

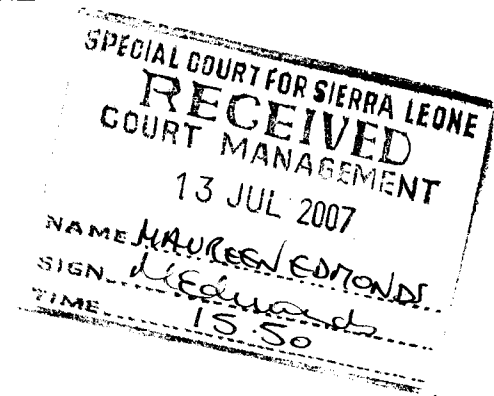
(22963 - 22968)

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

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

Registrar: Herman Von Hebel, Acting Registrar

Date filed: 13 July 2007



**THE PROSECUTOR**

**Against**

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

Case No. SCSL-04-16-T

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**PUBLIC**

**PROSECUTION LIST OF AUTHORITIES TO BE REFERRED TO IN ORAL  
SENTENCING SUBMISSIONS ON 16 JULY 2007**

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Office of the Prosecutor:  
Dr. Christopher Staker  
Mr. Karim Agha  
Mr. Chile Eboe-Osuji  
Ms. Anne Althaus

Defence Counsel for Alex Tamba Brima  
Mr. Kojo Graham  
Ms. Glenna Thompson

Defence Counsel for Brima Bazy Kamara  
Mr. Andrew Daniels  
Mr. Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu  
Mr. Geert-Jan Alexander Knoops  
Ms. Carry Knoops  
Mr. Agibola E. Manly-Spain

**1. In national legal systems, the practice is for victim impact evidence to be presented at the sentencing stage, and not at trial:**

*Cf.* Brima Sentencing Submissions, paras 44-46  
Kanu Sentencing Submissions, paras 11-51

- Canada: Criminal Code, s. 722.  
<http://www.canlii.org/ca/sta/c-46/sec722.html>
- England and Wales: For proposed law reform, see BBC News, "Families 'to have voice in court', 1 September 2005  
[http://news.bbc.co.uk/2/hi/uk\\_news/4202618.stm](http://news.bbc.co.uk/2/hi/uk_news/4202618.stm)
- United States of America: Reinhart, "Victim's Family Testimony at Penalty Phase of Capital Cases", 26 January 2005.  
<http://www.cga.ct.gov/2005/rpt/2005-R-0047.htm>

**2. In early cases at the ICTY and ICTR, when there was a separate post-verdict sentencing procedure, additional evidence could be presented at the sentencing hearing:**

*Cf.* Brima Sentencing Submissions, paras 44-46  
Kanu Sentencing Submissions, paras 11-51

- *Prosecutor v. Tadić, Sentencing Judgement*, Case No. IT-94-1-S, Trial Chamber, 14 July 1997, paras 3-4:
 

"3. Pursuant to Rule 100 of the Rules of Procedure and Evidence ("Rules"), on 30 June 1997 and 1, 2, 3 and 4 July 1997, the Trial Chamber conducted a Pre-Sentencing Hearing at which the Prosecution and the Defence tendered exhibits, and the Defence called a number of witnesses, including Dr. Norbert Nedopil, a forensic psychiatrist based in Munich who examined Dusko Tadic in 1994. Dusko Tadic also made a statement at the Pre-Sentencing Hearing which the Trial Chamber has considered.

4. Both parties also tendered written submissions. **In particular, the Prosecution offered a number of "victim impact statements" which detailed the physical and psychological injuries suffered as a result of the offences committed by Dusko Tadic.** The statements also contained averments as to economic losses of the victims, evidence of which the Defence sought to counter, as well as other harm which they suffered in the conflict. The Trial Chamber was careful to isolate the harm which flowed directly from the acts of Dusko Tadic, while other economic and non-

economic harm which these victims suffered from the conflict as a whole was considered solely in the light of the role of Dusko Tadic in that conflict. In doing so, the Trial Chamber did not consider the alleged amount of economic loss, however, it did consider the fact of that loss.” (Emphasis added.)

<http://www.un.org/icty/tadic/trialc2/judgement/tad-ts970714e.htm>

- *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, T. Ch. I, Transcript of Sentencing Judgement, 2 October 1998:

“Trial Chamber I, scrupulously examined all the factual evidence submitted by the two parties with regard to the determination of the penalty”.

<http://69.94.11.53/default.htm>

### 3. At the ICTY and ICTR, victim impact evidence is permitted, as well as, for instance, evidence of the good character of a convicted person:

*Cf.* Brima Sentencing Submissions, paras 44-46  
Kanu Sentencing Submissions, paras 11-51

- *Prosecutor v. Tadić, Sentencing Judgement*, Case No. IT-94-1-S, Trial Chamber, 14 July 1997, para. 4:

“4. Both parties also tendered written submissions. In particular, the Prosecution offered a number of "victim impact statements" which detailed the physical and psychological injuries suffered as a result of the offences committed by Dusko Tadic.” (Quoted in full at 2. above.)

<http://www.un.org/icty/tadic/trialc2/judgement/tad-ts970714e.htm>

- *Prosecutor v. Bralo, Sentencing Judgement*, Case No. IT-95-17-S, Trial Chamber, 17 December 2005, para. 36:

“In addition to examining the manner in which Bralo committed the crimes of which he has been convicted, the Trial Chamber takes into consideration the submissions of the Prosecution on the impact of these crimes on his victims. ... The Defence has further agreed with the Prosecution that the victim impact statements provided to the Trial Chamber are both powerful and affecting”.

<http://www.un.org/icty/bralo/trialc/judgement/index.htm>

- *Prosecutor v. Nikolić (Dragan), Sentencing Judgement*, Case No. IT-94-2-S, Trial Chamber, 18 December 2003, paras 41-43:

“The Prosecution called three witnesses to testify, all of whom had been detained in Susica camp during the time of the Accused’s criminal conduct. Written statements of two other victims were admitted into evidence as

Prosecution exhibits. In addition, the report of the Prosecution's expert psychologist, Dr. Maria Zepter, was admitted into evidence under Rule 94 *bis* of the Rules. The common goal of this evidence was to describe the closer circumstances and the environment in which the crimes were committed and the impact these crimes had on surviving victims and their relatives.

...

Prof. Sieber testified as an expert witness on the basis of his Sentencing Report on 5 November. ... Dr. Nancy Grosselfinger gave her oral testimony on 4 and 6 November 2003, primarily based on her written expert report of 20 October 2003." (Footnotes omitted.)

<http://www.un.org/icty/nikolic/trialc/judgement/index.htm>

- *Prosecutor v. Simić, Sentencing Judgement*, Case No. IT-95-9/2-S, Trial Chamber, 17 October 2002, footnote 46:

"The Defence attached numerous annexes to the Defence Sentencing Brief, including: "Forensic Expert Opinion on the health of the accused, Milan Simić" (Exhibit A); "Report on Milan Simić of UNDU Chief Tim McFadden" (Exhibit B); a report from the Embassy of Bosnia and Herzegovina stating that Milan Simić did not have a "criminal past" (Exhibit C); Certificate from the SDS of [amac stating that Milan Simić did not become a member of the SDS until 13 February 1993 (Exhibit D); affidavits from eight character witnesses (Exhibits E-L); reports on Milan Simić from the Bosanski [amac Public Security Station during his provisional release (Exhibits M-W); and documents concerning actions taken by Milan Simić while serving as President of the "Executive Committee", Serbian Municipality of Bosanski Šamac (Exhibits Y1-11)."

<http://www.un.org/icty/msimic/trialc3/judgement/sim-sj021017e.pdf>

#### 4. ICTR and ICTY sentencing examples:

*Cf.* Brima Sentencing Submissions, paras 50-56  
Kamara Sentencing Submissions, paras 23-28  
Kanu Sentencing Submissions, paras 78-82

- *Prosecutor v. Nzabirinda*, ICTR-2001-77-T, "Sentencing Judgement," Trial Chamber, 23 February 2007, especially paras 9, 27-35, 68-71, 116.  
<http://69.94.11.53/default.htm>
- *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, "Judgement," Appeals Chamber, 9 May 2007, paras 196-199.  
<http://www.un.org/icty/indictment/english/blajok-jud070509.pdf>

- *Prosecutor v. Galić*, IT-98-29-A, “Judgement,” Appeals Chamber, 30 November 2006, especially paras 448-450, 454-456, Disposition.  
<http://www.un.org/icty/galic/judgment/gal-acj061130e.pdf>
- *Prosecutor v. Jelisić*, IT-95-10-T, “Judgement,” Trial Chamber, 14 December 1999, especially paras 4-17, 138-139.  
<http://www.un.org/icty/jelistic/trialc1/judgement/index.htm>
- *Prosecutor v. Jelisić*, IT-95-10-A, “Judgement,” Appeals Chamber, 5 July 2001, especially paras 1-5, Disposition.  
<http://www.un.org/icty/jelistic/appeal/judgement/index.htm>

## 5. Relevance of sentencing practice in Sierra Leone:

*Cf.* Kamara Sentencing Submissions, para. 29  
Kanu Sentencing Submissions, paras 70-77, esp. paras 71-72

- *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, “Sentence,” Trial Chamber, 21 May 1999, paras 6-7.
  6. Rwandan law empowers its courts to impose the death penalty for persons convicted of being “. . . planners organizers, instigators, supervisors and leaders of the crime of Genocide . . . [or] persons who acted in positions of authority at the national, prefectorial, communal, sector, or cell level . . . [or] notorious murders . . . by virtue of the zeal or excessive malice with which they committed atrocities . . .” This Chamber notes that this law applies to acts committed after 1 October 1990. Rwandan law also empowers its courts to impose a life sentence for persons convicted of being “persons whose criminal acts or whose acts of criminal participation place them among perpetrators, conspirators or accomplices of intentional homicide or of serious assault against the person causing death.”
  7. In light of the findings of the Judgement against Kayishema and Ruzindana, this Chamber finds that the general practice regarding prison sentences in Rwanda represents one factor supporting this Chamber’s imposition of the maximum and very severe sentences, respectively.”  
(Footnotes omitted.)  
<http://69.94.11.53/default.htm>

**6. The Special Court is not bound by maximum penalties prescribed under the national law of Sierra Leone:**

*Cf.* Brima Sentencing Submissions, paras 10-11  
Kanu Sentencing Submissions, paras 70-77

- *Prosecutor v. Kunarac*, IT-96-23&23/1-A, “Judgement,” Appeals Chamber, 12 June 2002, para. 377.

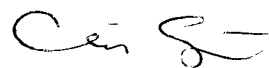
“... In the *Tadic* Sentencing Appeal Judgement, it is stated that “the wording of Sub-rule 101(A) of the Rules, which grants the power to imprison for the remainder of a convicted person’s life, itself shows that a Trial Chamber’s discretion in imposing sentence is not bound by any maximum term of imprisonment applied in a national system”.

<http://www.un.org/icty/kunarac/appeal/judgement/index.htm>

Filed in Freetown,

13 July 2007

For the Prosecution,



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Christopher Staker  
Deputy Prosecutor