

**IN THE SPECIAL COURT OF SIERRA LEONE**

**TRIAL CHAMBER II**

**Before: The Trial Chamber**

Judge Teresa Doherty, Presiding Judge  
Judge Richard Brunt Lussick  
Judge Julia Sebuntinde

**Registrar:** Mr Robin Vincent

**Date Filed:** 21<sup>st</sup> February 2005

**THE PROSECUTOR**

Against

**ALEX TAMBA BRIMA  
BRIMA BAZZY KAMARA  
SANTIGIE BORBOR KANU**

.....  
**KAMARA - DEFENCE PRE-TRIAL BRIEF**  
.....

Case No. SCSL 2004-16-PT

**Office of the Prosecutor**

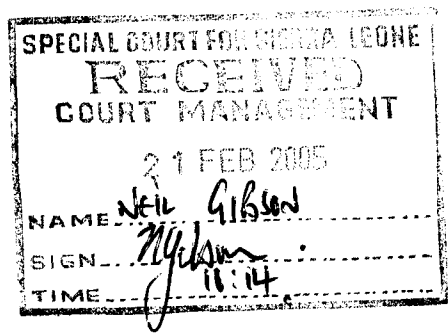
Luc Cote, Chief of Prosecutions  
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**Defence Counsel for Brima Bazy Kamara**

Wilbert Harris  
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**Counsel for Co-accused**

Kevin Metzger, Glenna Thompson and Kojo Graham for **Alex Tamba Brima**  
Geert-Jan Knoops, Carry Knoops and A.E. Manly-Spain for **Santigie Borbor Kanu**



## **KAMARA'S DEFENCE PRE-TRIAL BRIEF**

### **A. i. Introduction:**

1. Pursuant to Trial Chamber I's "Order for Filing Pre-Trial Briefs (under Rules 54 and 73bis)" of February 13, 2004 and "Order to the Prosecution to File a Supplemental Pre-Trial Brief and Revised Order for Filing of Defence Pre-Trial Briefs" of April 1, 2004 respectively, as well as in response to the "Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (under Rules 54 and 73bis) of February 13, 2004" (hereinafter called "the Prosecution's Pre-Trial Brief"), this Defence Pre-Trial Brief is hereby filed for and on behalf of Brima Bazzy Kamara alias Ibrahim Bazzy Kamara or Alhaji Ibrahim Kamara (hereinafter called "Mr. Kamara" or "the accused").
  
2. This Pre-Trial Brief is filed without prejudice to the Further Amended Consolidated Indictment dated the 18<sup>th</sup> February 2005 filed by the Prosecution against Mr. Kamara (herein after called "the Indictment") pursuant to this Trial Chamber's "Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18" dated February 15, 2005 and the "Corrigendum to the [said] Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18" also dated February 15, 2005 made by this Trial Chamber, granting the Prosecution leave to amend the Amended Consolidated Indictment by withdrawing and deleting Counts 15-18 thereof.

3. Further, this Brief is founded upon and within the context that it is for the Prosecution to prove its case against Mr. Kamara beyond reasonable doubt based on the presumption of innocence principle set out in the Statute of the Special Court for Sierra Leone<sup>1</sup>, and that until the Prosecution discharges that obligation against Mr. Kamara to the satisfaction of the Court, it is not for Mr. Kamara to prove his innocence.
4. This Brief is also filed on the basis that it is the right of Mr. Kamara to know the case against him and that until his Defence receives from the Prosecution full and frank disclosure on every limb of the Prosecution's allegations against him, including all un-redacted witness statements and other documentary evidence relevant to the case, and has heard the testimonies of all prosecution witnesses as well, the Defence will not be able to fully comprehend and/or determine the Prosecution's case against Mr. Kamara<sup>2</sup>.
5. Save as herein admitted, the Prosecution is put to strict proof of all factual and legal allegations contained in the Indictment filed against Mr. Kamara, together with the Prosecution's Pre-Trial Brief as well as every Prosecution Supplemental Pre-Trial Brief filed thereto.
6. In the light of the foregoing, failure by the Defence to expressly address or implicitly rebut any aspect of the Prosecution's case theory as stated in its Pre-

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<sup>1</sup> See article 17(3) of the Statute of the Special Court for Sierra Leone available at <http://www.sc-sl.org/scsl-statute.html>, last accessed on February 14, 2005.

<sup>2</sup> Id., article 17(4) *inter alia* provides that the accused shall, in the determination of any charge against him, be entitled to minimum guarantees including the right to have "adequate time and facilities for the preparation of his or her defence" and to "examine, or have examined, the witnesses against him or

Trial and Supplemental Pre-Trial Briefs respectively and the several allegations/charges against Mr. Kamara as set out in the Indictment should not be considered as a form of admission or guilt on the part of Mr. Kamara.

**ii. The Accused's Personal Background:**

7. Mr. Kamara was born on the 7<sup>th</sup> of May 1970 in Freetown, and not 1968 as claimed in the Indictment. Though he now carries the nickname "Bazzy", Mr. Kamara's actual name at birth is Ibrahim Kamara. He was born into a family that includes eight sisters and three brothers and grew up in Wilberforce, Freetown in the Western Area of Sierra Leone. Having attempted the 'Ordinary Level' of the General Certificate of Exams (GCE) at age seventeen, he left High School in search of job to help sustain members of his family. In 1991, at age twenty-one, Mr. Kamara joined the Sierra Leone Army ("SLA") and rose to the rank of Sergeant and not "Staff Sergeant" as claimed in the Indictment. He is married with two children, aged ten and eleven respectively. Mr. Kamara lost his father in 1996.
8. Shortly after joining the SLA, Mr. Kamara was, in 1991, deployed at Daru Military Barracks in the Kailahun District, east of Sierra Leone where he fought bravely to repel the advancing forces of the then Revolutionary United Front of Sierra Leone ("RUF-SL").
9. Between 1995 and May 1997, Mr. Kamara was a military driver attached to various military personnel in Sierra Leone. During that period, he drove escort

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her". The Prosecution's disclosure obligations are also re-echoed and emphasised in rules 66-68 of the

vehicles to several battlefronts between the SLA and RUF forces, which were involved in combat then. This was in defence of Sierra Leone, his fatherland.

10. In May 1997, Mr. Kamara was in military custody when a coup was staged by members of the Armed Forces Revolutionary Council (“AFRC”). Being a member of the rank and file of the SLA, Mr. Kamara continued to serve in the army until his arrest and detention by the Special Court for Sierra Leone.
11. It is, however, denied that at all times material to Mr. Kamara’s service in the SLA as well as the Indictment filed against him, to wit, the period between the 30<sup>th</sup> November 1996 and his arrest on the 28<sup>th</sup> May 2003, Mr. Kamara “is guilty pursuant to Article 6.1 of the Statute [of the Special Court for Sierra Leone] for crimes which he [allegedly] planned, instigated, ordered, committed or in whose planning, preparation or execution he otherwise [allegedly] aided and abetted, or which were [allegedly] within a joint criminal enterprise in which he [allegedly] participated and/or were [allegedly] a reasonably foreseeable consequence of the joint criminal enterprise in which he [allegedly] participated...” pursuant to the general Prosecution case theory espoused in paragraph 296 of its Pre-Trial Brief.
12. It is further denied that within the period stated in the preceding paragraph, Mr. Kamara “is guilty pursuant to Article 6.3 of the Statute [of the Special Court for Sierra Leone] of the [alleged] criminal acts of his subordinates in that he [allegedly] knew or had reason to know that the subordinate was about

to commit such acts or had done so and he [allegedly] failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof...” also pursuant to the general Prosecution case theory maintained in paragraph 296 of its Pre-Trial Brief.

**B. Issues of General Factual Background:**

13. The Defence for Mr. Kamara confirms certain basic factual issues contained in the “General Factual Background” to the Prosecution’s Pre-Trial Brief about the conflict in Sierra Leone, and they include the following:

- i. Sierra Leone became independent on the 27<sup>th</sup> April 1961 and, at different periods in the country’s political history, Siaka Stevens and General Joseph Momoh served as Presidents respectively.
- ii. The Revolutionary United Front of Sierra Leone (RUF-SL) started operating in Sierra Leone in March 1991.
- iii. On the 29<sup>th</sup> April 1992, President Momoh was overthrown in a military coup by Sierra Leone Army officers, ushering in a new administration known as the National Provisional Ruling Council (NPRC) headed by Captain Valentine Strasser.
- iv. In January 1996, NPRC deputy Head of State, Julius Maada-Bio, overthrew Valentine Strasser.
- v. On February 26<sup>th</sup> 1996, Ahmed Tejan Kabbah became President.
- vi. On the 30<sup>th</sup> November 1996, a peace agreement was signed in Abidjan pertaining to Sierra Leone; it was known as the Abidjan Peace Accord.

- vii. On the 25th May 1997, the government of President Kabbah lost power to the Armed Forces Revolutionary Council (AFRC), which included members of the Sierra Leone Army.
  - viii. On the 7<sup>th</sup> July 1999, another peace agreement was signed in Togo, Lome pertaining to Sierra Leone and it was known as the Lome Peace Accord.
14. It is denied that the AFRC and RUF-SL were one and the same group or that they were a combined group of fighting forces called “the People’s Army” or any other nomenclature. Thus, any attempt by the Prosecution to categorise and label the AFRC and RUF-SL as one or alike is controverted and contested by the Defence. The Defence avers that whilst the said groups existed in Sierra Leone, they were never formed into a wholesome alliance and never shared the same or similar objectives or *modus operandi*.
15. Unlike RUF-SL, the Defence avers that the AFRC was at all times material to the Indictment against Mr. Kamara, an off-shoot and part of the SLA. The Defence will later lead evidence to show that many of the members of the AFRC, including senior and junior officers, were and continue to be members of the Republic of Sierra Leone Armed Forces or SLA aforesaid.
16. Further, not only is it denied that the AFRC was a party to the Lome Peace Accord signed between the Government of Sierra Leone and RUF-SL as

inferred from paragraph 30 of the Prosecution's Pre-Trial Brief<sup>3</sup>, the Defence further puts the Prosecution to strict proof of any such claim. In this light, it is denied that the AFRC was an armed faction separate from, or independent of, the Government of Sierra Leone.

17. It is maintained that although Mr. Kamara continued to serve in the SLA during the regime of the AFRC, his service was only as junior officer on duty and not as "senior officer" as asserted by the Prosecution<sup>4</sup>. His duties were, in that regard, predominantly confined to the task of receiving and executing orders from his immediate superiors in line with military discipline, not otherwise as claimed by the Prosecution.

**C. General Allegations:**

18. It is denied that Mr. Kamara exercised authority and/or control over any member of the AFRC or RUF-SL as alleged by the Prosecution in both their Pre-Trial Brief and the Indictment<sup>5</sup> filed against him. Alternatively, it is averred that even if Mr. Kamara exercised any control or authority over his juniors, his rank as Sergeant<sup>6</sup> would not have permitted him to wield sufficient power or authority to warrant the execution of crimes as grave as those contained in the said Indictment.
19. It is also denied that Mr. Kamara participated in any activity individually or in concert with others, whether members of AFRC or RUF-SL, which would

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<sup>3</sup> That Foday Sankoh, the leader of RUF-SL, was 'acting on behalf of the AFRC/RUF' when he signed the Lome Peace Accord on 7<sup>th</sup> July, 1999.

<sup>4</sup> See paragraph 25 of the Further Amended Consolidated Indictment mentioned herein.

<sup>5</sup> Id., see paragraphs 26 and 27 in particular and the Indictment in general.



constitute a crime under international humanitarian or local law. Alternatively, it is averred that even if Mr. Kamara participated in any activity as alleged by the Prosecution, whether alone or in concert with others, such acts are not sufficient to make him “bear the greatest responsibility” required of the Statute of the Special Court for Sierra Leone<sup>7</sup> (hereinafter called “the Statute”).

20. It is further denied that Mr. Kamara was involved in, or can be held to account for, any joint criminal enterprise outlined in the Indictment<sup>8</sup> against him. Mr. Kamara categorically avers that he never “shared a common plan, purpose or design” with any one or body of persons to undertake or execute the crimes specified in the said Indictment.
21. Each and every allegation/charge set out in the Prosecution’s Indictment filed against Mr. Kamara is specifically denied and contested.
22. The Defence particularly notes that the Prosecution’s argument on “individual responsibility”<sup>9</sup> is, to a large extent and respectfully, a restatement of article 6 of the Statute of the Court. In lieu of condescending to specific particulars of offence(s) against Mr. Kamara in the Indictment, the Prosecution dwelt on using inchoate words and phrases like “planned”, “instigated”, “prepared” and “aided and abetted”<sup>10</sup> without pointing out such acts in, or alluding them to, the specific conduct of the accused. Though these words and phrases were indeed stated by the Prosecution to be referable to article 6 of the Statute, it is

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<sup>6</sup> This position would have been the same if the accused was Staff Sergeant as the Prosecutor alleges.

<sup>7</sup> Pursuant to article 1 of the said Statute.

<sup>8</sup> See paragraphs 33-35 of the Indictment for example.

<sup>9</sup> See paragraphs 21 to 36 of the Indictment

respectfully submitted that the omission to confine them to specific conduct of Mr. Kamara at the material time strains the case of the Defence in trying to locate and narrow than the triable issues in the Indictment.

23. Similarly, it is contended that the Prosecution has, in the Indictment, failed to distinguish between specific acts of Mr. Kamara for which he allegedly bears “individual criminal responsibility” and acts of Mr. Kamara’s subordinates that are transferred to him by the Prosecution. In the *Prosecutor -vs - Joseph Kanyabashi*,<sup>11</sup> Trial Chamber II of the International Criminal Tribunal for Rwanda (ICTR) held that “the wording of charges” to the effect that “the accused incurs individual criminal responsibility based on the same facts, both under Article 6(1) of the Statute and that of Article 6(3) as hierarchical superior... makes it impossible for the Accused to understand the nature and the cause of the specific charges brought against him, since the same facts cannot simultaneously give rise to the two types of responsibility provided for under the Statute”<sup>12</sup>. Consequently, the Court held that “the Prosecutor must clearly distinguish between facts as a result of which the Accused incurs criminal responsibility under Article 6(1) of the Statute from those giving rise to his responsibility under Article 6(3)”<sup>13</sup>. In the Indictment against Mr. Kamara, it is respectfully submitted that the same facts are used by the Prosecution to firstly, express individual criminal responsibility by the accused for his alleged direct acts (...*by his act*) and, secondly, infer individual

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<sup>10</sup> Reference to paragraph 35 of the Indictment

<sup>11</sup> *Prosecutor-vs -Joseph Kanyabashi*, ICTR-96-15-1, Trial Chamber II “Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (Rule 72(B)ii of the Rules of Procedure and Evidence” dated 31 May 2000, reference to paragraphs 5.8-5.11.

<sup>12</sup> *Id.*, paragraphs 5.8-5.9.

<sup>13</sup> *Id.*, paragraphs 5.11.

criminal responsibility by the accused for his alleged indirect acts, to wit, the acts of his subordinates (...*by his omission*).<sup>14</sup> Unfortunately too, this method is repeated, but not clearly explained, in the Prosecution's Pre-Trial Brief.<sup>15</sup> It is thus respectfully averred that this style of drafting *makes it impossible for the Accused to understand the nature and the cause of the specific charges brought against him.*

**D. On the Specific Counts in the Indictment**

24. Mr. Kamara specifically denies and requests strict proof by the Prosecution of the allegations contained in and under each and all of the following heads of the Indictment filed against him:

- i. Terrorising the Civilian Population and Collective Punishments under Counts 1 and 2.*
- ii. Unlawful Killings under Counts 3 to 5.*
- iii. Sexual Violence under counts 6-9.*
- iv. Physical violence under Counts 9 to 10.*
- v. Use of Child Soldiers under Count 12.*
- vi. Abductions and Forced Labour under Count 13.*
- vii. Looting and Burning under Count 14.*

**E. On Specific Issues of Unfairness/Imbalance in the Conduct of Pre-Trial and Trial Matters - The Prosecution as against the Defence:**

25. The Defence notes that there is great imbalance in the availability of resources to it as against the Prosecution. Insufficient equipment, materials and

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<sup>14</sup> See paragraphs 41-79 of the Further Amended Consolidated Indictment against Mr. Kamara.

personnel, such as one printer to a group of three Defence Teams, the unavailability of a photocopier to any of the teams, as well as the lack of a direct working staff to the respective teams, are serious constraints to the conduct of an efficient, speedy and, above all, fair trial. Where the distribution of resources for the conduct of a fair trial are uneven, and, in the case of the Defence, limited, the highest achievable standards of justice expected of an International Court could be hamstrung.

26. The Defence also takes exception to the fact that the Prosecution continues to release volumes of un-redacted witness statements to it at a go, even though full-scale trial is only days away. This approach, it is respectfully submitted, creates little space for the Defence to conduct proper background check of a witness prior to him/her taking the stand, in order to carry out a meaningful cross-examination and test the witness's veracity. On this issue, the Defence cannot agree more with the submissions of counsel for Issa Sesay in their Pre-Trial Brief before Trial Chamber I that "the Prosecution has adopted a strategy of late and intensive "carpet bombing" of evidence which have overwhelmed the defence. It is trial by ambush and not by evidence".<sup>16</sup>
27. It is also noted that the Prosecutor had, in present trials before Trial Chamber I, used "highly emotive" opening statements to commence their case against respective indictees of the Special Court.<sup>17</sup> The right to make opening statements, it is respectfully submitted, should be "confined to the evidence

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<sup>15</sup> See paragraph 295-296 of the Prosecution's Pre-Trial Brief.

<sup>16</sup> Issa Sesay Pre-Trial Brief, SCSL-2004-15-PT, dated 18<sup>th</sup> June 2004, at paragraph 30. Rule 66 of the Rules of Procedure and Evidence of this Court unequivocally frowns on such prosecutorial strategy.

<sup>17</sup> Id., Issa Sesay Pre-Trial Brief, at paragraph 34.

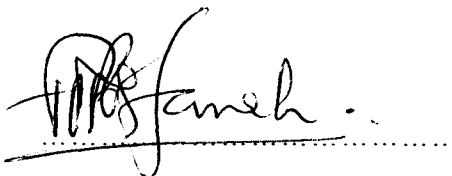
[the party] intends to present in support of his case".<sup>18</sup> It is averred that in order to maintain the standards of an International Court, such opening statements should be free of emotions, sentiments and prejudice.

**F. Conclusion: The Defence Case Summary:**

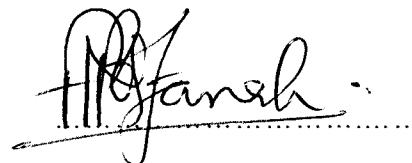
28. In conclusion, the Defence particularly repeats paragraphs 14, 17, 18, 19, 20 and 21 of this Pre-Trial Brief, together with every other averment or contention made herein, to state the case for Mr. Kamara.
29. The Prosecution is thus called upon to strictly prove its case against Mr. Kamara and to properly clarify the issues on what amounts to "individual criminal responsibility" and "joint criminal enterprise". The Prosecution is further requested to prove beyond doubt that Mr. Kamara bears "greatest criminal responsibility" for acts of members of the AFRC and RUF-SL, especially where specific members of the latter group are currently on trial before a different panel of judges, namely, Trial Chamber I.

Respectfully Submitted,

Dated this 21<sup>st</sup> day of February 2005.



PP. Wilbert A Harris  
- Lead Counsel.



Mohamed Pa-Momo Fofanah  
- Co-Counsel.

<sup>18</sup> See Rule 84 of the Rules of Procedure and Evidence of the Court.



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

## TRIAL CHAMBER II

### **Before Judges:**

Laïty Kama, presiding  
William H. Sekule  
Mehmet Güney

### **Registry:**

Ms Aminatta N'Gum

**Decision of:** 31 May 2000

**THE PROSECUTOR**  
**vs.**  
**JOSEPH KANYABASHI**

*Case No ICTR-96-15-I*

## **DECISION ON DEFENCE PRELIMINARY MOTION FOR DEFECTS IN THE FORM OF THE INDICTMENT**

**(Rule 72 (B)(ii) of the Rules of Procedure and Evidence)**

### **Office of the Prosecutor:**

Mr. Japhet Mono  
Ms Andra Mobberley  
Mr. Ibukundu A. Babajide

### **Defence Counsel:**

Mr. Michel Marchand  
Mr. Michel Boyer

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("The  
Tribunal")**

**SITTING** as Trial Chamber II, composed of Judges Laïty Kama, presiding, William H. Sekule and Mehmet Güney;

**CONSIDERING** the initial indictment confirmed by Judge Yakov Ostrovsky on 15 June 1996 ;

**CONSIDERING** the indictment amended on 17 August 1999 ("the Indictment"), upon leave granted by this Chamber on 12 August 1999;

**HAVING BEEN SEIZED** of Defence preliminary motion for defects in the form of the indictment dated 9 October 1999;

**CONSIDERING** the Prosecutor's response to the said motion dated 14 February 2000;

**HAVING HEARD** the parties during the hearing held for this purpose on 29 February 2000.

### **Submissions by the parties:**

#### **The Defence**

1. Under Rule 72 (B)(ii) of the Rules of Procedure and Evidence (the "Rules"), the Defence raises a number of defects in the form of the indictment, and submits essentially as follows:

1.1. In addition to the relevant provisions, specifically, Articles 17 (4) and 20 (4)(a) of the Statute of the Tribunal (the "Statute"), and Rule 47 (C) of the Rules, an indictment must include some degree of specificity concerning temporal references, the charges, the distinction between the types of the Accused's individual responsibility, his conduct or the extent of his participation in the acts with which he is charged. In support of this submission, the Defence refers, particularly, to the decisions of 24 November 1997 and 17 November 1998 in the *Nahimana* case, and to the decision of 30 June 1998 in the *Ntakirutimana* case as well as the relevant case-law of the International Criminal Tribunal for the Former Yugoslavia.

1.2. All nine counts of the Indictment begin with the following words:

*By the acts or omissions described in paragraphs 5.1 to 6.65 and more specifically in the paragraphs referred to below [...]*

Now, the words "*and more specifically*" are imprecise and not at all restrictive. Therefore the charges must be set aside or, alternatively this formulation deleted.

1.3. With the exception of Count 4, all the counts refer to the same paragraphs concerning the alleged facts. This identical formulation reads as follows:

*"- pursuant to Article 6 (1), according to paragraphs: 5.1, 5.8, 5.12, 5.13, 6.22, 6.26,*

6.28 to 6.35, 6.37, 6.38, 6.41 to 6.46, 6.57 to 6.65

- pursuant to 6(3), according to paragraphs: 5.1, 5.8, 5.12, 5.13, 6.22, 6.26, 6.28 to 6.35, 6.37, 6.38, 6.41 to 6.46, 6.57 to 6.65".

According to the Defence, the effect of such practice certainly is to "*facilitate the work of the Prosecutor* [...]", but at the same time it prevents the Accused from knowing precisely what he is accused of individually or on account of the conduct of his subordinates. Consequently, these eight counts must be set aside.

1.4. Count 4 must also be set aside because it is vague and imprecise. The Defence submits that the Prosecutor failed to specify the time or to provide specific factual references as to the deeds or conduct of the Accused or his subordinates and as to Accused's exact role in the acts charged.

1.5. The paragraphs included in the formulation "5.1 to 6.65", but which are not specifically mentioned in the various counts namely 5.2 to 5.7, 5.9 to 5.11, 5.14 to 5.18, 6.1 to 6.21, 6.23 to 6.25, 6.27, 6.36, 6.39, 6.40, 6.47 to 6.56, must be deleted, firstly, on account of their vagueness and imprecision and, secondly, because they in no way cover the accused or his subordinates. Since joinder of Accused was granted in the absence of a joint indictment, all allegations unrelated to the Accused must be deleted from his Indictment;

1.6. Those paragraphs specifically referred to in the various counts namely 5.1, 5.8, 5.12, 5.13, 6.22, 6.26, 6.28 to 6.35, 6.37, 6.38, 6.41 to 6.46, 6.57 to 6.65, should all be set aside, again, on account of their vagueness and imprecision and, more specifically, on account of one or more of the following reason:

(1) Absence of or imprecision in time references;

(2) Lack of specific factual reference as to the Accused's individual conduct with respect to the acts with which he is charged and as to role in the alleged crimes in relation to his hierarchical superiors, his co-conspirators, or his subordinates;

(3) Failure to disclose the identity of his co-conspirators.

2. Consequently, in light of the foregoing the Defence prays:

2.1. That the indictment be set aside because it is vitiated by serious defects;

2.2. Alternatively, that should the Chamber decline to quash the indictment, the Prosecutor be ordered to effect the corrections requested by the Defence within 30 days.

2.3. That the Defence be allowed to reserve its right to raise objections to the indictment as amended following the decision of this present Chamber.

## **The Prosecutor**



3. In response to the Defence, the Prosecutor mainly submits the following:

3.1. The style of the Indictment is within the sole prerogative of the Prosecutor, who has the power to adopt, under the guidance of the Trial Chamber, styles drawn from different jurisdictions throughout the world.

3.2. Regarding the nature and the scope of the facts indicated in the Indictment, it is necessary to make a distinction, between the minimum guarantees which the Accused is entitled to in the yes"> outline of the Indictment on the one hand, and, on the other hand, the right of the Accused to be provided subsequently with more detailed information so as to enable him prepare his defence. At this stage of the proceedings, the object of the Indictment is not to enable the Accused to prepare his defence, but rather to ensure that the Accused can read and fully understand the charges brought against him.

3.3. Regarding the wording “*and more specifically*”, used in each of the counts, the Prosecutor submits that this formulation far from misleading the Defence, yes"> enables it to differentiate between the paragraphs which are purely of a narrative nature and those which describe specifically the acts alleged.

3.4. In response to the allegation by the Defence that counts 1 to 3 and 5 to 9 are cumulative since they all refer to the same factual paragraphs, the Prosecutor submits that the acts and omissions charged against the Accused all result from the same criminal transaction, in the instance, the genocide of 1994. The paragraphs cited all relate to each of the counts, but not necessarily in similar fashion to each of the factual ingredients of each count. In addition, the Prosecutor refers to the Decision of 24 November 1997 in the matter of *Nahimana* in which the Trial Chamber dismissed the allegation of cumulative charges made by the Defence, holding that the matter would only be relevant when determining the penalty.

3.5. Regarding temporal references, the Prosecutor submits that she focused on the sequence of events in which the Accused was allegedly involved, and that consequently, it is necessary to use *inclusive* rather than *exclusive* time frames.

3.6. Regarding the identity of the co-conspirators, Article 3 of the Statute does not require that the Prosecutor should name all the co-conspirators and the Prosecutor contends that with respect to the facts referred to in the first count of the Indictment on conspiracy to commit genocide, she followed the case-law established by the Decision of 24 November 1997 in *Nahimana* case, requesting the Prosecutor “*to identify some or all of the persons with whom the Accused, in the first count allegedly conspired to commit genocide*”.

3.7 The submission by the Defence that the Indictment is vague as to the individual acts or the role of the Accused in the crimes alleged, or as to his acts or role as a subordinate, co-conspirator or hierarchical superior, is without merit. The specific factual information sought by the Defence is contained in the paragraphs referred to in each of the counts.

3.8 Moreover, the provisions of the Statute and the Rules provide that the clarifications sought by the Accused shall be specified during the disclosure process after his initial appearance.

3.9 Regarding the paragraphs which have not specifically been referred to in the counts, it appears from the structure of the Indictment that these mention the context within which the paragraphs which relate directly to the Accused should be situated, thus forming an integral part of the Prosecutor's argument.

3.10 Furthermore, in case of defects in the form of the indictment, the Rules do not provide that the Indictment be set aside. The practice is rather to direct, if necessary, the Prosecutor to cure if necessary, the defects in the form of the Indictment.

4. 1 For all the foregoing reasons, the Prosecutor prays the Chamber to dismiss the Defence motion.

#### **AFTER HAVING DELIBERATED,**

##### **Regarding the defects in the form of the Indictment:**

5.1. WHEREAS an Indictment must be sufficiently clear to enable the Accused to fully understand the nature and cause of yes"> the charges brought against him;

5.2. WHEREAS the Trial Chamber reminds the Prosecutor that, pursuant to Article 20 (4) (a) of the Statute, an Indictment should present in a precise and detailed manner, the charges brought against the Accused;

5.3. WHEREAS the Accused may, pursuant to Rule 72 of the Rules, raise objections based on defects in the form of the indictment, which procedure enables him to obtain further information in order to fully understand the nature and cause of the charges brought against him;

5.4. WHEREAS, in the opinion of the Trial Chamber, contrary to the Prosecutor's submission, the clarification required in the Indictment therefore does not relate to style;

##### **Regarding the fact that, with the exception of count 4, all counts refer to exactly the same paragraphs of the Indictment:**

5.5 WHEREAS counts 1 to 3 and 5 to 9 refer without distinction to the same paragraphs of the Indictment, that is, paragraphs 5.1, 5.8.5.12,5.13, 6.22, 6.26, 6.28 to 6.35, 6.37, 6.38, 6.41 to 6.46, 6.576 to 6.65;

5.6 WHEREAS the Trial Chamber notes that it is the usual practice before the Tribunal, which does not in anyway prejudice the Accused;

5.7 WHEREAS, furthermore, the Trial Chamber recalls that the issue of multiple charges can only be considered at trial and ruled on when judgement is passed, and not

at this stage of the proceedings;

**Regarding the fact that, according to the Indictment, the Accused incurs individual criminal responsibility, by reason of the same facts, pursuant to Article 6 (1) and Article 6 (3) of the Statute:**

5.8 Whereas the Trial Chamber notes that with the exception of count 4, the wording of the charges states that the Accused incurs individual criminal responsibility based on the same facts, both under Article 6 (1) of the Statute and that of Article 6 (3) as hierarchical superior;

5.9 Whereas the Trial Chamber holds that such a practice makes it impossible for the Accused to understand the nature and the cause of the specific charges brought against him, since the same facts cannot simultaneously give rise to the two types of responsibility provided for under the Statute;

5.10 Whereas the Trial Chamber notes the case-law established by Trial Chamber I in its Decision rendered on 17 November 1998, in the *Nahimana* case, which directed the Prosecutor to amend the Indictment “*specifying [...] the alleged acts for which the Accused is held individually criminally responsible pursuant to Article 6 (1) of the Statute and the acts allegedly committed by the Accused’s subordinates for which he is held individually criminally responsible pursuant to Article 6 (3) of the Statute*”.

5.11 Whereas the Trial Chamber consequently holds that the Prosecutor must clearly distinguish between facts as a result of which the Accused incurs criminal responsibility under Article 6 (1) of the Statute from those giving rise to his responsibility under Article 6 (3);

**Regarding the alternative nature of the charges of genocide and complicity in genocide :**

5.12 Whereas the Trial Chamber notes that in its oral decision of 12 August 1999 granting leave to amend the indictment, it stated :

*“that it follows from the Prosecutor’s clarification during the hearing of the motion, that count 2 of the amended indictment of genocide and count 3 of the amended indictment of complicity in genocide are meant to be charged alternatively”;*

5.13 Whereas it is clear that the counts of genocide and complicity in genocide are alternative counts and that in the opinion of the Chamber the Indictment must clearly indicate that the said two counts are charged alternatively;

**The paragraphs referred to in the counts which the Defence claims do not concern the Accused**

5.14 WHEREAS the Trial Chamber notes that while certain paragraphs in the Indictment do not refer directly to the Accused, they nevertheless make for an understanding of the background to the acts with which the Accused is charged;

5.15 Whereas, the Trial Chamber holds that the Indictment must be read as a whole and that the paragraphs which do not refer specifically to acts with which the Accused is charged must be read in conjunction with those that concern him directly, and that consequently, it is not appropriate to delete them;

5.16 Whereas, in any case, the Trial Chamber reminds the Defence that yes"> the paragraphs which do not directly refer to the Accused are only of general import and, therefore, must not be construed as supporting the counts;

**The general introductory formulation of each count:**

5.17 WHEREAS, contrary to the Prosecutor's assertion, the Chamber finds that the general introductory formulation to each count, "*By the acts or omissions described in paragraphs 5.1 to 6.65 and more specifically in the paragraphs referred to below*", does not specify nor does it limit the reading of the counts, but rather expands the Indictment without concretely identifying precise allegations against the Accused;

5.18 Therefore, the Trial Chamber holds that the said introductory formulation must be deleted from each count and that each count must consequently only mention the specific paragraphs of the Indictment which directly concern the allegations against the Accused;

**The vague and imprecise nature of the counts and the paragraphs to which they refer:**

5.19 WHEREAS the Trial Chamber finds that the vague and imprecise nature of the counts, as alleged by the Defence, indeed stems from the lack of specificity of the paragraphs to which the said counts refer;

5.20 Whereas, with respect to the paragraphs which are not specifically referred to in the counts, the Chamber finds that it is not necessary to consider whether they are vague and imprecise, since as a result of the general introductory formulation to each count being deleted, such formulation will no longer be reflected in the charges against the Accused;

5.21 Whereas, therefore, after having carefully reviewed the paragraphs specifically referred to in the Indictment, the Chamber is of the opinion that the following paragraphs of the Indictment must be clarified:

(a) Paragraph 5.8:

The Prosecutor must align the wording of this paragraph of the Indictment with that of paragraphs 7, 13 and 14 of the initial Indictment dated 15 June 1996, which is more precise;

(b) Paragraph 5.12:

The Prosecutor must specify whether the Accused is charged with having committed

acts solely in Ngoma *commune* or also in Nyakizu *commune*, as indicated in paragraph 6.31;

(c) Paragraph 6.29:

It is necessary to specify the identity of the subordinates referred to in this paragraph;

(d) Paragraph 6.37:

There appears to be a discrepancy between the English version and the French version with regard to the word “*éventuellement*”, which appears in the last sentence of the paragraph. The Prosecutor should therefore harmonize the two versions;

(e) Paragraph 6.63:

The phrase “*During the events referred to in this indictment*” is not sufficiently precise; the Prosecutor must make reference to more specific dates;

(f) Paragraph 6.64:

This paragraph gives no indication as to the period during which the events referred to occurred; the Prosecutor must specify dates, and moreover, identify who the subordinates referred to in the paragraph are.

5.22 WHEREAS the Chamber finds that it is not necessary to respond to the Defence’s objections relating to the other paragraphs, either because the paragraphs in the Indictment are sufficiently clear or because the factual precisions sought by the Defence bear on issues to be addressed during the trial on the merits, or also because the requested precisions sought can be inferred from the context of the paragraphs in question, bearing in mind the Chamber’s opinion that the Indictment must be read as a whole.

### **Paragraph 6.66**

5.23 WHEREAS, on this point, the Trial Chamber simply notes that said paragraph 6.66 is not referred to in any of the counts and does not rule on this matter.

**FOR THE FOREGOING REASONS,**

**THE TRIBUNAL,**

**DISMISSES** the Defence request to set aside the Indictment;

**RULES** that the Prosecutor must clearly distinguish the acts for which the Accused incurs criminal responsibility under Article 6 (1) of the Statute from those for which he incurs criminal responsibility under Article 6 (3);

**ORDERS** that the Indictment must clearly indicate that the counts of genocide and

conspiracy to commit genocide be clearly indicated in the Indictment;

**RULES** that the general introductory formulation to each count, “*By the acts or omissions described in paragraphs 5.1 to 6.65 and more specifically in the paragraphs referred to below*”, must be deleted from each count and that each count must consequently only mention the specific paragraphs of the Indictment which directly concern the allegations against the Accused;

**DIRECTS** the Prosecutor to clarify paragraphs 5.8, 5.12, 6.29, 6.37, 6.63 and 6.64 of the Indictment as follows:

Paragraph 5.8:

The Prosecutor must align the wording of this paragraph in the Indictment with that of paragraphs 7, 13 and 14 of the initial Indictment dated 15 June 1996;

Paragraph 5.12:

The Prosecutor must specify whether the Accused is charged with acts committed only in Ngoma *commune* or also in Nyakizu *commune*, as indicated in paragraph 6.31;

Paragraph 6.29:

The Prosecutor must specify the identity of the subordinates referred to;

(g) Paragraph 6.37:

The Prosecutor must harmonize the meaning of the word “*eventuellement*” which appears in the last sentence of the paragraph in the English and French versions of the indictment;

(h) Paragraph 6.63:

The Prosecutor must make reference to more specific dates;

(i) Paragraph 6.64:

The Prosecutor must provide specific dates and identify who the subordinates referred to in this paragraph;

**FURTHER DIRECTS** the Prosecutor to file with the Registry within 30 days from the date of this Decision, the English and French versions of the Indictment amended pursuant to this Decision.

Done in Arusha on 31 May 2000

Laïty Kama: Presiding  
William H. Sekule: Judge

Mehmet Güney: Judge

(Seal of the Tribunal)