

(22923 - 22945)

**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PRINCIPAL DEFENDER
Freetown - Sierra Leone**

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

Acting Registrar: Mr. Herman Von Hebel

Date filed: 5th July 2007

THE PROSECUTOR

Against

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

Case No. SCSL-04-16-T

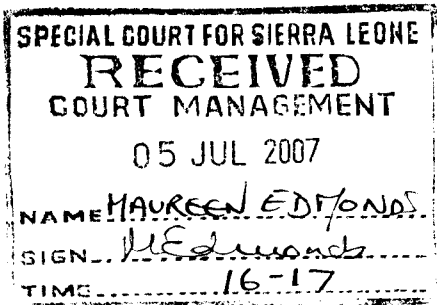
**PUBLIC
DEFENCE SUBMISSION PURSUANT TO RULE 100(A)
OF THE RULES OF PROCEDURE AND EVIDENCE**

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Introduction

1. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu were indicted on counts of Crimes Against Humanity, Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, and Other Serious Violations of International Humanitarian Law. The three accused pleaded not guilty to all charges.
2. The First Accused, charged as Alex Tamba Brima and like the other two Accused persons faced a 14 count indictment signed by the Prosecutor on the 14th February 2005 (hereinafter called the indictment). This indictment was the last and was entitled 'Further Amended Consolidated Indictment'. Mr Brima was arrested on the 3rd March 2003 and has been in the custody of the Special Court since then. The trial of the three AFRC accused began on 7 March 2005. The Prosecution concluded its case on 21 November 2005. The Defence opened their case on 5 June 2006 and rested on 27 October 2006. Final arguments in the case took place on 7 and 8 December 2006.
3. On the 20th June 2007, the Trial Chamber delivered its judgement and entered guilty verdicts to the following counts:
 - Counts 1-2 – Terrorizing the Civilian Population
 - Counts 3-4 Unlawful Killings
 - Counts 6- Sexual Violence
 - Counts 10– Physical Violence
 - Counts 12 – Use of Child soldiers
 - Counts 13 – Abductions and Force Labour
 - Count 14 – Looting and BurningThe Accused was found not guilty on count 11. The Trial Chamber dismissed Count 7 and no verdict was returned on Count 8.
4. The Defence for Tamba Brima files this sentencing brief on behalf of the First Accused.

Applicable Law

5. The Rules of the Special Court for Sierra Leone do not provide tariffs of penalties, save that it rules out the death penalty. Guidance is provided however in Article 19 (2) of the Statute of the Special Court for Sierra Leone (hereinafter referred to as the Statute) determining the sentence, the trial chamber shall take into account the factors mentioned in Article 19 (2) of the statute as well as factors such as, any aggravating circumstances, mitigating circumstances including the substantial co-operation with the prosecutor by convicted person before or after the conviction and the general practice regarding prison sentences in the courts of Sierra Leone. The extent to which any penalty imposed by the court of any state on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the statute, shall also be considered. From the different authorities and precedence of cases, the factors below were considered as mitigating factors. However, mitigating factors do not take the crime away but simply used as a means to reduce the criminal responsibility of the accused for violation of rights.¹ Credit shall be given to the convicted person for the period if any, during which the convicted person was detained in custody pending his surrender to the tribunal or pending trial or appeal.² In addition to the above, the court should address the principal aims of sentencing namely; retribution, deterrence, rehabilitation and justice. However, judges should not limit themselves to the above factors but have the discretion to consider any other factors that they deem fit to meet justice.

6. Trial Chamber in *Elebi* case concluded that retributive punishment by itself does not bring justice and that deterrence is probably the most important factor in the assessment of appropriate sentences for violations of humanitarian law. Trial chambers of the ICTR have consistently upheld in the light of the object and purposes

¹ Semanza judgment, ICTR-97-20

² Ruggiu judgment, ICTR-97-32-1 at para27 D, see also Rule 101 D of Special Court rules of procedure and evidence

of establishment of that tribunal that sentences imposed must be directed mainly at retribution and deterrence³

7. It was held in the *Akayesu* case⁴ that, the Chamber must among other things, have recourse to the general practice regarding prison sentences in courts in Rwanda. The trial chamber will also consider all relevant information submitted by the parties in order to determine an appropriate sentence⁵. The Chamber notes that it is logical that in the determination of sentence it has recourse only to prison sentences applicable in Rwanda to the exclusion of other sentences applicable in that country including the death sentences, since the Statute and the Rules provide that the Tribunal cannot impose this one type of sentence. Thus said the Chamber raises the question as to whether the scale of sentences applicable in Rwanda as mandatory or whether it is to be used only as a reference. The prosecutor in this case also sought for separate sentences for each of the counts on which Akayesu was found guilty but specified that the Chamber could impose concurrent sentences for offences arising from the same acts. In the opinion of the prosecutor the Chamber should impose a sentence for each of the offences committed in order to reflect the gravity of each and every one of them and to properly assess the guilt of the accused. The tribunal in this case also looked at various other factors to mitigate Akayesu's case. For example the fact that he risked his life to protect the Tutsis, he had never had a criminal record before and the fact that he was not a high ranking government official. One of the prosecutors who was also a witness stated the fact that had it not been for the accused, the killings in that area would have started much earlier than they did. Looking at the above facts, Article 32 of the Special Court Agreement Act 2002 also provides for the same conditions therefore, it is important to consider this in the instant case.
8. The Chamber shall take into account the individual circumstances of the convicted person as well as aggravating and mitigating factors. The Trial Chamber in the case

³ Kayishema and Ruzindana judgment, ICTR-95-1, ICTR-95-1;2: ICTR-96-10, Serushago judgment, ICTR-98-39-S at para 20

⁴ Prosecutor vs. Jean-Paul Akayesu case No. ICTR-96-4-T *October 2, 1998, Sentencing Judgement*

⁵ *supra*, footnote 2 at para 36

of *Naletilic and Martinovic*,⁶ stated that since the factors to be taken into account for aggravation and mitigation of sentence have not been defined exhaustively by the Statute and the Rules, a Trial Chamber has a considerable amount of discretion in deciding these factors. The Chamber is obliged to take into account mitigating circumstances when determining the sentence, but the weight to be attached thereto is discretionary.

9. In the case of *Kunarac, Kovac and Vokovic*⁷ “The Trial Chamber underlines its view that fairness requires the Prosecutor to prove aggravating circumstances beyond reasonable doubt, and that Defence needs to prove mitigating circumstances only on the balance of probabilities.” Similarly in *Simic*⁸ it was noted that; “Mitigating circumstances need only be proven on the balance of probabilities and not beyond reasonable doubt.”

10. The Defence will state at this stage that the Trial Chamber will find little precedent in the sentencing practice in Sierra Leone. For a start, although the Special Court was set up as a hybrid court and has always been referred to as such, the Accused was never charged with any crime under Article 5, nor were any jurisprudence, precedence or product from the jurisdiction of Sierra Leone. The Defence therefore sees no reason why the Trial Chamber should want to refer to the local jurisdiction. The Defence further points out that there are no reported precedents in Sierra Leone sentencing practice, save that imposed by statute. Moreover the practice has tended to imposed sentences in the upper end rather than the lower end. Sentencing for crimes of this nature where loss of life, especially on the scale of this indictment will attract a mandatory death penalty. This court is bound by Article 19 of the Statute of the Special Court for Sierra Leone in so far as the sentencing it can impose.

⁶ IT – 98 – 34, March 31, 2003 para 742

⁷ IT – 96 – 23 and IT – 96 – 23/1, (*Trial Chamber*), February 22, 2001, para 847

⁸ IT – 95 – 9/2 (*Trial Chamber*), October 17, 2002, para. 40

11. Should the Trial Chamber be of the opinion that it must look at the sentencing practice of Sierra Leone, the Defence will argue that it is not binding but can only be used as a guide. The Defence urges caution as there is no single unified sentencing code operating in Sierra Leone now or at the time of these events
12. The Defence now considers the factors contained in Article 19(2).
Gravity of the Offence: The Defence will state that the crimes are of the most serious. However, they must be looked at in the context of the theatre of guerrilla warfare operating at the time and the number of actors within it. Further the Trial Chamber in its judgement has stated that the convictions of the accused under section 6 (1) and 6 (3) are not in relation to any of the other districts pleaded in the indictment save for Bombali and Freetown. The Defence would pray in aid that it is impossible from the Prosecution evidence to ascertain the exact number of victims. As the Defence has stated before, the Prosecution's own evidence was contradictory to the point where the Defence brought a witness to court who had been supposedly killed by the First Accused in Karina. Whilst the Defence has always accepted that certain crimes were committed, it has always pointed out that it is impossible to know the extent and gravity even if exact numbers were difficult to ascertain.
13. The Defence therefore urges the Trial Chamber to bear in mind these difficulties when considering the gravity of the offence in sentencing.

Personal circumstances of the accused

14. Tamba Brima testified⁹ that he was born on 23rd November, 1971 at Wilberforce Village in Freetown. The Prosecution produced no documents to dispute this although they continue to assert that the First Accused was born in Yayah. Prosecution also alleged that Tamba Brima joined the Sierra Leone Army in April 1985 but did lead evidence documentary or otherwise to substantiate this allegation. In his testimony,

⁹ Transcript of the 6th June, 2006.

Tamba Brima stated categorically that he joined the Sierra Leone Army in 1991¹⁰ during the height of the rebel war. The Defence submits that this was a brave move, given that fact that in 1991, the rebel war, though in its infancy had already resulted in heavy casualties for the Sierra Leone Army. This desire and show of bravery displayed a willingness to serve his country and bring peace. Indeed, this is also exhibited in his participation in a military government which invited the RUF to join them with the sole aim to bring peace to Sierra Leone.

15. Tamba Brima is one of 23 children born to his father, the late staff Sergeant Tamba Brima. He has two wives; one his own and the other Neneh Galleh who was inherited from his deceased brother in accordance with Kono custom and tradition. His brother died at the hands of RUF's Gibril Massaquoi and is listed in the TRC report as one of the dead in that fateful incident.¹¹ He has three biological children and one adopted in accordance with customary law from his late brother. In addition, he looks after two other children, he rescued during the conflict. An analysis of his personal circumstances is found in paragraph 35 below.

Previous Record

16. The Defence submits that the Accused is a person of good character, having never been convicted of any offence either in the domestic courts, courts marshal or any other judicial body. The Defence further submits that the military record of the First Accused was without any adverse incident.¹² Indeed the evidence of TRC 1¹³ supports the First Accused assertion that he used his time in the army to further his educational qualifications, taking courses in accounting and other subjects unconnected with the military. The chamber in the *Niyitegeka*¹⁴ and *Ruggiu*¹⁵ case

¹⁰ Transcript of the 6th June, 2006

¹¹ Page 435 of the TRC report, see Annex A

¹² Defence Exhibit 10 – discharge book, Annex B

¹³ Transcript of the 24th October, 2006

¹⁴ *Niyitegeka* judgement at para 496

¹⁵ At paras 61-68

considered the fact that the accused was of good character before the course of events as a mitigating factor and so the defence prays that this court will do the same.

17. The Accused's desire to educate himself continued even after detention. Before computer lessons was suspended in the Detention facility, the First Accused was taking lessons in an effort to make his time in detention as useful an experience as possible. This also serves as a rehabilitative exercise. It is necessary to point out that the computer lessons were suspended in the Detention facility through no fault of the Accused.
18. The Defence also submits that when the Government of Sierra Leone arrested, tried, convicted and executed 24 soldiers for the Coup of May 25th 1997, which brought the AFRC to power, the Mr Brima was not amongst them. This in effect shows that the Government did not attribute the incidents of May 25 to him. Indeed, he was not sought, nor was there any warrant out for his arrest.

Service Record

19. As was seen in the Discharge Book, Mr Brima's record in the Army showed no disciplinary issues. Indeed despite that had happened, on 8th May 2000 in the incident at Foday Sankoh's residence, when RUF broke the ceasefire, Mr Brima was part of Sierra Leone Army (SLA) that was sent to go and help calm down the situation. At the time he was still enrolled in the SLA and was stationed at the Army Headquarters at Cockerill North, Wilkinson Road with Lt. Col. Memuna Kabia as his Commanding Officer. They were given arms and ammunitions by the Chief of Defence Staff Retired Major General Tom Carew.
20. Perhaps in recognition of his service record, during the 2nd advancement by the RUF to Freetown, Tom Carew instructed the SLA including the Mr Brima to go and repel the advancement at Masiaka (Mile 47) they helped to drive the RUF back to Lunsar.

21. Mr Brima was also helped in the negotiations to secure the release of kidnapped UNAMSIL and ECOMOG military personnel who had been kidnapped by the West Side boys in 1999. Those released were: Major Peter Bogie a Nigerian, Major Tanko also a Nigerian, Major Masunga, a Zambian, A British soldier and ECOMOG soldiers.

Health of the Accused

22. The Defence would also pray in aid the health of the Accused. The Trial Chamber is aware of the number of trial days missed by the Accused due to ill – health. The Trial Chamber will also recall that during his evidence in his own defence, trial days were aborted due to his ill – health. The Defence urges the Trial Chamber to take into the consideration the effect of any unduly long sentence on his health.

23. In terms of his personal life, as stated earlier the Accused has 2 wives and 4 dependant children. He also has a dependent mother. His absence has undoubtedly left a gapping whole in his family. He was the breadwinner and his incarceration has left his family dependent on the good wishes of others, a dependence that cannot be taken as continuing for a long time. The defence prays that the court will consider his family situation in coming to a decision as to his sentence.

24. The Defence wishes also to bring to the attention of the Trial Chamber that Office of the Prosecution did seek the permission of the Defence to speak to the First Accused regarding information about Charles Taylor currently appearing before this Trial Chamber seating in The Hague. The First Accused declined to assist, not because he did not want to help the process of justice, but because he has no knowledge of the workings or crimes of Charles Taylor. Indeed during the Trial, the Prosecution was unable to adduce any evidence of any link between the First Accused and Charles Taylor.

Assistance to Others

25. During the war, Mr Brima rescued a boy, brought him into his home and is currently being cared for within his family. This child, now in the third year of secondary schooling, was rescued at Yomendu town in Kono District in Sandor Chiefdom after Mr Brima left Kailahun District.
26. Mr Brima is also responsible for a girl born when his wife rescued a pregnant woman at Magbeni village in the Port Loko District. The woman who was a widow was looked after by Mrs Margaret Brima. Although the family now live in Kono District, they have kept in constant touch and the education of the child remains the responsibility of Mr Brima. Indeed, it was Mr Brima who facilitated the family's return to Kono. The girl still visits during school holidays.
27. While the AFRC were in power, Mr Brima undertook a number of philanthropic activities. Through the coach, he provided logistics for the Koidu Diamond Stars Football Club. This included food and financial support. Mr Brima also provided assistance, including food, clothing and shelter, to children affected by war through Father Theophilus Momoh and C.A.W (Children Affected by War). In addition to this he rendered assistance to the dependants of military officers that had been killed in action.
28. In an effort to help his place of origin, Mr Brima presented the Paramount Chief Chief Kaimondoh Sonsiama the following: 2 dozen shovels, half a dozen pick axes, 2 dozen head pans, 10 bags of rice, assorted condiments and Le1,000,000.00. This was all done in the presence of Pa Besibe in Kono and Pa Kenneth Sorie the Chiefdom Speaker of Sandor Chiefdom.
29. Mr Brima also rendered assistance to the Sandor Chiefdom of Kono District in a number of other ways. He paid local tax for every adult male through the late Chief Tamba Kaimodu Sandiwa Sonsiama II. He also provided financial support for the construction of feeder roads, a bridge and water pipes for the present water supply

system for Yaya village. Further, he bought an electrical generator for the supply of power to the Sandor Cheifdom and handed it over to the late Chief Tamba Kaimodu Sandiwa Sonsiama II

Post Conflict Conduct

30. The Defence submits that Mr Brima contributed to the peace process through his involvement in the Commission for the Consolidation of Peace, which was set up after the Lome Accord, under the Chairmanship of Johnny Paul Koroma and in which the current Minister of Youth and Sports, Dr Dennis Bright served. In accordance with the case of *Plavsic*¹⁶, such involvement should be taken into consideration by the Trial Chamber. Indeed in that case The Trial Chamber was satisfied that Mrs Plasvic was instrumental in ensuring the Dayton Peace Agreement was accepted and implemented in Republika Srpska. As such, she made a considerable contribution to peace in the region and was entitled to pray it in mitigation of sentence, and was in turn given significant weight by the Trial Chamber.

Age

31. Contrary to the Prosecution's assertion,¹⁷ that the age of Mr Brima is not a relevant factor, the Defence would urge the Trial Chamber to consider it as a mitigating factor. Alex Tamba Brima was born on 23rd November 1971. Thus he is currently 35. The time period in which the crimes were alleged to have happened, was between 30 November 1996 and 1999. At the start of this period, that is 30th November 1996, Mr Brima was barely 25 years of age. By the end of this period (1999), therefore, Mr Brima could not have been more than 29 years old.

32. Brima was only 19 or 20 at the time he joined the SLA. Coupled with the fact that other family members had joined the army and the climate of the time, it makes sense

¹⁶IT – 00 – 39 & 40/1 (*Trial Chamber*), February 27, 2003 p. ara. 94

¹⁷ See Prosecution Submission pursuant to Rule 100A

then, that the army was a great influence on his life and he was a product of this influence. In the case of *Erdemovic*,¹⁸ The Trial Chamber held that a combination of [Erdemovic's] young age [26 years old], evidence that he is “not a dangerous person for his environment” and “...his circumstances and character indicate that he is reformable and should be given a second chance to start his life afresh upon release while still young enough to do so.”

33. Further in the case of *Blaskic*,¹⁹ it was stated that “The case-law of the two *ad hoc* criminal Tribunals on rehabilitation takes the young age of the accused into account as a mitigating circumstance. The assessment of youth varies – whilst the ICTY considers the accused aged between 19 and 23 at the time of the facts as being young, the ICTR selects ages from 32 to 37.”

Remorse

34. Mr Brima, through his Defence would like the Trial Chamber to know that he bears no ill – will to the people of Sierra Leone. Whilst he maintains that he did not commit the crimes attributed to him, he respects the decision of the court and he accepts that people in Sierra Leone did suffer. To this end he regrets any suffering of whatever gravity that innocent people may have endured. As stated elsewhere in this brief, his family was also a victim of the conflict (Komba Brima) and knows only too well the effect the loss of a member of ones family can have on those left behind.

General

35. Mr Brima was one of 23 children. His father was an armourer in the Republic of Sierra Leone Armed Forces (RSLAF) and he had four wives. One should consider what kind of family life Mr Brima would have had – 23 children and 5 adults living in cramped army barracks (Wilberforce Barracks) dependent on the salary of an

¹⁸IT-96-22 (Trial Chamber), March 5, 1998, para. 16

¹⁹ IT-95-14(Trial Chamber), March 3, 2000, para. 778

armourer, competing for the attention of the father in a polygamous setting, here each child and each wife fights to be noticed and looked after. It is not hard to imagine that Mr Brima would have often lacked the attention and guidance that a growing child needs or that he would often had to fend for himself. This could only have been exacerbated by the fact that his biological mother was not present in the home.

36. Nonetheless, through all this and through two years of serious illness (1984 to 1986), Mr Brima managed to complete his education up to sixth form, sitting the West African School Certificate Examination both the ordinary and the Advance levels.
37. Several members, including his father, joined the armed forces so it is not surprising that Mr Brima felt compelled to do the same. Furthermore, given the circumstances in which he grew up (polygamous home with his own mother absent and situated within the barrack setting) it is arguable that for him the armed forces represented a family on which he could rely and one in which he could rise up in and eventually have some prominence in – a luxury which must have been extremely scarce for him when growing up.
38. Mr Brima is responsible for the upkeep of four children (three of his own and one of his brother's), two 'adopted children' and two wives. These are all school going children who depend sole on him. Clearly, Mr Brima has never shirked his responsibility as a father and breadwinner.
39. The Defence also brings to the attention of the Trial Chamber that Mr Brima and his family are also victims of the conflict. His brother Komba Brima is listed as one of those killed during the May 8 2000 incident outside the home of Foday Sankoh. This was stated by Mr Brima in his evidence in chief and this is corroborated by the TRC report.²⁰ (See TRC Report, Annex A)

²⁰ See TRC report Vol 3A page 435

40. The prosecution appear to have come to a sweeping conclusion about Mr Brima's personal circumstances. Although he is entitled to pension payments and his wife has his authority to collect the same, it transpires that despite her efforts to have the pension paid to her, it is currently being collected by a soldier by the name of Lance Corporal Sullayman K (number SLA 18172061). This soldier has no authorisation to receive anything on his behalf. This has left his family in absolute hardship as his wife is not working. In any event as a soldier below the rank of an officer he is unlikely to get any substantial amount in pension payments. His wife is unemployed, and the family makes do with handouts from well wishers. The only other income is Le96, 000 which he earns in the detention centre. In the current economic climate, this is hardly enough to sustain one person in a month let alone an entire family, even if one excludes the extended family. As far as support to his mother is concerned, that has always been Mr Brima's responsibility, one which he has always taken up. Mr Brima is also responsible for the upkeep of two younger sisters who are still at school. Indeed, his incarceration has caused and continues to cause serious financial problems for his family.

41. In so far as the Prosecution has thought it fit to dismiss, Mr Brima's family responsibilities, the Defence would say this. Mr Brima comes from a background and culture where the older ones who have any semblance of success are obligated to take care of not only the less able in the family, but the elders and the younger ones. This is a cultural practice form which he cannot escape and cannot use his incarceration to avoid. Where he is not available, he has to put modalities in place to ensure that those who depend on him do not suffer. Those modalities would include in his case, arrangements for his family to receive his pension, gratuity and any other benefit due to him. Prolonged incarceration therefore not only punishes him, but punishes his family as well. The Defence submits that the culture and practice within which the Special Court operates must not be dismissed or trivialised.

42. The Defence would pray in aid the case of *Serushago*²¹ The Chamber considered the following as mitigating circumstances: Serashugo's "cooperation with the

²¹ ICTR – 98 – 39 (*Trial Chamber*), February 5, 1999, *Sentencing Judgement para 31-42*:

prosecutor”, his “voluntary surrender”, his “guilty plea;” “his family and social background” (*i.e.*, “the political background of his family played a crucial role in his involvement with the ...militia” and strong ties of friendship between his father and the president led him to “play a prominent role in *Interhamwe* circles”); assistance given to certain Tutsis victims; individual circumstances, including his young age, his six children, two of whom are very young, and the possibility of his rehabilitation; and his “public expression of remorse and contrition.” The Chamber held “that exceptional circumstances in mitigation surrounding the crimes...may afford him some clemency.”

43. The Defence also asks that the Trial Chamber bear in mind its own judgment found Mr Brima guilty only of individual criminal liability for crimes in Bombali District and the Western Area.

Prosecution’s Submissions

44. The Defence respectfully asks that the Trial Chamber dismisses the Prosecution’s submissions in so far as it relies on Annex H and G. These annexes seem to be based on a desire to achieve an emotive and dramatic impact through shock and to play on the emotions of professional judges. Such emotive use of evidence should not be allowed. The Defence would ask the Trial Chamber to confine itself to the evidence it heard during the trial, upon which it return a guilty verdict. Any or all reports, surveys or articles of this nature could and should have been adduced at trial. The Defence further contends that this will not help the court in its deliberation, but will only serves to bring extraneous issues into the fray.
45. The Defence also requests that the Prosecution be denied any attempt to adduce oral evidence based on victim impact statements. All Judges were present during the trial and were able to assess each witness including their demeanour and to see the impact on their lives of the crimes perpetuated against them. It is not difficult, for example,
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to assess the quality of an amputee's life at present, without parading the witness as a spectacle to relive the trauma all over again in a court of law. To revisit these witnesses is an attempt to complete and address what the Prosecution now perceives as its own failure. The court should therefore place little or no reliance on Annex E and rely on its own judgement formed during the trial stage of this case.

46. The Defence also opposes the Prosecution's request to call Susan Stepakoff, the Psychologist attached to the Witness and Victims Support Unit of the Special Court as a witness. Whilst the Defence does not dispute the professionalism of Ms Stepakoff, it must be borne in mind that she worked with Defence witnesses as well and her services were not for the dedication and preserve of Prosecution witnesses alone. It is therefore of some concern that it is now being seen as a potential witness for one party to this case. The perception to those defence witnesses who sought and received help from her (if she is now seen to be aligned to one side) would be damaging to the confidence the Accused and witnesses have in the impartiality of this court, judgement and counselling capabilities which were put at the disposal of defence witnesses.

Appropriate Sentence

47. The Defence does not seek to tell the Trial Chamber what sentence it should impose. The Defence however wishes to state that the sentence of 60 years imprisonment being sought by the Prosecution is excessive. The Defence would also state that the sentence imposed should be separate and concurring to reflect that fact that the Accused was only convicted for crimes committed in the Western Area and Bombali and the fact that the notion of Joint criminal enterprise, upon which the Prosecution pleaded its case and placed heavy reliance, was dismissed by the Trial Chamber. The Prosecution is asking for a global sentence which the Defence would say is left entirely to the discretion of the Trial Chamber. The Trial Chamber should however bear in mind that the Accused is not guilty for crimes in Bo, Kenema, Kailahun, Port Loko and Kono. He cannot now be punished for them.

48. The Defence would also submit that the Trial Chamber bears in mind the impact of cumulative convictions upon sentencing of the accused. The Appeals Chamber in the case of *Celebici* stated:

[t]he fact that an accused's conduct may legitimately be legally characterised as constituting different crimes would not overcome the fundamental principle that he should not be punished more than once in respect of the same conduct. In the case of two legally distinct crimes arising from the same incident, care would have to be taken that the sentence does not doubly punish in respect of the same act which is relied on as satisfying the elements common to the two crimes, but only that conduct which is relied on only to satisfy the *distinct* elements of the relevant crimes.²²

Given the conviction of Mr Brima on 11 out of 14 Counts the Defence would submit that care must be taken to ensure he is not doubly punished

49. Moreover, the Trial Chamber asks that the Trial Chamber bear in mind that Rule 101 (D) of the Rules and Procedure of the Special Court for Sierra Leone. This states that any period held in detention should be taken into account. The Accused was arrested in March 2003 and has been in the detention of the Special Court since.

50. The Defence would in any event ask that the Trial Chamber take the following cases into consideration when determining the number of years Mr Brima should serve: In the case of *Blaskic*²³, a single sentence (as is advocated by the Prosecution) was imposed. Despite the Chamber finding that "..... in this case, the aggravating circumstances unarguably outweigh the mitigating circumstances and that the sentence pronounced accurately reflects the degree of seriousness of the crimes perpetrated and the faults of the accused given his character, the violence done to the victims, the circumstances at the time and the need to provide a punishment commensurate with the serious violations of international humanitarian law which the

²² Celebici Appeal Judgement IT-96-21-A 20 February 2001 para 769

²³ IT-95-14 – Trial Chamber Judgement 3rd March 2000

Tribunal was set up to punish according to the accused's level of responsibility."²⁴, the Chamber imposed a single sentence of 45 years.

51. Also in the case of *Naletilic and Martinovic*²⁵ Mladen Naletilic is found guilty of inter alia persecutions on political, racial and religious grounds as a crime against humanity, unlawful labour as a violation of the laws or customs of war, torture as a crime against humanity, torture as a grave breach of the Geneva Conventions of 1949, wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions of 1949 and was sentenced to a single sentence of twenty years of imprisonment.
52. Similarly, his co accused Vinko Martinovic, has been found guilty of inter alia persecutions on political, racial and religious grounds as a crime against humanity, inhumane acts as a crime against humanity, inhuman treatment as a grave breach of the Geneva Conventions of 1949, unlawful labour as a violation of the laws or customs of war, murder as a crime against humanity, wilful killing as a grave breach of the Geneva Conventions of 1949 and wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions of 1949. The Chamber sentenced Martinovic to a single sentence of eighteen years of imprisonment.
53. These sentences were imposed despite the fact that the Prosecution had requested sentences between 20 – 40 years and the Trial Chamber observed that Mladen Naletilic was a commander. The Chamber also took into consideration the impact of the offence upon the victim, their family and entire communities subjected to ethnic cleansing and the fact that acts of the accused contributed to the broader campaign against the BH Muslims throughout the region.²⁶ In the case of Vinko Martinovic, the Chamber had found him guilty of the most heinous crimes, which included murder.

²⁴ Ibid para 808

²⁵ Ibid para 746

²⁶ Ibid para 768

54. Also in the case of *Momcilo Krajisnik*²⁷, he was convicted of the crimes of persecution as a crime against humanity, extermination as a crime against humanity and Murder as a crime against humanity, for which he received a sentence of 27 years imprisonment.
55. In the case of *Akayesu*²⁸ the following sentences were imposed: 15 years imprisonment for murder as a crime against humanity, 10 years for torture as a crime against humanity, Rape 15 year's imprisonment, 10 years for crimes against humanity and other inhuman acts. These sentences were to be served concurrently and were imposed despite the Prosecutions submission for longer sentences.
56. Given the seriousness of the crimes each of the above were convicted of, the Trial Chamber in sentences affirmed by the Appeals Chamber in each case, imposed sentences far less than the 60 years the Prosecution is now seeking. There appears to be no basis for this request, save to say the Prosecution appear to want the Accused punished for those crimes in crime bases that he was not convicted of.

Submitted by:


Kojo Graham, Lead Counsel


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²⁷ IT-00-39 & 40

²⁸ Ibid (ICTR-96-4-T)

LIST OF ANNEXURES

22 942

1. TRC Report, page 435, Annex A
2. Defence Exhibit 10 (Brima's discharge book), Annex B

INDEX OF AUTHORITIES

22943

1. *Semanza*, ICTR – 97 – 20 (Trial Chamber), May 15, 2003, *Judgement and Sentence*
<http://69.94.11.53/ENGLISH/cases/Semanza/judgement/index.htm>
2. *Ruggiu*, ICTR – 97 – 32 (Trial Chamber), June 1, 2000, *Judgement and Sentence*
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3. *Kayishema and Ruzindana* ICTR-95-1, ICTR-95-1;2: ICTR-96-10, May 21, 1999, *Judgment*
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4. *Serushago*, ICTR – 98 – 39 (Trial Chamber), February 5, 1999, *Sentencing Judgement*
<http://69.94.11.53/ENGLISH/cases/Serushago/judgement/os1.htm>
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<http://69.94.11.53/ENGLISH/cases/Akayesu/judgement/ak81002e.html>
6. *Naletilic and Martinovic*, IT – 98 – 34, (Trial Chamber), March 31, 2003, *Judgement*
<http://www.un.org/icty/naletilic/trialc/judgement/nal-tj030331-e.pdf>
7. *Kunarac, Kovac and Vokovic*, IT – 96 – 23 and IT – 96 – 23/1 (Trial Chamber), February 22, 2001, *Judgement*
<http://www.un.org/icty/kunarac/trialc2/judgement/kun-tj010222e.pdf>
8. *Simic* IT – 95 – 9/2 (Trial Chamber), October 17, 2002, , , *Sentencing Judgement*
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9. *Niyitegeka*, ICTR – 96 – 14 (*Trial Chamber*), May 16, 2003, *Judgement and Sentence*
<http://69.94.11.53/ENGLISH/cases/Niyitegeka/judgement/index.htm>
10. *Plavsic*, IT – 00 – 39 & 40/1 (*Trial Chamber*), February 27, 2003, , *Sentencing Judgement*
<http://www.un.org/icty/plavsic/trialc/judgement/pla-tj030227e.pdf>
11. *Erdemovic*, IT – 96 – 22 (*Trial Chamber*), March 5, 1998, *Sentencing Judgement*
<http://www.un.org/icty/erdemovic/trialc/judgement/erd-ts980305e.pdf>
12. *Blaskic*, IT – 95 – 14 (*Trial Chamber*), March 3 , 2000, , *Judgement*
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13. *Momcilo Krajisnik*, IT – 00 – 39 & 40 (*Trial Chamber*), September 27, 2006, *Judgement*
<http://www.un.org/icty/krajisnik/trialc/judgement/kra-jud060927e.pdf>

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Analysis of the Killings carried out on 8 May 2000

1422. Approximately forty (40) persons were killed in the inter-factional violence that ensued around Foday Sankoh's Spur Road Lodge on 8 May 2000. Almost all of them were killed by gunshots or rocket-propelled grenades fired between the RUF, the West Side Boys, the Kamajors and other security forces. At least one man was crushed to death in a stampede.⁸⁷⁹ As the following analysis confirms, over half of the deceased were civilians, on both sides of the compound's walls. At least a further fifteen (15) persons were wounded by gunshots or shrapnel and hospitalised as a result of the same incident.
1423. The information made available publicly by state authorities in relation to the deaths and injuries that resulted from this incident is substantially incomplete. Moreover it is unbalanced and unsatisfactory to the Commission for the purposes of its impartial historical record. This section attempts to present the evidence of the violations and abuses committed on 8 May 2000 in a more accurate light.

Casualties sustained on the side of the Demonstrators

1424. According to the Pathology Laboratory in the 'Mortuary Department' of Freetown's Connaught Hospital, nineteen (19) persons were registered by 11 May 2000 as having been "killed on the 8 May 2000 during the peaceful demonstration."⁸⁸⁰ The figure later increased to twenty-two (22) persons, a full list of whose names, ages and occupations was presented to the Commission by the Civil Society Movement.⁸⁸¹

	<u>Name of deceased</u>	<u>Age</u>
a.	Harding Kallon	32 years
b.	Kabba Bangura (Junior)	21 years
c.	Foday Brima	60 years
d.	Abu Bakarr Conteh	16 years
e.	Alhaji Sesay	24 years
f.	Peter Kargbo	52 years
g.	Musa Kamara	26 years
h.	Mariama Gassama*	21 years
i.	Saio Marrah	47 years
j.	Ballah Turay	27 years
k.	David Jusu	28 years
l.	Komba Brima	31 years
m.	Saoman Conteh	48 years
n.	E. T. Kamara	32 years
o.	Pa Kemoh Jusu	39 years
p.	Lamin Massaquoi	42 years

⁸⁷⁹ A 52-year-old man named Peter Kargbo died on 8 May 2000 as a result of "crushed chest injuries". His death was recorded on 11 May 2000. See: Republic of Sierra Leone, Office of the Chief Registrar of Births and Deaths – *Medical Certificate of Cause of Death*, 11 May 2000.

⁸⁸⁰ Dr. S. O. Walker, Specialist Pathologist; *List of Casualties*, Mortuary Department, Connaught Hospital, Freetown; 11 May 2000.

⁸⁸¹ Festus Minah, President of the Sierra Leone Teachers' Union (SLTU) and one of the organisers of the 8 May 2000 demonstration march to Foday Sankoh's Lodge; TRC Interview conducted at SLTU offices, Freetown; 11 July 2003. Mr. Minah provided a series of documents to the Commission as part of his submissions, including a full list of deceased as registered by the Civil Society Movement.