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SCSL-04-16-T
(22984 - 28019)



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SPECIAL COURT FOR SIERRA LEONE

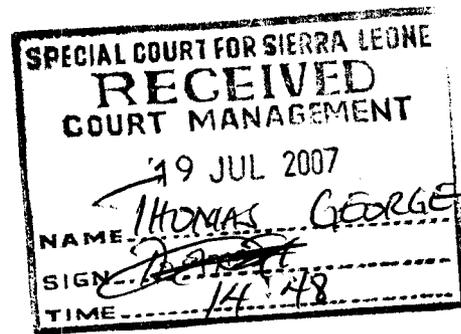
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Date: 19 July 2007

Case No.: SCSL-04-16-T



PROSECUTOR

Against

Alex Tamba BRIMA
Brima Bazy KAMARA
Santigie Borbor KANU

SENTENCING JUDGEMENT

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I. INTRODUCTION

1. On 20 June 2007, the Trial Chamber found each of the Accused, Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu, guilty on eleven Counts.¹ The Trial Chamber scheduled a sentencing hearing for 16 July 2007 and the Parties submitted relevant information for the assistance of the Trial Chamber pursuant to Rule 100(A) of the Rules.

2. The "Prosecution Submission Pursuant to Rule 100(A) of the Rules of Procedure and Evidence" ("Prosecution Sentencing Brief")² was filed on 28 June 2007. The Brima "Defence Submission Pursuant to Rule 100(A) of the Rules of Procedure and Evidence" ("Brima Sentencing Brief"),³ the "Kamara Sentencing Brief Pursuant to Rule 100(A) of the Rules of Procedure and Evidence" ("Kamara Sentencing Brief")⁴ and the "Kanu Defence Sentencing Brief Pursuant to Rule 100(A) and Request for Non-Admission of Prosecution Exhibits" ("Kanu Sentencing Brief")⁵ were all filed on 5 July 2007. At a sentencing hearing on 16 July 2007⁶ oral submissions were made by all Parties and statements were made by all three Accused.

3. The Prosecution submits that the appropriate sentence for Brima and Kamara is imprisonment for 60 years each and for Kanu 50 years.⁷

4. The Brima Defence makes no submissions as to what sentence should be imposed, but submits that Brima should receive a lesser sentence than that proposed by the Prosecution.⁸ The Kamara Defence also submits that Kamara should receive lighter sentences for each of the crimes for which he is convicted.⁹ The Kanu Defence submits that Kanu should only receive a sentence amounting to time served on remand or, in the alternative, that he should receive a lesser sentence than that proposed by the Prosecution.¹⁰

5. The Trial Chamber considered the written and oral submissions of the parties in the determination of appropriate sentences.

¹ *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Judgement, 20 June 2007 ("Judgement").

² SCSL-04-16-T-614.

³ SCSL-04-16-T-618.

⁴ SCSL-04-16-T-617.

⁵ SCSL-04-16-T-615.

⁶ See *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Scheduling Order for Sentencing Hearing and Judgement, 10 July 2007.

⁷ Prosecution Sentencing Brief, para. 162.

⁸ Brima Sentencing Brief, para. 47.

⁹ Kamara Sentencing Brief, para. 59.

¹⁰ Kanu Sentencing Brief, para. 191.

II. PRELIMINARY CONSIDERATIONS

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6. The Kanu Defence objected to the documents annexed to the Prosecution Sentencing Brief on the grounds that (1) the Prosecution purported to introduce new evidence through these documents;¹¹ (2) the Prosecution did not comply with its disclosure obligations under the rules in relation to (Annex G); the expert report was not objective and the Defence was not in a position to call their own expert in rebuttal on such short notice;¹² (3) the introduction of new Prosecution evidence would amount to an abuse of process;¹³ (4) the witness statements provided by the Prosecution are inadmissible, or alternatively, the Defence should have had an opportunity to cross-examine the proposed witnesses;¹⁴ and (5) other material submitted by the Prosecution is irrelevant.¹⁵

7. In its oral arguments, the Prosecution submitted that it is allowed to introduce additional evidence at the sentencing stage. The Prosecution argued that since the Special Court has two distinct procedures it was not necessary for it to adduce such evidence at the trial stage.¹⁶

8. The Trial Chamber upholds the Defence objections and has not taken into consideration the documents annexed to the Prosecution Sentencing Brief.

9. The Trial Chamber recalls the general principle that only matters proved beyond reasonable doubt against the Accused are to be considered against him at the sentencing stage.¹⁷ Aggravating circumstances must be proved beyond reasonable doubt¹⁸, whilst mitigating circumstances need only be proved on a balance of probability.¹⁹

¹¹ Kanu Sentencing Brief, para. 11.

¹² Kanu Sentencing Brief, para. 12-24.

¹³ Kanu Sentencing Brief, para. 27.

¹⁴ Kanu Sentencing Brief para. 31.

¹⁵ Kanu Sentencing Brief, para. 33-42.

¹⁶ Oral Submissions, Transcript 16 July 2007, p. 4-7.

¹⁷ *Prosecutor v. Muhimana*, Case No. ICTR- 95-1B-T, Judgement and Sentence, 28 April 2005 (“*Muhimana* Trial Judgement”), para. 590; *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case No. ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence, 21 February 2003 (“*Ntakirutimana* Trial Judgement”), para. 893.

¹⁸ *Prosecutor v. Tihomir Blaskić*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaskić* Appeal Judgement”), para. 688.

¹⁹ *Blaskić* Appeal Judgement, para. 697.

III. APPLICABLE LAW

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A. Applicable Provisions

10. Sentencing in the Special Court is regulated by the provisions of Article 19 of the Statute of the Special Court ("Statute") and Rule 101 of the Rules of Procedure and Evidence ("Rules"). Article 19 of the Statute provides:

1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. 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 and the national courts of Sierra Leone.
2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Rule 101 of the Rules provides:

(A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:

- (i) Any aggravating circumstances;
- (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
- (iii) 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, as referred to in Article 9(3) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

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

11. According to the above provisions the Trial Chamber is obliged to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. Aggravating and mitigating circumstances and the general practice regarding prison sentences in the International Criminal Tribunal for Rwanda (ICTR) and the domestic courts of Sierra Leone shall, where appropriate, be taken into account. These requirements are not exhaustive and the Trial

Chamber has the discretion to determine an appropriate sentence depending on the individual circumstances of the case.²⁰

12. The Trial Chamber agrees with the holding of the ICTR Appeals Chamber in *Prosecutor v. Kambanda*, that “[...] the Statute is sufficiently liberally worded to allow for a single sentence to be imposed. Whether or not this practice is adopted is within the discretion of the Chamber”.²¹ The governing criteria is that the final or aggregate sentence should reflect the totality of the culpable conduct, or generally, that it should reflect the gravity of the offences and the overall culpability of the offender, so that it is both just and appropriate.²² In the present case the Trial Chamber finds it is appropriate to impose a global sentence for the multiple convictions in respect of Brima, Kamara and Kanu.

B. Sentencing Objectives

13. The preamble of the United Nations Security Council Resolution 1315 (2000)²³ recognises that

[...]in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.²⁴

14. Retribution, deterrence and rehabilitation have been considered as the main sentencing purposes in international criminal justice.²⁵

15. Furthermore, international criminal tribunals have held that retribution is not to be understood as fulfilling a desire for revenge but rather as duly expressing the outrage of the national and international community at these crimes,²⁶ and that is meant to reflect a fair and balanced

²⁰ *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006, (“*Momir Nikolić* Appeal Sentencing Judgement”), para. 106: “Sentencing decisions are discretionary and turn on the particular circumstances of each case.”

²¹ *Kambanda* Appeal Judgement, para. 113

²² *Čelebići* Appeal Judgement, paras. 429-430

²³ UN Sec Res. 1315(2000), 14 August 2000.

²⁴ UN Sec Res. 1315(2000), 14 August 2000, para. 7.

²⁵ See also *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000 (“*Aleksovski* Appeal Judgement”), para. 185; *Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka “Pavo”), Hazim Delić and Esad Landžo (aka “Zenga”)*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”), para. 806; see also *Prosecutor v. Stevan Todorović*, Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001 (“*Todorović* Sentencing Judgement”), paras 28-29; *Gacumbtsi* Trial Judgement, para. 335; *Semanza* Trial Judgement, para. 554; *Kambanda* Trial Judgement, para. 28.

²⁶ See also *Aleksovski* Appeal Judgement, para. 185; *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003, (“*Dragan Nikolić* Sentencing Judgement”), para. 140, stating that retribution should solely be seen as: “an objective, reasoned and measured determination of an appropriate punishment which properly reflects the [...] culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offenders conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more”, *R. v. M. (C.A.)* (1996) 1 S.C.R. 500, para. 80 (emphasis in original).

approach to punishment for wrongdoing. The penalty imposed must be proportionate to the wrongdoing. In other words, the punishment must fit the crime.²⁷

16. International criminal tribunals have held further that the element of deterrence is important in demonstrating “that the international community is not ready to tolerate serious violations of international humanitarian law and human rights”.²⁸ It follows that the penalties imposed by the Trial Chamber must be sufficient to deter others from committing similar crimes.²⁹ In the context of international criminal justice, it is recognised that one of the main purposes of a sentence is to “influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody”.³⁰

17. International criminal tribunals have noted that unlike the case in domestic courts, rehabilitation cannot be considered as a predominant consideration in determining a sentence, as the sentencing aims of national jurisdictions are different from the aims of international criminal tribunals.³¹

18. In deciding appropriate sentences, the Trial Chamber has taken into account all the factors likely to contribute to the achievement of the above objectives.

C. Sentencing Factors

1. Gravity of Offence

19. In determining an appropriate sentence, the gravity of the crime is the primary consideration or “litmus test”.³² The determination of the gravity of the crime must be individually assessed.³³ In making such an assessment, the Trial Chamber may examine, *inter alia*, the general nature of the

²⁷ *Prosecutor v. Tadić*, Case No. IT-94-1-A/IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000 (“*Tadić* Appeal Sentencing Judgement”), para. 48; *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 803; *Todorović* Sentencing Judgement, para. 30.

²⁸ *Kambanda* Trial Judgement, para. 28, endorsed in *Aleksovski* Appeal Judgement, para. 66.

²⁹ *Prosecutor v. Tadić*, Case No. IT-94-1-A/IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000 (“*Tadić* Appeal Sentencing Judgement”), para. 48; *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 803; *Todorović* Sentencing Judgement, para. 30.

³⁰ *Nikolić* Sentencing Judgement, para. 139.

³¹ *Deronjić* Appeal Judgement, paras 136-137.

³² *Čelebići* Appeal Judgement, para. 731; *Nikolić* Appeal Judgement, para. 18.

³³ *Blaskić* Appeal Judgement, para. 683; *Prosecutor v. Blagojević and Dragan Jokić*, IT-02-60, Judgement, 17 January 2005 (“*Blagojević* Trial Judgement”), para. 833.

underlying criminal conduct;³⁴ the form and degree of participation of the Accused³⁵ or the specific role played by the Accused in the commission of the crime;³⁶ the degree of suffering, impact or consequences of the crime for the immediate victim in terms of physical, emotional and psychological effects;³⁷ the effects of the crime on relatives of the immediate victims and/or the broader targeted group;³⁸ the vulnerability of the victims;³⁹ and the number of victims.⁴⁰

20. Where an Accused has been found liable as a commander pursuant to Article 6(3) of the Statute, two levels of consideration are necessary in determining the gravity of the offence: (1) the gravity of the underlying crime committed by a subordinate under the effective control of the Accused, and (2) the gravity of the Accused’s own conduct in failing to prevent or punish the crimes committed by that subordinate.⁴¹

2. Aggravating Circumstances

21. The aggravating and mitigating circumstances to be taken into account by the Trial Chamber are not exhaustively set out in the Rules.⁴² Thus, the Trial Chamber is tasked with the charge of weighing the individual circumstances of each case and has discretion to identify the relevant factors. The Trial Chamber may consider, for example,

- (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict [...];
- (ii) the discriminatory intent or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime;
- (iii) the length of time during which the crime continued;
- (iv) active and direct criminal participation, if linked to a high-rank position of command, the accused’s role as fellow perpetrator, and the active participation of a superior in the criminal acts of subordinates;
- (v) the informed, willing or enthusiastic participation in crime;
- (vi) premeditation and motive;
- (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims;
- (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them;
- (ix) the character of the accused; and
- (x) the circumstances of the offences generally.⁴³

³⁴ *Blaskić* Appeal Chamber Judgement, para. 683; *Blagojević* Trial Judgement, para. 833.

³⁵ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004 (“Kordić Appeal Judgement”), para. 1061.

³⁶ *Blaskić* Appeal Judgement, para. 683, *Blagojević* Trial Judgement, para. 833.

³⁷ *Blaskić* Appeal Judgement, para. 683; *Blagojević* Trial Judgement, para. 833.

³⁸ *Blaskić* Appeal Judgement, para. 683; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003 (“Galić Trial Judgement”), para. 758.

³⁹ *Blaskić* Appeal Judgement, para. 683.

⁴⁰ *Babić* Trial Judgement, para. 47; *Galić* Trial Judgement, para. 758.

⁴¹ *Čelebići* Appeal Judgement, para. 732.

⁴² SCSL RPE, Rule 101(B).

⁴³ *Blaskić* Appeal Judgement, para. 686 (citing *Čelebići* Appeal Judgement, para. 763); *Jokić* Sentencing Judgement, paras 61-62; *Tadić* Appeal Judgement, paras 55-56; *Vasiljević* Appeal Judgement, paras 172-173; *Vasiljević* Trial Judgement, para. 277; *Kunarac* Appeal Judgement, paras 356, 357; *Todorović* Trial Judgement, para. 57; *Todorović* Sentencing Judgement, para. 65; *Krstić* Trial Judgement, paras 708, 711-712; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998 (“Furundžija Trial Judgement”), para. 281; *Čelebići* Appeal Judgement, paras 736-737, 788; *Jelisić* Appeal Judgement, para. 86; *Kayishema* Appeal Judgement, para. 351; *Krstić* Appeal

22. The Trial Chamber may also consider the fact that attacks directed against protected persons were carried out in places of religious worship or sanctuary, to be an aggravating factor in sentencing.

23. Facts which go to proof of the gravity of the offence and facts which constitute aggravating factors may overlap.⁴⁴ The practice of some Trial Chambers has been to consider the gravity of the offence together with aggravating circumstances.⁴⁵ The Trial Chamber considers that, regardless of the approach, where a factor has already been taken into account in determining the gravity of the offence, it cannot be considered additionally as an aggravating factor and *vice versa*.⁴⁶ Similarly, if a factor is an element of the underlying offence, then it cannot be considered as an aggravating factor.⁴⁷

24. The Trial Chamber may consider the abuse of a position of power by an accused held criminally responsible for a crime under Article 6(1) of the Statute to be an aggravating factor.⁴⁸ Where an accused has been found liable for the crimes of a subordinate under Article 6(3) of the Statute his/her mere position of command will not be considered by the Trial Chamber as an aggravating factor as it is an element of liability.⁴⁹ However, where it has been proved that an accused actively abused his/her command position or otherwise promoted, encouraged or participated in the crimes of his/her subordinates, such conduct may amount to an aggravating circumstance.⁵⁰

3. Mitigating Circumstances

25. Under Rule 101(B) any substantial cooperation with the Prosecutor by the convicted person before or after conviction must be considered as a mitigating circumstance.⁵¹ In addition, the Trial Chamber has the discretion to identify and weigh other mitigating factors according to the

Judgement, para. 258; *Kunarac* Trial Judgement, paras 864, 866 867; *Kunarac* Appeal Judgement, para. 353; *Kunarac* Appeal Judgement, para. 355; *Furundžija* Trial Judgement, para. 283; *Tadić* Sentencing Judgement, para. 19.

⁴⁴ *Bralo* Trial Judgement, para. 27.

⁴⁵ *Gacumbitsi*, Trial Judgement, paras 58-59; *Prosecutor v. Ruggiu*, Case No. ICTR-97-32-I, Judgement and Sentence, 1 June 2000 (“*Ruggiu* Trial Judgement”), para. 48.

⁴⁶ *Deronjić* Appeal Judgement, paras 106-107.

⁴⁷ *Kordić* Appeal Judgement, para. 1089; *Blagojević* Trial Judgement, para. 849; *Blaskić* Appeal Judgement, para. 693.

⁴⁸ *Deronjić* Appeal Judgement, para. 67; *Babić* Appeal Judgement, para. 80; *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić (aka “Vlado”)*, Case No. IT-95-16-A, Judgement, 23 October 2001 (“*Kupreškić* Appeal Judgement”), para. 451.

⁴⁹ *Jokić* Appeal Judgement, para. 28; *Deronjić* Appeal Judgement, para. 67; *Kayishema* Judgement, at para. 15; *Babić* Sentencing Judgement, at para. 60.

⁵⁰ *Čelebići* Appeal Judgement, para. 736; *Obrenović* Trial Judgement, para. 99

⁵¹ SCSL RPE, Rule 101 (B).

circumstances of each case, including, but not limited to (i) expression of remorse or a degree of acceptance of guilt; (ii) voluntary surrender; (iii) good character with no prior criminal convictions; (iv) personal and family circumstances; (v) the behaviour or conduct of the accused subsequent to the conflict; (vi) duress and indirect participation; (vii) diminished mental responsibility; (viii) the age of the accused; (ix) assistance to detainees or victims; and (x) in exceptional circumstances, poor health.⁵²

IV. SENTENCING PRACTICE IN THE NATIONAL COURTS OF SIERRA LEONE AND OTHER *AD HOC* TRIBUNALS

A. Submissions of the Parties

26. The Prosecution submits that comparisons with sentences imposed by the ICTR are of limited value because most ICTR cases concern genocide which is not a crime within the jurisdiction of the Special Court. Further, in many cases the penalty for genocide has been life imprisonment, which is not a sentence that the Special Court can impose.⁵³

27. The Prosecution argues that no specific guidance is discernible from the national courts of Sierra Leone on sentencing practice, since war crimes and crimes against humanity are not specifically addressed under Sierra Leonean law.⁵⁴ However, as a general overview, the Prosecution notes that sentences imposed for murder include the death penalty; while manslaughter, attempted murder, rape and malicious damage are punishable by the death penalty or lengthy terms of imprisonment, including life imprisonment.⁵⁵

28. The Prosecution thus submits that the crimes of which Brima, Kamara, and Kanu were convicted would be likely to lead to a sentence of life imprisonment at the ICTR. The Prosecution accordingly contends that the sentence imposed on Brima and Kamara should amount to an approximation of life imprisonment, while a very long sentence of imprisonment is warranted for Kanu.⁵⁶

29. The Brima Defence submits that the Trial Chamber should not seek guidance from the unduly harsh sentencing practice in Sierra Leone. In the alternative, the Defence argues that Sierra

⁵² *Babić* Appeal Judgement, para. 43; *Deronjić* Trial Judgement para. 156.

⁵³ Prosecution Sentencing Brief, paras 23-24.

⁵⁴ Prosecution Sentencing Brief, para. 34.

⁵⁵ Prosecution Sentencing Brief, paras 35-39.

⁵⁶ Prosecution Sentencing Brief, paras 76-77, 108-110, 130-132.

Leonean practice can only be considered as a guide but is not binding on the Trial Chamber.⁵⁷ It further refers to the *Serushago* Trial Chamber’s assessment of mitigating circumstances in that case,⁵⁸ and cites a number of cases before the ICTY and ICTR in which high ranking officials convicted on numerous counts were given lighter sentences than those proposed by the Prosecutor in the instant case.⁵⁹

30. The Kamara Defence notes that the Kamara was convicted of having ordered the killing of five girls in Karina, Bombali District, and submits that the average sentencing period at the ICTR for the offences of murder and extermination has been between ten and fifteen years.⁶⁰ It further argues that Sierra Leonean practice on sentencing for murder is not binding on the Trial Chamber.⁶¹

31. The Kanu Defence proposes that the Trial Chamber should take into consideration the sentencing practice of the ICTY, as it is a basis for ICTR practice, and may provide the Trial Chamber with additional guidance.⁶² The Prosecution would appear to agree as it provided a chart on ICTY sentencing practice in Annex B of its Sentencing Brief. The Kanu Defence contends that in Sierra Leone, a sentence of life imprisonment can be imposed for a range of crimes including “rape, burglary and gilding coinage”⁶³ while the ICTR has only imposed life sentences on individuals convicted of the crime of genocide.⁶⁴ In oral arguments, the Kanu Defence further submitted that Sierra Leonean sentencing practice is only relevant for convictions under Article 5 of the Statute which deals with crimes under Sierra Leonean law, which crimes were not charged in the indictment.⁶⁵

B. Deliberations

(a) Sentencing Practice in Sierra Leone

32. Article 19(1) states that as appropriate, the Trial Chamber shall have recourse to the practice regarding prison sentences in the national courts of Sierra Leone as and when appropriate. This does not oblige the Trial Chamber to conform to that practice, but rather to take into account

⁵⁷ Brima Sentencing Brief, paras 10 and 11.

⁵⁸ Brima Sentencing Brief, para. 42.

⁵⁹ Brima Sentencing Brief, paras 50-56 citing the cases: *Blaskić* Trial Judgement, para. 808; *Prosecutor v. Mladen Naletilić (aka “Tuta”) and Vinko Martinović (aka “Štela”)*, Case No. IT-98-34-T, Judgement, 31 March 2003 (“*Naletilić* Trial Judgement”), para. 74 before the ICTY and *Akayesu* before the ICTR.

⁶⁰ Kamara Sentencing Brief, paras 22-28. citing *Imanishimwe, Akayesu, Ntakirutimana, Muvunyi, Serushago* at the ICTR and *Kordić* at the ICTY.

⁶¹ Kamara Sentencing Brief, para. 29.

⁶² Kanu Sentencing Brief, para. 57.

⁶³ Kanu Sentencing Brief para. 72.

⁶⁴ Kanu Sentencing Brief, para. 72.

⁶⁵ Transcript, 16 July 2007, p. 76.

that practice as and when appropriate.⁶⁶ The Trial Chamber finds that it is not appropriate to adopt the practice in the present case since none of the Accused was indicted for, nor convicted of, offences under Article 5 of the Statute.

(b) Sentencing Practice at other International Tribunals

33. Article 19(1) of the Statute provides that the Trial Chamber shall, where appropriate, have recourse to the practice regarding prison sentences in the ICTR in determining the terms of imprisonment. The Trial Chamber will also consider the sentencing practice of the ICTY as its statutory provisions are analogous to those of the Special Court and the ICTR. The Trial Chamber is therefore guided by the sentencing practices at both the ICTR and the ICTY. The Chamber further notes that the pronouncement of global sentences is a well established practice at those tribunals.⁶⁷ The mitigating and aggravating factors that the Trial Chamber has considered in the instant case have also been widely considered by the ICTR and ICTY.⁶⁸

V. DETERMINATION OF SENTENCES

34. Brima, Kamara and Kanu have been found responsible for some of the most heinous, brutal and atrocious crimes ever recorded in human history. Innocent civilians – babies, children, men and women of all ages – were murdered by being shot, hacked to death, burned alive, beaten to death. Women and young girls were gang raped to death. Some had their genitals mutilated by the insertion of foreign objects. Sons were forced to rape mothers, brothers were forced to rape sisters. Pregnant women were killed by having their stomachs slit open and the foetus removed merely to settle a bet amongst the troops as to the gender of the foetus. Men were disembowelled and their intestines stretched across a road to form a barrier. Human heads were placed on sticks on either side of the road to mark such barriers. Hacking off the limbs of innocent civilians was commonplace. The victims were babies, young children and men and women of all ages. Some had

⁶⁶ See also *Serushago* Appeal Judgement, para. 30; *Semanza* Appeal Judgement, para. 377.

⁶⁷ *Kambanda* Appeal Judgement, para. 113. *Gacumbitsi* Trial Chamber Judgement, para. 356. *Nahimana* Trial Judgement, paras 1105, 1106, 1108. *Muvunyi*, Trial Chamber Judgement, para. 545; *Simba* Trial Judgement, para. 445.

⁶⁸ *Blaskić* Judgement, *supra* note 22, at para. 686 (citing *Čelebići* Appeal Judgement, para. 763); *Jokić* Sentencing Judgement, paras 61-62; *Tadić* Appeal Judgement, paras 55-56; *Vasiljević* Appeal Judgement, paras 172-173; *Vasiljević* Trial Judgement, para. 277; *Kunarac* Appeal Judgement, para. 357; *Todorović* Trial Judgement, para. 57; *Kunarac* Appeal Judgement, para. 356; *Todorović* Sentencing Judgement, para. 65; *Krstić* Trial Judgement, para. 708; *Furundžija* Trial Judgement, para. 281; *Čelebići* Appeal Judgement, paras 736-737; *Jelisic* Appeal Judgement, para. 86; *Kayishema* Appeal Judgement, para. 351; *Krstić* Trial Judgement, paras 711-712; *Krstić* Appeal Judgement, para. 258; *Kunarac* Trial Judgement, para. 867, and *Kunarac* Appeal Judgement, para. 353; *Kunarac et al.* Trial Judgement, para.

one arm amputated, others lost both arms. For those victims who survived an amputation, life was instantly and forever changed into one of dependence. Most were turned into beggars unable to earn any other living and even today cannot perform even the simplest of tasks without the help of others. Children were forcibly taken away from their families, often drugged and used as child soldiers who were trained to kill and commit other brutal crimes against the civilian population. Those child soldiers who survived the war were robbed of a childhood and most of them lost the chance of an education.

35. The Trial Chamber cannot recall any other conflict in the history of warfare in which innocent civilians were subjected to such savage and inhumane treatment.

36. It is against this background that Brima, Kamara and Kanu are sentenced for the crimes of which each of them have been convicted.

A. Alex Tamba Brima

1. Gravity of the Offences

(a) Submissions of the Parties

37. The Prosecution submits that Brima was convicted of crimes which involved a very large number of victims.⁶⁹

38. In relation to the role and participation of Brima in the crimes of which he was convicted, the Prosecution submits that he was “not an unwilling participant” but rather “a primary initiator and aggravator of the violence”.⁷⁰ Most of the crimes were deliberate, unprovoked, brutal and committed against unarmed civilians including men, women and children, the intention of which was to kill, mutilate, abduct or enslave or otherwise terrorise or collectively punish the civilian population and to shock the international community.⁷¹

39. The Brima Defence concurs that the crimes for which he was convicted were serious, yet submits that the Trial Chamber must consider the context of guerrilla warfare in determining the

864, 866; *Kunarac et al.* Appeal Judgement, para. 355; *Furundžija* Trial Judgement, para. 283; *Čelebići* Appeal Judgement, para. 788; *Tadić* Sentencing Judgement, para. 19)

⁶⁹ Prosecution Sentencing Brief, paras 78-79; see also Oral Submissions, Transcript 16 July 2007, pp. 19-20.

⁷⁰ Prosecution Sentencing Brief, para. 86.

⁷¹ Oral Submissions, Transcript 16 July 2007, p. 19.

extent and gravity of the offences, as well as the difficulty in ascertaining the precise number of victims.⁷²

(b) Deliberations

40. The Trial Chamber considers that the crimes for which Brima was convicted were heinous, deliberate, brutal and targeted very large numbers of unarmed civilians and had a catastrophic and irreversible impact on the lives of the victims and their families.

41. Brima was convicted under Article 6(1) and under Article 6(3). Specifically, the Trial Chamber found Brima responsible under Article 6(1) for:

1. committing extermination in Karina, Bombali District;
2. committing the murder of five civilians at State House, Freetown, Western Area;
3. committing the mutilation of one civilian in Freetown, Western Area;
4. ordering the terrorisation of the civilian population in:
 - a. Karina, Bombali District;
 - b. Rosos, Bombali District; and
 - c. Freetown, Western Area;
5. ordering the collective punishment of the civilian population in Freetown, Western Area;
6. ordering and planning the recruitment and use of child soldiers in:
 - a. Freetown, Western Area; and
 - b. Rosos, Bombali District;
7. ordering the murders of civilians at:
 - a. Mateboi, Bombali District;
 - b. Gbendembu, Bombali District;
 - c. State House, Freetown, Western Area;
 - d. Kissy Mental Home, Freetown, Western Area; and
 - e. Rogbalan Mosque, Freetown, Western Area;
8. ordering and aiding and abetting the murders of civilians in Fourah Bay, Freetown, Western Area;
9. ordering and planning the enslavement of civilians in Freetown, Western Area;
10. ordering the looting of civilian property; Freetown, Western Area;

⁷² Brima Defence Sentencing Brief, para. 12.



11. planning the commission of outrages upon personal dignity in the form of sexual slavery in Bombali District and the Western Area;
12. planning the enslavement of civilians in Bombali District.

42. Brima was further found liable under Article 6(3) for crimes committed by his subordinates throughout Bombali District and Freetown and the Western Area.

43. With regards to the crimes for which Brima is responsible under Article 6(1), the Trial Chamber recalls its factual findings that Brima was the primary perpetrator of the murders of at least 12 civilians in a mosque during the attack on Karina,⁷³ a fact indicative of the particular gravity of this offence.

44. With regards to the recruitment and use of child soldiers, the Trial Chamber recalls that the young victims were abducted from their families, often in situations of extreme violence, often drugged and forcibly trained to kill and to commit crimes against innocent civilians. These children were robbed of their childhood and many lost the chance of an education.

45. With regards to the crimes for which Brima is responsible under Article 6(3) the Trial Chamber has examined the gravity of the crimes committed by subordinates under his effective control. Many of these crimes, detailed in the Trial Chamber's Factual Findings are of a particularly heinous nature. The Trial Chamber recalls in particular that in Karina, Brima's subordinates unlawfully killed children by throwing them into the flames of burning houses.⁷⁴ In Rosos, five of Brima's subordinates beat and orally and vaginally gang-raped a civilian⁷⁵ and another four raped a civilian so brutally that she was in great pain, could not stand up and testified that "it seem[ed] as though all my guts were coming out".⁷⁶ With regards to the sexual crimes in general, the Trial Chamber notes that many of the victims were particularly young and vulnerable, were held in captivity for protracted periods, often coupled with unwanted pregnancy/miscarriages and endured social stigma.

46. The Trial Chamber considers the crime of mutilation was particularly grotesque and malicious. Victims who had their limbs hacked off not only endured extreme pain and suffering, if they survived, but lost their mobility and capacity to earn a living or even to undertake simple daily tasks. They have been rendered dependent on others for the rest of their lives.

⁷³ Judgement, para. 1709.

⁷⁴ Judgement, para. 888.

⁷⁵ Judgement, paras 1031-1032.

⁷⁶ Judgement, para. 1035.

47. The Trial Chamber dismisses the Defence arguments that the guerrilla nature of the conflict lessens the grievous nature of the offences.

2. Individual Circumstances of Brima

(a) Submissions of the Parties

48. The Prosecution submits that the personal circumstances of Brima do not justify any mitigation of his sentence since Brima was a professional soldier who by his own admission knew that it was wrong to commit crimes against the civilian population; was not of a young age, being 27-28 years old in the period in which the crimes occurred; and has family members who are in a position to care for his dependants, including his wife who receives his military pension.⁷⁷

49. The Brima Defence submits that the Trial Chamber must take into account the culture of Sierra Leone, where family responsibilities are paramount, emphasising that Brima has six children and two wives as dependants.⁷⁸ In addition, the Brima Defence submits that Brima's age is a mitigating factor, particularly given the young age at which he joined the army and the influence of the army on his future development.⁷⁹

50. The Brima Defence further submits that the detrimental effect that a long sentence would have on Brima's ill health is a mitigating factor.⁸⁰

(b) Deliberations

51. The Trial Chamber finds that nothing in Brima's personal circumstances justifies any mitigation of his sentence.

52. The Trial Chamber considers that Brima was a professional soldier whose duty it was to protect the people of Sierra Leone. The fact that he instead attacked innocent and unarmed civilians is considered by the Trial Chamber to be an aggravating factor.

⁷⁷ Prosecution Sentencing Brief, paras 89-90.

⁷⁸ Brima Sentencing Brief, paras 25-26, 38, 40.

⁷⁹ Brima Sentencing Brief, paras 32-33; citing *Erdemović* Trial Judgement, para. 16.

⁸⁰ Brima Sentencing Brief, para. 22-24.

3. Aggravating Circumstances

(a) Submissions of the Parties

53. The Prosecution submits that significant aggravating circumstances exist in Brima's case, including:

(i) the vulnerability of many of the civilian victims, namely young children, especially young girls subjected to sexual crimes, pregnant women and members of religious orders;⁸¹

(ii) the particularly brutal and heinous nature of the crimes, including the splitting open of the stomach of a pregnant woman and removal of the foetus, the burning of civilians alive, brutal gang rapes, the drugging of child soldiers;⁸² and the amputations of limbs;⁸³

(iii) the use of coercion by Brima, in particular the use of his phrase "minus you, plus you", to secure the commission of crimes by his subordinates;⁸⁴

(iv) the fact that Brima was a senior government official prior to the commission of the crimes, and the overall commander at the time of the commission of the crimes for which he was convicted.⁸⁵ The Prosecution submits that Brima's ongoing failure to fulfil his duty to prevent or punish had an "implicit effect of encouraging subordinates to believe that they [could] commit further crimes with impunity", thus contributing to the scale of crimes committed.⁸⁶

54. The Brima Defence made no submissions with respect to aggravating circumstances in its Sentencing Brief nor in their oral arguments.

(b) Deliberations

55. The Trial Chamber agrees that all the factors submitted by the Prosecution are aggravating factors. Moreover, the Trial Chamber finds that Brima's position as overall commander of the troops is an aggravating factor in relation to the crimes for which he is responsible under Article 6(1) of the Statute. The use by Brima of tactics of extreme coercion, illustrated by the use of the

⁸¹ Prosecution Sentencing Brief, paras 92-93.

⁸² Prosecution Sentencing Brief, paras 95-96.

⁸³ Oral Submissions, Transcript 16 July 2007, pp. 31-33.

⁸⁴ Prosecution Sentencing Brief, para. 99.

⁸⁵ Prosecution Sentencing Brief, paras 100-101.

⁸⁶ Prosecution Sentencing Brief, para. 102.

infamous phrase “minus you, plus you”, to force his subordinates to engage in criminal conduct constitutes an abuse of his position of power which is an aggravating factor in his case.⁸⁷

56. The Trial Chamber also finds that Brima was a zealous participant in some of the crimes for which he has been found liable. This factor will be considered as an aggravating circumstance.

57. The Trial Chamber further finds that the prolonged period of time over which the enslavement crimes were committed, the vulnerability of the victims and the targeting of places of worship or sanctuary are all aggravating factors.

4. Mitigating Circumstances

(a) Submissions of Parties

58. The Prosecution submits that no mitigating circumstances exist in respect of Brima, as he did not at any time cooperate with the Prosecution or express any remorse and there is no evidence that he acted under duress.⁸⁸

59. In relation to Brima’s alleged activities as a member of the Commission for the Consolidation of Peace, the Prosecution contends that no evidence was adduced at trial as to the particular functions of this body or Brima’s role within it. The Prosecution further submits that given the gravity of the crimes, very little, if any, weight should be given to this mitigating factor.⁸⁹

60. In addition, the Prosecution argues that Brima cannot plead good behaviour as he was responsible for various misdemeanours in detention as well as outbursts in court which on one occasion led to the adjournment of proceedings.⁹⁰ The Prosecution further submits that Brima’s ill-health should be given little weight as a mitigating factor as high blood pressure and hypertension are common ailments which, with proper medication, are rarely life threatening.⁹¹

61. The Brima Defence submits that Brima is a person of good character with a history of community philanthropy, no prior offences and a military record which includes assisting the government when the RUF broke the ceasefire in 2000 and in negotiations to secure the release of kidnapped UNAMSIL and ECOMOG personnel.⁹²

⁸⁷ Judgement, para. 593.

⁸⁸ Prosecution Sentencing Brief, paras 103-105.

⁸⁹ Prosecution Sentencing Brief, para. 105.

⁹⁰ Prosecution Sentencing Brief, para. 106.

⁹¹ Prosecution Sentencing Brief, para. 107.

⁹² Brima Sentencing Brief, paras 16-21, 25-29.

62. The Brima Defence argues that Brima's membership of the Commission for the Consolidation of Peace signifies a contribution to peace in the region which should be treated as a mitigating factor.⁹³

63. The Brima Defence further emphasises that Brima was only convicted of offences in the Western Area and Bombali Districts, and was found not guilty for crimes committed in Bo, Kenema, Kailahun, Kono and Port Loko Districts.⁹⁴ The Brima Defence further argued that a harsh sentence would not "promote the cause of reconciliation".⁹⁵

(b) Deliberations

64. The Trial Chamber does not consider Brima's service in the Army without incident to be a mitigating factor⁹⁶ as this was merely his duty.

65. The Trial Chamber further finds that Brima's alleged acts of philanthropy and alleged involvement in the Commission for the Consolidation of Peace are not mitigating factors.

66. The fact that Brima's convictions relate to crimes committed in two districts, as opposed to the seven districts particularised in the Indictment, in no way lessens the seriousness of the offences.

5. Remorse

67. The Trial Chamber finds that the statement made by Brima at the sentencing hearing, whilst containing a fleeting reference to "remorse to the victims of this situation"⁹⁷ cannot be accepted as an expression of genuine remorse. This fact cannot therefore be taken as mitigating his sentence.

⁹³ Brima Sentencing Brief, para. 30, citing *Plavšić* Trial Judgement, para. 94.

⁹⁴ Brima Sentencing Brief, paras 12, 47.

⁹⁵ Oral Submissions, Transcript 16 July 2007, p. 47.

⁹⁶ Exhibit D-14.

⁹⁷ Oral Submissions, Transcript 16 July 2007, p. 51.

B. Ibrahim Bazy Kamara

1. Gravity of the Offences

(a) Submissions of Parties

68. The Prosecution submits that on account of the Trial Chamber’s broad findings of Kamara’s liability under Article 6(3), the crimes for which he was convicted involved a very large number of victims, particularly in crimes sites such as Tombodu in Kono District.⁹⁸

69. The Kamara Defence submits that Kamara’s convictions under Article 6(1) of the Statute were based on one incident of ordering the killings of five girls in Bombali District and two incidents of aiding and abetting the commission of various crimes in Freetown and the Western Area and, while not denying the seriousness of the crimes for which Kamara has been convicted, submits this should be a relevant factor in determining the gravity of the offences.⁹⁹

(b) Deliberations

70. The Trial Chamber found Kamara responsible under Article 6(1) for:

1. ordering the murder of five civilians in Karina, Bombali District;
2. planning the abduction and use of child soldiers in Bombali District and the Western Area;
3. planning the commission of outrages upon personal dignity in the form of sexual slavery in Bombali District and the Western Area;
4. planning the enslavement of civilians in Bombali and Western Area;
5. aiding and abetting the murder/extermination of civilians at Fourah Bay, Freetown, Western Area;
6. aiding and abetting the mutilation of civilians in Freetown, Western Area.

71. Kamara was further found liable under Article 6(3) for crimes committed by his subordinates at Tombodu, Kono District and throughout Bombali District, the Western Area and Port Loko District.

72. The crimes for which Kamara was convicted were heinous, deliberate, brutal and targeted very large number of unarmed civilians and had a catastrophic and irreversible impact on the lives of the victims and their families.

⁹⁸ Prosecution Sentencing Brief, paras 110-113.

⁹⁹ Kamara Sentencing Brief, paras 16-19, 22.



73. In relation to his criminal responsibility the Trial Chamber finds that the crimes committed by his subordinates were crimes of the most serious gravity and Kamara's failure to prevent or punish the commission of these crimes must be considered correspondingly grave. The Trial Chamber recalls its factual finding that in Tombodu, Kamara's subordinates purposely trapped some 68 people in a house and burned them alive.¹⁰⁰ And that another 47 people were beheaded and thrown into a diamond pit.¹⁰¹

74. The Trial Chamber is satisfied that the crimes committed by Kamara or by his subordinates affected a very large number of victims. With regards to the recruitment and use of child soldiers, the Trial Chamber recalls that the victims were abducted from their families, often in situations of extreme violence, often drugged and trained to kill and forced to commit crimes against innocent civilians. These children were robbed of their childhood and many lost the chance of an education.

75. With regards to the crimes for which Kamara is responsible under Article 6(3) the Trial Chamber has examined the gravity of the crimes committed by subordinates under his effective control. Many of these crimes, detailed in the Trial Chamber's Factual Findings are of a particularly heinous nature. The Trial Chamber recalls in particular that in Karina, Kamara's subordinates unlawfully killed children by throwing them into the flames of burning houses.¹⁰² In Rosos, five of Kamara's subordinates beat and orally and vaginally gang-raped a civilian¹⁰³ and another four raped a civilian so brutally that she was in great pain, could not stand up and testified that "it seem[ed] as though all my guts were coming out".¹⁰⁴ With regards to the sexual crimes in general, the Trial Chamber notes that many of the victims were particularly young and vulnerable, were held in captivity for protracted periods, often coupled with unwanted pregnancy/miscarriages, and endured social stigma.

76. The Trial Chamber considers the crime of mutilation was particularly grotesque and malicious. Victims who had their limbs hacked off not only endured extreme pain and suffering if they survived, but lost their mobility and capacity to earn a living or even to undertake simple daily tasks.

77. All of the above factors point to the gravity of the offences.

¹⁰⁰ Judgement, paras 848-849.

¹⁰¹ Judgement, para. 849.

¹⁰² Judgement, para. 888.

¹⁰³ Judgement paras 1031-1032.

¹⁰⁴ Judgement para. 1035.

2. Individual Circumstances of Kamara

(a) Submissions of Parties

78. The Prosecution submits that the personal circumstances of Kamara do not warrant any mitigation of his sentence. The Prosecution submits that Kamara was a professional soldier who must have known it was wrong to commit crimes against civilians and that his dependants can presumably rely on his military pension and his other family members for support.¹⁰⁵

79. The Kamara Defence submits that Kamara gave loyal service for many years to the Sierra Leone Army, which he joined at a young age.¹⁰⁶ Additionally, the Kamara Defence submits that Kamara was involved in a number of activities that enhanced peace and reconciliation in Sierra Leone, including negotiating the release of around 200 children from the West Side Boys to the Red Cross and UNICEF in 1999, taking part in military action against the RUF in 2000 and working for the Commission for the Consolidation of Peace in Sierra Leone.¹⁰⁷ The Kamara Defence submits that Kamara's personal circumstances should be taken into account in mitigation of his sentence.

(b) Deliberations

80. The Trial Chamber finds that nothing in Kamara's personal circumstances justifies any mitigation of his sentence.

81. The Trial Chamber considers that Kamara was a professional soldier whose duty it was to protect the people of Sierra Leone. The fact that he instead attacked innocent and unarmed civilians is considered by the Trial Chamber to be an aggravating factor.

3. Aggravating Circumstances

(a) Submissions of Parties

82. The Prosecution submits a number of aggravating circumstances exist in the case of Kamara, including:

¹⁰⁵ Prosecution Sentencing Brief, paras 117-120.

¹⁰⁶ Kamara Sentencing Brief, paras 32-34.

¹⁰⁷ Kamara Sentencing Brief, paras 35-37.

1. the vulnerability of many of the civilian victims, especially young children and pregnant women;¹⁰⁸
2. the heinous nature of the crimes, including the burning alive of civilians in Karina and Tombodu;¹⁰⁹ and
3. the fact that Kamara was a senior government official prior to the commission of the crimes, and a senior commander at the time of the commission of the crimes.¹¹⁰ In the Prosecution's view, the failure of Kamara to fulfil his duty to prevent or punish "shows a total disregard for the sanctity for human life and dignity".¹¹¹

83. The Kamara Defence contends that Kamara was a "quiet, calm, non-violent and often passive and unrecognised "participant" in the crimes rather than an active and direct participant like Brima.¹¹² The Kamara Defence accordingly submits that Brima and Kamara should not be viewed as equally liable for the purposes of sentencing.¹¹³

84. The Kamara Defence submits that Kamara's position as a senior government official prior to the commission of the crimes cannot be used as an aggravating circumstance.¹¹⁴ The Kamara Defence further argues that, although the offences for which Kamara has been convicted are serious, "they occurred in situations in which [he] lacked clear sufficient command and control".¹¹⁵

(b) Deliberations

85. The Trial Chamber agrees that all of the factors submitted by the Prosecution are aggravating factors. Moreover, the Trial Chamber has given consideration to the vulnerability of some of the victims of the crimes for which Kamara was convicted with regards to the gravity of the offence and will not consider this factor additionally as an aggravating circumstance.

86. The Trial Chamber also finds that the killing of civilians deliberately locked in their homes and set ablaze, as was ordered by Kamara and carried out by his subordinates, is a violent and cruel circumstance of the offence amounting to an aggravating factor. Further, this particular incident

¹⁰⁸ Prosecution Sentencing Brief, para. 122.

¹⁰⁹ Prosecution Sentencing Brief, para. 124.

¹¹⁰ Prosecution Sentencing Brief, paras 126-127.

¹¹¹ Prosecution Sentencing Brief, para. 125.

¹¹² Kamara Sentencing Brief, para. 40; see also Oral Submissions, Transcript 16 July 2007, p. 54.

¹¹³ Kamara Sentencing Brief, paras 39-41; see also Oral Submissions, Transcript 16 July 2007, p. 54.

¹¹⁴ Kamara Sentencing Brief, para. 47.

¹¹⁵ Kamara Sentencing Brief, para. 44.

shows that Kamara was a violent and active participant in the crimes, contrary to the Defence assertions.

87. The Trial Chamber further finds that the prolonged period of time over which the enslavement crimes were committed, the vulnerability of the victims and the targeting of places of worship or sanctuary are all aggravating factors.

88. The Trial Chamber does not consider Kamara’s position in the AFRC government prior to the commission of the offences to be an aggravating factor. However, the Trial Chamber considers his position of command authority in relation to the crimes for which he has been found liable under Article 6(1) of the Statute to be an aggravating factor.

4. Mitigating Circumstances

(a) Submissions of Parties

89. The Prosecution submits that no mitigating circumstances exist in respect of Kamara, as he did not at any time cooperate with the Prosecution or express any remorse and there is no evidence that he acted under duress.¹¹⁶

90. The Kamara Defence submits that mitigating factors in the case of Kamara include the absence of a prior criminal record; the stressful environment prevailing at the time of the offences; and his responsibilities as an income earner for his large family.¹¹⁷

(b) Deliberations

91. The Trial Chamber finds that there are no mitigating circumstances in Kamara’s case. In particular, although Kamara chose to address the Trial Chamber at the sentencing hearing, he failed to express any genuine remorse whatsoever for his crimes.¹¹⁸

¹¹⁶ Prosecution Sentencing Brief, paras 128-129.

¹¹⁷ Kamara Sentencing Brief, paras 32, 53-55.

¹¹⁸ Oral Submissions, Transcript 16 July 2007, p. 59.



C. Santigie Borbor Kanu

1. Gravity of the Offences

(a) Submissions of Parties

92. The Prosecution submits that the Accused Kanu was criminally responsible under Article 6(1) for crimes involving a number of victims and that the extent of his liability under Article 6(3) is particularly significant as he was found to be responsible for all crimes committed in Bombali and the Western Area.¹¹⁹

93. The Kanu Defence submits that the RUF was responsible for the bulk of human rights violations in Sierra Leone and this “historical broader picture [...] should be reflected in the sentencing”.¹²⁰

(b) Deliberations

94. The Trial Chamber found Kanu responsible under Article 6(1) for:

- i. committing the mutilation of civilians in:
 - a. Kissy, Freetown; and
 - b. Upgun, Freetown;
- ii. committing the looting of civilian property in Freetown;
- iii. ordering the murder of persons *hors de combat* at State House in Freetown;
- iv. ordering the murder of civilians at Rogbalan Mosque in Freetown;
- v. ordering the mutilations of civilians at:
 - a. Ferry Junction, Freetown; and
 - b. Upgun, Freetown;
- vi. planning the abduction and use of child soldiers in Bombali District and the Western Area;
- vii. planning the commission of outrages upon personal dignity in the form of sexual slavery in Bombali District and the Western Area;
- viii. planning the enslavement of civilians on numerous occasions in Bombali District and the Western Area;
- ix. instigating the murder of civilians in Freetown; and

¹¹⁹ Prosecution Sentencing Brief, paras 133-135.

¹²⁰ Kanu Sentencing Brief, paras 85-86.

x. aiding and abetting the murder/extermination of civilians at Fourah Bay in Freetown, and the Western Area.

95. Kanu was further found liable under Article 6(3) for crimes committed by his subordinates throughout Bombali District and Freetown and the Western Area.

96. With regards to the crimes for which Kanu is responsible under Article 6(3) the Trial Chamber has examined the gravity of the crimes committed by subordinates under his effective control. Many of these crimes, detailed in the Trial Chamber's Factual Findings are of a particularly heinous nature. The Trial Chamber recalls in particular that in Karina, Kanu's subordinates unlawfully killed children by throwing them into the flames of burning houses.¹²¹ In Rosos, five of Kanu's subordinates beat and orally and vaginally gang-raped a civilian¹²² and another four raped a civilian so brutally that she was in great pain, could not stand up and testified that "it seem[ed] as though all my guts were coming out"¹²³ With regards to the sexual crimes in general, the Trial Chamber notes that many of the victims were particularly young and vulnerable, were held in captivity for protracted periods often coupled with unwanted pregnancy/miscarriages and endured social stigma.

97. The Trial Chamber considers the crime of mutilation was particularly grotesque and malicious. Victims who had their limbs hacked off not only endured extreme pain and suffering if they survived, but lost their mobility and capacity to earn a living or even to undertake simple daily tasks.

98. The Trial Chamber dismisses the Defence arguments that the RUF was responsible for the bulk of human rights violations in Sierra Leone and finds that this allegation cannot be a mitigating factor.

99. The Trial Chamber found that Kanu was a direct participant in unlawful killings, mutilations, the recruitment and use of the child soldiers, outrages on personal dignity, and enslavement.

¹²¹ Judgement, para. 888.
¹²² Judgement, paras 1031-1032.
¹²³ Judgement, para. 1035.

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2. Individual Circumstances of Kanu

(a) Submissions of Parties

100. The Prosecution submits that the personal circumstances of Kanu do not warrant any mitigation of his sentence, as Kanu was a professional soldier who must have known that it was wrong to commit crimes against civilians; was not of a young age being in his thirties in the period in which the crimes were committed; and is without any pressing personal circumstances or family concerns to justify mitigation.¹²⁴

101. The Kanu Defence submits that the behaviour of Kanu after the conflict constitutes an individual circumstance which justifies mitigation, referring specifically to his role in the Commission for Consolidation of Peace, his role in the “May 8th incident” and his role after the 1999 Lomé Peace Agreement.¹²⁵

102. In relation to the Lomé Peace Agreement, the Kanu Defence submits that Kanu was an early supporter of peace who worked with ECOMOG and UNAMSIL in Freetown to build confidence between the government, the ex-SLAs and the RUF. In addition, Kanu was allegedly one of five people commended by UN Special Envoy Francis Okello for his assistance in working to disarm the West Side Boys who were holding UN peacekeepers and civilians captive.¹²⁶

103. The Kanu Defence contends that the activities of Kanu as a member of the Commission for the Consolidation of Peace, which included overseeing the reintegration of ex-combatants into the community and the provision of training for them in various trades, indicate his desire to bring peace and stability to post-conflict Sierra Leone.¹²⁷ The Kanu Defence recalls that it made efforts to obtain salary vouchers from the national authorities to substantiate Kanu’s assertion that since 2000 he has been in receipt of a salary from the military for his work for the Commission, but these vouchers were no longer available.¹²⁸

¹²⁴ Prosecution Sentencing Brief, paras 139-142.

¹²⁵ Kanu Sentencing Brief, para. 88.

¹²⁶ Kanu Sentencing Brief, paras 89-93.

¹²⁷ Kanu Sentencing Brief, paras 94-97, 99.

¹²⁸ Kanu Sentencing Brief, para. 98; *See Prosecutor v Brima, Kamara and Kanu*, SCSL-04-16-PT-038, “Kanu - Motion to Request an order under Rule 54 with Respect to Exculpatory Evidence”, 19 March 2004.

104. Finally, the Kanu Defence submits that Kanu’s assistance to the British troops in a fire fight against the RUF on 8 May 2000, in protest of the RUF’s continued violation of the Lomé Peace Agreement, should mitigate his sentence.¹²⁹

(b) Deliberations

105. The Trial Chamber finds that nothing in Kanu’s personal circumstances justifies any mitigation of his sentence.

106. The Trial Chamber considers that Kanu was a professional soldier whose duty it was to protect the people of Sierra Leone. The fact that he instead attacked innocent and unarmed civilians is considered by the Trial Chamber to be an aggravating factor.

3. Aggravating Circumstances

(a) Submissions of Parties

107. The Prosecution submits that significant aggravating circumstances exist in the case of Kanu, including:

- (i) the vulnerability of many of the civilian victims, especially young children and pregnant women.¹³⁰ The Prosecution submits that the killing of civilians in a place of worship is a particularly aggravating factor;¹³¹
- (ii) the heinous nature of the crimes, including the demonstration of amputations;¹³² and
- (iii) the fact that Kanu was a senior government official prior to the commission of the crimes, and a senior commander at the time of the commission of the crimes.¹³³ In the Prosecution’s view, the failure of Kanu to fulfil his duty to prevent or punish “shows a total disregard for the sanctity for human life and dignity”.¹³⁴

108. The Kanu Defence objects to the Prosecution’s characterisation of Kanu’s superior position as an aggravating factor, arguing that this factor is an element of an offence committed under

¹²⁹ Kanu Sentencing Brief, para. 100.
¹³⁰ Prosecution Sentencing Brief, para. 144.
¹³¹ Prosecution Sentencing Brief, para. 148.
¹³² Prosecution Sentencing Brief, para. 146.
¹³³ Prosecution Sentencing Brief, paras 149-150.
¹³⁴ Prosecution Sentencing Brief, para. 147.

Article 6(3) of the Statute and therefore cannot also be considered an aggravating factor.¹³⁵ The Kanu Defence particularly objects to the Prosecution's submission that Kanu was a senior member of the AFRC government, referring to the Trial Chamber's finding that the evidence adduced was insufficient to draw any conclusions regarding the seniority of Kanu in that role.¹³⁶

(b) Deliberations

109. The Trial Chamber agrees that all of the factors submitted by the Prosecution are aggravating factors.

110. The Trial Chamber finds that Kanu's failure to prevent or punish his subordinates is an element of individual criminal responsibility under Article 6(3) of the Statute and therefore cannot be considered an aggravating factor.¹³⁷

111. However, the Trial Chamber does consider Kanu's leadership positions in Bombali and Freetown and the Western Area to be an aggravating factor with regards to his Article 6(1) liability for unlawful killings and mutilations.

112. Furthermore, the Trial Chamber is satisfied that Kanu's demonstration of amputations in Freetown and his order to commit killings at Rogbalan Mosque, a place of worship, are aggravating factors with regard to those crimes.

4. Mitigating Circumstances

113. The Prosecution submits that no mitigating circumstances exist in respect of Kanu, as he did not at any time cooperate with the Prosecution or express any remorse and there is no evidence that he acted under duress.¹³⁸

114. Kanu Defence submits that a number of mitigating circumstances exist in respect of Kanu.

(a) Deliberations on Kanu's Submissions

(i) Relatively Low Position

115. The Kanu Defence submits that Kanu had a relatively low position throughout the conflict, even in Freetown being only third in command and consequently he bore less responsibility. The

¹³⁵ Kanu Sentencing Brief, para. 61.

¹³⁶ Kanu Sentencing Brief, para. 62.

¹³⁷ Prosecution Sentencing Brief, para. 125.

Kanu Defence recalls Article 1(1) of the Statute, which empowers the Special Court to prosecute persons bearing the greatest responsibility for the crimes committed in Sierra Leone.¹³⁹ The Kanu Defence argues that although the Trial Chamber has found that this is not a jurisdictional requirement, it is a principle which should nevertheless be reflected in sentencing.¹⁴⁰

116. The Trial Chamber considers that Kanu’s position as third in command of armed forces was not a lowly one. He was not a foot soldier nor was he subject to duress. The fact that there were two persons superior to him does not lessen his culpability for crimes committed and does not mitigate his sentence.

(ii) Flexibility in Sentencing Superior Responsibility

117. The Kanu Defence emphasises that the responsibility of Kanu under Article 6(3) for rape is limited to the failure to prevent or punish the crimes and his sentence must reflect his culpability for this omission, rather than for the crimes themselves.¹⁴¹

118. The Trial Chamber takes into consideration that Kanu was convicted for rape pursuant to Article 6(3) and not Article 6(1). Nonetheless, this distinction does not mitigate in his favour.

(iii) Family Background

119. The Kanu Defence contends that Kanu has a girlfriend who wishes to marry him and this family consideration should be taken into account. In addition, the Kanu Defence submits that the “harsh environment of this specific armed conflict as a whole” is a mitigating factor.¹⁴²

120. The Trial Chamber finds nothing in Kanu’s family background that would mitigate his sentence.

(iv) Superior Orders

121. The Kanu Defence recalls the Trial Chamber’s findings that on several occasions Kanu followed or reiterated the orders of Brima, submitting that this lesser culpability is relevant to sentencing.¹⁴³

¹³⁸ Prosecution Sentencing Brief, paras 151-152.

¹³⁹ Article 1(1) of the Statute.

¹⁴⁰ Kanu Sentencing Brief, paras 105-110.

¹⁴¹ Kanu Sentencing Brief, paras 111-114.

¹⁴² Kanu Sentencing Brief, paras 115-118.

¹⁴³ Kanu Sentencing Brief, paras 119-121.

122. There is no evidence that Kanu acted under duress. The fact that Kanu voluntarily reiterated criminal orders previously issued by Brima cannot be considered as mitigation.

(v) Collapse of Command Structure

123. The Kanu Defence submits that the increasing chaotic climate prevailing in Freetown after the troops lost State House during the January 1999 invasion affected Kanu's culpability in relation to the crimes committed subsequently. The Kanu Defence submits that the difficult circumstances in which a convicted person operates is a mitigating factor, citing the *Orić* Trial Judgement in support of this proposition.¹⁴⁴

124. The Trial Chamber found that despite the deterioration of the situation in Freetown following the loss of State House by the renegade SLA, Kanu maintained effective control over his troops, he was aware of the crimes committed by his troops, and he took no steps to prevent or punish the troops under his command for the crimes they committed.¹⁴⁵ The battlefield is always chaotic and therefore this fact cannot be considered as mitigating.

(vi) Lack of Formal Military Training

125. The Kanu Defence contends that Kanu joined the military at 25 years of age and only received six months training. The Kanu Defence argues that limited military experience is a mitigating factor.¹⁴⁶

126. The Trial Chamber finds that limited or lack of military training is not a mitigating factor.

(vii) Absence of Knowledge of Criminality

127. In relation to Kanu's conviction on Count 12 (recruitment and use of child soldiers), the Kanu Defence refers to expert evidence heard during the trial establishing that the use of children under the age of 15 in the Sierra Leonean military in recent decades was widespread and a normal practice and there was no proper training given to servicemen to make them aware of the international prohibition on such conduct. While the Kanu Defence accepts that mistake of law is

¹⁴⁴ Kanu Sentencing Brief, paras 122-124; *Orić* Trial Judgement, paras 767-768.

¹⁴⁵ Judgement, para. 2076.

¹⁴⁶ Kanu Sentencing Brief, paras 125-126.



not a defence, it submits that Kanu’s absence of knowledge of the criminality of the conduct is a substantial mitigating factor.¹⁴⁷

128. The Trial Chamber found in the instant case that young children were forcibly kidnapped from their families, often drugged and forcibly trained to commit crimes against civilians. In those circumstances, the Trial Chamber cannot accept that Kanu did not know that that he was committing a crime in recruiting and using these children for military purposes.

(viii) Role of Protecting Women

129. The Kanu Defence reiterates its argument, presented throughout the trial, that Kanu’s responsibilities towards civilians in the jungle entailed their protection and this should be considered a mitigating factor.¹⁴⁸

130. This submission is contrary to the Trial Chamber findings and is without merit.

(ix) Lengthy Proceedings

131. The Kanu Defence submits that the Trial Chamber’s delay until the Judgement in deciding that joint criminal enterprise was not properly pleaded made the proceedings against Kanu unnecessarily long, as it resulted in additional evidence and occupied a substantial amount of time in preparation and the presentation of the parties’ cases. The Kanu Defence recalls that it raised objections concerning the deficiency of the Indictment in that respect on several occasions from pre-trial proceedings until the submission of Final Briefs; and argues that disproportionately lengthy proceedings are a recognised mitigating factor in the jurisprudence of the ICTY and the European Court of Human Rights.¹⁴⁹

132. The Trial Chamber holds that the appropriate time to consider its finding on joint criminal enterprise at the end of the trial when all the evidence and final submissions had been considered. The Trial Chamber therefore finds the Defence argument without merit.

(x) Good Behaviour in Army, No Previous Convictions and Character Evidence

133. The Kanu Defence submits that Kanu’s “loyal and faithful” service to the Army, described in his discharge booklet (exhibit D-11), and absence of prior convictions are mitigating factors.¹⁵⁰

¹⁴⁷ Kanu Sentencing Brief, paras 127-137.

¹⁴⁸ Kanu Sentencing Brief, paras 138-141.

¹⁴⁹ Kanu Sentencing Brief, paras 142-149.

¹⁵⁰ Kanu Sentencing Brief, paras 150-153.

In addition, the Kanu Defence submits that Kanu was a person of good character who assisted vulnerable people in the jungle, referring to evidence to this effect contained in an unsworn, signed witness statement annexed to the Sentencing Brief.¹⁵¹

134. The Trial Chamber does not consider Kanu’s service in the Army without incident to be a mitigating factor.¹⁵² This was merely his duty.

(xi) Breach of Conakry Accord by ECOMOG

135. The Kanu Defence recalls evidence at trial to the effect that the overthrow of the AFRC Government and the reinstatement of the Kabbah Government in Freetown in February 1998 was in breach of the Conakry Accord signed between ECOWAS and Johnny Paul Koroma, which provided for a peaceful handover of power to Kabbah in May 1998. The Kanu Defence submits that this breach put Kanu, as a member of the AFRC Government, “in a dilemma” which mitigates his role in subsequent events.¹⁵³

136. The Trial Chamber finds no merit whatsoever in the Defence submissions with regard to the alleged breach of the Conakry Accord.

(xii) Amnesty Provided

137. The Kanu Defence submits that Kanu’s trial by the Special Court has “circumvented” the amnesty granted to him as an ex-combatant and this factor should be taken into account as mitigation.¹⁵⁴

138. The Trial Chamber notes that Article 10 of the Statute states that “an amnesty granted [...] shall not be a bar to prosecution”. The Trial Chamber recalls that the Appeals Chamber has addressed legality of amnesties for international crimes and found that the grant of such amnesties violates *erga omnes* obligations under international law.¹⁵⁵ The Trial Chamber therefore finds no merit in the Defence submission.

¹⁵¹ Kanu Sentencing Brief, paras 160-163.

¹⁵² Exhibit D-14.

¹⁵³ Kanu Sentencing Brief, paras 154-157.

¹⁵⁴ Kanu Sentencing Brief, paras 158-159.

¹⁵⁵ *Prosecutor v. Kallon*, SCSL-2004-15-AR72(E); *Prosecutor v. Kanu*, SCSL-2004-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, 15 March 2004; *Prosecutor v. Kondewa*, Decision on Lack of Jurisdiction/Abuse of Process; Amnesty Provided by the Lomé Accord, Case No. SCSL-2004, 14 AR72 (E), 25 May 2004.

5. Remorse

139. The Trial Chamber finds that the statement made by Kanu at the sentencing hearing failed to express any remorse whatsoever for his crimes.¹⁵⁶

¹⁵⁶ Oral Submissions, Transcript 17 July 2007, pp. 88-91.



VI. DISPOSITION

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER UNANIMOUSLY

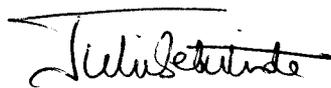
SENTENCES Alex Tamba Brima to a **SINGLE TERM OF IMPRISONMENT OF FIFTY YEARS** for all the Counts on which he has been found **GUILTY**. Credit shall be given to him for any period during which he was detained in custody pending this trial;

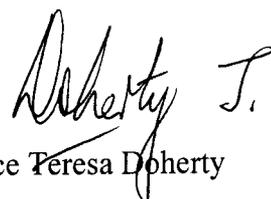
SENTENCES Ibrahim Bazy Kamara to **SINGLE TERM OF IMPRISONMENT OF FORTY FIVE YEARS** for all the Counts on which he has been found **GUILTY**. Credit shall be given to him for any period during which he was detained in custody pending this trial;

SENTENCES Santigie Borbor Kanu to **SINGLE TERM OF IMPRISONMENT OF FIFTY YEARS** for all the Counts on which he has been found **GUILTY**. Credit shall be given to him for any period during which he was detained in custody pending this trial.

Done in Freetown, Sierra Leone, this 19th day of July 2007.


Justice Richard Lussick


Justice Julia Sebutinde
Presiding Judge


Justice Teresa Doherty

