC, <i>Prosecutor v. Bemba et al.</i> , ICC-01/05-01/13, Judgment on the Appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido Against the Decision of Trial Chamber VII Entitled “Decision on Sentence Pursuant to Article 76 of the Statute”, 8 March 2018
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<i>Bemba</i> Sentencing Judgment	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08, Decision on Sentence Pursuant to Article 76 of the Statute, 21 June 2016
<i>Ntaganda</i> Sentencing Judgment	ICC, <i>Prosecutor v. Ntaganda</i> , ICC-01/04-02/06, Sentencing Judgment, 7 November 2019
<i>Ongwen</i> Sentencing Judgment	ICC, <i>Prosecutor v. Ongwen</i> , ICC-02/04-01/15, Sentence, 6 May 2021

#### E. Special Court for Sierra Leone

<i>Brima et al.</i> Appeal Judgment	SCSL, <i>Prosecutor v. Brima et al.</i> , SCSL-2004-16-A, Judgment, 22 February 2008
<i>Fofana and Kondewa</i> Appeal Judgment	SCSL, <i>Prosecutor v. Fofana and Kondewa</i> , SCSL-04-14-A, Judgment, 28 May 2008
<i>Sesay et al.</i> Appeal Judgment	SCSL, <i>Prosecutor v. Sesay et al.</i> , SCSL-04-15-A, Judgment, 26 October 2009
<i>Taylor</i> Appeal Judgment	SCSL, <i>Prosecutor v. Taylor</i> , SCSL-03-01-A, Judgment, 26 September 2013

#### F. Extraordinary Chambers in the Courts of Cambodia

<i>Nuon Chea and Khieu Samphân</i> Appeal Judgment	ECCC, <i>Prosecutor v. Nuon Chea and Khieu Samphân</i> , 002/19-09-2007-ECCC/SC, Appeal Judgement, 23 November 2016
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