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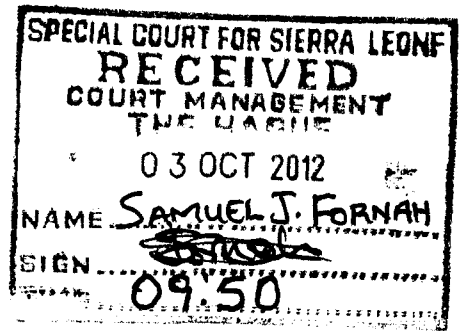
SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding
Registrar: Ms. Binta Mansaray
Case No: SCSL-2011-02-T
Date filed: 03 October 2012

THE INDEPENDENT PROSECUTOR

V.
Hassan Papa BANGURA
Samuel KARGBO
Santigie Borbor KANU
Brima Bazzy KAMARA



**PUBLIC
DEFENCE SENTENCING BRIEF**

Independent Prosecutor
Mr. Robert L. Herbst

Counsel for Bangura:
Melron Nicol Wilson
Counsel for Kargbo:

Charles Taku
Counsel for Kanu

Kevin Metzger

Counsel for Kamara

Abdul Serry Kamal

Office of the Principal Defender:

Claire Carlton-Hanciles

Introduction.

- 1) This brief is filed pursuant to Rule 100 (B) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone. That rule requires the Trial Chamber to hear submissions from the Prosecutor and the Defence on any relevant information that may assist the Chamber in determining an appropriate sentence.
- 2) On the 15 July 2011, Mr Samuel Kargbo was charged under rule 77 (A) (IV) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone. He was arraigned before the Honourable Justice Teresa Doherty sitting as a single Judge of Trial Chamber II of the Special Court for Sierra Leone¹. He pleaded Guilty to the two count indictment. The Honourable Justice Teresa Doherty ascertained that his plea was voluntary and unequivocal and entered a verdict of guilty and convicted him as charged².
- 3) Mr Kargbo applied for bail pending sentencing and to enable him to testify as a witness for the Prosecutor as specified in a plea agreement which was tendered and admitted in evidence by the Hon Justice Teresa Doherty. The Independent Prosecutor did not oppose the bail application and the Hon Justice Teresa Doherty in the exercise of her discretion, admitted Mr Kargbo to bail on conditions laid down at pages 54 to 62 of the transcript of 15 July 2011 and referred the question of protective measures that might apply to Mr Kargbo as a Prosecution witness to the Registrar and WVSS.
- 4) On the 25 of September 2012, the Hon Court delivered judgment in the case of co-accused in this case. The Prosecutor filed "Public Prosecutor's Sentencing Submissions" in respect of this case on 27 September 2012. Mr Samuel Kargbo now files his Sentencing Brief and respectfully prays the Court to permit him a sentencing hearing in which he will make a public expressing of remorse and further oral submissions to supplement this written brief.
- 5) Rule 77 (A)(iv) crime under which Mr Kargbo pleaded guilty and was convicted unlike most other offences that are perpetrated against vulnerable victims protected in international law, has been defined as "conduct which obstructs, prejudices or abuses the Tribunal's administration of justice"³.
- 6) Although the wide discretion of this Court concerning sentencing of the crime for cannot be gainsaid, Mr Kargbo respectfully prays and urges the Hon Court to temper justice with mercy and give him a non custodial sentence, preferably a caution and

¹ Transcript of 15 July 2011.

² Transcript of 15 July, 2011 pages 16,17,18.

³ See Prosecutor Vs Tadic January 31,2000 para.18 approved in Prosecutor Vs Aleksovski AC Judgment May 30,, 2001 para, 30, 36.

discharge or a fine. Like all crimes that fall within the jurisdiction of the Special Court, the discretion of the Hon Teresa Doherty in making a determination on sentence in this case is wide and respectfully acknowledged.

Object of sentencing.

- 7) Article 19 the Statute of the Special Court for Sierra Leone as well as rule 101 (B) (i) also applicable to ICTTY, ICTR lay down applicable sentencing principles and criteria before the Special Court⁴. International Criminal Jurisprudence confers a wide discretion on Trial Judges in imposing sentences in matters that come before them for determination. The underlying wisdom in this regard is that the trial judges are best placed to hear the evidence, observe and assess the demeanour of participants in the trial as well as weigh the aggravating and mitigating factors applicable in the circumstances of each case.
- 8) The well known objects of sentencing applicable in international criminal jurisprudence, thus this case, are deterrence, protection of society, reprobation, retribution, rehabilitation and reconciliation. In considering and applying these factors separately or in aggregate to the justice of this case, I hereby in all humility beg as I often do, to respectfully cite the persuasive **Separate Opinion of the Hon Judge Mumba in Prosecutor Vs Deronjic, Judgment March, 30 2004, Para.3** where the Hon Judge Mumba stated that: *“International Justice in cases similar to these, in this Tribunal, is not about unfair retribution; if that were the case, humanity should forget about reconciliation and its offshoot, peace. It is my humble view that this Tribunal is not about vengeance, using the pen as its firearm, much as the victims’ plight has been acknowledged; that would be erroneous, such a practice would amount to accepting the erroneous view that you can conquer hatred with hatred. This in my view does not work. Vengeance may be manifested in terms of a harsh sentence for an accused person who has pleaded guilty. In my humble opinion, rehabilitation after turmoil, may serve to reduce the incidence of political instability and conflict”*.
- 9) I must with the utmost respect, hasten to add that in citing the Separate Opinion of Judge Mumba I do so in the context of the application of the underlying factors of sentencing in International Tribunals generally and the extensive discretionary powers Trial Judges possess in applying these factors separately or in aggregate to matters that come before them. Thus, until a sentence in each case is actually imposed, all involved in a judicial process pass through some of the most anxious moments of an

⁴ The Court shall also take into consideration the sentencing practice of the ICTR article 23 (I)

international criminal case. Respectfully your Honour, the case at bar is no exemption.

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- 10) Considering the fact that this case has generated compelling international criminal jurisprudence in at least two or three areas on matters that have hitherto not been developed, I in all humility, while making a forceful plea for mercy for Mr Samuel Kargbo respectfully hereby in the interest of the development of the law, urge your Honour, if the time and your busy schedule permits to contribute to the ongoing debate on sentencing generally and within the contextual remit of the case at bar where the potential victim and complainant is the court itself.
- 11) As a beneficiary of the new jurisprudence developed, I wish in all humility, to submit that in this case as in the past ones that I have participated or come to know professionally, I can state on good authority that the people of Sierra Leone have demonstrated extraordinary admirable lessons in forgiveness and compassion. Granting Mr Kargbo a pardon, a caution and discharge, a symbolic fine in a case where the fountain of justice itself is also the aggrieved, will place an eternal higher premium on this healing spirit of forgiveness that Sierra Leone has been recognized and applauded for pioneering in a trouble continent.
- 12) The bail granted by your Honour to Mr Kargbo in this case is a remarkable demonstration of strict adherence by your Honour to the principles of fundamental fairness, human decency and compassion. It offered Mr Kargbo an opportunity to demonstrate while the case lasted, that if afforded another opportunity, he will live as a disciplined member of the society, a respecter of the rule of law and court decisions. The certificate of compliance and good conduct provided to this court by WVSS on the instructions of the Hon Registrar, herself a very meticulous and acknowledged distinguished public servant of international justice attests to this fact.
- 13) I must underscore once more that the fairness and integrity of these proceedings and its contributions to international criminal jurisprudence in areas never before developed contribute enormously to the certainty of law. These are worthy contributions to the improvement of the human condition and the protection that international law provides our common destiny and humanity, in a world of conflicting interests that only the certainty of the law can regulate.
- 14) Like the Semanza case at the UNCITR previously, with enormous thanks I count myself blessed for being one of the messengers to the world, a "John the Baptist", I must state, of these developments in International Criminal Jurisprudence. On behalf of Mr Kargbo with respect to him alone, I respectfully place on record that the judicial process has been thorough, pedagogic, and compassionate and it has provided him

and hopefully others, another opportunity to be a better Sierra Leonean and human being. With this submission you Honour, Mr Kargbo respectfully therefore submits to you the factors hereunder in support of his plea for rehabilitation through a non custodial sentence.

Mitigating Factors.

- 15) The Contemnor respectfully submits that there are no aggravating factors to warrant the imposition of a custodial sentence against him. Rather several mitigation factors exist in Mr Kargbo's favour.
- 16) Article 101 (B)(iii) of the rules of procedure of the Special Court and those of the ICTR and ICTY permits a Trial Chamber to consider any mitigating factors including considerable and substantial cooperation by the convicted person with the Prosecutor before and after conviction in imposing sentence.
- 17) The contemnor submits that he has substantially, unequivocally, and unconditionally cooperated with the Prosecutor and the Hon court from the very inception of this case till the very end. The contemnor submits that the list of mitigating factors that have been established in international criminal jurisprudence is non exhaustive and may be considered on a case by case basis.
- 18) In respect of the case at bar, we urge the court to consider the following mitigating factors: Remorse, substantial cooperation, guilty plea, conduct at trial, individual circumstances of the convict, previous character of the convict.

Mr Kargbo showed remorse over the crimes at the earliest opportunity.

- 19) It is settled jurisprudence that a sincere remorse may constitute a mitigating factor in sentence. The Court may construe remorse from the conduct of the convict and statements made by him from the earliest opportunity that he was availed of when confronted with his wrongful conduct⁵.
- 20) The contemnor Mr Kargbo respectfully urges the Court to consider favourably the submissions of the Prosecutor at paragraphs 14 to 18 that Mr Kargbo expression of remorse was substantial and significant necessitating a non custodial sentence.
- 21) The Contemnor submits that a holistic consideration of his conduct and statements from the moment witness 334 rebuffed his entreaties to accede to the request of the other accused in this case; he respected 334's principled decision. He thereafter, did not make any attempt to contact any other protected witness as requested by the

⁵ Prosecutor Vs Serushago, ICTR Trial Chamber, Sentence, February 5, 1999 Paras.40-41. ICTY Trial Chamber, Sentencing Judgment, Prosecutor Vs Erdemovic, March 5,1998, where the Chamber found the Accused to have expressed "feelings of sorrow and remorse which were genuine and real".

accused. He did not expose the identity of 334 to third parties, did not hate him and disrespect or threaten him. In effect, he does not constitute any danger or threat to 334 or any other protected witness. The contemnor respectfully urges your Honour to review the testimony of witness TF1-334 in support of this submission. The contemnor also urges your Honour to consider the fact that witness TF1-334, has since forgiven the contemnor in acceding to this plea in mitigation.

22) The contemnor is devastated by the discomfort his conduct and participation in the criminal scheme has caused to his own family and TF1-334 whom as statements submitted and filed for consideration from his family members to the Hon Court demonstrate is a member of that family. It is significant to note that prior to the participation of the convict in this crime, both families although very modest and of humble origins shared their joys and sorrows together, a quality that sustains most African families and communities from the vagaries and vicissitudes of harsh life realities. I respectfully submit that a show of compassion and a grant of mercy on the contemnor will encourage these family values which I respectfully consider to be one of the best gifts of Africa to the world.

23) The contemnor urges the Hon Court to deduce remorse from the fact that he confessed his participation in the crimes at the earliest opportunity from when he was invited by the Independent Prosecutor to explain his conduct. He did not only make a remorseful and sincere apology but offered to co-operate in the investigation and the discovery of the truth. He has done so with the stoicism of a Spartan, threats to him and his fragile family notwithstanding.

24) It has been suggested during this trial that Mr Kargbo should not have apologized and express remorse and cooperate by the Prosecutor as he did. And that he pleaded guilty as a result of bad legal advice. That submission is unfortunate and misplaced in law and in fact.

25) In law, it is trite law and a matter of fundamental fairness that a plea is personal and that the plea of an accused must be ascertained to by the Trial Court to be free, sincere and unequivocal. The Hon Justice Teresa Doherty ascertained that the plea of Mr Kargbo was free, sincere and unequivocal⁶.

26) When Mr Kargbo was invited by the Independent Prosecutor to explain his participation in the crimes for which he was later charged, his right to counsel was explained to him and a counsel was placed at his disposal. He renounced his right to counsel and immediately unequivocally confessed his participation in the crime and started cooperating with the Prosecutor. His conduct from exception is proof of

⁶ See Transcript of 15 July 2011

profound remorse.

- 27) Mr Kargbo takes the opportunity of this brief to once more sincerely apologize to the Special Court whose administration of Justice he acted in contempt. He apologizes in particular to your Honour on whose shoulders the heavy load to conduct this trial fell. Mr Kargbo recognizes the risks and inconvenience your Honour has undertaken to travel to Rwanda and back to Freetown to conduct this trial. He sincerely assures your Honour that he has atoned for his transgressions against the administration of justice and prays for your honour to temper justice with mercy in determining his sentence.
- 28) Mr Kargbo apologizes to his brother TF1-334 once more for putting him through another court process and for his role in the crime for which he has pleaded guilty and will be sentenced. Mr Kargbo pleads with the Hon Court to give him another opportunity to live a normal family life with his brother and family.

Substantial Cooperation.

- 29) The position taken by your Honour that rule 101 (B)(ii) of the Special Court for Sierra Leone , ICTR and the ICTY unequivocally state that full, substantial and unconditional co-operation is given to the Office of the Prosecutor, this may be given consideration significance in mitigation is fully supported by international criminal jurisprudence⁷ .
- 30) The Prosecutor has submitted at paragraphs 14 to 18 of his “Prosecutor’s Sentencing Submissions” that Mr Kargbo significantly and unequivocally cooperated with him through confession to his own participation, which the Hon Judge found to be sincere and unequivocal during a hearing on his guilty plea on 15 July 2011, and during trial preparation, his testimony at trial and his cooperation with WVSS and organs of the Court concerning with the trial process.
- 31) It is therefore not open to any reasonable doubt that Mr Kargbo has unconditionally, fully and substantially cooperated with the Prosecutor from the inception of the Proceedings. He confessed his participation in the crimes when invited by the Independent Prosecutor and pledged his cooperating in the investigation and the trial⁸. He provided material evidence namely the phone numbers and identities of the principal perpetrators in the crimes. His cooperation prevented the perpetration of similar crimes by the principal perpetrators. The Independent Prosecutor admitted to

⁶ Scheduling Order for the Conduct of Trial Case No. SCSL-2011-02-pt Prosecutor Vs Hassan Papa Bangura and others dated 1 June 2012 para. 8 ,See ICTY Prosecutor Vs Blagojovic, Judgment, January 17 2005 paras.857, ICTR, Prosecutor Vs Serushago, Sentence, September 4, 191998 para.31.

⁷ At Page 189 of the transcript of 21 June 2012, Mr Kargbo testified in answer to a question from Mr Nicol-Wilson for Mr Bangura that : 7-11“ When the independent Prosecutor came, he tendered evidence against me that proved that this was an act that took place. I immediately knew that I was guilty of the offence. Then I just had to agree, yes, indeed, it was something that happened. I wouldn’t deny that it didn’t happen

the Court that the contemnor was cooperating with him and the Plea Agreement submitted to the Court and admitted as an exhibit established that he had cooperated substantially at that stage of the proceedings⁹. At the end of the trial, the independent Prosecutor has affirmed in his sentencing submissions that this cooperation was total, unequivocal and significant and recommended a non custodial sentence. The contemnor respectfully adopts the submission and recommendation of the Prosecutor in this regard.

- 32) Mr Kargbo testified truthfully as a Prosecution witness, exhibited exemplary courteous behaviour and respect towards the court, defence counsel, co-accused, court staff and more important your Honour. He answered all the questions asked in a calm and respectful manner. He was not evasive or attempted to withhold the truth from the Court. He was confident and respectful under intense and some time provocative cross-examination.
- 33) In respect of the Independent Prosecutor and me, we were both compelled by constraining circumstances to travel out of Freetown at a moment we should have been present to prepare him to testify. The Prosecutor fell ill and travelled to Kigali to conduct the proceedings from there. I lost my dependent aunt and sought permission to go and bury her. Our absence from the seat of the Court notwithstanding, Mr Kargbo testified and answered all questions in a manner that demonstrated his commitment to testify truthfully and to cooperate substantially with the court and the Prosecutor¹⁰.

Guilty Plea.

- 34) Mr Kargbo pleaded guilty and promptly entered a guilty plea. A guilty plea was held to be evidence of remorse and reasonable indicia of atonement. A guilty plea in a case like the one at bar which is against the administration of justice, is a way of making amends with the administration of justice by saving avoidable expenditure, needless waste of time and a prolong trial. It is a public manifestation of contrition¹¹. Mr Kargbo made a principled choice to stand up to express remorse for his actions and opted at personal risk to himself and his family, a risk explained by witnesses in confidential documents contained in annex SK1-SK6, dated 22 May 2012 to redress his wrongful action through working for the discovery of the truth and the enthronement of justice.

⁹ Transcript of July 15, 2011.

¹⁰ Transcript of 20, 21 and 22 June 2012.

¹¹ Prosecutor Vs Sikirica et al, Judgment November 13, 2001 para.149.

Mr Kargbo demonstrated exemplary good conduct at trial.

- 35) Conduct at trial may be considered a mitigating factor¹². On the 15 July 2011, Mr Kargbo took his plea, and was convicted¹³. He was granted bail on conditions set at paragraphs 54 to 62 of the trial transcript of 15 July 2011. Those conditions were further communicated to Mr Kargbo by confidential annex R1. By confidential annex R 2 dated 3 May 2012, the Chief of Section WVSS on the instructions of the Hon Registrar issued a certificate attesting to the fact that Mr Kargbo had complied with and respected all the terms of bail granted by this court¹⁴.

Individual Circumstances of Mr Kargbo.

- 36) We respectfully urge the court to consider confidential annexes SK1-SK6 filed on 22 May 2012, see Certificate dated 22 May 2012 in the courts records in finding the substance of those confidential annexes as affording significant weight in favour of mitigation.
- 37) Mr Kargbo is an ordinary Sierra Leonean citizen as your Honour found in granting him bail on the 15 July 2011 of good standing and without any criminal background or antecedents struggling to earn a living for himself and his large family that depends on him for subsistence. This factor was considered in granting him bail. I respectfully urge the court to consider it as a mitigating factor.
- 38) The meticulously well conceived yet stringent conditions of bail imposed on the 15 July 2011 and committed by the Hon Registrar in annex R1 were duly complied with as specified or attested to in annex R2. For over a year now while Mr Kargbo lived under those conditions of bail that confined him to a part of Freetown away from his dependent family, wife and two children of tender ages. The physical addresses in confidential annexes SK1-SK6 attest to this fact.
- 39) Mr Kargbo learnt and appreciated the price of liberty while fulfilling these conditions of bail. He took time in meditating his fate as well as that of his young wife and very young children, his old mother, very old grand mother and aunt who in his absence merely managed to survive by the amazing grace of God Almighty. We respectfully urge your Honour to consider these factors in mitigation of sentence.

Mr Kargbo's prior Conduct; is humble background and his commitment to legality.

¹² Prosecutor Vs Simic Judgment October 17, 2002 para.112.

¹³ Transcript of 15 July 2011.

¹⁴ Confidential annexes R1 and R2 were confidentially filed pursuant to "Confidential Document Certificate" dated 22 May 2012 in the courts records.

- 40) These proceedings provide a rare view of the humble background of Mr Kargbo. Confidential annexes SK1-SK6 succinctly establish the close relations between witness TF1-334 and Mr Kargbo and their families. This close relationship from every reasonable inference seem to have been the compelling factor that led the accused to approach Mr Kargbo to contact TF1-334 to accede to their request to recant his testimony. We respectfully urge your Honour to consider the pleas in SK1-SK6 as well as the family ties that existed between the two families as mitigating factors in favour of Mr Kargbo¹⁵. A non custodial sentence will help cement these family bonds and cohesion and further solidify the protections accorded both TF1-334 and Mr Kargbo as protected Prosecution witnesses in the AFRC case and this case respectively.
- 41) Apart from his humble family background, it emerges from the perspective of the accused in this case that Mr Kargbo was a dedicated and committed soldier who did not betray his motherland even when more senior officers took the path of defection, rebellion, treachery and destabilization that devastated the nation and caused untold suffering to many. He dared the Angel of death and risked his life in so doing and was abducted by the West Side Boys¹⁶.
- 42) From that perspective, the fact that Mr Kargbo was one of the unsung heroes among the loyal elements of the Sierra Leone Army who suffered egregious violations in the line of duty defending his motherland during the very sad days when the Angel of death visited cannot be subject of reasonable controversy. Some of the evidence that supports this submission is reproduced hereunder:

In the transcript of the 21 June 2012 Mr Melron Nicol Wilson asked Mr Kargbo:

P 180:

14: Q. Now, Mr Witness, you have known 334 for a very long time.

A. 15: Yes, Sir.

Q.18: In fact, when you were released from Prison in 2009, he was gracious enough to allow you to stay in his house?

A. No, Sir.

Q. Where did you move to when you were released from Prison?

A. I had a fiancé who was staying in the same place.

Justice Doherty: The answer was:

"I had a fiancé who was staying in the same place." But I haven't worked out where the

¹⁵ See also the transcript of 22 June 2012 cross-examination by Mr Mertzger at p240 line 25-29, p241 line 1-12.

¹⁶ Transcript of 22 June 2012 P 294 Line 3 to 11

place was”.

The witness: I was staying in Wellington.

43) Mr Nicol-Wilson at pages 184 to 188 crossed-examined Mr Kargbo about his possible participation in the crimes that were committed during the ill fated civil war in Sierra Leone. He provided the following answers that reveal that during the said war, was a law abiding soldier of the Sierra Leone in the defence of his beloved country. And that he placed his life at risk and was abducted and by the West Side Boys, leading to being unjustly incarcerated at Pendemba Road Maximum Security Prison until released in a general amnesty that the Government of this great country Sierra Leone granted in a laudable public expression of peace and reconciliation.

44) Significantly, Mr Bazzy Kamara repudiated testified that Mr Kargbo was not one of the West Side Boys when I cross-examined him with leave of the Court on the 27 August 2012.¹⁷

45) The cross-examination of Mr Kargbo by Mr Serryl Kamal, learned counsel for Bazzy Kamara as well as the testimony on oath by Mr Bazzy Kamara when cross-examine confirmed the non participation of Mr Kargbo in any crimes that fall within the jurisdiction of this court or elsewhere¹⁸.

46) What emerged is the fact that Mr Kargbo was a victim of abduction by the West Side boys, wrongfully detained in Pademba Road Maximum Security Prison for several years without the due process of law¹⁹. A perusal of the testimonies of TF1-334, Bazzy Kamara , K for K and Borbor Khanu that Mr Kargbo was never with them in Freetown, the jungle and was not a member of the West Side Boys makes this as obvious as day follows night.

47) As a victim of the war in Sierra Leone, Mr Kargbo respectfully regrets his conduct in the present proceedings that place him on the wrong side of history as his answers to questions put to him by Mr Serryl Kamal hereunder reveal.

Transcript of 22 June 2012:

P 292:

Mr Kamal:

9: Yes Your Honor, Bazzy was living at Wilberforce and he was living at Mount Aureole Terrace.

P 293:

8. Q: Now, in what unit were you were you when you were serving in the army?

¹⁷ Transcript of 27 August 2012 Pp 1511 -1513.

¹⁸ Transcript of 27 August 2012 PP 1511-1513 (Supra)

¹⁹ Transcript of 22 June 2012 P294 Line 3 to 11, P 295 Line 4 to 11 cross-examinations by Mr Sherry Kamal of Mr Kargbo.

10.A: *I was in Security Guard.*

15. Q: *Now the event of 1997 did you go anywhere?*

19. A: *No I was in Freetown.*

20. *How come it you were implicated in the West Side Boys?*

21-22. A: *Actually, when we signed the Lome Peace Accord, I came and was re-instated in the Army. When I was re-instated in the Army, I did not belong to the West Side. By then the RUF were advancing on Freetown and they armed us. Then they said –then they started advancing from Beri Junction to Makeni. On our way, by then the West Side Boys came to join the ----*

P 294:

3. Q: *When you say “we” who are you referring to?*

4-5. A: *We, the soldiers. The Sierra Leone Army soldiers. When we were moving, by then the West Side Boys were moving along us. When we got to Lunsar, then infighting ensued in Lunsar.*

9. Q: *You ended up in Pademba Road Prison?*

10. A: *Yes, because we were abducted by the West Side Boys and were arrested in Port Loko. Then they took us to Pademba Road.*

P 295:

6. Q: *You were arrested with the rest of the West Side Boys and taken to Pademba Road?*

8. A: *Yes.*

9. Q: *You were prosecuted and sentenced?*

10-11. A: *Yes, by then Mr Melron was my defence counsel there. Even you, Mr Serry Kamal.*

Led in evidence by Mr Kamal on the 22 August 2012, Bazy Kamara, the leader of the West Side provided the following answers in corroboration of the exculpatory explanations provided by Mr Kargbo through the cross-examination of both counsel for Mr Bangura and Mr Bazy.

P 1225:

16-21. A: *That man and I are not on the same level. My rank does not permit me to be friends with that kind of man. He was staying in the east, while I was staying in the west, so yeah, he is not my friend. So if he saw me, he may just pay compliments, maybe, if we met on the highway. That was all.*

22. Q: *Now, whilst you were in the jungle-sorry. While you were in the jungle during the Sierra Leone conflict, were you deployed together with him in any unit? Were you deployed together?*

P 11226:

3-7. A: *I said, during the time of the jungle-when we were in the jungle, I did not know Sammy Ragga's where about. Even when I became commander at the West Side up to the time that I left there and went to Freetown, Sammy Ragga was not with me. I never saw him there.*

19-22. A: *I Said, when I was at the West Side, as commander up to the time I went to Freetown, I did not see Sammy Ragga until we were arrested and taken to Pademba Road. That was where I saw Sammy Ragga²⁰.*

- 48) We therefore, urge the court to consider the fact that Mr Kargbo was among that group of unsung heroes among the Sierra Leonean Army who did not betray the national flag, the coat of arms and the people of Sierra Leone to whom he swore to defend and accord him all the mitigating circumstances sought.
- 49) The co-accused Bangura in his testimony associated Mr Kargbo with efforts to preach peace and rally former combatants to eschew violence or being manipulated by politicians to disrupt the democratic process in Sierra Leone. We urge the Court to credit Mr Kargbo with these contributions and commitment to peace which he defended prior to, during and after the war. He should be given an opportunity to pursue these lofty goals for the public good.
- 50) In considering evidence of prior conduct in mitigation, we urge the court, to find that the above evidence concerning the war victimhood of Mr Kargbo, although belated, has come out in open court to exonerate Mr Kargbo from the stigma of rebellion and criminality wrongly associated with him due to his prolonged unjustified detention at Pademba Road Maximum Security Prison.
- 51) The amnesty granted Mr Kargbo by the government of Sierra Leone has done some justice to him, but a caution and discharge by your Honour, or even an admonishment or symbolic fine while acknowledging his victim situation in that and the present case will in a way bring satisfaction and closure to many within the ranks of the Sierra Leonean Army who were wrongly assimilated with perpetrators of crimes although their victim situation and contributions towards the defence of their beloved country, could have been ascertained with reasonable diligence.
- 52) I urge the Court to take into consideration the difficult circumstances under which Mr Kargbo testified²¹. As the Prosecutor has rightly asserted, the many circumstances

²⁰ Transcript of 22 June 2012 P 295 Line 3 to 11 cross-examination by Mr Serry Kamal

²¹ Transcript of 16 June 2012 p93: 27 – 29. P 94: 1-10.

that would have compelled Mr Kargbo notwithstanding, he opted to purge his conscience of the contempt despite the consequences. By his conduct, Mr Kargbo has strengthened the confidence of many ex-soldiers and combatants and the people of Sierra Leone in the Rule of Law. He therefore, places his life and fate in your Honour's hands and ultimately in the Mighty Hands of God who has examined his conscience and found that he hid nothing from your Honour.

- 53) I urge the court to consider the vulnerability of Mr Kargbo as a victim of war, his inferior subordinate position vis-a- vis all the accused in this matter, his weak financial situation, years of unjust incarceration and his close relations with TF1-334 as mitigating factors in sentencing him. His situation demands compassion and mercy.
- 54) We urge the Court to consider the contributions made by Mr Kargbo to his community and to his church. Under cross-examination, it emerged that Mr Kargbo is an acclaimed artist who has dedicated his talent to the service of his church and community. This quality portrays Mr Kargbo as a person who was pre-occupied not with criminality and criminals but with his God, his faith and the pursuit of happiness for fellow mankind.
- 55) The humble and ordinary women and men to whom Mr Kargbo renders service join me in urging your Honour to exercise compassion and mercy towards this humble yet frail man full of hope, yet vulnerable like all humans; so that together each and every one, may join the Psalmist in glorifying and magnifying the Mighty Name of the Lord thus:

"Bless the Lord at all times.

His praise shall continually be in my mouth,

My soul shall make its boast in the Lord,

The Humble shall hear about it and be glad,

Oh magnify the Lord with me,

And let us exalt his name together"²².

Proposed Sentence.

- 56) The Special Court has taken a lenient position in imposing a lenient non custodial sentence upon finding mitigating circumstances in favour of contemnors who pleaded guilty and were found to be primary offenders.²³ In that case, the Trial Chamber gave

²² Psalm 34,(1)(2)(3).

²³ The Special Court for Sierra Leone in the exercise of its sentencing discretion under rule 101 (B) found the following mitigating factors in favour of the contemnors In the case of Independent

the contemnors a non custodial sentence of a conditional discharge.²⁴ In view of the plethora of mitigating circumstances submitted by Mr Kargbo for consideration, his special circumstances, and his proven record of cooperation with the Prosecutor and the Court, his respectful demeanour towards the court, and the forthright manner in which he testified, I respectfully urge the court to caution and discharge him. In the alternative, taking into consideration his limited financial situation, the Court should consider imposing a fine of a symbolic Leone.

Respectfully submitted.



Chief Charles A. Taku
Counsel for Mr Samuel Kargbo.

Prosecutor Vs Margaret Fomba Brima and others, Case No SCSL-2005-02 and Anita Kamara SCSL-2005-03, 2 Sept, 21 2005, para.32, 33, 35, and 36, (Trial Chamber Sentencing): That the contemnors were first offenders and had entered guilty pleas thereby avoiding lengthy proceedings.