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SCSL-04-16-T

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**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone**

Before: Hon. Justice Julia Sebutinde, Presiding Judge
Hon. Justice Richard Lussick
Hon. Justice Teresa Doherty

Registrar: Herman von Hebel, Acting Registrar

Date filed: 05 July 2007

THE PROSECUTOR

Against

**Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu**

Case No. SCSL-04-16-T

**PUBLIC-KAMARA
SENTENCING BRIEF PURSUANT TO RULE 100(A) OF THE RULES OF
PROCEDURE AND EVIDENCE**

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SPECIAL COURT FOR SIERRA LEONE
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SENTENCING BRIEF FOR IBRAHIM BAZZY KAMARA:

1. Introduction:

1. On 20 June 2007 the Trial Chamber rendered its judgement. (The **Trial Chamber Judgement**)¹ The Second Accused Brima Bazy Kamara along with the First Accused Alex Tamba Brima and the third Accused Santigie Borbor Kanu were found guilty on 11 of the 14 counts in the Indictment.²
2. On 28 June 2007, the Prosecutor filed “Public [With Confidential Annexes filed separately] Prosecution Submission Pursuant to rule 100(a) of the Rules of Procedure and Evidence” (**Prosecution Sentencing Brief**)³
3. In particular, the Defence for the Second Accused (herein called “the Second Accused” or “the Accused”) states that this Sentencing Brief is filed without prejudice to the Accused’s right of appeal⁴ against the Judgment of the Trial Chamber (herein called “the Court”).
4. The Second Accused herein submits his Sentencing Brief pursuant to Rule 100(a) of the Rules of Evidence and Procedure.

2. Factors in Determining Sentence:

5. Pursuant to Article 19 of the Statute of the Special Court (herein called “the Statute”) and Rule 101 of the Rules of Procedure and Evidence of the Court (herein called “the Rules”), the Court shall be guided by the following factors in determining sentence:
 - i. The gravity of the offence
 - ii. The individual circumstances of the convicted person
 - iii. Aggravating circumstances

¹ Prosecutor v. *Brima, Kamara, Kanu*, Case No. SCSL-04-16-T-613, “Judgement” Trial Chamber, 20 June 2007 (The **Trial Chamber Judgement**).

² Trial Chamber Judgement, Part XIII, “Disposition” para 2112-2123

³ Prosecutor v. *Brima, Kamara, Kanu*, Case No. SCSL-04-16-T-614, Public [With Confidential Annexes filed separately] Prosecution Submission Pursuant to rule 100(a) of the Rules of Procedure and Evidence” 28 June 2007

⁴ See rule 106(A) of the Rules of Procedure and Evidence of the Special Court as amended and article 20 of the Statute of the Special Court.

- iv. Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before and after conviction
 - v. 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.
 - vi. Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal.
6. The Rules also note that in pronouncing its decision on sentencing, the Court shall indicate if the sentences shall be served consecutively or concurrently.⁵
7. Furthermore, the Statute notes that “in determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda [ICTR] and the national courts of Sierra Leone”.⁶ The Defence shall address these factors in chronology, and, in the process, adequately respond to the representations made by the Prosecution in its Sentencing Brief⁷.

3. General Sentencing Principles

8. The Defence submits that the elements of punishment, that is retribution, deterrence and rehabilitation must be carefully balanced. In the jurisprudence of the Tribunals ICTR and ICTY, retribution, deterrence and rehabilitation have been acknowledged as purposes of punishment.⁸
9. The main effect sought in deterrence is to turn the perpetrator away from future wrongdoing (special deterrence) but it is assumed that punishment will also have the effect of discouraging others from committing the same kind of crime that is, for the Tribunal, those described in the Statute (general deterrence).⁹

⁵ Rule 101(C).

⁶ Article 19(1).

⁷ Filed on 28 June 2007.

⁸ *Celebici Appeal Judgement*, para. 806

⁹ *Jokic Sentencing Judgement*, para. 33-34

10. In *Tadic* Sentencing Appeal Judgement, it was found that:

*[i]n determining the sentence to be imposed on the Appellant, the Trial Chamber took into account, as one of the relevant factors, the principle of deterrence. The Appeals Chamber accepts that this is a consideration that may legitimately be considered in sentencing, a proposition not disputed by the Appellant. Equally, the Appeals Chamber accepts that this factor must not be accorded undue prominence in the overall assessment of the sentences to be imposed on persons convicted by the International Tribunal.*¹⁰

11. The Defence submits that what would amount to “undue prominence” would be to impose a harsh sentence (60 years as requested by the Prosecution)¹¹ on a person merely for the purpose of deterring others.¹² In the same light it would be also unfair, and would ultimately weaken the respect for the legal order as a whole if the sentence has to be imposed in light of what the community would accept as a punishment fitting the crimes in question.¹³
12. An equal factor is **retribution**. This is not to be understood as fulfilling a desire for revenge but as truly expressing the outrage of the international community at these crimes.¹⁴ In its retributive aspect, punishment may reduce the anger and sense of injustice caused by the commission of the crime among victims and their wider community.¹⁵
13. Punishment is also understood as having a **rehabilitative** purpose, for it underscores for the convicted person the seriousness with which society regards his or her criminal acts. The loss of freedom, which is the form of punishment imposed by the Tribunal, provides the impulse and context for the convicted person’s reflections on the wrongfulness of his or her acts and on the harm and suffering they have caused to others. This process will often go along with that of reintegrating the convicted person into the society.¹⁶ The prospect of

¹⁰ *Tadic* Sentencing Appeal Judgement, para 48.

¹¹ Prosecution Sentencing Brief, para 162

¹² *Ibid* 34

¹³ Prosecution Sentencing Brief, para 18

¹⁴ *Aleksovski* Appeal Judgement, para. 185, citing a number of Judgements from both the International Tribunal and the ICTR.

¹⁵ *Jokic* Sentencing Judgement, para. 33

¹⁶ *Jokic* Sentencing Judgement, para. 34,

rehabilitating the accused and the extent to which the accused may be a great danger to the community as a whole should be taken into account.¹⁷

14. The Trial Chamber should take into account factors pertaining to the individual circumstances of the convicted person (Article 19(2) of the Statute), to "bring to light the reasons for the accused's criminal conduct" and to assess the possibility of rehabilitating the accused." The character traits are not so much examined in order to understand the reasons for the crime but more to assess the possibility of rehabilitating the accused.¹⁸

15. The factor of rehabilitation considers the circumstances of reintegrating the guilty accused into society. This is usually the case when younger, or less-educated, members of society are found guilty of offences. It therefore becomes necessary to reintegrate them into society so that they can become useful members of it and enable them to lead normal and productive lives upon their release from imprisonment. The age of the accused, his circumstances, his ability to be rehabilitated and availability of facilities in the confinement facility can, and should, be relevant considerations in this regard.¹⁹

4. The Gravity of the Offence:

16. The Accused was convicted by the Court for the following offences, pursuant to *Article 6(1) of the Statute*:

Count 1: Acts of Terrorism, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(d) of the Statute.

Count 2: Collective Punishments, which violates Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(b) of the Statute.

Count 3: Extermination, as a crime against humanity, punishable under Article 2(b) of the Statute.

¹⁷ *Erdemovic* Sentencing Judgement, para. 110, and *Erdemovic* Sentencing Judgement II, para. 16(1).

¹⁸ *Blaskic* Judgement, paras. 779 and 780., *Krstic* Judgement 2001, para 690

¹⁹ *Celebici* Trial Judgement 1996, para. ????

Count 4: Murder as a crime against humanity, punishable under Article 2 (a) of the Statute.

Count 5: Violence to life, health and physical or mental well-being of persons, in particular murder, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 (a) of the Statute.

Count 6: Rape, a crime against humanity, punishable under Article 2(g) of the Statute.

Count 9: Outrages upon personal dignity, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 (e) of the Statute.

Count 10: Violence to life, health and physical or mental well-being of persons, in particular mutilation, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute.

Count 12: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, another serious violation of international humanitarian law, punishable under Article 4(c) of the Statute.

Count 13: Enslavement, a crime against humanity, punishable under Article 2(c) of the Statute; and

Count 14: Pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute.

17. Furthermore, the Accused was convicted by the Court for the offence of Rape, a crime against humanity, punishable under Article 2(g) of the Statute, pursuant to *Article 6(3) of the Statute*.

18. Worthy of note, however, is the fact that the Court, in its deliberations and findings, found the Accused liable under *Article 6(1) of the Statute* only for the following offences:

- a. Counts 1, 2, 3, 4 and 5 for the aforesaid respective offences of: i) Acts of Terrorism, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(d) of the

Statute; ii) Collective Punishments, which violates Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(b) of the Statute; iii) Extermination, as a crime against humanity, punishable under Article 2(b) of the Statute; iv) Murder as a crime against humanity, punishable under Article 2 (a) of the Statute; and v) Violence to life, health and physical or mental well-being of persons, in particular murder, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 (a) of the Statute.

19. According to the Court, all of these crimes were found against the Accused, because he is said to have “ordered” the killings of 5 (five) girls in Bombali District, in particular in the Karina location²⁰.

b. Similarly, on the same Counts 1 and 2 above, and on Count 10 (Violence to life, health and physical or mental well-being of persons, in particular mutilation, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute), the Court found the Accused responsible for “aiding and abetting” the commission of various crimes in Freetown and the Western Area, including amputations²¹ and mutilations²².

20. Simply put, by virtue of the Court’s deliberations and findings, no finding was made or reached on Counts 6, 9, 12, 13 and 14 regarding the culpability of the Accused on *Article 6(1) of the Statute*.

21. The Defence for the Second Accused notes that the only deliberations and findings reached pursuant to *Article 6(1) of the Statute* by the Court was on the offence of Rape contained in Count 6 of the Indictment²³. Though the foregoing distinction forms a core of the Accused’s anticipated appeal against the Court’s

²⁰ Paras. 1915-16 of the Judgment of 20 June, 2007.

²¹ Paras. 1940 and 1934-35 of the Judgment, id.

²² Para. 1941, id.

²³ Para. 2118, id.

Judgment, it is pointed out in this Sentencing Brief in order to limit the gravity of the convictions on those offences upon which the Accused was pronounced guilty.

22. Whilst the Defence for the Second Accused does not deny the seriousness of the crimes charged in the Indictment, especially those for which the Accused was found guilty, the evidence on which the Court found him responsible included, inter alia, “ordering” the killings of 5 girls in Bombali²⁴ as noted. It is submitted for the Court’s attention that the average sentencing period for offences like murder and extermination passed by the ICTR has been between 10 and 15 years, and not 60 years.
23. In the *Imanishimwe* case, **Samuel Imanishimwe** was given 10 years for murder as a crime against humanity, 3 years for imprisonment, 10 years for torture, 12 years for serious violations of the common article 3. In the *Akayesu* case, Jean-Paul Akayesu was given the following sentences; 15 years imprisonment for murder as a crime against humanity, 10 years for torture as a crime against humanity, Rape 15 year’s imprisonment, 10 years for crimes against humanity and other inhuman acts. In the Semanza case, as mention in the prosecution sentencing brief.²⁵
24. Additionally, in cases in the ICTR where the person was convicted of genocide, amongst other crimes and was not given life sentence, they were not given up to 60 years imprisonment.
25. In the *Ntakirutimana* case, the Trial Chamber found Gérard Ntakirutimana guilty of genocide and murder as a crime against humanity and he was sentenced to 25 years imprisonment.²⁶ In the *Muvunyi* case, the Trial Chamber found Tharcisse Muvunyi guilty of genocide, direct and public Incitement to commit genocide and crimes against humanity (Other Inhumane Acts) and he was sentenced to 25 years imprisonment.²⁷ In the *Serushago* case, the Trial Chamber found Omar Serushago

²⁴ The exactness of this number of girls was, however, continuously varied by one of the Prosecution’s key witnesses: TF1-334, see Transcript of 23 May 2005, pp 66-67.

²⁵ Prosecution Sentencing Brief, para 30-31

²⁶ *Ntakirutimana* Judgement, para 922-924

²⁷ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T para 531 and 545

- guilty of genocide, crimes against humanity; murder, extermination and torture and he was sentenced to 15 years imprisonment.²⁸
26. Although the Trial Chamber is not bound to follow the sentencing practice of the ICTR recourse must be had to that sentencing practice as an aid in determining the sentence to be imposed.
27. In the ICYT, in the **Kordic** case, Dario Kordic was found guilty of persecutions, murder and inhumane acts as crimes against humanity, two counts of violations of the laws or customs of war (unlawful attack on civilians), grave breaches of the Geneva Conventions, (wilful killing, inhuman treatment, unlawful confinement of civilians), violation of the laws or customs of war, (violence to life and person), violation of the laws or customs of war, (wanton destruction not justified by military necessity), violation of the laws or customs of war, (plunder of public or private property), and violation of the laws or customs of war, (destruction or wilful damage to institutions dedicated to religion or education). Dario Kordic was sentenced to 25 years imprisonment.²⁹
28. Similarly in the **Cerkez** case, Mario Cerkez was found guilty of violation of the laws or customs of war, (destruction or wilful damage to institutions dedicated to religion or education), persecutions, murder, imprisonment and inhumane acts as crimes against humanity, two counts of violations of the laws or customs of war, (unlawful attack on civilians), a grave breach of the Geneva Conventions, (wilful killing), a grave breach of the Geneva Conventions, as (inhuman treatment), a grave breach of the Geneva Conventions (unlawful confinement of civilians), grave breach of the Geneva Conventions (inhuman treatment), grave breach of the Geneva Conventions, (taking civilians as hostages), grave breach of the Geneva Conventions, (inhuman treatment), grave breach of the Geneva Conventions, (extensive destruction of property not justified by military necessity), a violation of the laws or customs of war (plunder of public or private property). Mario Cerkez was sentenced to 15 years imprisonment by the Trial Chamber and on appeal the sentence was reduced to 6 years of imprisonment, subject to credit

²⁸ *Serushago*, Sentencing 1999, para 45

²⁹ *Kordic and Cerkez* Judgement

being given under Rule 101(C) of the Rules for the period he has spent in detention. After all Mario Cerkez remaining convictions under Count 2 and all convictions pursuant to Article 7(3) of the Statute were reversed.³⁰

29. Also, the fact that murder carries the death penalty in Sierra Leone, as highlighted by the Prosecution in its Sentencing Brief, does not necessarily instruct the giving of longer years of imprisonment to the Accused by the Court. As provided in Article 19 of the Statute, the Court can neither sentence an Accused to death nor imprison him for life; the Court can only sentence an Accused to a term of years, which it has discretion to determine based on the factors outlined above.
30. Besides, the Defence for the Accused submits that the submission by the Prosecution that the Accused's failure as a superior to exercise his duties to prevent or punish the offences for which he was held responsible led "to the crimes being committed on the scale that they were"³¹, should be rejected. Under Article 6(3) of the Statute, which deals with superior command responsibility, the Accused was found guilty of only the crime of Rape relative to Count 6 as stated herein, and not for *all* crimes in "the Freetown area" and "Bombali District" as indicated in the Prosecution's Sentencing Brief³².
31. The Defence for the Second Accused appeals to the Court to consider the other factors stated below to lower the sentence to be served by the Accused, giving that the seriousness of the crimes on which he stands convicted is not in dispute.

5. The Individual Circumstances of the Accused:

32. As noted in the Pre-Trial Brief filed on behalf of the Accused,³³ the Accused was born on 7 May 1970 in Freetown to poor parents: his father is deceased and his mother ageing. At the tender age of 17, poverty and harsh realities at home forced him to search for jobs, after sitting for his final secondary school exams. Young and with limited education, he became breadwinner of his family, including his

³⁰ Cerkez Appeal Judgement 2004, para

³¹ See Para. 112 of the Prosecution's Sentencing Brief aforesaid.

³² Para. 113, id.

³³ Kamara Pre-Trial Brief, Dated 21 February, 2005.

then ailing father, illiterate mother, 8 sisters and 2 brothers. The Accused joined the Sierra Leone Army (SLA) at the age of 21, an age considered in Sierra Leone then and now as the beginning of adulthood³⁴. The Accused rose to the rank of sergeant in the Army and served until his arrest in 2003.

33. During the Accused's service in the Army, he was deployed at the Daru Military Barracks in Kailahun, where in 1991 (the year of his enlistment) he fought bravely to repel the advancing forces of the Revolutionary United Front (RUF). Between 1995 and May 1997, the Accused was a military driver attached to various Army personnel serving the SLA. In particular, he drove escort vehicles to and from several battlefronts between the SLA and RUF forces, all in a precarious but dedicated service to his country. The Accused was still in loyal service to the SLA when the coup was staged in May 1997 by members of the SLA; he served the Junta that was subsequently formed as Principal Liaison Officer 3. Whilst it is admitted that a lot of crimes and ugly incidents occurred when ECOMOG troops were in hot pursuit of members of the Junta and SLAs loyal to them, many of the SLAs who perpetrated heinous crimes were loose and uncontrolled; they engaged in spontaneous and unplanned acts of war that were unconnected with the Accused.
34. Even when the SLA was disbanded by the President of Sierra Leone, the Accused was eager to be reinstated into the Army to continue loyal service to his country. Himself and several of his disbanded colleagues sought many peaceful means to end the civil war, including giving of full and unrestrained support to the Lome Peace Agreement of 1999 and doing everything lawfully possible to allow peace to reign in Sierra Leone. The Truth and Reconciliation Commission of Sierra Leone (TRC) had this to say about the Westside Boys, a group of ex-soldiers affiliated with the Second Accused during the search for peace in Sierra Leone in 1999:

Many of the West Siders hoped that they would still be integrated into the army. When the peace negotiations started in Lome, they all supported it and hoped that a peace agreement would lead to their reintegration into the army....The Chief of Defence Staff and the Army were providing them with

³⁴ See the Interpretation Act of Sierra Leone, 1971, which defines "infant" as a person below 21 years.

*supplies and had publicly contemplated turning the west side abode into a barracks for the Fifth Battalion... The notion that the West Side Boys were trying to establish their own foothold in the vicinity of Okra Hills was dismissed in testimony to the Commission by some of their most influential commanders. They claimed that they were all united behind a patriotic cause and were intent on reinstating themselves back into the Army in order to be able to serve the Government....*³⁵

35. The Accused participated in many activities that enhanced peace and reconciliation in Sierra Leone. He personally negotiated and facilitated the release of about 200 children from the West Side Boys to the Red Cross and UNICEF sometime in October 1999. He served Major Johnny Paul Koroma when the latter was made Chairman of the Commission for the Consolidation of Peace in Sierra Leone in November 1999. He also took part in the May 7 and 8, 2000 military maneuvers to capture Corporal Foday Sankoh in Freetown whose RUF forces were rapidly advancing on Freetown to disrupt the peace process and gain political control of Sierra Leone.
36. Besides the foregoing, it has been recognized in the Sentencing Judgment of *Prosecutor-v- Tadic*³⁶ that, in the given circumstances, ‘reconciliation and the restoration of peace’ are factors to be considered in sentencing. The Special Court for Sierra Leone was established with the dual objective of ‘seeking justice and accountability for serious crimes’ on the one hand and ‘contributing to the process of national reconciliation and the restoration and maintenance of peace’ on the other hand³⁷.
37. It is submitted on behalf of the Accused that in view of the simultaneous and corresponding establishment of the TRC and the Special Court, a judicial process aimed at strengthening the peace and enhancing true reconciliation became the long term objective of the Special Court. It is thus pleaded that a prolonged sentence directed at the Accused will defeat the essence of peace and reconciliation, which the Accused assigned his military life to achieve. Also, of crucial significance is the fact that the Lome Peace Agreement (Ratification)

³⁵ See Paras. 1032, 1034 & 1035 of the Sierra Leone TRC Report: Vol. 3a: Chapter 3 on the Military.

³⁶ IT-94-1-Tbis-R117 (“Sentencing Judgment”, Trial Chamber, 11 November 1999, paras. 7-9.

³⁷ See UN Security Council Resolution 1315 (2000), para. 1.

Act, 1999, an enactment of the Sierra Leone Parliament, gave blanket amnesty and reprieve to all “combatants and their collaborators”³⁸ in the spirit of peace and reconciliation, the outcome of which the country is now benefiting from. It thus became a recognized practice of the Sierra Leone Courts not to hear or try any case that touched and concerned events in the civil conflict.

6. Aggravating Circumstances:

38. The Statute and the Rules do not stipulate which factors are to be considered as aggravating circumstances.
39. It must firstly, be stated that the Defence for the Second Accused notes that the Prosecution, in its Sentencing Brief, likened the Second Accused to the First Accused, and in some cases even replaced the Second Accused’s name with the First Accused in reference to the former³⁹. The object of such exercise, as the Defence understands it, is to put both Accused on the same footing regarding sentencing. This is repeated in the Prosecution’s final submission that the two Accused be given 60 years each in cumulation as an “appropriate sentence” for the offences found by the Court.
40. Though the Defence for the Second Accused observed that the same or similar verdict or convictions were entered by the Court for both Accused, it is the Defence’s submission that the Court’s findings and deliberations leading to that were varied and different. In several cases, the Second Accused was convicted for serving as the First Accused’s Deputy and for failing to stop, prevent and/or punish crimes that he (the Second Accused) mostly did not order, plan, commit or instigate. The Second Accused’s disposition for being a quiet, calm, non-violent and often passive and unrecognized “participant” stood out clearly in the testimonies of most of the non-insider witnesses to the Court, who had no interest to serve.

³⁸ See Article 9 of the Agreement.

³⁹ See Paras. 117 and 120 of the Prosecution’s Sentencing Brief.

41. Active and direct participation in the crime means that the accused committed by his own hand all or some of the crimes with which he is charged. Direct participation in the crime is accordingly an aggravating circumstance which will more often than not be held against the actual perpetrators rather than against the commanders.⁴⁰
42. The *Kupreškic* Trial Chamber said that “(t)he sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused. The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.”⁴¹
43. The Defence for the Second Accused therefore appeals to the Court to resist putting the Second and First Accused on the same threshold of liability for purposes of sentencing.
44. Again though the offences found against the Second Accused are serious, and the circumstances of their occurrences aggravating, the Defence submits that they occurred in situations in which the Second Accused lacked clear and sufficient command and control. A case in point being Kono, where the RUF was admittedly the overall commanding force during the indictment period; as well as the fact that “Savage”, one of the RUF’s sub-commanders, was lord on to himself, not subject to the Accused.⁴²
45. The Defence submits that since the primary purpose of speeding terror and imposing collective punishment on a civilian population⁴³ is one of the basic elements of the crime of serious violations of Article 3 Common to the Geneva Conventions, this aspect of Kamara’s criminal conduct has already been encompassed in a consideration of the offence. Therefore, it should not be treated separately as an aggravating factor. For the same reason, the fact that the crime

⁴⁰ *Blaskic* Judgement, paras. 790

⁴¹ *Jokic* Sentencing Judgement, para. 34, *Kupreskic* Trial Judgement, para. 852, cited in the *Aleksovski* Appeal Judgement, para. 182, and endorsed by the *Celebici* Appeal Judgement, para. 731.

⁴² See Paras. 1525-27 of the Court’s Judgment.

⁴³ Prosecution Sentencing Brief para 122-123

was committed against civilians will not generally be accepted as an aggravating circumstance.⁴⁴

46. In *Krstic*, the ICTY Trial Chamber stated that when the Chamber has already examined the criminal responsibility of the accused in order to decide on his guilt. The same elements should not be reviewed a first time as a constitutive element of the crime and a second time as an aggravating circumstance.⁴⁵
47. The fact that Bazy kamara held a senior government position during the Junta period cannot evidentially be used as aggravated circumstances⁴⁶ when he did not commit and was not held liable or convicted any crimes committed during the period.⁴⁷
48. In determining the extent of the existence of any aggravating factors, the Chamber will consider only those factors on which it has made a positive finding. In analysis the Prosecution's annexes, the Trial Chamber should view the information with cautious to isolate the harm which flowed directly from the acts of Bazy Kamara separate from other economic and non-economic harm which these victims suffered from the conflict as a whole.
49. The Defence pleads that these facts, inter alia, mitigate the aggravating circumstances pleaded by the Prosecution in its Sentencing Brief.

7. Mitigating Circumstances:

50. Neither the Statute, the Rules nor the jurisprudence of the Tribunals define mitigating circumstances.⁴⁸ The following have been considered as mitigation in certain cases: a good personal character with no previous criminal record, poor health and youth.⁴⁹ In *Bisengimana* case the Chamber found the following

⁴⁴ *Todorovic* Sentencing Judgement, 2001, para 57

⁴⁵ *Krstic* Judgement 2001, para 707

⁴⁶ Prosecution Sentencing Brief, para 126

⁴⁷ Trial Chamber II Judgement 20 June 2007, para 1847 and 1855

⁴⁸ *Krstic* Judgement 2001, para 713, *Kordic* Judgement, para. 815.

⁴⁹ *Erdemovic* Sentencing Judgement, para. 16(i); *Prosecutor v. Georges Ruggiu*, Case No. ICTR-97-32-I, Judgement and Sentence, 1 June 2000, paras. 59-60 and 61-68., *Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999, para. 472., *Erdemovic* Sentencing Judgement, para. 16(i); *Furundzija* Trial Judgement, para. 284; *Blaskic* Trial Judgement, para. 778.

circumstances to be mitigating: the Accused's guilty plea with publicly expressed remorse, his family situation, his good character prior to the events, his lack of prior criminal convictions, his good conduct in detention and his age and ill-health.⁵⁰

51. The Defence for the Second Accused restates the above factors, especially the Accused's personal circumstances, as mitigating concerns against a prolonged sentence.
52. Throughout the Accused's detention, lasting more than 4 years since his arrest by the Court, he has been of behaviour. and submitted to the Court's jurisdiction humbly.
53. The offences found against the Accused occurred whilst he was in his late twenties; the events of their occurrences were stressful. Soldiers were hounded and "preyed" upon for overthrowing the constitutional government, the latter act in itself not being a war crime or an international offence. They were dismissed from their jobs and lifelong careers for the same reason. The soldiers' families were equally hounded, tortured, mutilated, raped and killed for being collaborators to "coupists". Many of those found by the Court as being in the Accused's control and command were desperadoes and battle-hardened fighters on a frolic of their own.
54. Apart from the above, the Accused is a family man. He is married with two children, aged 12 and 13 respectively. His wife and children love him dearly, and so do his 8 sisters and 2 brothers who adore him as their sole breadwinner. Sentencing the Accused to 60 years, as suggested by the Prosecution, will devastate his family since it will amount to a life sentence in a country with a life expectancy of 40 years or below. It will also shock those ordinary Sierra Leoneans who know that many of the Accused's senior colleagues who equally served the AFRC at all times are today free men either serving in the Army to date or living cozy, peaceful lives abroad.

8. Penalty imposed by the Sierra Leone Courts, if any:

⁵⁰ The PROSECUTOR v. Paul BISENGIMANA *Case No. ICTR-00-60-, para 180*

55. The Defence for the Second Accused submits that he has never been convicted for any criminal offence. Although he was among a group of soldiers interrogated in 2003 for attempting a coup, he was promptly released by the police without charge. Again, for this reason, a lighter sentence commensurate to the Accused's circumstances is pleaded.

9. Time Spent in Detention prior to Conviction:

56. Rule 101(D) of the Rules of Procedure and Evidence state that

Any period during which the convicted person was detained in the custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing

57. The Defence submits that from 28th May 2003, when Ibrahim Bazy Kamara was arrested to date, should be taken into consideration on sentencing.

10. Conclusion:

58. The Defence for the second Accused respectfully submits that the Trial Chamber should be guided in its determination of sentence by the principle proclaimed as early as in 1764 by Cesare Beccaria: "punishment should not be harsh, but must be inevitable."⁵¹

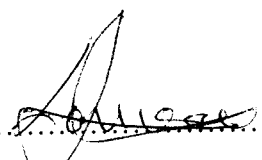
59. In conclusion, the Defence for the Second Accused pleads that in view of the Accused's circumstances and background, and in the spirit of lasting peace, genuine reconciliation and a lawful blanket amnesty and reprieve in force in the national jurisdiction, lighter sentences commensurate to the circumstances outlined above be imposed for each of the crimes upheld by the Court. And above

⁵¹ Furundzija Judgement, para 290, As he put it, "one of the greatest brakes on crime is not the cruelty of the punishment but its infallibility, and, consequently, the vigilance of judges." Beccaria, "Dei delitti e delle pene (Crimes and Punishment)", 1766 ed., para. XXVII, Venturi (ed.), 1965 p.

all, it is the further plea of the Defence that the said light sentences pleaded be served concurrently rather than consecutively.

Dated this 5th day of July 2007.

Faithfully submitted,


..... (for)
Andrew K. Daniels Esq. -
Lead Counsel, Kamara Defence

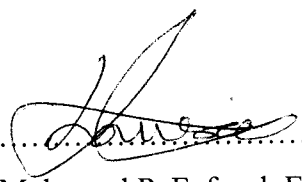
(for).....

Mohamed P. Fofanah Esq. -
Co-Counsel, Kamara Defence

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1. ICTY

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Prosecutor v. Vidoje Blagojević & Dragan Jokić, Case No. IT-02-60-T, Judgment, 17 January 2005 (“*Blagojević Trial Judgement*”)

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-T, Judgement, 3 March 2000 (“*Blaškić Trial Judgment*”)

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Appeal Judgment, 29 July 2004 (“*Blaškić Appeals Judgment*”)

Prosecutor v. Brđanin and Talić, Case No. IT-99-36-PT, Decisions on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001.

Prosecutor v. Brđanin and Talić, Case No. IT-99-36-PT, Decisions on Form of Fourth Amended Indictment, 23 November 2001.

Prosecutor v. Zejnil Delalić, Zdravko Mucić aka “Pavo”, Hazim Delić aka “Zenga” and Esad Landžo, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići Trial Judgement*”)

Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-A, Judgement, 21 July 2000 (“*Furundžija Appeal Judgment*”)

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Prosecutor v. Dario Kordić & Mario Cerkez Case No. IT-95-14/2-A, Appeals Judgment, 17 December 2004 (“*Kordić Trial Judgement*”)

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Prosecutor v. Radislav Krstić Case No. IT-98-33-T, Judgment 02 August 2001 (“*Krstić Trial Judgment*”)

Prosecutor v. Dusko Tadic, Case No. IT-94-1-T, Opinion and Judgment, 7 May 1997 (“*Tadic Trial Judgment*”)

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Prosecutor v. Juvenal Kajelijeli, Case No. ICTR-98-44A-T, Judgment and Sentence, 1 December 2003 (“*Kajelijeli Trial Judgment*”)

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Jean de Dieu Kamuhanda v. Prosecutor Case No. ICTR- 99-54A-T, Appeal Judgment 19 September 2005 (“*Kamuhanda Appeal Judgment*”)

Prosecutor v. Andre Ntagerura, Emmanuel Bagambiki, Samuel Imanishimwe, Case No. ICTR- 99-46-T, Judgment 25 February 2004 (“*Ntagerura Trial Judgment*”)

Prosecutor v. Eliezer Niyitegeka, Case No. ICTR-96-14-T, Judgment, 16 May 2003 (“*Niyitegeka Trial Judgment*”)

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Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003 (“*Semanza Trial Judgment*”)