

Case No. SCSL-2004-16-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU

MONDAY 16 JULY, 2007
9.35 A.M.
SUBMISSIONS ON SENTENCING

TRIAL CHAMBER II

Before the Judges:

Julia Sebutinde, Presiding
Richard Lussick
Teresa Doherty

For Chambers:

Mr Simon Meisenberg
Ms Doreen Kiggundu

For the Registry:

Mr Thomas George

For the Prosecution:

Mr Chris Staker
Mr Karim Agha
Mr Charles Hardaway
Ms Anne Althaus
Ms Briget Osho
Ms Tamara Cummings-John (Case

Manager)

For the Principal Defender:

Ms Haddijatou Kah-Jallow

For the accused Alex Tamba
Brima:

Mr Kojo Graham
Mr Osman Keh Kamara
Mr Stephen Akrong (legal

assistant)

Daniels

For the accused Brima Bazzy

Mr Andrew William Kodwo

Kamara:

Mr Mohamed Pa-Momo Fofanah

Ms Louisa Songwe (legal

assistant)

For the accused Santigie Borbor
Kanu:

Mr Geert-Jan Alexander Knoops

Mr Ajibola E Manly-Spain

Ms Karlijn van der Voort

(legal assistant)

1 [AFRC16JUL07A- MD]

2 Monday, 16 July 2007

3 [Open session]

4 [The accused present]

09:25:51 5 [Upon commencing at 9.35 a.m.]

6 PRESIDING JUDGE: Good morning. Could we
begin

7 with the appearances, please?

8 MR STAKER: May it please the Chamber, for the
Prosecution,

9 Christopher Staker. With me, Mr Karim Agha, Mr Charles
Hardaway,

09:45:23 10 Miss Anne Althaus, a national visiting lawyer is Ms Bridget
Osho

11 and our senior case manager is Miss Tamara Cummings-John.
Thank

12 you.

13 MR GRAHAM: Good morning, Your Honours. For the first
14 accused, Mr Kojo Graham, lead counsel for the first accused,
Your

09:45:40 15 Honours. I have with me Mr Osman Keh Kamara for the Brima
team.

16 We also have Stephen Akrong as a legal assistant, he is a
17 student, law student visiting from the UK. Thank you, Your
18 Honours.

19 MR DANIELS: Good morning, and respectfully, Your
Honours,

09:45:59 20 Andrew Daniels as lead counsel for Kamara. Together with me
21 Mr Pa Fofana, and with us also is Louise Songwe as legal
22 assistant.

23 MR KNOOPS: Good morning, Your Honours. For the third
24 accused Mr Manly-Spain, co-counsel, and on my right side Miss
09:46:26 25 Karlijn van der Voort, legal assistant and, of course, myself.
26 Thank you.

27 PRESIDING JUDGE: Right. We are scheduled this morning
to
28 hear sentencing submissions relating to the case in question,
and
29 we shall begin with the Prosecution submissions.

commence

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1 MR STAKER: May it please the Chamber. Before I
2 my submissions I would like to make an oral application. It's
3 application for an extension of the time allocated to the
4 Prosecution for its submissions. We note the Defence has been
5 allocated a combined total of three hours for its submission,
6 it would be our submission that, for the Prosecution to be
7 allocated an hour-and-a-half, which would only be 50 per cent
8 the combined total allocated to the Defence would be
9 proportionate. To confine ourselves to one hour would mean
10 20 minutes per accused for the Prosecution to address.

11 I should say that even if we are granted this extension
12 would not seek to use all of that time and would be as brief
13 possible. But to be constrictly confined to one hour would
14 us some difficulty and, of course, needless to say sentencing
15 a very important aspect of the case and we submit it's in the
16 interest of the Prosecution, and of the convicted persons, and
17 the interest of justice that it be appropriately argued.

18 PRESIDING JUDGE: Mr Staker, before you sit in relation

that 19 this application for extension of time, we do not envisage
09:48:30 20 you are going to repeat what is already in your written
for 21 submissions. We expect that you would use your time in court
That 22 either clarifications or additional submissions et cetera.
23 is what we would expect. It would serve no purpose to repeat
did 24 yourself, would it now? So, in view of what I've just said
09:48:49 25 you still need to make this application? And, if so, how much
26 extra time are you proposing?
for 27 MR STAKER: Your Honour, in that event it may suffice
28 an extra 15 minutes. Perhaps if I could simply put it on the
29 basis that if we don't finish strictly on the second that 60

1 minutes are up but be given some leeway to complete our
2 submissions.

3 PRESIDING JUDGE: In other words, a total of one
4 hour-and-three-quarters?

09:49:24 5 MR STAKER: One hour and 15 minutes, Your Honour.

6 PRESIDING JUDGE: I think your request is a modest one,
7 Mr Staker, and it's granted.

8 MR STAKER: We are much obliged, Your Honour.

9 May it please Your Honours, our oral submissions today
will

09:49:49 10 be presented by myself and Mr Agha. I will deal with some
points

11 of a general nature and Mr Agha will then deal with points
12 specific to each of the convicted persons.

13 As Your Honour has indicated, we won't be repeating the
14 material contained in our filing of 28 June unless I can be of

09:50:10 15 any particular further assistance to the Chamber in relation
to

16 that material, but will address certain specific points
arising

17 out of the Defence filings.

18 The details of the authorities to be referred to in my
oral

19 submissions are given in a document that was filed by the
Prosecution last Friday and I understand the Chamber would

09:50:27 20 have

21 that before it.

22 The first point that I intend to address concerns the
23 evidence that the Trial Chamber can consider for sentencing
24 purposes. The Defence sentencing filings argue that new

factual

09:50:46 25
objection

evidence cannot be admitted at the sentencing stage and

26 is therefore taken by the Defence to the material contained in
27 annexes E, F, G and H of the Prosecution filing.

in

28 The Prosecution submits that there is nothing improper

the

29 additional evidence relevant to sentencing being presented at

1 sentencing stage.

2 We know that under the current rules at the ICTY and
ICTR
3 sentencing is dealt with as part of the main trial and the
4 sentence is pronounced together with the verdict and it
follows
09:51:25 5 that at those tribunals, therefore, evidence relevant to
6 sentencing must be presented at trial.

7 However, where sentencing is dealt with in a separate
8 post-verdict phase, it's submitted that it's entirely proper
for
9 evidence and information that's relevant to sentencing only to
be
09:51:43 10 presented at that sentencing stage and, indeed, where there is
a
11 separate sentencing phase we submit the Defence would be
entitled
12 to object and to claim, indeed, that it was prejudiced if
13 evidence that was relevant to sentencing, but was not material
to
14 the actual guilt of the accused, was presented at the main
trial.

09:52:09 15 Thus, we see in national legal systems, where there is a
such
16 separate post-verdict sentencing phase, evidence of matters
17 as prior convictions of the accused or the character of the
18 accused are normally only permitted to be presented at the
19 sentencing stage. And we submit the purpose of a sentencing

09:52:30 20 hearing is to ensure that all information that is relevant to
21 sentencing, but was not relevant to the trial itself, can be
national 22 placed before the Chamber. And thus, for instance, in
23 legal systems which allow for victim impact statements, these
stage 24 are, quite logically, normally tendered at the sentencing
09:52:54 25 and not during the trial and in this respect I refer to point
1 26 on our list of authorities.
ICTR 27 Indeed, in the earliest cases before the ICTY and the
28 which was at a time when there was a post-verdict sentencing
29 hearing in those tribunals, additional material relevant to

1 sentencing was, in fact, submitted at the sentencing stage
and,
2 in this respect, I refer to point 2 on our list of
authorities.

3 Furthermore, at the ICTY and ICTR the practice has been
4 followed of submitting victim impact evidence for sentencing
09:53:38 5 purposes. In that respect I refer to point 3 on our list of
6 authorities.

7 We note that at the ICTY and ICTR the Defence has been
8 permitted also to present any material that it considers
9 relevant, such as character evidence, or police records and,
in

09:54:01 10 that respect, I refer to the last of the authorities under
point
11 3 on our list of authorities.

12 It's therefore our submission that the Kanu Defence
cannot
13 now claim, as it does in paragraph 16 to 18 and 32 of its
filing
14 that it's somehow been denied this opportunity in this case.

09:54:20 15 Indeed, the Kanu filing itself annexes a statement of a
character
16 witness and it's our submission that the Kanu Defence, indeed
all
17 of the Defence teams, did have the opportunity to file
whatever
18 material it so wished with its Rule 100 submissions.

19 The Kanu filing at paragraph 16 also objects that the

09:54:46 20
have

material contained in the annexes to the Prosecution filing
21 not been filed in accordance with the normal requirements for
22 evidence. In this respect it's our submission that Rule 100
23 contains no specific rules for presenting evidence at a
24 sentencing hearing. Indeed, the Rule does not even use the

word

09:55:08 25

"evidence;" it refers to information.

26 It's our submission that, under the Rules, the Trial
27 Chamber is not required to follow the Rules of Evidence that
28 apply at trial when receiving and admitting information or
29 evidence relevant to sentencing.

Kanu 1 This is, in fact, acknowledged at paragraph 5 of the
2 filing. We submit that what is required is that the Trial
3 Chamber must give the parties adequate opportunity to submit
4 relevant information and evidence that is material to
sentencing.

09:55:48 5 The submission of evidentiary material at the sentencing
6 stage is, in fact, of some importance, given the standard of
7 proof for sentencing factors. It appears to be common ground
8 between the Prosecution and the Defence that aggravating
factors
9 must be proved beyond a reasonable doubt and that mitigating
10 factors must be proved on a balance of probabilities.

11 The Prosecution notes that the Defence filings contain
12 significant amounts of information on the personal
circumstances
13 of the accused which the Defence seeks to have taken into
account
14 as mitigating factors. However, almost all of these details
of
15 personal circumstances are unsupported by any evidence at all.
16 They are merely asserted in the Defence submissions.

17 The Prosecution submits that such mere assertions,
18 unsupported by any evidence, cannot of themselves be taken to
19 satisfy a balance of probabilities standard. We therefore
submit

09:56:59 20 that there can be no objection, in principle, to the inclusion
of

21 evidentiary material in the Prosecution filing.

22 As to the particular material contained in annex E of
the

23 Prosecution filing, the Kanu submission, at paragraphs 33 to
41,

24 argues that it's not clear that the witnesses in this annex
were

09:57:29 25 victims of crimes of which Kanu was specifically convicted.

26 The Prosecution submission is that this is, in fact,
clear.

27 Kanu was convicted under Article 6.3 of all crimes committed
in

28 Bombali District and all crimes committed in the Western Area.

29 We refer to paragraphs 2044 and 2080 of the Trial Chamber's

1 judgment.

2 The Western Area, of course, includes Freetown and
3 therefore, we submit, the Freetown and Bombali witnesses, in
4 annex E of the Prosecution filing, are victims of crimes for
5 which Kanu was found responsible. We note that as Kanu was

09:58:19 also

6 convicted of some crimes under Article 6.1 the disposition of

the

7 Trial Chamber's judgment only recorded a conviction under

Article

8 6.1 but we submit the totality of the Article 6.3 liability

can

9 be taken into account for sentencing purposes and we refer to

09:58:46 10 judgment.

paragraphs 800 and 2110 to 2111 of the Trial Chamber's

be

11 But the totality, as I say, of the Article 6.3 liability can

12 taken into account in sentencing.

Kamara

13 We submit that it's similarly misconceived for the

crime

14 filing to state, as it does at paragraph 30, that the only

09:59:13 15 Kamara

of which Kamara was convicted under Article 6.3 was rape.

16 was convicted under Article 6.3 of all crimes committed in

in

17 Bombali District and Freetown and some of the crimes committed

18 Kono and Port Loko districts. We refer to the Trial Chamber's

also
09:59:45
Brima
Kanu
without
10:00:13
in
to
We
in

19 judgment at paragraphs 1893, 1928, 1950 and 1969. We note
20 that paragraph 3 of the Brima filing omits to mention that
21 was also convicted on count 5 and count 9.
22 I would though, as an aside, note that paragraph 2080 of
23 the Trial Chamber's judgment refers only to the liability of
24 under Article 6.3 for crimes committed in "Western Area"
25 any specific mention of Freetown. As I've noted, Freetown is
26 Western Area and we submit that it's clear from the preceding
27 paragraphs of the Trial Chamber's judgment that Kanu was found
28 have Article 6.3 responsibility over the troops in Freetown.
29 submit this is a matter that might be clarified, if necessary,

1 the sentencing judgment.

2 As now to the material contained in annex F of the
3 Prosecution filing, we submit that as this material is already
4 part of the trial record it's before the Trial Chamber and it
can
10:00:52 5 certainly be considered at the sentencing stage.

6 As to the material in annexes G and H of the Prosecution
7 filing, it's acknowledged that this information is of a
general
8 nature and not specific to the victims of the particular
crimes
9 of which these three accused were convicted.

10:01:18 10 Nevertheless, the Prosecution submits that this material
is
11 relevant background information and can be considered by the
12 Trial Chamber in light of all the other information before it,
13 and can be given whatever weight the Trial Chamber considers
14 appropriate.

10:01:37 15 Contrary to what is suggested at paragraph 44 of the
Brima
16 filing, this material is not intended to shock and play upon
the
17 emotions of the judges; it's intended to place relevant
18 information before the Trial Chamber. The fact that material
may
19 be inherently shocking is not a reason for withholding it from
10:02:00 20 judges, if it's relevant to a case before them. Professional

objectively 21 judges will always decide matters dispassionately and

22 on the basis of all relevant material.

23 It is acknowledged that the Trial Chamber can only have
24 regard to the victim impact caused by the crimes for which the
10:02:24 25 accused themselves were responsible. It's acknowledged that
they

26 cannot be held liable for the entirety of the suffering for
the

27 whole of the population during the entire conflict.

28 However, the Trial Chamber can have regard to context
and,

29 in our submission, it can consider the contribution that the

of 1 crimes of these three convicted persons made to the suffering
2 the nation as a whole.

3 The impartiality of Ms Anne Michels has also been
4 questioned. However, she previously worked in the Victims and
10:03:06 5 Witnesses Unit of the Registry which has responsibility for
both
6 Prosecution and Defence witnesses. We submit there is no
basis
7 for doubting her objectivity.

8 We submit, furthermore, that the impact of crimes on
9 victims, does not depend on whether the victim was a
Prosecution
10:03:26 10 or a Defence witness. And, in any event, the Defence has not
11 actively suggested that the impact on victims was somehow
12 overstated in the Micheles report.

13 The same observation would apply to Miss Shanee
Stepakoff,
14 although we note that the Prosecution's proposal that she be
10:03:50 15 called as a witness by the Trial Chamber now appears moot.
16 However, we do point out that the proposal was not to call her
as
17 a Prosecution witness but for her to be a neutral witness
called
18 by the Trial Chamber itself.

19 I turn then to a second issue which is more a matter of
10:04:12 20 clarification. Contrary to what is suggested in the Kamara

65 21 filing at paragraph 48, and the Kanu filing at paragraph 5 and
such 22 to 69, the Prosecution is not seeking to argue that matters
their 23 as the age of any of the convicted persons in this case, or
voluntarily 24 conduct in detention, or their failure to surrender
10:04:39 25 should somehow be taken into account as aggravating factors;
26 that's not our submission.
merely 27 The Prosecution, in these parts of its filing, was
28 seeking to negate the existence of any mitigating factors in
29 anticipation of the Defence raising them.

1 In our submission there are no mitigating factors for
the 2 reasons given in the Prosecution filing. As I say, we do not
3 advance these as, of themselves, aggravating factors.

4 The third issue that I address concerns the relevance of
10:05:16 5 comparisons with sentencing precedents at the ICTY and ICTR.
The
6 Prosecution Rule 100 filing argues that there is limited value
in
7 making such comparisons. Nevertheless, the Defence filings do
8 draw such comparisons at some length; I refer in particular to
9 the Brima filing at paragraphs 48 to 56, and the Kamara filing
at
10:05:46 10 paragraphs 23 to 28.

11 The Prosecution submits that if any comparisons are to
be
12 drawn with sentences imposed by other international criminal
13 tribunals, it is necessary to identify precisely the specific
14 criminal conduct of which the person convicted by the ICTY, or
10:06:07 15 ICTR, was found liable, and the specific role of the accused
in
16 those crimes and any aggravating and mitigating factors in
those
17 cases.

18 As is apparent from annexes A and B to the Prosecution
19 filing it's not uncommon for life sentences to be imposed at
the

10:06:29 20 ICTR. At the ICTY, while there is greater variation in the
21 ranges of sentences imposed, the sentences always reflect the
22 specific circumstances of the individual case and I refer now
to
23 point 4 on our list of authorities.
24 We submit that there is no basis for the submission in
the
10:06:49 25 Kamara filing, at paragraph 22, that the average sentencing
26 period for offences like murder and extermination, passed by
the
27 ICTR, has been between ten and 15 years. Low sentences have
been
28 imposed in those other tribunals in some cases but on accused
who
29 have played limited roles.

convicted
only
and
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1 For instance, at the ICTR, Joseph Nzabirinda, was
2 of murder as a crime against humanity and was sentenced to
3 seven years' imprisonment. However, he pleaded guilty and he
4 took no part in the killings. He was convicted as an aider
5 abetter for having been present as an approving spectator at
6 several meetings where killings were prepared and encouraged
7 he manned road blocks on two occasions and was an approving
8 spectator near the site of the killing of two people.
9 To give an example from the ICTY: Dragan Jokic was
10 convicted of murder, extermination and persecutions for his
11 in the Srebrenica massacre, and he was sentenced to nine
12 imprisonment only. However, he was convicted under Article
13 only for having played a limited role as an aider and abetter
14 he personally took no active part in the massacre. His role
15 consisted essentially of deploying earth moving equipment of
16 engineering brigade of the army for the purposes of digging
17 graves. We submit that such a case bears no similarities to
18 circumstances of the present case.

19 This can be contrasted for instance with the case of
10:08:49 20 Stanislav Galic, whose sentence of 20 years' imprisonment was
21 increased by the Appeals Chamber of the ICTY to life
22 imprisonment. He was found guilty of crimes committed during
the
23 siege of Sarajevo which terrorised the entire population of
that
24 city over a protracted period. The case of Goran Jelusic
10:09:13 25 provides another contrast. He pleaded guilty to plunder,
cruel
26 treatment of four victims and the murder of 13 victims and was
27 sentenced to 40 years' imprisonment. He only pleaded not
guilty
28 to genocide and the genocide charge was dismissed at the Rule
98
29 stage; that sentence was upheld on appeal.

1 Unlike the accused in the present case, he was not
2 convicted on the basis of any command responsibility and
unlike
3 the accused in this case he pleaded guilty. But for these
4 factors it can be expected that the sentence in the Jelusic
case
10:09:55 5 would have been higher.

6 We submit that neither of these examples provides
7 particularly close analogies to the present case but they
8 demonstrate the precedents from other international criminal
9 tribunals do not indicate low sentences for crimes under
10:10:12 10 international law.

11 The next issue that I address is the relevance of the
12 sentencing practice of the courts in Sierra Leone. I do not
13 understand any of the Defence teams to be contradicting the
14 Prosecution submission that the criminal conduct of all three
10:10:29 15 accused in this case, if tried under Sierra Leonean law, would
16 have attracted a mandatory death penalty which could have been
17 commuted to life imprisonment.

18 The Kamara filing at paragraph 29 suggests that the fact
19 that a crime would attract the death penalty in Sierra Leone
does

10:10:48 20 not necessarily instruct giving a longer sentence at the
Special
21 Court. The Prosecution takes issue with this and refers to
the

22 Kayishema and Ruzindana case at point 5 on our list of
23 authorities which is, in fact, also quoted in paragraph 82 of
the
24 Kanu filing. I would add that media reports indicate that the
10:11:12 25 death penalty was, in fact, very recently abolished in Rwanda
but
26 that does not undermine the force of these authorities.

27 We add that statements in case law of the ICTY to the
28 effect that the ICTY is not bound by national sentencing
29 practices do not suggest that lower sentences should be
imposed

1 than those prescribed by national law. On the contrary, such
2 statements have sometimes specifically been made to emphasise
3 that the ICTY is not bound by maximum prison sentences in the
4 former Yugoslavia.

10:11:57 5 Under the relevant national law of the former Yugoslavia
6 the maximum term of imprisonment that could be imposed in
cases
7 where the death penalty was not imposed was 20 years, and the
8 ICTY has made clear that the sentences it imposes are not
subject
9 to this maximum and it has imposed longer sentences. I refer
to
10:12:15 10 point 6 on our list of authorities.

11 We submit that this is also consistent with the general
12 submission made in the Prosecution filing that crimes under
13 international law should not attract lower sentences than
14 comparable crimes under national law.

10:12:32 15 The final issue that I turn to concerns the sentences
16 recommended by the Prosecution. It's acknowledged that the
17 sentence imposed is a matter for the Trial Chamber. It's
18 acknowledged that the sentence must be individualised in the
case
19 of each accused taking into account the specific crimes of
which
10:12:56 20 each accused was convicted and the personal circumstances of
each

21 accused.

22 As it happens, the sentences recommended by the
Prosecution

23 for the first two accused were the same but this does not mean

24 that the Prosecution is seeking to treat the cases of those
two

10:13:13 25 accused identically, contrary to what is suggested in
paragraphs

26 39 to 43 of the Kamara brief. There are different
considerations

27 in each case and each case must be considered separately on
its

28 own merits but of course different considerations in two

29 different cases may ultimately lead to sentences of a similar

1 magnitude.

2 We add that what the Trial Chamber must consider is the
3 culpability of the individual accused. Contrary to what the

Kanu

4 filing suggests at paragraphs 85 to 86, the relative political

10:13:52
contrary

5 culpability of the AFRC and the RUF is irrelevant. Also

6 to what the Kanu filing suggests at paragraphs 122 to 124, we

mitigating

7 submit that the prevailing chaos at the time is not a

Prosecution

8 factor for the reasons given in paragraph 75 of the

9 brief.

10:14:12
the

10 The Prosecution notes that the convictions recorded in

11 disposition of the Trial Chamber's judgment are largely under

12 Article 6.1 of the Statute. However, as I've submitted, the

13 totality of each accused's Article 6.3 liability must be taken

under

14 into account in sentencing. Each accused was found liable

10:14:37
District

15 Article 6.3 for all of the crimes committed in Bombali

16 and Freetown, and the second accused also for certain crimes

17 committed in Kono and Port Loko Districts.

18 Contrary to what the Kanu filings suggest, at paragraphs

is

19 111 to 114, the Prosecution submits that Article 6.3 liability

10:14:59 20 not inherently less serious than Article 6.1 liability, and in
21 cases such as the present is even graver than Article 6.1
22 liability. I refer in this respect to paragraph 51 of the
23 Prosecution filing.

24 We note that paragraphs 18 to 22 of the Kamara filing
10:15:22 25 foreshadows a Defence appeal against the Trial Chamber's
26 judgment. Of course, anticipated appeals cannot be taken into
27 account in sentencing. However, the Prosecution does not take
28 issue with the proposition that the sentence must reflect the
29 specific criminal liability of each accused as actually found
in

in 1 the Trial Chamber's judgment, and if there is any uncertainty
clarify 2 this respect the Trial Chamber would be in a position to
3 this in the sentencing judgment.

10:15:59 4 Finally, the Prosecution denies that the recommended
life 5 sentences are intended to be an underhand way of imposing a
refer 6 sentence which the Special Court has no power to impose. I
7 to paragraphs 172 to 180 of the Kanu filing.

reflect 8 The recommended sentences in the Prosecution filing
9 what the Prosecution considered appropriate to the criminal
10:16:24 10 responsibility of the accused and their personal
circumstances.

Prosecution 11 The recommended sentences were not based on what the
12 calculated to be necessary to keep the accused in prison for
the 13 rest of their lives.

further 14 May it please the Chamber, unless I can be of any
10:16:43 15 assistance on any of these matters, I would invite the Chamber
to 16 call upon Mr Agha to complete the Prosecution's submissions.

17 PRESIDING JUDGE: Thank you, Mr Staker. Mr Agha.

18 MR AGHA: Thank you, Your Honours. I will now deal with

19 the points regarding the particular accused. I would like to
10:17:15 20 stress there may be a small measure of repetition in the sense
obliged 21 that at the sentencing hearing the Prosecution feels it
asking 22 to at least explain to the public why the Prosecution is
We 23 for very lengthy sentences in respect of all three accused.
public 24 will try not to dwell on this too much but one feels the
10:17:38 25 should at least be aware of the gravity of the crimes for
which
considers 26 the accused have been convicted and why the Prosecution
27 an extremely lengthy term of imprisonment to be an appropriate
28 sentence.
29 The Prosecution adopts and incorporates by reference in

1 it's oral submissions today it's written submissions together
2 with appendices and annexures pursuant to Rule 100(A) in
respect
3 of each accused which was filed on 28 June 2007.

4 In respect of all three accused the Prosecution stresses
10:18:14 5 that deterrence and retribution are the overriding sentencing
6 objectives which are applicable to the circumstances of this
7 particular case and the circumstances of each individual
accused.

8 Brima, at paragraph 6 of his brief, accepts that the
Trial
9 Chambers of the ICTR have consistently upheld that sentences
must
10:18:34 10 be directed mainly at retribution and deterrence. All of the
11 Defence counsel also raise a sentencing objective of
12 rehabilitation in their briefs. The Prosecution agrees that
13 rehabilitation is a sentencing objective. The Prosecution,
14 however, bearing in mind all the circumstances of this
particular
10:18:54 15 case, the seriousness of the crimes for which the accused have
16 been convicted, and the disposition of each of the individual
17 accused considers that rehabilitation has very little, if any,
18 application as a sentencing objective in this case.

19 Since the commission of the crimes, none of the accused
has
10:19:16 20 done anything to indicate that they are on the path to

21 rehabilitation or is doing anything to atone for their crimes.
22 None of the accused have accepted responsibility for their
23 crimes. None of the accused has pled guilty. Instead, they
made
24 the Prosecution witnesses relive their horrific ordeals by
having
10:19:37 25 to come to court to give evidence under hostile
26 cross-examination.
27 None of the accused has shown any remorse for their
28 actions; none of the accused have cooperated with the
29 Prosecution. None of the accused is particularly young.
Brima

years

1 and Kamara are in their mid-to-late 30s, while Kanu is 42
2 of age. None of the accused is particularly under-educated.
3 Brima was undergoing advanced studies when he overthrew the
4 government. Kamara, through his own intelligence, had risen

to

10:20:11
served

5 the rank of sergeant. Neither is Kanu illiterate and even
6 on a peacekeeping mission in Liberia prior to the coup.

with

7 All the accused alleged that through their association
8 the Commission for Consolidation for Peace that they worked
9 peace after the conflict. The Prosecution submits that the

for

three

10:20:29
atoning

10 accuseds' association with the CCP had nothing to do with
11 for their crimes but had everything to do with again getting
12 into a role of influence and power. The Prosecution will
13 to the role of the three accused after the end of the conflict
14 until their arrest later in this submission.

back

revert

10:20:49
Prosecution

15 While the accused speak of rehabilitation, the
16 points to the case of Obrenovic, whereby Obrenovic himself had
17 shown cooperation, had pleaded guilty, and had been noted by
18 Trial Chamber to be on the path to rehabilitation through his

the

19 actions.

10:21:11 20 As articulated by my learned friend, Mr Staker, the
their 21 Prosecution stresses that no two cases are identical and on
22 facts no accused have identical personal mitigating or
down 23 aggravating circumstances and that the sentence to be handed
24 must be personalised with respect to each accused. So, in
10:21:31 25 looking at the gravity of some of the crimes, the Prosecution
26 will try also to indicate what graduation, if any, may be
27 applicable to the accused.

28 The Prosecution understands that it is accepted by all
29 parties that the gravity of the offence is a most important

1 factor in sentencing and the Prosecution considers that it
should 2 be given the most weight.

3 It also seems to be an agreed position that the
4 determination of the gravity of the offence requires a
10:22:05 5 consideration of the particular circumstances of the case as
well
6 as a form and degree of the participation of the accused in
the
7 crime, and this is why the Prosecution stresses that what role
8 and participation each accused actually played in the crimes
9 needs to be looked at with very close scrutiny.

10:22:24 10 As far as possible, the Prosecution will try and limit
11 itself to dealing with each accused all in one, but where it
is
12 not possible, will deal with them individually.

13 Turning to Brima: The circumstances which the accused
were
14 committed are the utmost gravity. Most of the crimes for
which

10:22:46 15 Brima has been convicted, especially the crimes that he
ordered
16 to be carried out during the attacks in Karina in 1998, and
17 January 1999, were deliberate, unprovoked, brutal crimes
18 committed against unarmed civilians including men, women and
19 children. Make no mistake: The intention of these crimes
which

10:23:08 20 Brima ordered to be carried out, in both Karina and Bombali,
21 attacks which he personally led, was to kill, mutilate,
abduct,
22 enslave or otherwise terrorise and collectively punish the
23 civilian population.

24 At Karina, the intention was to shock the international
10:23:26 25 community and shock he did through the barbarity of the acts
26 which were carried out by the troops pursuant to his orders.
The
27 crimes which were ordered to be carried out as part of these
28 attacks were inexcusable. Brima was a trained professional
29 soldier. He knew that it was wrong to attack non-military

terrorise 1 targets, yet he deliberately chose to do so in order to
2 and punish the civilian population. Brima's behaviour of
3 ordering the murder and maiming of the civilian population,
and 4 the destruction of their villages, was not a one-off incident.
10:24:00 5 It was a planned and systematic way of behaviour which started
1998 6 when he organised his command structure in Mansofinia in May
7 and continued until late January 1999 when he and his troops
were 8 pushed out of Freetown; a period of almost nine months of
9 brutality.

10:24:17 10 The number of victims is a factor which adds to the
gravity 11 of the crimes for all three accused. The Trial Chamber found
12 that the violence inflicted on civilians during the invasion
of 13 Freetown in 1999 was extreme. All three accused partook of
this 14 attack and inflicted this violence.

10:24:38 15 In addition to personally committing, ordering and being
found 16 liable under other modes of liability, Brima has also been
various 17 liable under Article 6.3 for superior responsibility for
his 18 crimes committed in both Bombali and Freetown by troops under

19 command. This the Prosecution will deal with under "scale" as
10:25:00 20 adding to the gravity of the offence.

21 The Trial Chamber has found that civilians were killed
on a
22 massive scale in Karina. One witness estimated that it was
200.
23 For Freetown, the Trial Chamber found that AFRC forces killed
at
24 least 145 men, women and children which amounted to
10:25:21 25 extermination.

26 The Prosecution also submits that the scale of the type
of
27 crimes would also add to the gravity of the offence. This was
28 not a situation where victims were all shot dead. Numerous
29 victims had their arms amputated; victims were made to suffer.

1 For Freetown, the Trial chamber found that members of the AFRC
2 fighting forces mutilated at least 237 civilians and one
soldier
3 by cutting off their limbs.

4 These are large numbers, large numbers which we put in
10:25:55 5 context not just as figures; at least one whole gallery behind
us
6 of people were killed during Freetown, then Karina and then
7 amputated and hundreds more were made child soldiers and
8 abducted. Many had to undergo forced labour. Women became
sex
9 objects. The Trial Chamber particularly pointed to the
magnitude

10:26:18 10 of the three enslavement crimes committed by the AFRC troops.
11 These crimes were committed on a large scale.

12 At paragraph 12 of his brief Brima argues in terms of
scale
13 that it's impossible to ascertain the exact numbers of
victims.
14 This may be so but there can be no doubt that the Trial
Chamber

10:26:37 15 found that the scale of the crimes was massive. The
Prosecution
16 submits that these figures represent the minimum number of
17 victims.

18 Both Kamara and Kanu, like Brima, also bear superior
19 authority for the massiveness of these crimes committed in

10:26:56 20 Bombali and Freetown by troops under their command, and let us
21 not forget that although Kamara in his brief attempts to play
22 down his role in such criminality, he has even greater command
23 responsibility than Brima and Kanu, and that he was the
overall
24 commander at Kono, where his subordinate Savage was
responsible
10:27:17 25 for committing crimes on a massive scale in Tombodu Town,
where
26 the Trial Chamber found that members of the AFRC unlawfully
27 killed a minimum of 265 soldiers. Savage also amputated
28 civilians, including cutting off their heads as well as arms.
29 Kamara, in this instance, was the sole commander alone.
In

1 Port Loko District, after the brutal and horrific retreat from
2 Freetown, the Trial Chamber found an unknown number of people
3 were unlawfully killed in the village of Manaarma whilst
Kamara,
4 once again, was the overall commander on the ground.

10:27:56 5 So in terms of graduation of sentence let us not forget
6 Kamara's role in the scale of crimes that were committed in
all
7 areas of the conflict.

8 The impact of the crimes on victims and others also adds
to
9 the gravity of the offence. Annexures E and F for the

10:28:16 10 Prosecution sentencing submissions show the impact the crimes
had
11 had on some of the victims. The barbaric nature of these
crimes,
12 especially enslavement, amputation and child soldiers, has had
a
13 devastating impact on people's lives.

14 Take a victim who has had both his hands amputated; his
10:28:37 15 life has been devastated at so many different levels. Imagine
16 that you have both your hands amputated, hands which you once
17 used for work, play and routine tasks. If you are a cook or a
18 builder, how are you going to cook? How are you going to
build
19 with no hands? If you cannot work, how are you going to
support

10:28:54 20 your family? How do you wash; use the bathroom? You rely on
also 21 others for the rest of your life. Such reliance on others
other 22 damages a person's psychologically, in terms of how, among
and 23 things, he sees his own self-worth in terms of his own pride
accident. 24 dignity. Furthermore, loss of limbs was not through an

10:29:14 25 Instead, the victims were held down as they watched their
hands 26 being deliberately cut off, often in front of friends or
27 relatives.

these 28 Take another type of victim, a child soldier. All of
get 29 children were robbed of their childhoods which they can never

1 back. As the Trial Chamber found, the evidence is conclusive
2 that most if not all of the children in question were forcibly
3 abducted from their families or legal guardians. In addition
to
4 having been kidnapped, child soldiers described having been
10:29:47 5 forced into hard labour and military training and sent into
forced 6 battle, often on the front lines. They were also beaten,
7 to watch the commission of crimes against family members.
8 Injected with narcotics to make them fearless. Compelled to
9 commit crimes including rape, murder, amputation and abducted.
10:30:05 10 Used as human shields and threatened with death if they tried
to
11 escape, or refused to obey orders.
12 The Prosecution submits that the impact which the above
13 crimes must have had on their victims, their relatives and
14 others, must be devastating and should be seen as an
aggravating
10:30:22 15 factor adding to the crimes of all three accused.
16 The accused's role and participation in the crimes adds
to
17 the gravity of the offence. Brima was the driving force
behind
18 most of the crimes for which he has been convicted. He was
the
19 overall commander in both Bombali and Freetown who gave the
10:30:40 20 orders. He was under no duress. In fact, it was Brima who,

that 21 through his infamous words, "minus you, plus you," to ensure
22 his illegal orders were carried out.

23 Brima even personally committed crimes himself. For
24 example, in Karina, he participated in a mass killing of at
least

10:30:59 25 12 civilians in a mosque. He participated in the killing of
at
26 least five people in Freetown in three separate incidents and
27 personally amputated one person's arm in Freetown.

28 Coupled with his numerous orders to kill, burn and
amputate
29 at Karina and Freetown there is no doubt that Brima was an

1 active, willing and enthusiastic participant in all the crimes
2 for which he has been convicted. Brima, in his own brief, at
3 paragraph 12, states under the heading of "Gravity of the
4 Offence" that the crimes are of the most serious.

10:31:32 5
seriousness

Brima's Defence at paragraph 12 states that the

6
guerrilla

of Brima's crimes must be looked at in the context of

7
8
9
be

war which was operating at this time. The Prosecution submits
that the context of guerrilla warfare is irrelevant in judging
the gravity of the crimes in Bombali and Freetown, and should

10:31:50 10

dismissed as irrelevant for mitigating the gravity of Brima's
11 crimes.

12
with

As mentioned before, Brima was a professional soldier

13
under

a military organisation with effective command and control

14
and

him. The attacks and crimes committed in Bombali and Karina

10:32:06 15

Boama were villages which Brima knew to comprise of civilians.

16
17
mitigate

Even in the context of a so-called guerrilla war there is no
justification for attacking civilians. To allow this to

18 would suggest that other guerrilla fighters could enjoy such
19 impunity and get mitigation.

10:32:24 20

And let us not forget about Kamara and Kanu. Kamara

be
That
10:32:46
Trial

21 Defence in paragraph 39 and 40 suggests that Kamara should not
22 placed on the same footing as Brima in terms of sentencing.
23 Kamara was a lesser player than Brima and as such should get a
24 lighter sentence. The Prosecution, although agreeing with the
25 principle of graduation in sentencing, totally rejects this
26 argument of the Defence in respect of Kamara. Based on the
27 totality of the evidence, and the overall findings of the
28 Chamber, Kamara bears no less culpability than Brima for the
29 death and destruction which was meted out in large parts of

1 Freetown and Karina on the civilian population. In addition,
2 Kono and Port Loko.

3 Kamara was not a man without authority. After the
4 intervention he was a senior-most SLA commander in Kono. He
had

10:33:19 5 his own mixed battalions of SLAs under his command, and he
worked

6 hand in glove with Superman in securing the area and
brutalising

7 the civilian population. It was on Kamara's watch that his
8 notorious subordinate, Savage, carried out some of the worst
9 atrocities committed in a single small village throughout the

10:33:37 10 conflict. Kamara did nothing to stop his subordinate's
11 atrocities. Indeed, as the campaign progressed through
Bombali,

12 Kamara was fully on board with Brima in terrorising and
punishing

13 the civilian population. Kamara, throughout the Bombali
14 campaign, was Brima's deputy. There is no evidence whatsoever
15 that Kamara disapproved of any of Brima's illegal orders to
16 commit crimes against civilian population.

17 If he was so appalled by Brima's campaign of terror why
18 didn't he run away? That was an option open to him. Instead,
he

19 chose another more sinister option; that of lining up
alongside

10:34:18 20 with Brima. Kamara fully partook on the attack on Karina, and
21 upon Brima's illegal orders to kill and brutalise civilian
22 population. In Karina, the Trial chamber found that Kamara
23 ordered that five young girls be locked in a house and burnt
24 alive. Aside from his presence as a commander this was
Kamara's
10:34:39 25 personal contribution to the devastation of Karina.
26 The Prosecution would submit that this action of
brutality
27 alone, coupled with the other matters set out in the
submission,
28 totally refutes the statement at paragraph 40 of Kamara's
29 sentencing brief, that Kamara's disposition was one of a
quiet,

1 calm, non-violent and often passive participant.

2 Again, during the attack, occupation and retreat from
3 Freetown Kamara remained Brima's trusted second in command.

He

4 was personally present during the killings as Fourah Bay,

which

10:35:13 5 the Trial Chamber found that he aided and abetted.

6 Kamara in Freetown was also found by this Trial Chamber

to

7 have aided and abetted the amputations of arms of numerous

8 civilians during Operation Cut Hand which he eagerly provided

the

9 troops with machetes to perform this most gruesome of tasks.

10:35:34 10 Once driven out of Freetown Kamara didn't run away and
hide

11 himself from all of the brutality which he had witnessed and

been

12 a part of in Freetown. He didn't surrender to the ECOMOG

troops.

13 Instead, once again, like in Kono, he seized the opportunity

to

14 be the overall commander of the notorious West Side Boys. In

the

10:35:56 15 West Side, numerous brutal crimes and unlawful killings were

16 carried out under Kamara's overall command, as found by this

17 Trial Chamber.

18 Turning to Kanu. Kanu, according to his brief, should

be

19 released after time served or should be given a light sentence
10:36:14 20 but the Prosecution submits that Kanu's role and participation
in
21 the crimes totally nullifies this assertion. As for Kamara,
the
22 sentencing brief of Kanu attempts to play down the role and
23 position of Kanu. The Kanu Defence states that during the
junta
and
24 period Kanu had a relatively low position compared to Brima
10:36:34 25 Kamara. This, however, is not relevant for the purpose of
26 sentencing Kanu for the purposes for which he has been
convicted.
27 Kanu has been convicted for crimes committed after the
28 junta period in Bombali in 1998 and Freetown in 1998 where the
29 Trial Chamber found that Kanu was in a senior command
position.

Staff,
as
no
10:37:14
behind
utmost

1 At Bombali, the Trial Chamber found that Kanu was Chief of
2 commander in charge of civilians and commander in charge of
3 military training. In Freetown, the Trial Chamber found that
4 Chief of Staff Kanu was third in command. So let us be under
5 illusion; Kanu's role in terms of command when the crimes were
6 committed at both Bombali and Freetown was only marginally
7 that of Brima and Kamara. He was a senior commander with
8 influence who was nearly always at Brima's side.

9 The Prosecution submits that so closely did the three
10:37:34 10 accused work together in terms of command, in both Bombali and
11 Freetown, that they formed a triumvirate of command with only
12 slight graduation in each of their authority.

personally
10:37:52
soldier
at
should

13 Furthermore, Kanu played a significant role in
14 carrying out numerous crimes in Freetown. Firstly, the Trial
15 Chamber found that Kanu personally shot dead one ECOMOG
16 and ordered the execution of the remaining 13 ECOMOG soldiers
17 State House. Kanu personally demonstrated how amputations

18 be carried out in Freetown. In addition, Kanu ordered the
19 amputation of 200 civilians at eastern Freetown.

10:38:12 20 Kanu also reissued Brima's orders to kill people in a
21 mosque. This order led to the death of around 71 civilians at
22 Rogbalan mosque. 71; again, a very large number.

23 The Trial Chamber found that on the eve of the 6 January
24 1999 invasion of Freetown, Brima chaired a meeting at which

Kanu

10:38:36 25 reminded the AFRC troops present about orders to burn down
police

26 stations and kill targeted collaborators. Kanu thereby
prompted

27 the perpetrators to kill civilians in Freetown. Again, let us
be

28 in no doubt; Kanu participated in the crimes in Freetown in
both

29 a major and significant way. He was not an innocent
bystander.

1 Though third in the hierarchy of command at Freetown, he
2 was not far behind Brima in his personal participation in such
3 crimes. Such personal participation significantly adds to the
4 gravity of Kanu's crimes.

10:39:12
end

5 As stated in paragraph 110 of the Kanu trial brief the
6 principle in graduation in sentencing, according to which the
7 highest penalties are to be imposed upon those at the upper
8 of the sentencing scale, such as those who planned or ordered
9 atrocities, and those who committed crimes with the special
or sadism enables the Chamber to punish and deter and
11 consequently stigmatise the crimes is considered at a level
12 corresponds to their overall magnitude, and reflects the
13 of the suffering of the victims.

zeal
10:39:31
which
extent

Prosecution

14 Out of the three accused it is the case for the
15 that Kanu was the one who personally committed crimes with the
16 most zeal and sadism. No better example can be his enthusiasm
17 for ordering and personally carrying out and even
18 how to carry out the chopping off of arms.

demonstrating

10:40:08
other

19 The Prosecution submits that no other crime committed in
20 this conflict was more brutal than that of amputation. No

21 crime in this conflict left such permanent damage in both body
22 and mind for those victims who were amputated. Indeed, this
23 crime of amputation is unique in its barbarity and is unique
to
24 this conflict. It was neither used in the Yugoslavian
conflict,
10:40:29 25 nor in the Rwandan conflict. In those conflicts, the aim was
26 either to displace or to kill the targeted persons, not to
27 permanently disfigure whereby the victim carried the scars and
28 crippling disability throughout the remainder of his life.
This
29 barbaric and inhumane practice of amputation, as favoured by

1 Kanu, the Prosecution submits, is of extreme gravity in Kanu's
2 case.

3 There are also aggravating factors applicable to all
three
4 accused. Firstly, breach of his position of authority and
trust.

10:41:01 5 All three of the accused were senior commanders, the top three
6 commanders during the attacks on Karina and Freetown.

7 Secondly, the vulnerability of the victims is another
8 aggravating factor for all three accused. The victims are
mostly
9 unarmed civilians. They included men, women and children; the
10 young and the old. Age and sex was not a consideration for

10:41:19 10 accused and their soldiers. Such victims comprised young
women
11 who were sexually enslaved, young girls and boys who were
forced
12 to become child soldiers. All of these victims were in an
13 extremely vulnerable and helpless position.
14

10:41:39 15 Thirdly, the premeditation of the actions of all three
16 accused is aggravated. All of the accused committed their
17 crimes, or ordered soldiers under their command to commit
these
18 crimes in a premeditated way. The trial judgment is replete
with
19 references to crimes carried out on the civilian population by

10:41:58 20 way of retaliation to punish civilians or to teach civilians
21 lessons. To target particular groups of civilians, police and
22 perceived collaborators. Most of these attacks were motivated
by
23 desire for revenge against the civilian populations.

24 Brima's attacks on Bombali and Freetown were not carried
10:42:16 25 out by chance. Karina was attacked specifically because it
was
26 perceived to be the home of President Kabbah and the
atrocities
27 committed by Brima's troops were geared to shock the
28 international community.

29 Kamara's crime are also premeditated. Kamara didn't go
by

1 chance to Foureah Bay in Freetown to see what was going on. He
2 went to aid and abet the troops in their killing operation
3 against the civilians to ensure that the troops were doing a
good
4 job.

10:42:43 5 Likewise, Kamara didn't go to WFP warehouse by chance.
6 Kamara went there to collect machetes which he distributed to
the
7 troops with the full knowledge that these machetes would be
used
8 by his troops to amputate the arms of civilians pursuant to
9 Operation Cut Hand. Kamara didn't accidentally order a house
to

10:43:02 10 be burnt down in Karina, unaware that there were people inside
11 it. On the contrary, Kamara locked the five young girls in
the
12 house and ordered it to be set on fire so that they would be
13 burnt alive.

14 Kamara just did not walk into Freetown as part of the
10:43:20 15 invasion force. He was part of an invasion force with orders
to
16 kill collaborators, burn down police station, an invasion
force
17 of which he was second in command. Neither were the killings
at
18 Manaarma an accident. Kamara had ordered civilians be killed
en

soldier 19 route to the attack on Port Loko. He even promoted the

10:43:38 20 who brought in the news of the killings.

Kamara 21 By no stretch of the imagination can it be said that

22 was one of those who allowed themselves to be drawn into the

23 maelstrom of violence. Kamara was a senior commander who,

24 through his presence, aggravated the crimes and therefore

10:43:54 25 contributed to the overall harm done.

26 Kanu's crimes are also premeditated. Kanu didn't just

to 27 happen to decide to amputate people. Kanu ordered amputations

28 be carried out in retaliation against the civilian population.

29 The killings which occurred in Freetown did not take place by

1 accident. These killings were instigated by Kanu prior to the
2 attack on Freetown, motivated by revenge with a view to punish
3 perceived collaborators.

4 Fourthly, the cruelty and depravity and humiliation
caused

10:44:30 5 on the victims by all three accused should be seen as a
6 particularly aggravating factor. The Prosecution can only
repeat

7 the finding of the Trial Chamber in respect of enslavement as
an
8 illustration of how cruel and depraved Brima's treatment of
his
9 victims were.

10:44:44 10 As was the pattern with all operations overseen by the
11 accused Brima, AFRC fighters exhibited a depraved indifference
12 towards human life in abducting and enslaving civilians.

13 Children watched their abductors executing family members.
14 Throughout the conflict women and young girls were treated as
war

10:45:03 15 bounty, abducted from their homes and repeatedly raped. Child
16 soldiers were terrorised, drugged and forced to commit crimes
17 against civilians.

18 Given his authority, the accused was in a position to
shut

19 down this system of exploitation entirely to deter the
excesses

10:45:19 20 committed by his troops and to alleviate the plight of the

that
21 victims. On the evidence adduced, the Trial Chamber finds
22 Brima failed to do so.
four
23 Kamara's conduct was equally as depraved. He locked
24 to five young girls in a house and ordered them to be burnt
10:45:36 25 alive. For Kanu, the depravity again was huge. Firstly, Kanu
26 designed, implemented and maintained a system to use abducted
27 women and girls as slaves to be distributed to soldiers for
28 sexual abuse and exploitation.
29 As the Trial Chamber found, Kanu's system involved the

1 cruel treatment of the abducted women, included punishments,
2 including lashes and confinement within a box. These women
were
3 also raped.

4 Secondly, for Kanu, the Prosecution cannot imagine a
more
10:46:11 5 cruel or depraved act in demonstrating to others how to carry
out
6 amputations. How brutal a choice was the victim faced with:
7 Long sleeve or short sleeve. What kind of depravity does it
take
8 to force someone to make such a choice?

9 Sixthly, superior responsibility under Article 6.3 is an
10:46:31 10 aggravating factor. This has been dealt with under the
gravity
11 of the offence for scale, and the Prosecution accepts that
12 double-counting is impermissible. The Prosecution, however,
13 refers to the importance in terms of sentencing of liability
14 under command responsibility by referring to paragraph 112 of
the
10:46:48 15 Kanu brief, whereby quoting the case of Oric, at paragraph 728
16 and 771, Kanu accepts how the gravity of the offences
committed
17 by his subordinates has a serious impact on the accused for
18 sentencing purposes.

19 To touch just upon a few instances of the acts which his

10:47:08 20 subordinates carried out, or the subordinates of all the
accused
21 should I say, in Freetown, in Parsonage Street soldiers
amputated
22 witness 278's hands. The witness testified that his child
23 shouted, "Hey, soldier, don't cut my father's hands. Please,
he
24 is working for us." One of the soldiers ordered that the
child's
10:47:29 25 hand be amputated. The witness asked the soldier to amputate
his
26 hand in exchange for sparing his child. The rebels amputated
his
27 right hand before releasing the witness and other civilians
28 telling them: "You are the messenger of Tejan Kabbah. Go and
29 tell Tejan Kabbah that we cut off your hand, since you did not

1 allow peace, and we are saying goodbye to you."

brutal

2 At Karina, the Trial Chamber noted the particularly

the

3 nature of the number of acts of violence committed against

4 civilians during the attacks, including the splitting open of

10:48:00
the

5 stomach of a pregnant woman and the removal of the foetus and

6 burning of civilians alive.

acts

7 Similarly, the Trial Chamber noted the number of the

8 of violence were carried out against particularly vulnerable

9 persons; children and pregnant women.

10:48:14
accused

10 Seventhly, the professional background of all three

trained

11 should be regarded as an aggravating factor. They were

Their

12 professional soldiers. They had prior combat experience.

chose

13 job was to protect the civilian population. Instead, they

assist

14 to turn their training against the civilian population to

10:48:37

15 them in punishing them.

the

16 Turning to mitigation and personal circumstances, all

17 accused have raised various mitigation and personal

that 18 circumstances. The Prosecution at the outset makes it plain
the 19 no mitigating circumstances, as are generally recognised by
10:48:57 20 ad hoc tribunals, are applicable to any of the accused which
21 again reflects rehabilitation is not the appropriate sentence
22 objective in this case.

23 As we've mentioned before, none of the accused pleaded
24 guilty. No one cooperated with the Prosecution. None of the
10:49:16 25 accused showed any remorse. None of the accused have done
26 anything to atone for their crimes.

27 In the event that the Trial Chamber finds that any
28 mitigating circumstances, or personal circumstances, are
29 applicable for any of the accused, the Prosecution submits
that

1 such mitigating circumstances, or personal circumstances,
should 2 be given little, if any, weight and any weight which may be
3 afforded will be far outweighed by the gravity of the offence.

4 A number of mitigating and personal circumstances that
have 5 been raised are common to each of the accused. The
10:49:46 Prosecution 6 will firstly deal with each of these common factors.

7 All of the accused claim that are of good character,
were 8 brave and loyal soldiers and after the conflict contributed to
9 the peace for, amongst other things, their involvement in the
10:50:03 Paul 10 Commission For the Consolidation of Peace headed by Johnny

11 Koroma.

12 The Prosecution submits that all of these mitigating
13 factors should be rejected in their entirety. With regard to
14 character, there is no evidence that any of the accused are of
10:50:16 Trial 15 good character. All three accused have been found by this

16 Chamber to have participated in the coup which overthrew a
17 democratically elected government. There is no evidence of
good 18 governance on their part during the junta period. Their
19 behaviour during the conflict was barbaric.

10:50:32 20 After the conflict, as will be alluded to later in these

21 submissions, they played no positive role in contributing to
22 peace and were, indeed, a part of the difficulty in restoring
23 peace as quickly and as smoothly as possible. None of the
24 accused by their conduct, in either this courtroom or whilst
in
10:50:49 25 detention indicates that they are men of good character.

26 With regard to conduct in the military, loyalty and
27 bravery, at paragraph 15 of Brima's sentencing brief, the
28 Prosecution disputes that Brima's joining the army in 1991 at
the
29 time of the rebel war was an act of bravery. There is no

1 evidence of this effect on the trial record. On the contrary,
2 one of Brima's own Defence witnesses, under oath, repeatedly
3 referred to Brima as a coward. The Defence of Brima did not
4 contradict this witness.

10:51:23 5
out

6 The Prosecution submits that Brima joined the army not
7 of bravery but because he was following in the family
8 and it was the best form of employment available at the time.
9 The Prosecution disputes that Brima joined the army in 1991

and

10:51:41 10

11 overthrew an elected government solely for personal gain. The
12 Trial Chamber has found that Brima was rewarded for the role
13 played in the overthrow by giving him a specific function in
14 AFRC.

he

the

14 In addition to being PL02, during the junta government,
the

10:51:58 15

16 Trial Chamber found Brima to be an influential member. Brima
17 oversaw forced mining. Such a government practice was hardly
18 a way to bring about peace among the civilian population. It
19 more a policy to subjugate the civilian population.

a

was

bravely

19 Similarly, at paragraph 33, allegedly Kamara fought

10:52:16 20 to repel the RUF forces. There is, however, no evidence of
this.

Kamara 21 No citations, no medals, no references. Even if true, if

the 22 was in such loyal service to the SLA, why did he partake in

23 coup which overthrew the government? That was an act of utter

defend. 24 disloyalty to the State which Kamara had taken an oath to

10:52:38 25 In so doing, Kamara committed the act of high treason under
26 national law.

27 The Prosecution submits that Kamara and the other SLAs,
28 including Brima and Kanu, in overthrowing the government of
29 President Kabbah, were not doing it out of any loyal,
patriotic

1 act. They had no ideology, however warped, like the RUF.
2 Let us be clear: Kamara, Brima and Kanu and the other
coup
3 plotters overthrew the Kabbah government in pursuit of
personal
4 power and aggrandisement which they achieved. Kamara went
from
10:53:11 5 being a lowly sergeant to PL03 which is a senior government
6 position with a duty to monitor various ministries. After the
7 intervention Kamara occupied the second most senior command
8 position in the SLA, a position which he would not have even
9 dreamed of achieving prior to the coup.
10:53:29 10 Likewise, at paragraph 50, the Defence claims credit for
SLAs
11 Kanu's loyal and faithful service. The loyal and faithful
instead
12 were the ones who did not take part in the coup and who
and
13 fought alongside ECOMOG to protect the civilians population
14 restore democracy. Kanu was not one of these SLAs.
10:53:53 15 Post-war conduct. All of the accused claim credit for
16 their post-war conduct in trying to bring about peace through
17 their work with the CCP. The Prosecution submits that none of
18 the accused played a positive or constructive role in the
search
19 for peace. Instead, the activities of the accused was
motivated

10:54:08 20 by self-interest and they were striving to get themselves and
21 Johnny Paul Koroma back into positions of power and influence.
22 At paragraph 39 Brima relies on the TRC report at annex
A.
23 In order to refute all of the accused alleged positive post-
war
24 contribution, the Prosecution similarly relies on volume 3A of
10:54:32 25 the TRC reports and, although I will not read all parts to
you, I
26 will submit it at the close of the submission.
27 The parts which are pertinent are paragraph 1168 and
1169
28 on page 365; paragraph 1174, page 366; paragraph 1236 at page
29 384; paragraph 1243 at page 385; paragraph 1290 and 1291 at
page

1 399; and paragraph 1298 to 1301 on page 401. All of these
2 findings by the TRC suggests that Johnny Paul Koroma created
his
3 own task force of hardened criminals such as Brima, Kamara and
4 Kanu, not with a view of implementing peace but with a view to
10:55:34 5 trying to regain power.

I
6 And, just very briefly, so that it's for the record and
7 won't dwell too much on this because of time constraints, at
8 paragraph 1168, this is just after Johnny Paul Koroma has been
9 appointed chairman, the inner circle who joined Koroma in late
10:55:56 10 1999 included Santigie Kanu, alias Five-Five, Alex Tamba
Brima,
11 alias Gullit, Ibrahim Kamara, alias Bazzy, Samuel Kargbo and
12 George Adams. Since their expulsion from Freetown in late
13 January 1999 they were known collectively as the West Side
Boys.

14 The irony is not lost on the Commission that through
10:56:20 15 Koroma's actions most of the ringleaders of the 6 January 1999
16 invasion of Freetown were returning to the city as protectors
of
17 peace. There was no evidence in their actions that these West
18 Side Boys warranted any role in helping to restore calm and
19 confidence in the minds of the Sierra Leonean population.

They
10:56:39 20 were not of a mind to reconcile their differences with the
RUF.

grievances 21 Indeed, the stance they put forward in their letter of
22 and demands, in September 1999, indicated that they had an axe
to 23 grind on account of the RUF's unacceptable treatment of their
24 leader.

10:57:05 25 Again, very briefly at 1236, this is a raid on the
premises 26 of a minister which was carried out by this task force which
27 included the three accused and this was a minister, the deputy
28 minister for labour industrial relations, and is found at
29 paragraph 1236 to 1237.

1 "On Saturday 6 May 2000 at about 6.30 p.m. I got a call
2 from my wife through my mobile telephone that a group of
3 armed personnel led by Brigadier Santigie Kanu, alias
4 Five-Five, went to my room at Cape Sierra Hotel and had
10:57:39 5 looted all of my properties and also molested my wife
and
6 two children, aged 3 and 14 respectively."
7 At 1237:
8 "This attack has come to represent the onset of a
pattern
9 of violations and abuses that took place in Freetown
over
10:57:53 10 the ensuing days. The perpetrator was identified as
West
11 Side Boys and other remnants of the AFRC regime. They
were
12 led by Santigie Kanu, alias Five-Five, who was known to
be
13 a part of the burgeoning security of Johnny Paul Koroma
at
14 his Juba residence. The Commission draws a direct link
10:58:15 15 between Five-Five and Johnny Paul Koroma and holds the
pair
16 jointly responsible for instigation of this particular
17 act."
18 Again, at 1243, regarding Johnny Paul Koroma's call for
a

January 19 peace rally. The strongmen included the leaders of the 6
10:58:34 20 1999 invasion of Freetown, such as Alex Tamba Brima, Ibrahim
21 Bazzy Kamara and Santigie Kanu. They were all malleable to
22 Koroma's agenda and still motivated by motions of power
largely
23 on the sentence for their recognition as professional
soldiers.
24 And, finally, a part worth referring to concerns on the night
of
10:58:55 25 violence in Freetown on 7 and 8 May 2000. At 1298, among the
26 most appalling multiple violations committed by the peace task
27 force during its rampage through Freetown was a fate inflicted
28 upon the deputy minister for transport and communications,
Susan
29 Lahai. Susan Lahai's capturers were led by Alex Tamba Brima,

Bangura, 1 alias Gullit. They included Samuel Kargbo, Hassan Papa
hours 2 Ibrahim Bazzy Kamara. Susan Lahai was killed in the early
of 3 of Monday, 8 May 2000, by the West Side Boys. The full extent
disclosed 4 the horror suffered by Susan Lahai was never properly
10:59:35 5 to the Commission. It was confirmed that the acts of
violence, 6 sexual abuse were carried on her probably by each of the
7 abovenamed men.

8 The Commission holds the West Side Boys and Johnny Paul
9 Koroma responsible for the sexual violence and abduction of
the 10 minister, who was apparently gang raped to death.
10:59:50

11 So let us be absolutely clear about this. None of the
12 accused played any positive role in the search for peace after
13 the war. They were seeking revenge against the RUF who they
14 perceived had betrayed them at the Lome agreement. The RUF
had

11:00:10 15 become part of the government; the AFRC had not. Their role
was
16 purely in seeking personal power and, on a balance of
17 probabilities, it can be said that they made no positive
18 contribution to peace.

19 Fourthly, age. All the accused draw attention to their

11:00:28 20 apparent young age. At the time of the commission of the
crimes,
29, 21 in 1998 and 1999, Brima was 27, 28 years old. Kamara, 28 to
22 and Kanu 35. In Cestic, the Trial Chamber of the ICTY said:
"We
23 are not aware of any domestic system where 27 years is treated
as
24 a young age and may be treated as a mitigating factor. No
weight
11:00:53 25 should be given to the alleged young age of the accused.
26 Brima in his brief refers to. Erdermovic, as mentioned
by
27 my learned friend Mr Staker, is entirely distinguishable on
its
28 facts from this case and is inapplicable to Brima.
29 Family situation. All accused draw attention to their

1 family situation, especially that they have wives and children
to
2 support. The Prosecution contends that little, if any, weight
3 should be given to the family position of any of the accused.
4 They all have other family who, pursuant to Sierra Leone
11:01:27 5 traditions, can help with support. They have military
pensions.
6 If Brima cannot obtain his own, I am sure it's retrievable by
7 appropriate methods. They also have the money they earn in
8 detention.
9 Assistance to others. Both Brima and Kanu rely on the
11:01:49 10 assistance to others during the conflict. The jurisprudence
has
11 held that selective assistance is consistent. Little if any
12 weight should be given to this factor.
13 Brima also refers to his ill health. Ill health only
14 applies in extreme circumstances, such in Simic, where the
11:02:07 15 accused was wheelchair-bound, a paraplegic. This is certainly
also
16 not the case of Brima. For war situations, Kamara and Kanu
situation
17 claim that it was stressful for them and the difficult
18 should be in some way mitigating; the harsh environment. The
19 Prosecution says both Kamara and Kanu were trained soldiers
who
11:02:27 20 had gone active combat against the RUF, so they would have
been

in 21 well prepared for the prevailing situation and used to working
22 harsh environments especially during the war with the RUF.
23 The Prosecution suggests that all armed conflicts by
24 definition are harsh and so are the environments which are
11:02:44 25 fought. For example, the trenches in World War I, Iraq,
26 Afghanistan, Vietnam, The Falklands War, the list is endless.
27 The Appeals Chamber in Blaskic saw neither merit nor
logic 28 in recognising the context of war as a factor to be considered
in 29 mitigation. For Kamara only, he stresses that a lengthy
sentence

1 will shock most local Sierra Leoneans. The Prosecution says
this 2 is misplaced. On the contrary, a lengthy term of imprisonment
3 may well satisfy and assuage some of the victims of Kamara,
4 Brima's and Kanu's atrocious crimes, who lost loved ones and
11:03:22 5 arms, and had to suffer other terrible calamities.
6 Kamara's brief stresses the fact that he came from a
poor 7 family. Many people in Sierra Leone come from a poor family;
it 8 is a poor country. It is not an excuse. It is true that one
of 9 the aims of the establishment of the Special Court and
Security 10 Council Resolution was to contribute to the peace process but
11:03:38 11 it was also to put an end to impunity.
12 Accordingly, the Prosecution rejects the assertion in
13 Kamara's brief that prolonged sentence directed at Kamara
would 14 defeat the essence of peace and reconciliation. Let us not
11:03:56 15 forget that Kamara, like Brima and Kanu, has been tried and
16 convicted as one of those who bear the greatest criminal
17 responsibility for the most serious violations of
international 18 humanitarian law which took place in this conflict. Crimes
which 19 have shocked the conscience of mankind.

11:04:12 20 For Kanu, we have already addressed he was not a lonely
21 figure. He relies on witness C1 in his statement to say he is
a
22 man of good character. This can be rejected in its entirety.
A
23 close scrutiny of the statement indicates that is both untrue
in
24 large parts and contradictory of the Trial Chamber decision.

11:04:30 25 For example, at paragraph 6, it says Kanu only played a
26 minor role. At paragraph 12, it accuses another witness of
lying
27 in court. At paragraph 6, how did Kanu at Karina request SAJ
28 Musa to feed the hungry people? SAJ Musa was not even present
in
29 Karina at the same time as Kanu.

1 Furthermore, the AFRC had no means of communicating to
2 others by radio. Kanu also said superior orders should
mitigate
3 him. The Prosecution says Kanu was one of the most senior
4 commanders. He was under no duress and he enthusiastically
11:05:06 5 carried out the orders. This cannot mitigate his sentence.
He
6 even gave orders to others.

7 PRESIDING JUDGE: Mr Agha, you have five minutes left to
8 conclude your submissions.

9 MR AGHA: Thank you, Your Honour, I am very grateful for
11:05:21 10 the additional time which you have chosen and given me.

11 The Kanu Defence considers that the collapse of the
command
12 structure is a pivotal consideration for the purpose of
13 establishing the sentence that should be meted out to Kanu.

14 Prosecution submits that far from being the pivotal
The
11:05:37 15 consideration, which certainly cannot trump the gravity of the
16 offence, that very little if any weight should be given to
this
17 factor.

18 This passage at 123 from Oric judgment concerns a stage
for
19 the Bosnian Muslim army, who were the defenders of Srebrenica.
11:05:51 20 The crimes for which Kanu has been convicted are crimes which

21 were carried out by an aggressive force of which Kanu was a
22 senior commander.

effective
23 This Trial Chamber has found that this force had
stresses
24 command and control throughout Freetown and Bombali. He
11:06:08 25 after the loss of State House this should make a difference.
The

26 Trial Chamber further found that the accused Brima was in a
27 superior subordinate relationship with the AFRC troops that
28 committed crimes in Freetown even after the three headquarters
29 were dislodged from State House. This was a finding which the

1 Trial Chamber agreed with in Colonel Irons, that the AFRC was
a
2 capable fighting force. Commanders were still able to make
sound
3 decisions. The command structure was effective. This cannot
in
4 any way be seen as mitigation.

11:06:44 5 Kanu alleges that his lack of military training should
be
6 mitigation. Again the Prosecution says it's aggravating, not
7 mitigating. The Kanu Defence argues that circumstances about
8 recruitment of child soldiers should be mitigating. This
again
9 is strange. The Prosecution says it's aggravating, especially
as
11:07:03 10 these child soldiers were abducted.

11 At paragraph 138, Kanu says his role of protection of
women
12 should be rejected. Kanu's treatment of women should be
regarded
13 as an aggravating factor, not a mitigating factor. The
factual
14 findings demonstrate that the accused Kanu presided over a
system
11:07:22 15 that institutionally serious abuse of women.

16 The characterisation of the Kanu's function as
protective
17 is incorrect and completely unacceptable. Neither are the

18 grounds of amnesty, nor any breach of the Conakry agreement
19 mitigating for Kanu.

11:07:40 20 In summary, Your Honours, the Defence would have you
21 believe that before you are three brave patriotic soldiers who
22 are in the business of bringing peace to this embattled
country.

23 The Prosecution would submit that the accused, far from being
24 brave and patriotic are cowardly, disloyal soldiers who waged
war

11:08:00 25 on an unarmed civilian population who had sworn allegiance to
26 protect. Their motives were greed and the lust for power.

27 Cowardly, because their victims were the most vulnerable
members

28 of society; the women, the children, the young and the old,
those

29 who had been detained and enslaved, and who had no means of

1 fighting back, all of whom were punished in the most brutal
and
2 inhumane fashion, their only crime being that they were
perceived
3 to be against the accused and the AFRC.

4 The Prosecution submits that all three of the accused
11:08:35 5 Brima, Kamara and Kanu, should be sentenced to extremely
lengthy
6 terms of imprisonment with little graduation in sentence
7 reflecting the gravity of their crimes, the overwhelming
8 aggravating circumstances present in their cases, and their
total
9 lack of mitigation and personal circumstances of any
significant
11:08:53 10 weight.

11 This concludes the Prosecution submission. Again, I am
12 grateful for Your Honours for the additional period of time
13 granted to me, and would also like to submit for the benefit
of
14 the Bench the pages of the TRC report which were quoted by
myself
11:09:14 15 for ease of reference.

16 PRESIDING JUDGE: Thank you, Mr Agha. Mr Agha, one of
17 judges has a question for you.

18 JUDGE DOHERTY: Sorry, Mr Agha, it's to any member of
the
19 Prosecution. It's my understanding that most national

11:09:43 20 legislation provides for remission of sentences. Will that
apply

21 in the instant case if there is a custodial sentence and, if
so,

22 is it a matter to be considered by the Bench?

23 MR AGHA: This I shall leave to my learned friend Mr
Staker

24 as it is his realm of the arguments, Your Honour.

11:10:07 25 MR STAKER: Your Honour, our submission would be that
any

26 remission of sentence that will ultimately be granted is not a

27 matter that should be taken into account in sentencing. For

28 instance, if the Chamber knew that there would be one third

29 remission for good behaviour, it would be inappropriate to
impose

1 a commensurately higher sentence to make sure that the time
2 actually served was what the Trial Chamber wanted.

3 The answer to the specific question is found in the
Rules.

4 The Rules do state that where a person is eligible for pardon
or

11:10:39 5 commutation of sentence under the national law of the country
6 where the sentence is being served, that is communicated to
the

7 President of the Special Court and a decision is made by the
8 President.

9 JUDGE DOHERTY: Mr Staker, I accept the Rules 123 and
124

11:10:55 10 as being commutation. I had in mind remission in the
beginning
11 rather than in the course of sentence.

12 MR STAKER: I am sorry Your Honour, I don't quite
13 understand the question.

14 JUDGE DOHERTY: To my mind the commutation and remission
11:11:10 15 are not necessarily the same, but I accept that your
submission
16 is that they are the same.

17 MR STAKER: Yes. In the practice of international
criminal
18 tribunals and, for instance, in the case of the ICTY it has
been
19 common for, I think almost standard, for remissions to be

11:11:32 20
more

granted. I would have to check if the Trial Chamber wanted

21 detailed information about the ICTR.

22 JUDGE DOHERTY: Thank you.

23 PRESIDING JUDGE: Now, I propose that we listen to the
24 submissions of at least one of the Defence counsel before we
take

11:12:05 25 a short comfort break, and in this regard I wish to call upon

26 counsel for the accused Brima to begin.

Your 27 MR GRAHAM: Thank you. Good morning, Your Honours.

28 Honours, I will be very brief in my submissions. As I need to

29 restate that we stand by our submissions made in our brief
filed

Evidence. 1 pursuant to Rule 100(A) of the Rules of Procedure and
to 2 Your Honours, I must say I am grateful to have the opportunity
3 be here this morning to pursue the cause of justice in the
4 interest of my lay client, the first accused in this matter,
Alex
11:12:33 5 Tamba Brima.

6 Your Honours, I have heard and listened to the
7 of my learned friends on the other side. Your Honours, I must
8 say they are honourable men for whom I bear a lot of respect.
9 However, in the light of the submissions that they have made
11:12:51 10 today, I am at least gratified that they do not constitute the
11 Bench that is sitting on this matter simply because of their
12 submissions for very lengthy and excessive sentences to be
13 imposed on the accused persons, particularly the first
accused.

14 Your Honours, on June 20, 2007, this Honourable Trial
11:13:19 15 Chamber delivered a judgment in this case, convicting the
first
16 accused, Alex Tamba Brima, for crimes against humanity in
respect
17 of 11 out of the 14 counts contained in the indictment for his
18 actions and conduct in the Bombali District and the Western
Area.

19 Needless to say, Your Honours, there is voluminous legal

11:13:41 20 authority and commentary on the relevance of deterrence and
21 retribution insofar as sentencing is concerned. Your Honours,
22 our submissions in respect of that are clearly stated in our
23 brief which we filed and which I earlier referred to.
24 However, Your Honour, I need to raise one additional
point
11:14:06 25 which I think is very relevant, and relevant in the sense and,
26 Your Honour, what I am talking about is reconciliation.
27 Your Honours, this morning I heard and listened on the
BBC
28 World Service this morning. Whilst listening I heard one
29 gentleman, his name I think was Alieu Kamara. Alieu Kamara

and, 1 happens to be the [indiscernible] spokesperson for the AFRC,
2 in his interview, of course the relevance of the interview
3 related to the proceedings in this Court today. And what
Alieu 4 Kamara simply said was that, he referred to the three accused
11:14:49 5 persons in this case. He also spoke about the fact that they
6 were also victims of the circumstances of the war.

7 Indeed, Your Honours, Mr Kamara stressed on the need for
8 reconciliation and forgiveness. He spoke also principally
about 9 the fact that the principal architects of the AFRC,
principally 10 Johnny Paul Koroma, is yet to be brought to justice.
11:15:10 11

12 Your Honour, the essence of this submission is that I
13 believe that reconciliation is also a very important issue
that 14 ought to be considered by this Court in the process of
15 sentencing.

11:15:33 16 Your Honours, before I continue, I am informed that the
17 first accused wants to use the restroom, if he may kindly be
18 granted the permission to do that.

19 PRESIDING JUDGE: The first accused may be escorted out.

20 MR GRAHAM: Thank you, Your Honours.

11:16:02 21 Your Honours, we all know about the Truth and
22 Reconciliation Commission that was set up by the Government of

22 Sierra Leone. We are all also aware of the enormous resources
23 that were invested in the process of ensuring the smooth
running
24 of the Truth and Reconciliation Commission. Your Honours, it
is
11:16:22 25 my humble submission that this Court also promote the cause of
26 reconciliation. Deterrence and retribution are indeed
important,
27 but, Your Honours, we think that in the particular
circumstances
28 of Sierra Leone, considering the war, the background and the
29 circumstances, and the need to move forward and also to heal
the

1 wounds all the people of Sierra Leone have suffered as a
result
2 of this war, we believe that reconciliation is also a very
3 important matter.

4 And also, Your Honours, it is also a fact that most of
the

11:16:59 5 combatants who were part of the AFRC and the SLA, who also
fought

6 in the war, are sometime back, who have all been -- some of
them

7 have been integrated into the Sierra Leone Armed Forces. Can
I

8 mention Staff Alhaji, the infamous Staff Alhaji whom we heard
9 about in this Court. We heard about his activities in
Tombodu.

11:17:17 10 That Staff Alhaji was integrated and served as a member of the
11 Sierra Leone Army. I am reliably informed that he was retired
12 quite recently. So this essence of reconciliation is really
13 worthy of consideration.

14 Your Honours, I urge you, in the course of considering
all

11:17:41 15 the submissions that have been made before you this morning,
to

16 bring your expertise and your knowledge to bear on the fact
that

17 for this country to be able to move forward, for this country
to

18 be able to heal the wounds of the war, reconciliation in
addition

19 to deterrence and retribution, is something worth considering.

11:18:07 20 Your Honours, I also will move on.

21 PRESIDING JUDGE: Before you move on, counsel, exactly
how

22 do you propose we consider reconciliation? Exactly how do you

23 propose that we reintegrate the accused into the army or what
are

24 you proposing?

11:18:26 25 MR GRAHAM: Well, Your Honours, not integration. I
cited

26 that as an indication of the fact that some of those who were

27 also engaged in the war were, in the past, integrated in the

28 Sierra Leone Army, and the purpose of doing that was to
promote

29 reconciliation. In the circumstances, I leave that to the

I
1 superior wisdom of Your Honours to decide how best they think
2 they can balance the elements of deterrence and retribution
3 together with reconciliation. It is a humble submission that
4 am making before Your Honours this morning.

11:18:59 5 And, Your Honours, if I may also mention, there is also
the
6 issue of greatest responsibility. Your Honours, the
indictment
7 stated, in no uncertain terms, that the accused in this case,
the
8 first accused, they bore the greatest responsibility for most
of
9 the atrocious crimes that were committed during the war.

11:19:25 10 Indeed, Your Honours, the first accused was charged
11 together with the second and third accused of having committed
12 these crimes in almost all of the 12 districts of Sierra
Leone.

was
13 Your Honours, in your own judgment, the first accused
14 convicted and held responsible for his conduct and actions in
11:19:47 15 only one principal district; that was Bombali, together with
his
16 conduct and activities also in the Western Area. Considering
the
17 issue of greatest responsibility, Your Honours, I will humbly
18 urge that in considering the sentences to be imposed on the
first

of 19 accused, the issue of his responsibility, within the context
11:20:12 20 the overall war, ought also to be fairly considered for,
indeed, 21 out of the 12 districts, he was found by your judgment to have
22 engaged or committed crimes only in the Bombali District. It
23 doesn't make it lesser of a crime but, Your Honours, I believe
24 that when it comes to considering the quantum and gravity of
the 11:20:35 25 offences against the background of where we started from I
26 believe it is a point worthy of considerations and I humbly
pray 27 that Your Honours would take that into due consideration.
28 Your Honours, I do not have much to say except to say
that 29 I submit and humbly plead and pray that you temper justice
with

1 mercy for to err is human and to forgive is divine.

2 Your Honours, as I sign off, I believe in your superior
3 wisdom and knowledge and believe that at the end of the day

there

4 will be a fair consideration of all the submissions that have

11:21:18 5 been made before you this morning, having in mind that,

promote

6 ultimately, the objective is to heal, reconcile and then

this

7 peace. These are my humble submissions before Your Honours

8 morning. I am grateful for the time.

Bench

9 PRESIDING JUDGE: Counsel, before you sit down, the

11:21:38 10 would like to know if your client has anything personally to
say

11 to us at this sentencing hearing.

12 MR GRAHAM: Thank you, Your Honours.

13 PRESIDING JUDGE: And additional to what you have said.

14 MR GRAHAM: Thank you, Your Honours. I will inquire of

11:21:55 15 him. Thank you.

he

16 Thank you, Your Honours. My client has indicated that

17 has nothing to say and that he hopes that all the submissions

interest

18 that I've made this morning before you were made in his

19 and he stands and holds by them. I am grateful for the time,

11:22:35 20 Your Honours.

21 PRESIDING JUDGE: Thank you, counsel. By the clocks on
the
22 wall, it is 20 past 11. I think we will take a 15-minute
break.
23 That will bring us to 25 to noon. We will just take a 15-
minute
24 comfort break.

11:23:03 25

[Break taken at 11.20 a.m.]

26

[Upon resuming at 11.42 a.m.]

27 PRESIDING JUDGE: May I call upon the Defence counsel
for
28 the accused Kamara, please.

29

MR GRAHAM: Your Honours, I am sorry to interrupt you.

Court

1 Your Honours, I think whilst talking to my client, there must
2 have been some form of miscommunication, but he appears, with
3 your kind permission, my client would want to address the
4 just for about a minute. He called me during the break and
11:43:54 5 informed me he wants to have a word to say before the Court.

6 PRESIDING JUDGE: That is okay, Mr Graham. We will hear
7 from your client.

8 MR GRAHAM: I am grateful, Your Honour.

9 PRESIDING JUDGE: If he would stand, please.

11:44:20 10 MR GRAHAM: I am grateful, Your Honour.

11 PRESIDING JUDGE: And speak through the microphone.

12 [Accused Brima speaks through interpreter]

13 ACCUSED BRIMA: I stand for peace and reconciliation and

I

14 pray that the Honourable Judges of this Chamber could use

their

11:44:52 15 wisdom to bring peace and reconciliation to the people of
Sierra

16 Leone. And I show remorse to the victims of this situation of
17 this war that took place in Sierra Leone. I thank you all.

18 PRESIDING JUDGE: Thank you, Mr Brima, you may be
seated.

19 Now, counsel for the accused Kamara.

11:45:37 20 MR DANIELS: May it please Your Honours. On 20 June

Ibrahim 21 September 2007 this Trial Chamber unanimously convicted
22 Bazzy Kamara, the second accused, on 11 counts out of the 14
23 count indictment for crimes committed against humanity. Just
as 24 night follows day, sentencing follows conviction. It now lies
11:46:00 25 exclusively in the Court's preserve to determine the
appropriate 26 sentence which, in this case, is a length of imprisonment to
be 27 handed down to him as punishment for the crimes committed
against 28 the people of Sierra Leone.
29 These submissions should assist the Chamber arrive at a

1 just, fair and appropriate sentence. They are made
supplemental 2 to the Kamara Defence sentencing brief filed on 5 July 2007.
We 3 caution, however, just as we did in the Kamara Defence opening
4 brief, that our case is not about the blatant denial of agony,
11:46:38 5 suffering, grief and horror beyond imagination suffered by the
6 people of Sierra Leone within the period of the indictment to
wit 7 November 1996 to 2001.

8 The Prosecution, in its final submission, at paragraph
162 9 of the sentencing brief filed on 28 June 2007 has requested
for 10 60 years of incarceration as the appropriate sentence to be
11:47:02 11 imposed on Kamara. The Prosecution readily submits that
12 deterrence 12 considerations for the purpose of sentencing, such as
13 to 13 and retribution, are not to be considered in isolation but are
14 be weighed with other factors in each individual case.

11:47:25 15 The Appeals Chamber of the ICTY has held in the Celebici
16 as 16 case that undue prominence should not be accorded deterrence
17 entitled 17 an objective of sentencing. Nigel Walker, in his book
18 that 18 "Sentencing Theory and Practice," at paragraph 2510, argues

deterrence 19 "the evidence for the efficacy of sentences as general

11:47:52 20 is scrappy rather than weak."

21 At paragraph 2511 he states that, "It is not deception,
22 however, that has given rise to moral worries about deterrence
23 but the assumption that to penalise someone with the aim of
24 discouraging others from imitating him is to misuse him."

11:48:15 25 As regards retribution, as a principle of punishment,
the

26 Prosecution relying on the ICTR case of Kayishema has argued
that

27 retribution, as a main purpose of sentencing, should make
plain

28 the condemnation of the international community of the
behaviour

29 in question. In this regard, the Kamara Defence argue that
the

1 severity of the intended penalty should not exceed a limit
2 related to the offence, be it either to its seriousness or to
the 3 defender's culpability.

4 Beyond the general theories of crime and punishment,
11:48:56 5 Article 91 and 2 of the Statute of the Special Court sets out
6 specific factors which are to be taken into account in
7 determining sentence; the first consideration being the
gravity 8 of the offence. As has already been pointed out in the Kamara
9 deliberations 10 sentencing brief, at paragraph 18, the Court in its

11:49:17 11 and findings only found the accused liable under Article 6.1
of 12 the Statute for counts 1, 2, 3 and 5 because Kamara was found
to 13 have ordered the killings of five girls in the Bombali
District, 14 and also for aiding and abetting the commission of various
crimes 15 in Freetown and the Western Area.

11:49:39 16 No finding was made on count 6, 9, 12, 13 and 14 regards
Statute. 17 the culpability of the accused under Article 6.1 of the
18 These factors should be taken into account in order to limit
the 19 gravity of the convictions on these offences for which the
20 accused has been pronounced guilty.

11:50:00 20 The Kamara Defence, in the sentencing brief, has made
21 mention of the following cases of the ICTR: Imanishimwe,
22 Akayesu, Ntakirutimana, Muvunyi, Serushago. These cases are
all
23 referred to in our sentencing brief with appropriate
citations,
24 where the average sentence rendered for crimes of murder and
11:50:29 25 extermination, has been between ten and 15 years but most
26 definitely not up to 60 years even for crimes of genocide.
27 The Court must take account not only of the spirit but
also
28 of the letter of Article 19 of the Statute of the Special
Court
29 as it relates to the death penalty. Given that the Sierra
Leone

1 penal code still permits for the death penalty in cases of
2 murder, this practice regarding prison sentence in the
national
3 courts of Sierra Leone is of little assistance in helping the
4 Court arrive at an appropriate sentence.

11:51:06 5 For persuasive effect only the Court's attention is
drawn
6 to a very recent decision of the Belgium national courts where
a
7 former Rwandan army general, Bernard Ntuyahaga was on
Thursday, 5
8 June, sentenced to 20 years in prison for murdering ten
Belgium
9 peacekeepers in the early days of the 1994 genocide.

11:51:29 10 The individual circumstances of the accused should
mitigate
11 against a long sentence. Kamara was a poor and ill-educated
12 teenager who at this tender age was saddled with the
13 responsibility of fending for his brothers and sisters. At an
14 early age of 21 years he risked life and limb fighting as a
11:51:53 15 dedicated soldier, in order to repel advancing Revolutionary
16 United Front forces from controlling his nation, Sierra Leone.

17 Kamara participated in the reconciliation of Sierra
Leone
18 by seeking for the release from the Western Area of as many as
19 200 children to the Red Cross and the UNICEF sometime in
October

11:52:18 20 1999. Kamara remains a family man, married to his wife and
21 committed to the upbringing of his two sons.
22 As regards aggravating circumstances, the Kamara Defence
23 team maintains that it will be unfair to place the second
accused
24 on the same pedestal as the first accused given that the
findings
11:52:45 25 and deliberations, as far as the actual factual narrative go,
26 were varied and different. Due consideration in sentencing
must
27 be given to the fact that Kamara did not directly participate
in
28 the commission of the crimes for which he stands convicted,
which
29 said facts should mitigate the aggravating circumstance as

1 pleaded by the Prosecution.

active

2 Even though the Court has found that Kamara was an

3 participant in the military coup of May 1998, which ousted His

4 Excellency Ahmad Tejan Kabbah from power, this fact, it is

11:53:27 when

5 submitted, cannot be used as an aggravating factor, more so

during

6 Kamara was not found liable to have committed any offences

7 this period. It is worthy of note that participating in a

8 military coup d'etat is not an offence for which Kamara stands

9 charged, either at the national or Special Court for Sierra

11:53:48

10 Leone.

11 Finally, Your Honours, the Kamara Defence team wishes to

12 remind this Honourable Court of the four key sentencing

13 principles:

and

14 First, the purposes of sentencing, such as deterrence

11:54:03 a

15 retribution, should be weighed against other considerations on

16 case-by-case basis. Second, undue prominence or excessive

of

17 importance should not be accorded deterrence as an objective

18 sentencing. Third, it would be ultimately unfair to increase

19 punishment imposed on Kamara for crimes committed, specific

11:54:25

20 deterrence, merely for the purpose of deterring others from

21 committing similar crimes, general deterrence. Fourth, it is
22 acknowledged that the main purpose of punishment should be to
23 make plain the international community's condemnation of the
24 behaviour in question.

11:54:41 25
highlight a

26 The Kamara Defence team at this stage wishes to
27 fundamental underpinning of this whole trial process, mainly,
reconciliation 28 national reconciliation. Your Honours, national
Special 29 is one of the cardinal goals for the establishment of the
in Court for Sierra Leone. This important object is articulated

Special
1 United Nations Security Council Resolution 1315 passed in the
2 year 2000, the mandate that gave birth and purpose to the
3 Court of Sierra Leone.

4 It is the contention of the Kamara Defence that the
11:55:20 5 imposition of unduly long custodial sentence on Kamara, such
as
6 the 60 years being demanded by the Prosecution, will frustrate
7 and severely undermine any real possibility of attaining
genuine
8 national reconciliation in Sierra Leone.

9 It is important to point out that reconciliation occurs
at
11:55:41 10 three principal levels: The interpersonal, criminal and
societal
11 or national. The Kamara Defence team concedes that there is
12 probably no real hope of fostering reconciliation between the
13 convict and the several individual victims of the crime for
which
14 he stands convicted.

11:56:02 15 The Kamara Defence team contends, however, that the aims
of
16 criminal and societal reconciliation, as vital forms and
17 components of national reconciliation, will best be served
with
18 the imposition of a moderate custodial punishment that is
19 consistent with the established international case law and
which,

11:56:23 20 most importantly, enhances the possibility of Kamara having a
served 21 real chance of some day coming out of prison, after having
22 his sentence, having contact with survivors and families or
23 relations of victims of his crimes and reconciling with them.

24 In this regard the Kamara Defence team wishes to draw
11:56:45 25 attention to the fact that Kamara is a product of Sierra Leone
community 26 society; to the fact that he is an integral part of a
he 27 severely impacted by his life and conduct and to the fact that
community 28 is a family man with a wife and children living in the
29 that is an integral part of Sierra Leone society.

1 Your Honours, the foregoing submission for the
mitigation 2 of Kamara's sentence on the basis that giving him a lesser
3 sentence will help promote reconciliation, in post-conflict
4 Sierra Leone, is grounded in sound empirical research from the
11:57:24 5 well-studied field of transnational justice. In her classic
6 work, *Unspeakable Truths* facing the challenges of truth
7 commissions, in 2001, Pricilla Hayner, a senior advocate in
the 8 New York based International Centre For Transitional Justice,
9 observes that the degree to which there is contact between
former 10 opponents will help determine whether reconciliation develops.
11 The Kamara Defence team contends that in a post-conflict
12 society, such as Sierra Leone, reconciliation is best promoted
13 where former opponents, the victims and perpetrators are
allowed 14 and given a real rather than a theoretical opportunity for
15 contact and reconciliation. Locking up Kamara for 60 years
11:58:14 16 effectively obliterate any such substantive possibility.
will 17 up Kamara for 60 years, in a country where the average life
18 expectancy is 40 years, will be tantamount to giving him the
19 death sentence through the back door. And it is trite that a
Locking 20 death sentence defeats the object of reconciliation which

21 constitutes one of the fundamental underpinnings of the
22 transnational justice scheme on Sierra Leone in general and
this
23 very Honourable Special Court in particular.
24 Your Honours, the Kamara Defence team urges you to open
the
11:58:54 25 aperture for real reconciliation in Sierra Leone, beyond the
life
26 of this Special Court, by rendering a sentence that will truly
27 and substantively enable reconciliation to occur and not to
give
28 undue prominence to the object of deterrence an object which,
in
29 the context of post-war Sierra Leone, is irrelevant because
the

1 possibility of the resurgence of conflict is simply non-existent.

2 We are left then, Your Honours, with two important goals
3 for this very Honourable Special Court; retribution and
4 reconciliation. In short, Your Honours, we urge you to breathe

11:59:33 5 life into UN Resolution 1315 by enabling the attainment of
6 general reconciliation in Sierra Leone through the imposition
of
7 a reasonable sentence on Kamara.

8 We urge you to give Kamara the kind of punishment that
9 accords with principles and trends in contemporary sentencing
for
11:59:50 10 the kinds of punishment for which Kamara stands convicted.
11 Namely, ten to 15 years maximum, as was the case with persons
12 convicted of more heinous crimes of genocide in Rwanda and
13 elsewhere.

14 We urge you, Your Honours, to give Kamara the kind of
12:00:09 15 punishment that will enable him to return to society some day
16 while he is still useful, physically and mentally, to atone
for
17 his crimes, to seek forgiveness from the surviving victims and
18 relations of his crimes, to help bury the ghosts of the past
and
19 to promote healing and reconciliation at all three levels of
12:00:30 20 Sierra Leonean society: Individual, criminal and national.

out 21 I thank you very much, Your Honours, and wish to point
is 22 that my client would also have something to say if the Court
23 ready to listen to him.

from 24 PRESIDING JUDGE: Thank you, counsel, and we will hear
12:01:11 25 the accused Kamara. If he could please stand and speak
through 26 the microphone.

27 [Accused Kamara speaks through interpreter]

the 28 ACCUSED KAMARA: Your Honour, I thank you very much for
29 good work that you have done. Your Honour, I am just a young

1 Sierra Leonean. I joined this army to fight for my people. I
2 did not join the army to fight against my people.

3 My Lord, I am not Charles Taylor or Johnny Paul Koroma
or
4 Foday Sankoh, for me to bear the greatest responsibility. I
am

12:01:32 5 just a sergeant in the army, My Lord, but I believe in the
6 experience that you have, I rely on your experiences, My Lord.

I
7 know that you will be able to deliver justice, My Lord, and I
8 stand for reconciliation, My Lord.

9 And finally, My Lord, all those that suffered in this
war,

12:01:54 10 who lost their lives, I am sorry for them, My Lord. I thank
you
11 very much.

12 PRESIDING JUDGE: Thank you, Mr Kamara. I now call upon
13 counsel for the accused Kanu to address the Court.

14 MR KNOOPS: Thank you, Your Honours. Your Honours,
before

12:02:46 15 I start, I wish to point out that I will probably make use of
the

16 full hour, so, in light of the normal morning break, I leave
it

17 to your discretion whether to address the Court and interrupt
my

18 arguments or whether Your Honours agree I can finish my
arguments

19 but that would mean that we would not be finished at 12.45.

12:03:15 20 PRESIDING JUDGE: That's okay. You can go on for your
full

21 hour.

22 MR KNOOPS: Thank you, Your Honour.

23 Your Honours, you have seen our client, Mr Santigie Kanu
in

24 Court from March 2005 onwards, yet all of us know very little
of

12:03:42 25 him. No one of the Prosecution witnesses were able to give a
26 detailed account about who he really is and what his daily
life,
27 especially in the jungle at that time, looked like. Why?
Maybe

28 it's because we simply do not know him.

29 The Prosecution gave a description in their submissions

1 today as an individual who is far from patriotic, a coward,
and
2 probably guilty of high treason. Now, let us look into the
facts
3 of the case and what the evidence really shows about Mr Kanu.
4 Santigie Borbor Kanu was a corporal who enlisted in the
12:04:37 5 army on 3 December 1990 without being trained to command
troops,
6 just how to use a rifle. The Prosecution assertion that Kanu
was
7 a professional soldier may be true but that does not alter
this
8 fact: Being a professional soldier and being well trained are
9 two different concepts. Sometimes moral justice and criminal
10 justice do not always coincide. Today, we believe is the
12:05:06 11 to address mainly the former part of justice, which works in
moment
both
12 ways, and envisions also the position of the accused in the
13 overall context.

14 When the war started, Santigie Kanu was 32 years old
12:05:27 15 indeed. By then he had dedicated his loyalty and I would say
16 that proven beyond reasonable doubt by the Defence with the
17 discharge book, he has dedicated his loyalty to the Sierra
18 Leonean Army and his country for almost seven years.

19 In those seven years he defended his country and his
people

12:05:47 20 against the armed operations of the RUF, starting in March
1991,
21 which was also accepted, the latter situation, by Your
Honours.
22 Santigie Kanu did not receive substantial military training,
let
23 alone was he trained to command troops. Kanu nor the other
24 junior ranks who were, in those days, part of the army were
12:06:15 25 seriously subjected by the Government of Sierra Leone to
26 educational military programs and manuals. Nor were they
27 educated in military ethics. None of this all.
28 To the contrary, the governmental practice of recruiting
29 children into the military of Sierra Leone goes as far back as

1985,
reign

1 the reign of the late President Siaka Stevens, 1978 until
2 and this situation, this practice continued even during the
3 of President Kabbah from 1996 onwards. See also our Defence
4 brief where we quote the sources.

12:07:02
Leone

5 The indictment stresses that the Republic of Sierra
6 acceded to the Geneva Conventions in the 90s statehood and
7 sovereignty that goes with it until both rights but also legal
8 obligations for states. If states are to meet the obligations
9 imposed upon them by the Geneva Conventions and international
10 humanitarian law, then it follows that they cannot meet those
11 obligations in good faith if their armed forces have not been
12 made acquainted with those laws.

12:07:27
Your

13
14
15
16
17
18
19
20
21

13 The four Geneva Conventions entail a common article of
14 mandatory nature to this end, namely, Articles 47, 48, 127 and
15 144 of the respective four conventions. These provisions,
16 Honours, being a black letter law in the Sierra Leoneans'
17 history. Only when IMATT arrived in 1999 substantial military
18 training in military ethics came in place. See also the study
19 David Keene which has been referred to by the Defence military
20 expert.

12:08:16

21 The absence of a coherent strategy on part of the

1991
12:08:36

22 government to implement a system of military ethics - I am not
23 speaking about rules but ethics - within the SLA throughout
24 to 1997 reinforced the existing frustration within the junior
25 ranks, and the judgment Your Honours rendered lends support to
26 the acceptance of this circumstance in paragraph 555.
27 Like most other ranks, Your Honours, Santigie Kanu felt
28 betrayed by his government and neglected for the contribution
he
29 made to his country in risking his life. Even today his
pension

1 of a few thousand leones per month has not been paid for the
last 2 two years.

3 Santigie Kanu had no criminal mind or intentions. He
had 4 no criminal records. He had nothing against his people. He

12:09:16 5 ideals that were shattered when it also turned out that the
AFRC 6 was a dead end. There was nothing else for Santigie Kanu but
to 7 flee, flee to the jungle, flee out of fear for what was going
to 8 happen, flee with his family and friends. Shocked by the
9 elements of the war in which he tragically lost his first wife
12:09:38 10 during ECOMOG bombardment in 1997 he joined the defected SLAs
in 11 the jungle. Why?

12 Santigie Kanu did so merely out of survival rather than
for 13 political ideals or goals. Survival in that he was protected
by 14 his colleagues against aggression of all the fighting
factions.

12:10:01 15 Your Honours have held in the judgment, at paragraph 179, that
in 16 the days that followed after February 1998 the troops moved
17 without any obvious strategy, aim, except survival.

to
in
12:10:26 just
his
12:10:46 more

18 In return for survival, Santigie Kanu conformed himself
19 take care of women and children who were part of the movement
20 the jungle. Was running away an option like the Prosecution
21 suggested? He did run away. He did run away from Freetown.
22 Was there an option to run away in the jungle? Your
23 Honours, there was no option in the jungle to run away. That
24 would be his death. There was only an option to survive with
25 people, with his group.
26 While performing this role, Your Honours, Santigie Kanu
27 indeed protected some of the civilians during this complex
28 The account witness C1 gave of Mr Kanu, the witness who was
29 to him during the war period in the jungle, provides us with

1 insight as to his real character and role during the war, an
2 aspect which was not shed light upon during the trial phase.
The
3 attachment attached to our sentencing brief speaks for itself.
4 Santigie Kanu looked after pregnant women. He was
always
12:11:26 5 there for the weak and defenceless people. He was always
there
6 for the poor people. Kanu's human face was certainly present,
7 Your Honours, in those difficult days. Also here, the account
8 witness C1 gave, speaks for itself. Even whilst they were
coming
9 in town he would protect children and make sure they would be
12:12:19 10 fed. At one point Kanu came back from the bush to rescue one
11 child; that was Gloria.
12 Your Honours, Santigie Kanu's real character is also
13 revealed when witness C1 tells us about the desire of Mr Kanu,
14 his sincere desire, not an artificial one as suggested by the
12:12:19 15 Prosecution, in bringing peace to his country in 1999 with the
16 Lome peace process.
17 Yes, once they were in the bush, Kanu told such to come
18 out, to lay down their arms and make peace with the
government.
19 "I was present," C1 tells us, "when Kanu said to such that
whilst
12:12:36 20 Gullit and others were arrested in Kailahun to lay down the
arms

21 and to bring peace to the country."
22 Your Honours, these are sentiments which led Santigie
Kanu 23 into, throughout and after the war. Santigie Kanu regrets,
24 sincerely regrets what happened during the war with his
people,
12:12:57 25 with his own people. The suffering to everyone, including his
26 own family, was immense. His dreams and that of many did not
27 come through. Like many people he really sought for peaceful
28 lives, not as a fighter against his country, but as an
accepted
29 member of the military.

1 The question today of moral justice is: Is such a
person 2 to be sentenced to imprisonment until his death? Your Honours
3 have held Santigie Kanu responsible for several counts and he
4 prays that Your Honours will transpose the complex context of
12:13:38 5 those days into a sentencing judgment.

6 Let me in the second place, Your Honours, go into his
7 position within the alleged chain and proven chain of command.
8 What was exactly his position, according to the judgment, in
9 those days?

12:13:56 10 It is significant that Santigie Kanu did not have a
11 ministerial position during the AFRC government period. Your
12 Honours have held this clearly in paragraph 510 of the
judgment 13 that no evidence is provided for any indication of his
seniority 14 within the government.

12:14:20 15 Now, why is this relevant? The Prosecution says this is
16 irrelevant because this is prior to the crimes for which he is
17 committed. It is relevant, Your Honours, because in paragraph
18 149 of the Prosecution sentencing brief is the alleged
position 19 of Kanu is considered to be an aggravating factor. The
12:14:43 20 Prosecution says it is an aggravating factor that Kanu held a
21 senior governmental position prior to the commission of the

22 crimes for which he is convicted.

23 It is therefore a matter of logic that the Defence can
24 counter-balance this argument by reference to Your Honours'

own

12:15:07 25 judgment. Also today, in the oral submissions of my learned
26 friend Mr Agha, he relies on the alleged influence the three
27 accused had prior to the commission of the crimes. So it's
28 perfectly justified to take that prior position into account
29 because it will reflect the real accountability for the events

SCSL - TRIAL CHAMBER II

1 which happened afterwards.

2 Is it justified to ask ourselves: What did Mr Kanu do
as
3 part of the AFRC? Your Honours have considered in the
judgment

4 that it was not established whether Mr Kanu made any real
12:15:54 5 practical contributions to the policies or running of the AFRC
6 government. That is in paragraph 1995 of Your Honours'
judgment.

7 This is also to say, Your Honours, that paragraph 150 of
8 the Prosecution brief, where it purports as an aggravating
factor

9 that Mr Kanu had an exalted position and had a role model
12:16:21 10 [indiscernible] to rank file has really no foundation, nor in
the
11 judgment, nor in the evidence which was led at trial. To the
12 contrary, witness 045, Prosecution witness mentioned in Your
13 Honours' judgment in paragraph 437, clearly testified that

Kanu
14 was not one of the top commanders superior to the others
12:16:46 15 mentioned there.

16 Also here, Your Honours have ruled that the evidence did
17 not show any high-ranking governmental position on the part of
18 Mr Kanu. Secondly, speaking about his real position.

Santigie
19 Kanu was not trained or meant to be a military leader. Did he
12:17:13 20 operate as such? Was he a prominent operational commander of

21 high level?

22 Your Honours have held that he was a Chief of Staff,
23 commander in charge of civilians and commander in charge of
24 military training. As such, Your Honours also have held that

12:17:30 25 this mere observation does not, of itself, permit conclusions
to

26 be drawn as to his ability to control his subordinates in the
27 judgment, although it related only to the Bombali District

there.

28 Now, what is the implication of all of this for the
29 sentencing today? The ICTY in the Krstic case held that

direct

1 participation of high level superior formed an aggravating
factor
2 in the sentencing of General Krstic, by the way, that was a
full
3 general, and not a fake general like we are dealing with in
the
4 AFRC case.

12:18:13 5 Certainly, this situation does not by itself apply to
the
6 case of Mr Kanu. Rather, compared to the other AFRC
individuals
7 who have not been tried before the Special Court, such as
Johnny
8 Paul Koroma, Adama Cut Hand, Savage and Junior Lion, Santigie
9 Kanu's position was far from that of a high calibre and we
12:18:37 10 believe that this factor should be of relevance today.

11 Apart from that, and as indicated in our brief, a
superior
12 position per se cannot doctrinally be seen as an aggravating
13 factor since the element, by itself, already forms part of the
14 liability mode of superior responsibility and its
determination

12:19:01 15 thereof. A criterion for superior responsibility as such can
16 therefore not function separately at the same time as an
17 aggravating factor during a sentencing hearing or
determination.

18 Hence, the OTP has asserted in its brief several factors

19 mentioned in paragraphs 145, 147, 148 and 150 and, for these
same
12:19:33 20 reasons, those factors are moot because the factors the
21 Prosecution mentions there already constitute an element of
the
22 crimes, such as the element of pre-determination. The
23 Prosecution today alleges that this element forms an
aggravating
24 factor but this is clearly part already of one of the crimes
12:20:02 25 which have been proven.

26 We submit that it is not an aggravating factor that Mr
Kanu
27 held, in view of the Prosecution, in its brief, a senior
28 governmental position and that he was a coup plotter, an
29 honourable or a member of the Supreme Council. Two reasons
why

1 we think this cannot be an aggravating factor.

form

2 First, those positions which are, by the way, can't --
3 revealed by Your Honours' own observations in the judgment,

and

4 already part of establishing superior responsibility as such

12:20:42

5 the evidence underlying it.

or

6 Secondly, staging a coup, taking over political control

7 power or even rebellion, it's not an international crime which

8 was clearly set out in the Appeals Chamber's decision in the

9 Kallon case as rightly quoted by Your Honours in the judgment.

12:21:07

10 At the same time, the argument of the Prosecution today

11 that the three accused are probably guilty of high treason,

12 according to their own laws, is moot for the same reasons.

are

13 Your Honours, for all these reasons, which we believe

14 ignored by the Prosecution, we submit that this position of

12:21:34

15 Mr Santigie Kanu should be taken into account when determining

16 the justifiable and legitimate sentence.

17 I now turn, Your Honours, to a third issue of my oral

18 submissions, the context of the conflict.

a

19 Of course, undeniable the fact that we are dealing with

law

12:22:00

20 guerrilla war is an accepted factor in international criminal

is 21 in terms of mitigation. It's a matter of gradation and there
in 22 clearly a distinction between superior responsibility imposed
force 23 the context of a professional army and that of an irregular
on 24 where no full effect, command or control exists. The emphasis
12:22:24 25 "full." I come to this nuance later.
26 A sentence, Your Honours, cannot be imposed for
the 27 international crimes abstracted from the specific context of
28 underlying conflict. Your Honours actually have said so in
the 29 paragraph 254 of the judgment: "The Trial Chamber finds that

1 crimes were closely related to this conflict."

2 The ICTY Appeals Chamber in the Tadic case already
3 recognised and adopted the need for sentences to reflect the
4 relative significance of the role of the accused in the

broader

12:23:03 5 conflict of the conflict in the former Yugoslavia. The same,
the

6 Delalic Appeals Chamber expressingly accepting as a mitigating
7 circumstance "the harsh environment of the armed conflict as a
8 whole."

9 Your Honours, are we dealing here with an ordinary armed
12:23:27 10 conflict? Certainly not. It was a guerrilla war in which
11 irregular forces operated and survival was the overall aim.

Is

12 this significant for sentencing? Indeed, it is. The conflict
in

13 Sierra Leone amounted to a chaotic conflict involving several
14 separate factions operating in different geographical areas.

12:23:56 15 Does any criminal liability borne by the accused, is
16 pre-dispositioned upon sociological and environmental
17 circumstances? Otherwise we would not have a form of moral
18 justice. Consistently, it is to be transposed onto
sentencing.

19 Now, what does the judgment learn us about these
factors?

12:24:23 20 The judgment includes several ingredients which could lead to
the
21 acceptance of this mitigating factor. The command structure
22 failed when the troops lost control of State House and the
23 climate became increasingly chaotic once the troops lost State
24 House.

12:24:42 25 In 1999, as to the Freetown Western Area, Your Honours
have
26 clearly, in paragraph 620, held that the Prosecution had
failed
27 to establish beyond a reasonable doubt that a disciplinary
system
28 was in place, et cetera.

29 Therefore, the Prosecution contention, in paragraph 135
of

1 its brief, that citation, Kanu is clearly one in which his
2 ongoing failure as a superior led to the crimes; his ongoing
3 failure, emphasis on "ongoing," is in our view not supported
by
4 these observations and most importantly Your Honours, the
12:25:24 5 judgment clearly accepts, in paragraph 555, that the
6 dysfunctional state of the Sierra Leonean Army at the time of
the
7 coup had a detrimental impact on the future military
organisation
8 of the AFRC faction.

9 Fourth, indeed, there was only jungle justice. One was
not
12:25:48 10 trained in military law. No formal procedures were in place
for
11 military discipline. It was a fairly arbitrary system. There
12 was a lack of trained officers to fill the senior positions,
all
13 of which has been accepted by Your Honours in the paragraphs
539
14 and 597 of the judgment.

12:26:10 15 Lack of military training and experience is, for sure, a
16 mitigating factor, such as accepted in the Oric case but also
in
17 the ICTR case of Serushago you will find this in our brief in
18 paragraph 125. I will not repeat all the reasonings there of
the
19 Chambers.

12:26:34 20 Your Honours, it is the combination of all these
21 circumstances that contextualises the conflict within which
the
22 accused were put. A conflict, by the way, which was spread
over
23 13 districts and Freetown. It is significant that the limited
de
24 jure role within the overall conflict in Sierra Leone, that
12:27:21 25 Santigie Kanu was attributed, related to two of those
districts.
26 It's hard to deny that the chameleonic and irregular nature of
27 the AFRC movement did not affect the accused's ability to
28 realistically control the forces.
29 Now, again here, what should be the exact impact of this

1 context on the sentencing? The ICTY, in the Oric case,
already
2 quoted before, came to a considerable mitigation of the
penalty
3 thought. This mitigation was administered by the fact that
the
4 accused in that case was held responsible as a superior
operating
12:27:41 5 in a chaotic situation where law and order had collapsed.
6 Now, the Prosecution says, and the Prosecution has a
point
7 in saying so, that the Oric case was different when it
concerns
8 the facts. But I point here that there is evidence before
your
9 Court, also led by the Prosecution's expert, that the
operations
12:28:09 10 in those days were predominantly defensive operations and not
11 purely war of aggression. The Prosecution says we cannot rely
on
12 Oric because here we are dealing with aggressive forces. Now,
13 that is not totally true, Your Honours, considering the
evidence.
14 And then I think it's fair, as a matter of guidance, to
12:28:33 15 look into the Oric case, in particular paragraph 770, where
the
16 ICTY took into account the absence of a fully effective
command
17 structure. Few weapons; inexperienced soldiers, which scorned

18 the authority of the commanders. It was a matter of life and
19 death in that situation of Oric, et cetera, all ingredients
which
12:29:01 20 can be applied here.

21 The Oric reasoning is, for another reason, instructive.
In
22 paragraph 724 of that decision the ICTY clearly held that the
23 superior responsibility does not relate to the responsibility
for
24 the crimes committed by the subordinates per se, but merely
for
12:29:27 25 the failure to prevent or punish.

26 Insofar, therefore, as the liability of Mr Kanu is based
on
27 Article 6.3, his responsibility should be limited to the
failure
28 to prevent or punish and does not extend to the actual crimes
29 committed by his subordinates at that time. And there, the

1 context of the conflict should come into play.

2 Now, the Defence is not saying the Prosecution just held
it
3 against us, that the Article 6.3 liability is of lesser
severity,

4 but we are saying it's of a different nature and that nature
12:30:14 5 denotes the context of the underlying conflict. Therefore, we
6 hold that the reasoning applied by the ICTY in the Oric case
also

7 applies to the situation of Mr Kanu. At the least it was
8 accepted in the judgment of Your Honours that the system of
9 military discipline and planning of orders did collapse in the
12:30:41 10 Western Area at a certain point within the indicted period.

11 It is not fair, we believe, to keep one individual
12 responsible for what happened in what virtually became a
lawless

13 society. Defence therefore concludes that these
circumstances,
14 ie the context of the conflict, should lead to a considerable
12:31:05 15 mitigation of the penalty thought.

16 Now, your Honours, I will turn to a fourth element of my
17 submissions; that is the question of the de facto life
sentence.

18 One of my learned friends, Mr Staker, he addressed this
19 issue this morning shortly, but the Prosecution did not go
into

12:31:26 20 our detailed argument about the life expectancy in Sierra
Leone
21 in relation to the de facto life sentence.
22 Your Honours, I put the question before your Court: Is
it
23 in light of this position of Mr Kanu in those days, and the
24 context, is it just the fight to put him virtually for the
rest
12:31:53 25 of his life in prison? I believe it's a rhetorical question.
26 Apart from this it is tenable that the sentence sought by the
27 Prosecution contravenes the nature and purpose of the
sentencing
28 policy as envisaged by the drafters of the Statute for the
29 Special Court.

1 The Prosecution, in its brief, advocates for prison
2 sentences virtually tantamount to life sentences. This in
spite
3 of the fact that we believe the Rules of Procedure and
Evidence
4 do not allow for that imposition. The Prosecution indeed
12:32:28 5 acknowledges in the same brief that the Rules as such do not
6 count for life imprisonment. But it is clear that imposing an
7 amount of years which will virtually lead to life imprisonment
8 would in the mind, the rationale of this principle underlying
the
9 Rules of Procedure and Evidence.

12:32:50 10 Now, our brief details that such life imprisonment
cannot
11 be imposed, nor any sentence which would virtually amount to a
12 life sentence. The life expectancy of Sierra Leoneans is only
41
13 years. And, as we speak, Your Honours, Mr Santigie Kanu is of
14 the age of 42. Of course, for the age is the average,
12:33:11 15 considering the UNDP report and documents we have attached to
our
16 brief, and given the fact that Mr Kanu has already passed for
the
17 age, there is of course a chance that he will live for quite
some
18 years.

19 However, it is our submission that any sentence which
will

12:33:29 20 last beyond his 60th year would virtually be a form of life
21 imprisonment, bearing in mind this low life expectancy within
22 Sierra Leone.
23 Now, Your Honours, what is the legal standing of this
24 argument? Judge Schomburg of the ICTR and ICTY Appeals
Chamber,
12:33:50 25 in an article which was published recently in the
[indiscernible]
26 in honour of the African jurist, the late Judge Laity Kama, on
27 page 106, indicated the following:
28 "The latter goal would be impossible to fulfil if a
person
29 was kept in prison until his or her death. Furthermore,
as

1 to the dignity of a human person, the prospect of a
2 lifelong imprisonment may undermine the core of the
3 convicted person's personality."

4 Now, is there another legal basis to say that the
12:34:31 5 Prosecution request contravenes principles of international
law?

6 Yes, there is. Scholarly arguments exist in support of the
7 argument that keeping a person in prison for the remainder of
his
8 life contravenes the International Covenant for Civil and
9 Political Rights -- the ICCPR -- to which Sierra Leone has
12:34:55 10 acceded.

11 We submit, Your Honours, that by imposing a factual life
12 sentence, as suggested by the Prosecution, it is our
13 interpretation that the imposition of a 50 years long
14 imprisonment to Mr Kanu would violate the rights under the
ICCPR.

12:35:17 15 The second optional protocol to this international
16 convention adopted by the UN in 1989 deals with the abolition
of
17 the death penalty. This protocol should be read in
conjunction
18 with Articles 10.1 and 10.3 of the ICCPR. The latter
provision
19 clearly states that the penitentiary system shall comprise
12:35:42 20 treatment of prisoners, the essential aim of which shall be
their

21 reformation and social rehabilitation.

22 According to scholarly views, the latter goal would be
23 impossible to fulfil if a person is to be kept in prison until
24 his or her death. Furthermore, the dignity of a human person
12:36:03 25 within the meaning of Article 10.1 of this international
lifelong 26 convention, would be undermined with the prospect of a
27 imprisonment and may undermine his core personality.

28 This interpretation, as laid down by Judge Schomburg, is
29 supported by three prominent sources.

1 First, the German Federal Constitutional Court, in its
2 ruling of 21 June 1977, in a landmark case in Germany, held
that
3 life imprisonment can only be tolerated under the condition
that
4 the convicted person stands a chance of being liberated in the
12:36:47 5 course of time, stating that the State must legally regulate
the
6 conditions and procedure under which the enforcement of life
7 sentences may be suspended.

8 In the second place, in the ICTY trial judgment in
9 Prosecutor v Stakic, a ruling of 31 July 2003, that ruling
12:37:11 10 contravenes the notion of a lifelong sentence by saying that
in
11 modern criminal trials this approach to general deterrence is
12 more accurately described as deterring aiming at reintegration
of
13 potential perpetrators into the global society.

14 And, in the third place, in 1999 - sorry, in 1991,
several
12:37:40 15 prominent members of the International Law Commission, among
16 which Germany have expressed serious reservations on the
17 imposition of life imprisonment which they said also
constitutes
18 a form of cruel, inhumane and degrading punishment.

19 This is also to be found in the book of Professor
Schabas,

12:38:01 20 The Abolition of the Death Penalty in International Law, Third
21 Edition, page 244 and 254, where all those members of the
22 International Law Commission and their respective resolutions
are
23 being mentioned.

24 So, Your Honours, if the Prosecution is saying that
12:38:20 25 domestic sentencing practice in Sierra Leone should be of
26 relevance here, insofar that Sierra Leonean law relies on life
27 sentences and even death penalty, this would be -- this
28 acceptance would be a clear violation of the International
29 Covenant on Civil and Political Rights, and especially the
second

violate

1 optional protocol. This simply, this notion would simply
2 international law and, for this reason, also for this reason I
3 would say, Your Honours could not rely on these submissions by
4 the Prosecution.

12:38:59
the

5 I was personally struck, Your Honours, by page 22250 of
6 Prosecution's submission in the case of State v Vandi Johnson,
7 it's a domestic case for fraud. The Prosecution included this
8 example, this case example, as an argument to say: Well, we

have

9 death penalty in Sierra Leone so Your Honours should see that

12:39:25
view

10 what we are asking is still reasonable, 40 and 50 years in

by

11 of the death penalty here in Sierra Leone. But I was struck

within

12 the fact that this death sentence by hanging was imposed

it

13 15 minutes after the submissions by the Defence. You can find

the

14 on page 22250 that the honourable judge in that case, after

12:39:52
all

15 mitigation plea of the Defence, came to a penalty by death by
16 hanging in 15 minutes, and I would not exactly say that, with

rely

17 due respect for the local system, that Your Honours should

sentence

18 on these precedents in order to say that a de facto life

19 for these defendants is appropriate.

12:40:19 20 Now, Your Honours, to go back to this foundation of our
21 submissions, it's clear that this submission also finds merit
in
22 two other internationally accepted legal provisions and its
23 interpretation, an interpretation saying that having the
24 defendant incarcerated until virtually his death, amounts to a
12:40:41 25 form of inhuman and degrading treatment or suffering as
26 envisioned by Article 7 of the International Covenant on
27 Political Civil Rights and Article 3 of the European
Convention
28 on Human Rights. In fact, if the intention is that the
convicted
29 person should die in prison, and this is clearly the result of

would
only
12:41:22
not
book
referring

1 the Prosecution submissions, this pursuing in permanent and
2 irrevocable deprivation of his liberty, irrespective of his
3 personality and rehabilitation, such a sentencing situation
4 result in a serious violation of those articles and it's not
5 my view but you will find in the literature support for that,
6 only in the submissions by Judge Schomburg but also in the
7 of Jones and Powles, International Criminal Practice,
8 to other sources.

the
12:41:39
to
has
specifically
national
12:42:24
destruction

9 And this foundation also leads to the conclusion that
10 Prosecution request should be denied. Insofar as they intend
11 rely on the national sentencing practice of Sierra Leone it
12 also observed this right to do so. The Prosecution
13 opted for a prosecution on the basis of international crimes
14 solely, although the Statute provides for prosecution on
15 crimes as well. Article 5, abuse of girls and wanton
16 of property. Now, the Prosecution did not opt to pursue
17 domestically criminality before your Court and therefore
18 international law should be abided by and not the domestic

19 sentencing practice of Sierra Leone.

12:42:24 20 Now, Your Honour, have arguments been submitted by the
21 Prosecution to counterveil the interpretation of this human
22 rights law. There are none. There are none submitted and
they
23 are certainly not to be found in the traditional sentencing
24 goals. We believe that the aforementioned fundamental human
12:42:38 25 rights I just enumerated should be upheld even when one
dealing
26 with international crimes. These human rights reflecting
27 fundamental values of humanity also for the accused persons
28 supersede deterrence and retribution arguments also in regard
to
29 international crimes and, speaking of deterrence, I already

different
general

1 referred Your Honours to Prosecution v Stakic where a
2 view was held with respect to general deterrence. Yet the
3 Prosecution submissions are for sure based on its view of
4 deterrence.

12:43:14
Santigie

5 But is it fair, Your Honours, to use the case of
6 Kanu for this purpose? Although the ICTY Appeals Chamber has
7 accepted this factor as one of its sentencing elements, it has
8 held that this factor must not be accorded undue prominence in
9 the overall assessment of the culpability on the sentencing.

12:43:36
deterrence

10 One can also ask whether the factor of special
11 is applicable here against Mr Kanu, this factor then serving
12 deterrence option that the convicted person be prevented from
13 recommitting those crimes. The ICTY in Kunarac case
14 this notion in both its specific and general dimension,
15 stating

12:43:59
its

15 that the Trial Chamber considered it appropriate to express
16 view that special deterrence, as a general sentencing factor,
17 is
18 generally of little significance before this jurisdiction. We
19 have to ask ourselves: Will it deter others by simply putting

key 19 Santigie Kanu in prison for the remainder of his life? The
12:44:24 20 word in our view is just not deterrence or retribution but
21 education and rehabilitation.
look 22 Now, speaking about rehabilitation, is it justified to
is 23 into Santigie Kanu's future? Of course it's justified. That
24 what the sentencing hearing is about. We believe so. We
12:44:43 25 strongly believe that the importance of rehabilitation also in
26 international criminal proceedings is an accepted one and,
gives 27 rightly so, although ignored by the Prosecution. The ICTY
end. 28 weight to this factor. There are various precedents to this
29 The ICTY Appeals Chamber in the Delalic case held that

1 rehabilitation is a relevant factor albeit, and that is true,
it
2 should not be given undue weight. But it is, however, clear
Your
3 Honours, that this factor is relevant also to Mr Kanu's
4 situation. If one accepts that no life sentence is to be
imposed
12:45:22 5 de jure or de facto, Mr Kanu will return to this society at
some
6 point and rehabilitation should just necessarily be one of the
7 factors as a matter of principle. That is what, Your Honours,
we
8 believe strongly should owe to the defendants. Otherwise,
9 Article 10, section 3 of the International Covenant of Civil
and
12:45:46 10 Political Rights would have no meaning, saying that the
11 penitentiary system shall comprise treatment of prisoners, the
12 essential aim of which shall be reformation and social
13 rehabilitation.
14 Is there a realistic rehabilitation possibility for
12:46:00 15 Santigie Kanu is the next question? Yes. We believe so. He
16 wishes to set up a new future with his wife in Sierra Leone
after
17 his release. It is also his desire to follow educational
18 programs during his detention in order to prepare a new life.
19 The prospect of the enforcement of any sentence abroad could
be

12:46:23 20 seen as a separate mitigating factor in that the punishment
will
21 be much harsher, given that his partner and his daughter of
22 Mr Kanu will most probably be located in a different country
for
23 the duration of his sentence.

24 Now, Your Honours, I arrive at the next issue in my
12:46:44 25 submissions that the question whether the criminal law
defences
26 can affect the sentencing as such. It is clear from the
Statute
27 that they can. Article 6.4 provides for the possibility that
28 superior orders may be considered in mitigation of punishment.
29 We have indeed raised formerly during the trial another

1 defence, that of mistake of law which was not accepted, yet
the
2 rationale of Article 6.4 of the Statute does apply to other
3 defences. Mistake of law can and should just return in
today's
4 discussion. The defence of mistake of law regarding the crime
of
12:47:28 5 child soldiers was rejected by the Chamber but the evidence
6 clearly showed that it was a common policy within the Sierra
7 Leonean Army to recruit and enlist child soldiers and made
Kanu
8 undeniably believe that this was not wrong in those days, in
that
9 context. In good faith he could rely on the policy of his own
12:47:54 10 government.

11 Both Prosecution and Defence expert in this regard, TF1-
296
12 and Mr Gbla testified to this extent at the least in their
13 reports. The Brookfields Hotel incident described by
Prosecution
14 expert 296 was clearly an example. The government was paying
12:48:19 15 children to enlist for the army. Dr Gbla notably relied on
16 primary sources; interviews with senior officials in the
present
17 government. See paragraph 134 of our brief.

18 Additionally, Your Honours, the impact of such defences
on
19 sentencing is accepted before. Indeed, the Erdemovic case is

12:48:45 20 quite different from the facts in our case but the principle
of
Chamber, 21 Erdemovic can be applied here in that a different Trial
Chamber, 22 after the first judgment being reversed by the Appeals
23 did take that defence into account as a mitigating factor.
24 Certainly, by way of analogy, this reasoning may apply to the
12:49:08 25 defence of mistake of law. In the event it is made probable
or
facts 26 on the balance of probabilities today, that the underlying
27 may have deteriorated the required level of mens rea. The
28 Defence holds that this is indeed the case with Santigie Kanu
29 and, similarly, superior orders may be taken into account as a

1 similar mitigating factor since, for instance, footnote 107 of
2 our -- the sentencing brief -- refers to various sources from
3 Your Honours' judgment showing that Mr Kanu took orders from
4 others.

12:49:47 5
to

6 And also in Kambanda case of the ICTR, which is referred
7 in paragraphs 119 to 120 of our brief, it was accepted that
8 superior orders may be taken into account as a mitigating
9 factor
10 in those cases.

that

11 Your Honours, there is more. Decisive arguments exist

12:50:10 12

13 strengthen the Defence request and we believe we have, on the
14 balance of probabilities, presented 13 serious mitigating
15 factors.

on

16 First, absence of a prominent position in the government
17 part of Mr Kanu. Second, his poor family background. His
18 positive role during the 1999 peace process. Here, I make a
19 full
20 stop. I am coming now to the Prosecution request to rely on
21 portions of the TFC report.

12:50:27 22
full

the

23 Now, I strongly object to this. Why? Your Honours can
24 recall that during the examination, the cross-examination of

12:50:48 20
TFC

General Prins, the Prosecution strongly objected in that the
21 report was a source to be accepted for your Court. The
22 Prosecution has repeatedly held that the TFC report only
23 reflected opinions, opinion evidence, and Your Honours were, I
24 believe, in agreement on this issue with the Prosecution.

12:51:12 25
deputy

Now, it's not fair that the Prosecution without, by the
26 way, referring to that report in its table of authorities,
27 presents this report today without giving the Defence any
28 opportunity to cross-examine, for instance, this minister,
29 minister of labour, Mr Leather Boot on the contents of his

1 statement. By the way, the name Leather Boot makes some
2 recollections to the statements which were made about this
3 person.

4 The Prosecution has held that the TFC report only
reflected

12:51:47 5 opinion evidence and should therefore not rely on the same
6 materials today which, by the way, is also to be noticed that
the
7 report is not correct by connecting Mr Kanu in that report to
the
8 West Side Boys which was never a proven fact before this
9 Tribunal.

12:52:07 10 It means that we ask the Court, in addition to the
request
11 to not admit the other exhibits which we mentioned in our
brief,
12 not to rely on the TRC report as such.

13 The thing is that the Defence, Defence has to make the
14 proportion, the proposition, that Mr Kanu was involved in the
15 peace process only plausible beyond the balance of
12:52:33 15 probabilities;
16 on the balance of probabilities.

17 We have done so. We have, we believe, cited the sources
18 which indicate that Mr Kanu was involved. The Prosecution is
now
19 saying on the basis of the TRC report he did not play a
positive

12:52:55 20 role after the war; it was purely a matter of self-interest
but

21 what is the proof of this fact? The TRC report? That cannot
be

22 the case as just referred to and indicated.

23 The Defence has relied on several motions in his brief

24 which were not disputed as such by the Prosecution in 2004 for

12:53:17 25 the fact that Mr Kanu was involved in the CCP process.

26 I return to my list of mitigating circumstances. I

27 mentioned a third, his positive role during the peace process,

28 which is established on the balance of probabilities. The

29 Prosecution has not beyond all reasonable doubt proven that

1 Mr Kanu did not play a positive role after the war.

2 Fourth, the impact of mistake of law and superior
orders.

3 Five, collapse of command and control. Six, education, lack
in

4 military ethics and absence of training as an officer.
Seventh,

12:53:55 5 his role in protecting women and children; witness C1. It was
6 not unsubstantiated as the Prosecution this morning held.

7 Eighth, his good behaviour and record in the army. Also
8 there there is a foundation. His discharge book, which was
9 accepted into the evidence, and not disputed by the
Prosecution.

12:54:15 10 Ninth, no previous convictions. Tenth, the breach of the
Conakry

11 accord by ECOMOG, which instigated the upsurge of the
conflict.

12 Eleventh, the amnesty provided by the Lome Peace Accord.
13 Twelfth, evidence relating to his character; also C1 and his
14 discharge book. Thirteenth, the lengthy proceedings and
ninth,

12:54:37 15 cooperation, question mark.

16 The Prosecution says there was no cooperation on the
part

17 of the accused. Well, was it ever asked to him, was Mr Kanu
ever

18 asked to cooperate with the Prosecution? I believe it was

19 strongly denied by the Prosecution during the trial.

12:54:54 20 Then, the last point, the greatest responsibility. Can
21 that be an aggravating factor in this case? Your Honours, we
22 believe it cannot be accepted as an aggravating factor in this
23 case because Your Honours have held, in paragraph 659 of its
24 ruling, that the criterion of the greatest responsibility may
12:55:17 25 relate to individuals in a range of 50 years and older, and
may
26 encompass military or political leaders, including individuals
27 going back to 50 years so, as such, the greatest
responsibility
28 factor cannot be on the basis of the judgment accepted as an
29 aggravating factor in this case. Now, Your Honours, all of
these

1 14 factors, each of them and in combination with each other,
2 should lead to substantial mitigation of the penalty. We have
3 already referred to a [indiscernible] burden of proof which,
for
4 us, is that on the balance of probability.

12:55:55 5 Your Honours, lastly, I return to the former point of
the
6 non-admissibility of the Prosecution exhibits. I think our
brief
7 is quite clear on our stance in this matter. Additionally,
not
8 to fall into repetition, I refer to Article 17.4(c) and
17.4(e)
9 of the Statute. The right for the accused person to have
12:56:27 10 adequate time and facilities to prepare its case including, as
I
11 add to it, sentencing. The same rights are embedded in
Article
12 14 of the ICCPR and 6 of the European Convention.

13 Now, the Prosecution requests that additional evidence
14 should be allowed at this stage are clearly in contravention
with
12:57:27 15 these rights, and they are also in contravention with its own
16 authorities in this case. The list of authorities of the
17 Prosecution under sub-2 and 3 is moot in that it relies on
Tadic.

18 In the Tadic case a sentencing hearing was held at which
19 both Defence and Prosecution were able to call a number of

12:57:27 20 witnesses including experts which hearing, Your Honours,
lasted
21 five days. A pre-sentence hearing lasting five days during
which
22 the Defence and Prosecution could cross-examine each other's
23 witnesses and experts. Now, this is in clear contrast to our
24 case and the Prosecution this morning I think overlooked two
12:57:35 25 things:
26 First, my learned friend, the Deputy Prosecutor, this
27 morning said: Well, you know, the Defence submitted also a
28 statement C1 in order to show good character. That is true,
but
29 that is of a different nature because that is the purpose of
the

character
victims'

1 sentencing hearing, to submit arguments about the good
2 of an accused instead of alluding to new evidence on the
3 impact on the basis of new statements -- of new witness
4 statements. That is totally different.

12:58:09

5 In many local systems, like the UK, there is a separate
6 sentencing phase indeed, and there was one indeed before at
the
7 beginning of the ICTY but the emphasis was on the Defence to
make
8 the arguments. See also the State v Vandi Johnson case the
9 Prosecution relied on here in Sierra Leone.

12:58:35

10 It is therefore not about what the Defence did file as
good
11 character evidence in order to say: Now we are justified to
file
12 new evidence from witnesses. This is clearly new evidence
which
13 also relates to new factual evidence. New factual evidence,
it's
14 not character evidence, and that is why it's prejudicial to
the

12:58:55

15 accused to allow this. It's not a matter of assisting the
Trial
16 Chamber; in my view it's a matter of: Is it prejudicial or
not
17 to allow statements of this kind in this stage?

18 Now, the victim impact statements clearly relate to

the 19 offences committed by Dusko Tadic in the Tadic reference of
12:59:17 20 Prosecution reference in its list of authorities. It enabled
the 21 ICTY, as quoted in that judgment, to "isolate the alleged harm
22 which flowed directly from the acts of Tadic". Also here, the
23 Tadic reference is clearly distinct from our case,
particularly 24 with respect to the report of Ms Ann Michels.
12:59:39 25 Now, also here, it's not a matter of that Ms Ann Michels
as 26 a person, as an expert, may be partial or impartial; it's a
fact 27 that the material she provided us with could objectively not
be 28 challenged in cross-examination. The crux is that her
research 29 was limited to Prosecution witnesses and not Defence witnesses

1 like C1. Therefore, it would be highly unfair to admit her
2 report.

section

3 The same goes for the other authorities in the list

13:00:24
on

4 3. The Prosecution argues that the victim impact evidence is
5 permitted under the ICTY, but also here the precedents relied

the

6 by the Prosecution are totally distinct from our case. The
7 Prosecution v Bralo decision, there, the Chamber took into
8 account that the Defence had agreed with the Prosecution that

13:00:45

9 victim impact statements were powerful and affecting. The
10 Defence agreed in that case and I respectfully disagree, Your
11 Honour, and that makes, I believe, a difference.

witness

12 Secondly, the Dragan Nikolic case. The Prosecution

the

13 in that case testified in viva in court, while the Prosecution
14 expert, psychologist's report, in our case was admitted into

13:01:02

15 evidence, was not admitted into the evidence under Rule 94bis.

16 In the Dragan Mikolic case that report was admitted under Rule

17 94bis.

18 PRESIDING JUDGE: Mr Knoops, I have to remind you of the
19 five minutes that you have left.

13:01:18 20

MR KNOOPS: Thank you, Your Honour.

and
21 All those elements are, therefore, absent in our case
22 therefore the table of authorities relied on by the
Prosecution
23 cannot form a foundation for the acceptance of those exhibits
24 today.
13:01:31 25 Your Honours, we conclude our oral submissions and, if
Your
26 Honours would like me to address the aspect of the cumulative
27 charges I can do so, but it's already addressed in our brief.
28 For the reasons set out in our brief, and elaborated
upon
29 in these arguments today, we respectfully submit that the

1 Prosecution submissions in its brief should be dismissed. We
2 respectfully request the Chamber to determine a sentence which
3 meets the mitigating factors we just have set out and are
founded
4 upon in our brief.

13:02:14 5 In our view, this should lead to an imprisonment equal
to
6 the time served until now or, alternatively, a limited
sentence
7 to be assessed by the Chamber and good justice including, of
8 course, the application of Rule 101(D), credit for time
served.

9 Your Honours, I realise what is good justice in such a
13:02:37 10 difficult and complex case, both for Prosecution, for Your
11 Honours and for Defence. What is good justice, both
criminally
12 and morally? I believe, Your Honours, that you should have
13 guidance and support in the eloquent words of Justice Murphy
of
14 the US Supreme Court, in his dissenting opinion in 1946 in the

13:03:04 15 Yamashita case, saying that: An uncurbed spirit of revenge
and
16 retribution masked in a formal legal procedure for purposes of
17 dealing with a fallen enemy commander can do more lasting harm
18 than all the atrocities giving rise to that spirit. The
people's
19 faith in the fairness and the objectiveness in the law can be

13:03:28 20 seriously undercut by that spirit."
21 Your Honours, it is this nuance approach which is
mindful
22 of the undeniable international human rights for the convicted
23 person that stands in clear contrast to the Prosecution
opinion
24 to "ask for sentences which could see the three accused in
prison
13:03:48 25 for the rest of their lives". That was directly said by the
26 Chief Prosecution after Your Honours' judgment, without having
27 the Prosecution knowledge on any mitigating circumstance.
28 How can a Prosecution say such a thing to the people of
29 Sierra Leone without having knowledge on any mitigating

1 circumstance? That, indeed, supports a view that the sentence
2 was already being made and -- in the minds of the Prosecution
--
3 and they were not susceptible for any mitigation which today,
I
4 hope, was put before the Court.

13:04:24 5 The integrity of international criminal proceedings
should,
6 in my strong belief, follow the line of Justice Murphy instead
of
7 that of the Prosecution in our case. This is the legal legacy
8 which we should leave behind to the people of Sierra Leone and
9 its international audience today. This is the legal legacy we
13:04:49 10 are asking for and not mere revenge and retribution, like
11 Justice Murphy warned for.

12 The integrity is affected when one would accept notions
of
13 the Prosecution such as: There was an hostile cross-
examination
14 by the Defence; the witness had to relive their experiences;
the
13:05:12 15 defendants denied guilt. If such notions would be held
against a
16 defendant, what is the worth of a criminal trial in which
17 somebody says "I'm not guilty"?

18 What is the worth of those notions if a defendant cannot
19 fight his case and plead not guilty? If we are challenging
the

13:05:34 20 situation that an hostile cross-examination may be held
against

21 the defendant, I think we are far from the integrity of the
22 proceedings, as we just have learned from Justice Murphy.

23 I thank Your Honours.

24 PRESIDING JUDGE: Thank you, Mr Knoops, and I thank the
13:05:53 25 parties for their submissions. I beg your pardon. Counsel,
26 would Mr Kanu have anything to say to the Judges?

27 MR KNOOPS: Your Honours, he would like to address Your
28 Honours.

29 PRESIDING JUDGE: Okay. Mr Kanu, please, if you would

1 stand and speak through the microphone.

2 [Accused Kanu speaks through interpreter]

3 ACCUSED KANU: Sorry, Your Honours. Good afternoon Your
4 Honours, good afternoon the Prosecutors, good afternoon the
13:06:29 5 Defence.

6 I want you to forgive me because I am a stammerer.

First

7 of all, Your Honours, I pray that as you've come with justice

in

8 Sierra Leone, then what we are asking for, when we had been
9 fighting this war it started in 1990, it was March 3, 1991.

13:06:56 10 Now three of us have been convicted and we are facing

know

11 sentence but, My Honours, you, that are sitting up there, I

Doherty,

12 that both Justice Sebutinde, Justice Lussick and Justice

13 that you yourselves have children like us. We pray that Your

14 Honour, that whatever the Prosecution has said about us, that

13:07:21 15 it's a case that everybody knows that that was not how it

16 operated.

17 Your Honours, what we are saying now in Sierra Leone is

this

18 that peace and reconciliation for all that had suffered in

eternal

19 war. Those that have died, we pray that God send them to

13:07:43 20 life and those who have been victims, who are asking for
mercy,

21 Your Honours, yes, we've prayed that Sierra Leone forges
ahead.

22 That this Special Court that has been brought that, Your
Honours,

23 this is a highly political court, My Honour, but, My Honours,
I

24 don't want you to --

13:08:09 25 THE INTERPRETER: Your Honours, would the witness be

26 allowed to -- be asked to go slow so as to keep --

27 PRESIDING JUDGE: Mr Kanu, you are speaking too quickly.

28 If you could go a little slowly and just repeat the last two

29 sentences and then continue.

1 ACCUSED KANU: Yes, My Honour. I told you that I was
2 stammering. My Honour, I just wanted to buttress what I was
3 saying, that we are soldiers and that we were sworn to protect
4 our people and not to destroy our people.

13:08:39
fighting

5 Your Honours, when we joined the war we had been
6 against the RUF. Like Charles Taylor, we did not know him
7 before. Gadaffi, we did not know him before. The people who
8 fuelled this war in this country, we did not know them before
9 today, see, justice has trapped us in this country.

but

13:09:00
you,

10 Your Honour, we pray that you, the three of you, like
11 Justice Sebutinde, I am not asking you to operate on a
12 sentiment.

sentiment.

pray

know

13:09:22

15 how to do it.

16 I am talking to the Prosecutor. In fact --

get

17 THE INTERPRETER: Your Honours, the interpreter did not
18 the last bit of what the --

just

19 PRESIDING JUDGE: Please go a little slowly. Mr Kanu,

13:09:38 20 repeat the last two sentences again, and try to go slowly.
21 ACCUSED BRIMA: As I said, Your Honours, I said like for
22 you, Justice Sebutinde, you are an African woman from Uganda
and
23 where you came, you know where -- what had been happening
there
24 and you know that it was a mistake of law. Some of us were
and
13:09:57 25 have a low rank in this army and we are under command and
26 supervision. All that we need to know was: Yes sir, yes sir.
27 But for today, Your Honours, if you can see the Court said
that
28 those who bear the greatest responsibilities, and those who
are
29 the three people who belong to the other ranks, Bazzy Kamara,

1 Brima.

2 Now, Your Honour, yes, we are the ones that are going to
3 pay the price for peace, but it should not be the three of us
4 that we pay the price for peace in Sierra Leone. There are
13:10:29 5 soldiers who had committed. All the ECOMOG, when they went
and
6 fought in Sierra Leone, and the wounded Sierra Leonean people,
7 and we are coming to ask them, the Sierra Leonean people, to
8 forgive us.

9 We ask for mercy. We did not know. See, in Sierra
Leone
13:10:49 10 everybody was angry. Civil society, everybody was angry in
11 Sierra Leone, but now we pray that this peace that we have got
be
12 sustained; that it becomes everlasting.

13 That Your Honours, you that are sitting there, judge us
14 fairly so that we are -- sorry, that you consider that we are
13:11:08 15 just youth, so if you send us to life imprisonment, Your
Honour,
16 we pray that you three would not accept that and consider that
we
17 are youths. Use your good offices as judges, national and
18 international judges, that Your Honours, whatever the
Prosecution
19 says, yes, they are building a case, they are working, and we
13:11:32 20 would not say that, see, they have been -- everything had been

21 explained to them and they came to prosecute us.

22 And like TF1-334, Your Honour, if I should tell you that
he

23 is right now campaigning with other political parties, the
real

24 party, but they brought him to come and prosecute us and those

13:12:33 25 are the people who came to prosecute us as commanders. My

26 Honour, you see, let me don't continue so as not to waste
time.

27 People in the gallery, you also know are people they --

28 whosoever has come to this Court to hear today, yes, we are
three

29 in the Sierra Leone Army. We joined the army to protect our

1 people and not to destroy our people.

2 Like, for me, I knew that I went to Liberia, I went to
3 ECOMOG, I fought. But today everybody say, they say that it's
4 three of us, Tamba Brima, Bazzy Kamara, Santigie Borbor Kanu.

We

13:12:33 5 are the ones that bear the greatest responsibility.

6 We are going to pay the price for peace and we pray that
7 three of you, Justice Sebutinde, Justice Doherty and Lussick,
8 that you use your good offices as elders, mothers and fathers.
9 Your Honours, I thank you and I thank the Court.

13:12:49 10 PRESIDING JUDGE: Thank you, Mr Kanu.

11 I thank the parties for their closing submissions,
12 sentencing submissions.

the

13 Now, as indicated earlier in our scheduling order for
14 sentencing hearing and judgment, we will retire to consider

finally

13:13:06 15 submissions that we've just heard, as well as the written
16 submissions, and we will deliver our sentencing judgment
17 on Thursday, 19 July, that is this week, at 11.30 a.m.

18 In the meantime, each of the accused is further remanded
19 until then. I will request the Court attendant to adjourn the
13:13:33 20 Court, there being no other matters for today.

p.m.,

21 [Whereupon the hearing adjourned at 1.14

of

22

to be reconvened on Thursday, the 19th day

23

July 2007, at 11.30 a.m.]

24

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28

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SCSL - TRIAL CHAMBER II