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SCSL-11-02-T
(669 – 703)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Single Judge

Registrar: Binta Mansaray

Case No.: SCSL-2011-02-T

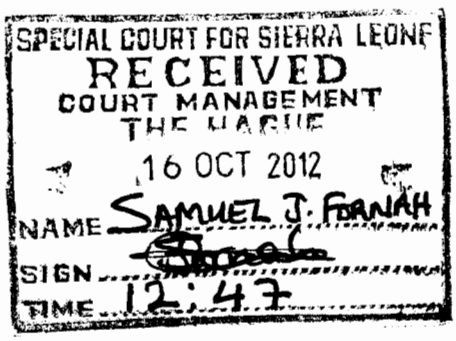
Date: 11 October 2012

Filed 16 October 2012

INDEPENDENT COUNSEL

v.

Hassan Papa BANGURA
Samuel KARGBO
Santigie Borbor KANU
Brima Bazzy KAMARA



PUBLIC
SENTENCING JUDGEMENT IN CONTEMPT PROCEEDINGS

Independent Counsel:
Robert Herbst

Counsel for Bangura:
Melron Nicol Wilson
Counsel for Kargbo:
Charles Taku
Counsel for Kanu:
Kevin Metzger
Counsel for Kamara:
Abdul Serry Kamal

Principal Defender:
Claire Carlton-Hanciles

I, Justice Teresa Doherty, Single Judge of the Special Court for Sierra Leone ("Special Court"); 670

SEISED of the Independent Counsel's written sentencing submissions, filed on 27 September 2012;[1]

NOTING Counsel for Samuel Kargbo's written sentencing brief, filed on 3 October 2012 ("Kargbo Brief");[2] Counsel for Hassan Papa Bangura's written sentencing brief, filed on 4 October 2012 ("Bangura Brief");[3] and Santigie Borbor Kanu's written sentencing brief, filed on 4 October 2012 ("Kanu Brief");[4]

CONSIDERING the oral submissions of the Independent Counsel made on 8 October 2012;

CONSIDERING the oral submissions of Counsel for Hassan Papa Bangura, Samuel Kargbo, Santigie Borbor Kanu and Brima Bazzy Kamara made on 8 October 2012 and the statements of each of the Defendants made *in allocutus* on 8 October 2012;[5]

COGNISANT of Articles 17 and 19 of the Statute of the Special Court for Sierra Leone ("the Statute"), and Rules 77, 100 and 101 of the Rules of Procedure and Evidence ("the Rules");

HEREBY deliver my decision as follows:

BACKGROUND AND PROCEDURAL HISTORY

1. Three of the Defendants – Samuel Kargbo on a plea of guilty and Hassan Papa Bangura and Santigie Borbor Kanu following a joint trial - were convicted of knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given testimony before a Chamber, in violation of Rule 77(A)(iv); four of the Defendants – Samuel Kargbo on a plea of guilty and Hassan Papa Bangura, Santigie Borbor Kanu and Brima Bazzy Kamara following a joint trial – were convicted of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given testimony before a Chamber, in violation of Rule 77(A)(iv); and one Defendant – Brima Bazzy Kamara, following a trial – was convicted of knowingly and wilfully interfering with the Special Court's administration of justice by disclosing

[1] SCSL-11-02-T-64.
[2] SCSL-11-02-T-67.
[3] SCSL-11-02-T-68.
[4] SCSL-11-02-T-69. Counsel for Brima Bazzy Kamara did not file written sentencing submissions.
[5] Transcript 8 October 2012 pp. 2517-2588.

information relating to proceedings in knowing violation of an order of a Chamber, in violation of Rule 77(A)(ii).[6]

2. On 27 September 2012 Independent Counsel filed a public "Prosecutor's Sentencing Submissions."[7] Pursuant to Rule 100 (A) Counsel for Kargbo, Bangura and Kanu filed sentencing submissions on 3 and 4 October 2012, respectively.[8] A sentencing hearing pursuant to Rule 100 (B) was set for hearing on 8 October 2012 in Freetown with video link to Kigali and phone link to Independent Counsel in New York. All Counsel elected to make oral submissions, and made these submissions on 8 October 2012.[9] In the course of submissions Counsel referred to the Amicus Curiae brief filed in the matter of *The Prosecutor v. Eric Koi Senessie* ("the Senessie case") on 25 June 2012.[10]

APPLICABLE LAW

3. Article 19 of the Statute provides:

> 1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
> 2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
> 3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal

[6] Samuel Kargbo pleaded guilty and was convicted in a hearing before the Single Judge on 15 July 2011. Transcript 15 July 2011 pp. 16-18, 20-22, 27-34. Hassan Papa Bangura, Santigie Borbor Kanu, and Brima Bazzy Kamara pleaded not guilty and, after a trial, were convicted in the public "Judgement in Contempt Proceedings" on 25 September 2012. SCSL-11-02-T-66.
[7] SCSL-11-02-T-64.
[8] SCSL-11-02-T-67; SCSL-11-02-T-68; SCSL-11-02-T-69.
[9] See Transcript 8 October 2012 pp. 2517-2588.
[10] *The Prosecutor v. Eric Koi Senessie*, SCSL-11-01-T-16, Amicus Curiae Brief, 25 June 2012.

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[8] SCSL-2011-02-T-67; SCSL-2011-02-T-68; SCSL-2011-02-T-69.
[9] *See* Transcript 8 October 2012 pp. 2517-2588.
[10] *The Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-T-16, Amicus Curiae Brief, 25 June 2012.

conduct, and their return to their rightful owner or to the State of Sierra Leone.

4. Rules 77(E) and (G) provide:

> (E) The rules of procedure and evidence in Parts IV to VIII shall apply, as appropriate, to proceedings under this Rule.
>
> [...]
>
> (G) The maximum penalty that may be imposed on a person found to be in contempt of the Special Court pursuant to Sub-Rule (C)(i) shall be a term of imprisonment not exceeding six months, or a fine not exceeding 2 million leones, or both; and the maximum penalty pursuant to Sub-Rule (C)(iii) shall be a term of imprisonment for seven years or a fine not exceeding 20 million leones, or both.

5. Rule 101 provides that:

> (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mention in Article 19(2) of the Statute, as well as such factors as:
>
> (i) Any aggravating circumstances;
>
> (ii) Any mitigating circumstances, including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
>
> (iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.
>
> (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
> (D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

SUBMISSIONS OF THE PARTIES

Submissions of Independent Counsel

6. In his written submissions, Independent Counsel submits that in his view, sentencing should be the province of judges, and not prosecutors, much less Independent Counsel, and thus defers to this Court's "vast judicial experience and knowledge of Sierra Leone," as well as her "instincts and judgement" concerning the sentence to be imposed. Counsel declines to offer specific sentencing recommendations but limits himself to "relevant observations" and "suggestions of appropriate sentencing ranges."[11]

7. Counsel refers to the Amicus Brief filed by the Office of the Prosecutor ("OTP") in the *Senessie* case, which sets out the applicable rules and sentencing ranges; the relevant objectives in sentencing, including specific and general deterrence; and a survey of previous sentences in contempt cases before the Special Court and other international criminal tribunals.[12] Independent Counsel had emphasised, in his written submissions prior to judgement "one cannot deny that this was a joint criminal plan, and once each accused joined and participated in it, he became as guilty as his co-schemers and criminally responsible for their acts as well as his."[13]

8. Independent Counsel first addresses the sentences to be imposed on the three Defendants who pleaded not guilty and were convicted at trial – Hassan Papa Bangura, Santigie Borbor Kanu and Brima Bazzy Kamara[14] - and notes that an appropriate sentence is one "severe enough to accomplish the legitimate purpose, objectives and goals of sentencing, such as specific and general deterrence, rehabilitation and retribution, but no more severe than necessary to accomplish them."

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[11] SCSL-11-02-T-64, para. 3.
[12] SCSL-11-01-T-16, para. 2.
[13] SCSL-11-02-T-62, para. 13.
[14] SCSL-11-02-T-64, para. 3.

9. Counsel submits that a sentence of imprisonment sufficient to punish the Defendants and deter them from future similar conduct is called for. He contends that because Kamara and Kanu are incarcerated and serving lengthy sentences, any sentence would have to be imposed consecutively, and the sentence in this case must be towards the "high end of the sentencing range" in order to accomplish deterrence.[15]

10. The crimes for which Kamara and Kanu were convicted, Counsel submits, are "intolerable," "striking at the heart of the integrity of the Court's process for administering justice." Further, the fact that TF1-334 reported the crimes and they were thus stopped should not weigh as a mitigating factor. [16]

11. Independent Counsel notes that Bangura was not a beneficiary of the scheme, but willingly joined the scheme, offered a bribe and was the Defendant who most clearly used threats and intimidation towards TF1-334, and then continued to contact TF1-334 after he was indicted. Thus, the gravity of his crimes should weigh more heavily in sentencing, and a substantial prison term would be necessary to punish and deter Bangura. Counsel further submits that any fine imposed on Bangura should be in addition to rather than alternative to incarceration.[17]

12. Independent Counsel further notes that the fact that all three witnesses testified falsely is also an aggravating factor.[18]

13. In relation to Samuel Kargbo, who pleaded guilty, Counsel notes that he, like Bangura, agreed to participate in the scheme, persisted in attempting to persuade TF1-334 to recant and offered him money to do so, but that it was Bangura who threatened TF1-334.[19] Counsel refers to Kargbo's plea agreement and the requirement that he (Counsel) inform the Court of

[15] SCSL-11-02-T-64, paras 7-9.
[16] SCSL-11-02-T-64, para. 10.
[17] SCSL-11-02-T-64, para. 11.
[18] SCSL-11-02-T-64, para. 12.
[19] SCSL-11-02-T-64, para. 14.

all the particulars of Kargbo's substantial cooperation and his remorse and to recommend leniency.

14. Counsel contends that from the beginning of his investigation, Kargbo "swore off Counsel," and indicated that he was remorseful and was willing to plead guilty and to tell the truth. Kargbo has also fully cooperated with the Independent Counsel. Further, Independent Counsel submits, his testimony was credible and his cooperation and testimony were essential to the conviction of the Defendants. Counsel suggests that encouraging such cooperation is an appropriate goal in sentencing, and states that it takes courage to do so. He therefore submits that Kargbo should be sentenced to a non-custodial term of probation, or alternatively, a sentence that is significantly shorter than the other Defendants.[20]

Submissions of Counsel for Hassan Papa Bangura

15. Counsel for Hassan Papa Bangura submits that Independent Counsel argued that a substantial term of imprisonment for Bangura was necessary, but did not define what amounted to a "substantial term." Counsel contends that Independent Counsel's reliance on the Amicus Curiae brief suggests that he is asking for a five to seven year imprisonment, which is "disproportionate and unjustifiable" given the offences. Counsel submits that an "appropriate sentence" should not be determined by the number of years imposed, but is one in which the surrounding circumstances are juxtaposed with the contemnor's culpability, as construed by the Single Judge.[21]
16. Counsel contends that the suggestion by Independent Counsel that Bangura used "threats and intimidation" to persuade TF1-334 is a "re-writing [of] the Court's judgement." Further, Independent Counsel's assertion that Bangura falsely testified is "speculation," and runs

[20] SCSL-11-02-T-64, para. 15-18.
[21] SCSL-11-02-T-68, paras. 3, 6-7.

contrary to the Judge's findings that given Bangura's "business intellectual [sic] and acumen," he should have been in a better position to know the nature of the contempt scheme.[22]

17. Counsel submits that Independent Counsel intends to portray Bangura as the architect of the scheme, despite the Court's findings that TF1-334 was not truthful in all aspects of his testimony and that Kargbo was the primary contact. Independent Counsel's suggestion that Bangura's culpability should weigh more heavily despite his secondary role cannot be an aggravating factor because, according to the Court, his motive was to "have money from the deal." Thus, having regard for Bangura's circumstances prior to and after the acts of contempt a fine or, if a custodial term is to be imposed, that of time served or six months or less would be appropriate.[23]

18. Counsel for Bangura outlined the law applicable to sentencing,[24] and contends that the main objectives of sentencing in international criminal tribunals are deterrence, retribution and rehabilitation. He stresses that public confidence in the integrity of the tribunals' administration of justice requires that convictions for similar offences carry equal sentences, notwithstanding the fact that a chamber is not bound by its prior decisions. He distinguishes Bangura's case from that of *Senessie*.

19. Counsel submits that the Single Judge should be wary of giving prominence to individual or general deterrence in determining sentence because the collateral act of recanting cannot be committed in the future: "it is a general principle in common law that a court cannot listen to issues of review after 12 months of conviction" and thus for three of the Special Court's completed trials, "the issue cannot be raised." Second, the deterrence effect was satisfied by the fact that the Defendants were indicted and a full-scale trial was conducted.[25] Retribution has already been accomplished, Counsel submits, by publicly condemning Bangura and

[22] SCSL-11-02-T-68, paras. 8.
[23] SCSL-11-02-T-68, paras. 9-10.
[24] SCSL-11-02-T-68, paras 11-29.
[25] SCSL-11-02-T-68, para. 31-32.

acknowledging the "emotional pain" of TF1-334. Retribution is not vengeance but an act of restraint.[26]

20. Counsel further submits that the particular circumstances of the case and Bangura's degree of participation should be considered as mitigating factors in his favour, and that the gravity of the Courts' findings diminishes his culpability and overall participation.

21. Counsel argues that Bangura's conduct, whilst not diminishing the gravity of the offence, does diminish his culpability and says that Independent Counsel's submission "circumvent[s] the Courts' findings." Counsel also rebuts various submissions by Independent Counsel referring to Bangura's threatening and aggravating behaviour which, he submits, are not shown by the evidence and are both inaccurate and misleading.[27]

22. Counsel submits the following mitigating factors must be taken into account on behalf of Bangura, whether they have a nexus with the offence or not:

- his efforts to consolidate peace;
- his cooperation with Independent Counsel;
- his good behaviour in detention;
- his remorse;
- his family responsibility;
- his lack of prior conviction; and
- his being a born-again Christian.

23. Counsel refers to the provisions of Rule 101 (B)(iii) and submits that Bangura's voluntary surrender to the court and his cooperation should be considered in his favour. Counsel refers to several letters of commendation and character references annexed to the brief.[28] Counsel further asks the Court to consider the period between 2000 – 2004, when Bangura was

[26] SCSL-11-02-T-68, para. 34.
[27] SCSL-11-02-T-68, paras 45, 48-58.
[28] SCSL-11-02-T-68, paras 59-73.

detained without trial in Pademba Road Prison, as a general consideration for reduction of sentence.[29]

Submissions of Counsel for Samuel Kargbo

27. In his written sentencing submissions, Defence Counsel for Samuel Kargbo stresses that Kargbo entered a voluntary and unequivocal plea of not guilty. He urges the Court to give Kargbo a non-custodial sentence, and preferably a caution and discharge, or a fine. Counsel acknowledges the Single Judge's discretion in sentencing, stating that trial judges are best placed to hear evidence, observe and assess the demeanour of participants, and weigh the aggravating and mitigating factors that apply.[30]

28. Counsel submits that the objects of sentencing are deterrence, protection of society, reprobation, retribution, rehabilitation and reconciliation. He cites the separate opinion in the International Criminal Tribunal for the Former Yugoslavia (ICTY) case of *The Prosecutor v Deronjic*, in which the judge stated that "international justice ... is not about unfair retribution; if that were the case, humanity should forget about reconciliation and its offshoot, peace," "vengeance may be manifested in a harsh sentence for an accused person who has pleaded guilty," and "rehabilitation after turmoil reduces political instability and conflict."[31] Counsel for Kargbo submits that the people of Sierra Leone have demonstrated extraordinary lessons in forgiveness and compassion, and giving Kargbo a pardon, caution and discharge, or fine would place a higher premium on this type of forgiveness.[32]

29. Counsel submits that granting bail to Kargbo offered him the opportunity to demonstrate that he could live as a respected member of society, and the certificate of good conduct provided by WVSS [sic] to the Court attests to this fact. He states that this trial has been

[29] SCSL-11-02-T-68 para. 74.
[30] SCSL-11-02-T-67, paras. 6-7, 56.
[31] SCSL-11-02-T-67, para. 8, citing *The Prosecutor v. Miroslav Deronjic*, IT-02-61-S, Sentencing Judgement: Separate Opinion of Judge Florence Ndepele Mwachande Mumba, 30 March 2004, para. 3.
[32] SCSL-11-02-T-67, para. 11.

"thorough, pedagogic, and compassionate" and has allowed Kargbo to become a better Sierra Leonean and a better human being. Counsel contends that there are no aggravating factors that would warrant custodial punishment, but that there are several mitigating factors that run in Kargbo's favour including his considerable and substantial cooperation with the Prosecutor before and after conviction, his remorse, his guilty plea, his conduct at trial and his previous character.[33]

30. Counsel submits that Kargbo's remorse is demonstrated by his not further contacting TF1-334 after he was rebuffed, his not exposing TF1-334's identity to any third parties, and his not threatening TF1-334, his confession of his (Kargbo's) crime, his cooperation in the discovery of the truth and his not contacting any other protected witnesses. Counsel submits that Kargbo does not constitute a danger or threat to any witness. Counsel further submits that Kargbo is devastated by the discomfort this situation has caused his family, and he "sincerely apologises" to the Special Court, the Single Judge and to TF1-334.[34]

31. Counsel reminds the Court that in his sentencing submissions Independent Counsel agreed that Kargbo confessed his participation at the earliest opportunity, offered to cooperate and waived his right to counsel.[35] Kargbo also provided material evidence, and prevented similar crimes by the principal perpetrators.[36] Finally, Counsel contends, Kargbo was courteous, answered questions in a calm and respectful manner, and was not evasive when giving evidence, despite the fact that the Independent Counsel and his own Counsel, because of extenuating circumstances, could not prepare him to testify.[37]

32. Counsel reminds the Court that Kargbo's guilty plea was a way of making amends to the administration of justice, avoiding a prolonged trial and thus saving time and resources.

[33] SCSL-11-02-T-67, paras 12-15, 17.
[34] SCSL-11-02-T-67, paras 21-22, 27-28.
[35] SCSL-11-02-T-67, paras 23, 26, 30-31.
[36] SCSL-11-02-T-67, para. 31.
[37] SCSL-11-02-T-67, paras. 31-33.

Counsel also submits that Kargbo also pleaded guilty at a personal risk to himself and his family.[38]

33. Counsel submits that Kargbo demonstrated good conduct at trial, and complied with and respected the conditions of his bail, which confined him to an area of Freetown away from his wife and family. Kargbo is an "ordinary citizen," with no criminal background, struggling to earn a living for himself and his family.[39]

34. Counsel urges the Court to consider the contributions Kargbo made to his community and his church and his status as an artist to demonstrate that he is not a pre-occupied with criminality, but with religion, faith and "the pursuit of happiness for fellow mankind."[40]

35. Counsel notes that the confidential annexes attached to his submissions demonstrate the close relations between Kargbo and TF1-334, and their families, and states that this may have been the factor that led the co-perpetrators to contact Kargbo regarding TF1-334. Counsel asks the Court to consider that a non-custodial sentence for Kargbo would cement these familial ties and solidify the protections afforded to him and TF1-334.[41]

36. Counsel notes that Kargbo was a "dedicated soldier" who did not, at the risk of death, "betray" Sierra Leone even when more senior officers did so. He was abducted into the West Side Boys, leading to his being "unjustly incarcerated" at Pademba Road Prison until he was released in a general amnesty. Counsel submits that the cross-examination of Kargbo confirmed that he did not participate in any crimes under the jurisdiction of the Special Court.[42]

37. Counsel urges the Court to consider Karbgo's efforts towards peace, and states that a caution or fine imposed while acknowledging Kargbo's victimhood would bring satisfaction and closure to those in the Sierra Leonean Army who were "wrongly assimilated" with the

[38] SCSL-11-02-T-67, para. 34.
[39] SCSL-11-02-T-67, paras 35, 37-39.
[40] SCSL-11-02-T-67, para. 54.
[41] SCSL-11-02-T-67, para. 40.
[42] SCSL-11-02-T-67, paras 41-48.

perpetrators of the crimes. In addition, by his conduct in pleading guilty, Kargbo has strengthened the confidence of ex-combatants, ex-soldiers and Sierra Leoneans in the rule of law.[43]

Submissions of Counsel for Santigie Borbor Kanu

38. In his written submissions, Counsel for Kanu submits that Kargbo changed his testimony concerning Kanu in the course of the trial: in cross-examination, Kargbo agreed that he had not testified that Kanu asked him to get TF1-334 or any other person to change their testimony, but then later claimed that Kanu had spoken to him about TF1-334. Counsel asks the Court to consider the equivocal nature of this testimony in sentencing Kanu. Counsel argues that considering the testimony supporting Kanu's conviction, Kanu's words were "more in the form of a plea than anything else," and that Kanu never threatened a party or did anything more than ask them to "help him, and his brothers." Thus, though the testimony may support a finding of guilt, Kanu's actual words were not as serious as those contemplated by Rule 77(A)(iv).[44]
39. Counsel considers that due to Kanu's incarceration, rehabilitation may not be a primary factor in his sentencing, but that the Single Judge should consider his comportment during his incarceration, which Counsel submits has been excellent.[45]
40. Counsel notes that in the contempt proceedings before the Special Court against the wives and a friend of the three *AFRC* accused, a sentence of a one-year probationary period reflected the fact that this was an isolated incident with a lack of forethought, and that remorse was shown via guilty pleas.[46]

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[43] SCSL-11-02-T-67, paras 41-53. Counsel further notes that on direct examination by his Counsel, Defendant Kamara testified that he Kargbo were not friends and not on the same level, and he did not see Kargbo in the jungle or at the West Side, but first saw him in Pademba Road Prison. para. 47.
[44] SCSL-11-02-T-69, paras 5-9, 21.
[45] SCSL-11-02-T-69, para. 13,
[46] SCSL-11-02-T-69, para. 14.

41. Counsel further notes that in sentencing Defendant Senessie in the *Senessie* case, the Single Judge imposed concurrent sentences of two years' imprisonment in each of the eight counts of contempt, taking into account the multiplicity of offences and the persistence of the Defendant in the criminal acts.[47] Counsel argues that Kanu's case can be distinguished from that of Senessie, in that Kanu's involvement was limited to one witness, TF1-334, and his interaction with Kargbo, at its most damaging, simply amounted to encouraging Kargbo to convince TF1-334 to recant. Kanu's culpability, therefore, should be less than that of Senessie.[48]

42. Counsel notes that in the case from which the *Senessie* trial arose appellate proceedings had not yet finished, whilst in this case the *AFRC* accused had exhausted their appellate procedures and so their only recourse was through Rule 120 of the Rules. Thus, Counsel submits, any benefit of a plan to get TF1-334 to recant would not have automatically resulted in overturning the *AFRC* convictions, and was unlikely to have the effect of successfully interfering with the administration of justice.[49]

43. Counsel also notes that, as outlined in the Amicus Curiae brief filed in the *Senessie* case, other courts in contempt cases have imposed terms of imprisonment ranging from two months to three years. In the *Šešelj* case, a sentence of two years' imprisonment was imposed for "persistent contumacious behaviour," and in light of two previous convictions for the same offence. Counsel distinguishes the case against his client Kanu with the *Šešelj* case.[50]

44. In mitigation, Counsel submits that because Kanu is currently serving a sentence for his prior conviction, he would find it difficult if not impossible to pay a financial penalty. He notes that any custodial sentence imposed on Kanu would affect the likelihood of his early release or

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[47] SCSL-11-02-T-69, para. 15, citing *The Prosecutor v. Eric Koi Senessie*, SCSL-11-01-T-20, Sentencing Judgement, 12 July 2012.
[48] SCSL-11-02-T-69, paras 15-16.
[49] SCSL-11-02-T-69, para. 17.
[50] SCSL-11-02-T-69, paras 18-19, citing *In the Matter of Vojislav Šešelj*, IT-03-67-R77.4, Public Redacted Version of Judgement Issued on 28 June 2012, 28 June 2012, paras 53-57.

eligibility for parole, and would be "out of proportion to the demands of justice." Counsel also contends that because Kanu was a convicted person, he was more likely to have "grasped at any and all straws available to have his sentence reduced." Further, his role in this plan was limited to speaking to TF1-334, and he did not offer Kargbo money or speak to Kargbo regarding TF1-334 recanting his testimony. Counsel submits that Kanu was simply "part of the plan," rather than its "architect or developer."[51]

45. Finally Counsel for Kanu, in quoting William Shakespeare's *The Merchant of Venice*, asks the Judge for leniency and mercy, and not to impose a further custodial sentence or, in the alternative, the least possible sentence under the circumstances.[52]

Oral Submissions of the Parties

46. As noted, each of the Defendants elected to make a statement in *allocutus*. Bangura told the Court that he is a family man, one of a family of ten, and his wife is unemployed and dependent upon him. His only child is a daughter of twelve who is entering secondary school, and if he continues to be incarcerated she will have to "drop out." He said he has learnt from his mistake and asked for mercy and forgiveness.

47. Kargbo thanked the Court for the opportunity to speak and also said he was sorry and asked for forgiveness. He stated that from the first day of the proceedings he said he was sorry and he continued to do so. Kargbo apologised to the Special Court, the Almighty, his family and the Government and people of Sierra Leone. He explained that he is married in a traditional way, with two children, and is to marry in church on 27 October. He cares for his mother, grandmother and others. He stressed that he will never commit any other crimes.

[51] SCSL-11-02-T-69, paras 20-21.
[52] SCSL-11-02-T-69, paras 22-23, citing *The Merchant of Venice*, William Shakespeare, Act Four, Scene 1 ("The quality of mercy is not strain'd ...")

48. Kanu adopted the words of Mr. Nicol-Wilson (Counsel for Bangura) stating that the Court is a minister of justice, and knows all the evidence. He said he is "showing remorse and to show mitigation [sic]," and that he complied with the Single Judge, the staff in the court, the Defence and "even Mr. Herbst." Kanu stated that he is a family person with a mother, three children - one of whom is eight months old - and reminded the Single Judge that she had seen his daughter in court. He asked the Court to look at all the evidence against him, and thanked Defence Counsel and the staff of the court. He closed by stressing matters of mitigation, his remorse, and his comportment.

49. Kamara opened his *allocutus* by thanking the Presiding Judge for taking time to go through the contempt proceedings and apologised for his absence in court during the morning session, explaining it was due to a logistical reason. He was ready, dressed and waiting to come to court, and because "they" do not have use of phones on a Monday he could not speak to anyone.

50. Kamara stated that he respected the judgement, and he thanked the court and its staff for its time and patience, and also thanked the Prosecutor and in particular his Defence lawyer and Defence Counsel. He noted that he is already sentenced to forty-five years' imprisonment and asked for mercy given the length of this sentence and his family commitments, including his elderly mother and children. He asked for forgiveness and for the Court to bear in mind his comparative age and the length of his sentence. He spoke of the effect the case had on his mother.

51. All Defence Counsel made further submission on behalf of their respective clients. Mr. Nicol-Wilson referred to the letter of commendation from the Head of Detention at the Special Court, stating that Bangura was well behaved. He emphasised Bangura's work for peace in Sierra Leone, which is supported in a reference letter from the Director of AGPAD, where Mr. Bangura served as a deputy chairman. Counsel commented on the detrimental effect

Bangura's incarceration has had on his family, and their inability to pay rent and school fees which would result in his wife and child being without a home. He noted that the offer of a bribe "may have been an empty promise," and referred to the finding of the Court that he had not paid a bribe. Counsel sought a non-custodial sentence, and asked the Court to consider the period of four years which Bangura had spent in Pademba Road Prison in unlawful detention without conviction or charge. Counsel acknowledged that the four years in Pademba Road Prison were not related to the present offence, but submitted that it showed how Bangura had already suffered.

52. Chief Taku, Counsel for Kargbo, stressed the contribution of the Court to justice and to the peace of Sierra Leone and drew a parallel to his client's situation and that of Paolo Gabriele, the butler to Pope Benedict who had recently been pardoned. Counsel stressed Kargbo's cooperation from the outset, and that, notwithstanding his right to counsel he admitted his role and spoke truthfully during investigation. Kargbo continued to show this truthfulness, humility and remorse by pleading guilty and giving evidence. Counsel stressed that Kargbo's ability to say "I am sorry" denotes that people make, but can also acknowledge, mistakes. He reiterated his client's statement that he is married traditionally with two children and intends to marry in church. Counsel urged the Court to give his client a further opportunity in the light of the mitigating factors in his favour.

53. Mr. Metzger, on behalf of Kanu, referred to his client's emotional plea and stated that Kanu had been deeply moved by this experience. He referred to the dearth of precedent on contempt proceedings in the international tribunals, and sought to distinguish the instant case from the *Senessie* case. In the *Senessie* case, Counsel submitted, the Defendant Senessie had committed a multiplicity of offences and was persistent. Counsel submitted that Kanu was different, and that he is already serving a lengthy sentence and would do anything that was possible to change his situation. Counsel conceded that contempt strikes at the heart of

justice but that his client, having been convicted and had his appeal rejected, looked to Rule 120 not realising that the rule is not automatic and Sesay is not giving new evidence.

54. Counsel referred to the Amicus Curiae brief, and in particular to the case of *Haraqija,* in which an aggravating factor in sentencing had been the fact that Haraqija was a government minister and therefore had betrayed his position of trust.[53] Counsel also noted that the *Haraqija* case showed intimidation, and there was no intimidation by Kanu in this case and Kanu was not in a position of power to exert any influence on others.

55. Given the lengthy sentence being served by Kanu and the fact that he will not be considered for parole for at least sixteen years, Counsel submitted that a consecutive custodial sentence will have "a deleterious effect." He referred to his client's "exemplary conduct in Rwanda." Counsel further submitted that in the event of a custodial sentence being imposed, it should be concurrent, since both counts of which Kanu was convicted arose from the same situation. He asked for mercy on behalf his client.

56. Mr. Serry Kamal, on behalf of Kamara, noted the difficulties of conducting the trial and acknowledged the work of his colleagues, Independent Counsel and Court. He submitted that it is painful to give someone a sentence and send them to prison, particularly in this case where Kamara has stressed how his elderly mother became seriously ill after hearing the evidence. He asked the Court to consider the lengthy sentence already imposed on Kamara, who is in his 40s, and submitted that people in Africa do not have a long life span. Counsel submitted that this conviction will be a "serious blot" on Kamara's parole assessment. The conviction will drive home that the law is the law, but even one more day of a custodial sentence will condemn Kamara to life imprisonment. Counsel submitted that all of this would be coupled with the difficulty of serving sentence in a foreign land where customs,

[53] SCSL-11-01-T-16, paras 14-15. See *The Prosecutor v. Astrit Haraqija and Bajrush Morina*, IT-04-84-R77.4, Judgement on Allegations of Contempt, 17 December 2008 paras. 103, 112.

language and the political and social environment are very different to his home. Counsel also noted that Kamara's family visits are restricted to one per year.

57. Counsel drew a parallel to contempt in the Sierra Leonean national jurisdiction where it is only required to write a letter of apology to purge contempt. He noted the lack of authorities on contempt in Sierra Leone, but stressed that this is not a military tribunal where draconian sentences are passed, nor is the offence a crime against humanity or a war crime. Counsel submitted that a civilian can apologise and be given a small fine, but noted that Kamara is impecunious. Counsel urged the Court to give a warning, and to reflect on the impact that having gone through this process will have on Kamara.

58. Independent Counsel, Mr. Robert Herbst, responded and thanked the other Counsel and the Court for the courtesy extended to him. He reiterated that it is not his practice to make specific recommendation on sentence, but suggested that in the case of Bangura, Kanu and Kamara a sentence should be on the high end of the range. He submitted that whilst contempt is not a war crime, its strikes at the heart of justice and that a goal of a sentence should be deterrence to those serving sentence and to the rest of the community.

59. In relation to rehabilitation, Counsel submitted that rehabilitation involves an acceptance of guilt. This has not been shown by the three Defendants Bangura, Kanu and Kamara, as all three testified falsely and this is "a significant aggravating factor."

60. In distinguishing the case of *Senessie*, Counsel submitted that Senessie had admitted what he had done wrong *in allocutus* and this is a significantly different from the instant case, where only Kargbo conceded wrong doing.

DELIBERATIONS

61. It is agreed by all Counsel that the provisions of Rule 77 (G) apply in the instant case and, as the proceedings where brought pursuant to Rule 77 (C)(iii), the maximum penalty is a term of

imprisonment of 7 years or a fine not exceeding 20 million leones, or both. I note that the current provisions of Rule 77(G) provide, *inter alia*, for a fine not exceeding 20 million leones as amended in May 2012. That amendment was not retrospective and I agree with the submission of Counsel for Kanu that, as the facts in this case arise out of an order in lieu of indictment issued prior to the amendment, the earlier provision of a maximum fine not exceeding 2 million leones is applicable in the instant case.[54]

62. All Counsel, including Independent Counsel, have referred to the aims of punishment imposed on persons convicted of crimes as deterrence, rehabilitation and retribution.[55] To these I add, as did Counsel for Kargbo, the safety of the public. Counsel for Bangura submits at length on the sentencing objectives both in the international tribunal and in Sierra Leonean domestic courts. He relies on the *AFRC* sentencing judgment, holding that retribution, deterrence and rehabilitation have been considered as the main sentencing purposes in International Criminal Justice. Counsel does not, however, go further to quote paragraph 17 of the same judgment, where the Chamber noted that international criminal tribunals have held that, unlike domestic courts, rehabilitation cannot be considered as a predominant consideration in determining a sentence.[56] I accept that the Trial Chamber of the Special Court has stated that retribution and deterrence are the factors most in mind when sentencing for war crimes and crimes against humanity.[57] This has also been confirmed by the Appeals Chamber.[58]

63. As I noted in the *Senessie* case, since none of the Defendants in this case is convicted of crimes against humanity, war crimes or crimes against international humanitarian law but of the crime of contempt, I consider that rehabilitation is also a matter I am entitled to consider and do consider when sentencing in the instant case.

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[54] SCSL-11-02-T-69, para. 11.
[55] SCSL-11-02-T-64, para. 3.
[56] *The Prosecutor v. Alex Tamba Brima et al.*, SCSL-04-16-T-624, Sentencing Judgement, 19 July 2007, paras. 14, 17.
[57] *The Prosecutor v. Charles Taylor*, SCSL-03-01-T-1285, Sentencing Judgement, 30 May 2012, para. 13.
[58] *The Prosecutor v. Alex Tamba Brima et al.*, SCSL-04-16-A-675, Judgement, 22 February 2008, para. 532.

64. Counsel for Bangura also submits that "it is necessary to show that TFI-334 was actually influenced," and relies on the case of *Re B (JA) [an infant]*; I do not agree with Counsel's interpretation of this precedent. The Court in that case, when considering an argument on behalf of a convicted contemnor that his threat did not take effect and no harm had been done, stated that it did not accept this view and "the mere fact that no harm has been done in this particular case is neither here nor there. It would be unfortunate if the idea got abroad that if a person threatens witnesses in this way, the worst that is likely to happen to them will be that they would have to pay some costs and make an apology."[59]

65. I apply this principle also to the oral submission by Counsel for Kamara stating that in Sierra Leone domestic jurisprudence it suffices to write a letter of apology in order to purge a contempt of court. Counsel did concede that he had no precedent to put before the Court in support of that submission and, if there is such a precedent, I do not consider it persuasive in the instant case.

66. The comprehensive review of the applicable law and sentencing practices in contempt proceedings before the Special Court and in the other international tribunals set out in the Amicus Curiae brief submitted in the *Senessie* case has been referred to by several Counsel.[60] The brief notes that every case has a "multiple of variables"[61] and that in matters of contempt Chambers have considered the gravity of the crime most determinative in choosing what penalty to impose.[62] The Amicus Curiae brief shows the wide spectrum of reasons for disobeying court orders which have in turn led to contempt proceedings, but notes that the sentencing practice in cases involving Rule 77 (A)(iv) violations has consistently been to impose terms of imprisonment (with two exceptions).[63] In the present case, each of the

[59] *Re B (JA) (an infant)* [1965] Ch. 112, [1965] 2 All E.R. 168.
[60] See *The Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-T-16, Amicus Curiae Brief, 25 June 2012.
[61] *The Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-T-16, Amicus Curiae Brief, 25 June 2012, para. 10.
[62] *The Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-T-16, Amicus Curiae Brief, 25 June 2012, para. 11.
[63] *The Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-T-16, Amicus Curiae Brief, 25 June 2012, para. 14.

Defendants has been convicted of one or more counts pursuant to Rule 77 (A)(iv) and, in the case of Kamara, one count pursuant to Rule 77 (A)(ii).

67. In considering the "variables" in this case, of particular note is that three of the Defendants strenuously denied any involvement, leading to a protracted trial. Any accused person, including the Defendants, is entitled to put a Prosecutor to proof of a charge against him or her. This is clearly stated in Article 17 of the Statute and in such international treaties as the International Covenant on Civil and Political Rights.[64] However, in this case the Defendants, particularly Bangura and Kanu, went far beyond challenging and seeking to rebut the evidence against them. In the case of Kanu he made outrageous allegations that a prison officer and Independent Counsel tampered with evidence in order to incriminate him, and that they colluded together. He persisted in his allegations but produced no evidence to support these extremely serious criminal allegations. He also alleged that the complainant TFI-334/Sesay had grossly insulted his (Kanu's) mother without giving TFI-334 an opportunity to comment.

68. In the case of Bangura, he alleged that Independent Counsel had brought these proceedings against him for improper motives and, even when shown and conceding that the Independent Counsel was not in Sierra Leone at the relevant time, Bangura persisted in alleging there was an ulterior motive of revenge on the part of the OTP, which was the real reason for the allegations against him.

69. A court, when considering sentence and weighing aggravating and mitigating circumstances, considers whether an accused person pleaded guilty or not guilty when deciding a sentence. In the instant case, Kargbo pleaded guilty and admitted his guilt at the earliest opportunity and the three accused Bangura, Kamara and Kanu pleaded not guilty. However in the case of

[64] See International Covenant on Civil and Political Rights, Article 14.

Bangura and Kanu, I considered that their allegations, outlined above, are an exacerbating aspect of their trials.

Individual Considerations

Defendant Hassan Papa Bangura

70. As I found in the judgement in this case, it is clear on the evidence that there is a hierarchy or perceived hierarchy and friendships among the Defendants. The Defendants in Rwanda had been colleagues of Bangura and were fellow honourables, hence of the same rank as each other. Bangura was superior to TF1-334/Sesay, he was both a boss and a brother to TF1-334 and had influence over him. It was this superior position that enabled him to influence TF1-334, and which he misused to commit these offences. I found on the evidence that initially TF1-334 was only prepared to speak to Bangura, though he subsequently spoke to Kanu and it was Bangura's urging of TF1-334 and the pressure he put on him that left TF1-334 "confused and tormented." I note that Counsel for Bangura submits that "there was no evidence that Mr. Bangura threatened or intimidated TF1-334" and TF1-334 and Kargbo received calls from Rwanda."[65] He submits further that the threat and intimidation cannot be aggravating factors because they were adjudged to have constituted the offence and at the time of the purported threat, the offence had already been completed. I do not agree with this reasoning. It is clear on the evidence that Bangura's calls and words to TF1-334 were the ones that tormented him and, in the case of Bangura, the offence was not "already completed." I accept that Bangura's offer of a bribe was not the worst example of such an offence but in the overall scheme it was part of the intended persuasion.

71. In closed session TF1-334/Sesay dealt in detail with his fears for his personal safety and his concern regarding the role of ex-combatants in the political arena. The Court has also heard

[65] SCSL-11-02-T-68, para. 56.

repeated evidence of former combatants meeting regularly at Sweissy and how they made regular contact with each other and with the convicted persons in Rwanda. This evidence conveys a strong picture of unity and rapport among some former combatants and rebels, and the superior role that Bangura had among the group. Bangura has misused his position in this case and I consider that it is imperative that this Court delivers a clear message to him and to other ex-combatants that this type of position and comradeship cannot be misused in order to interfere with the administration of justice.

72. I agree with Independent Counsel that there was a plan to have witnesses recant their testimony in an effort to have a review of the conviction and/or sentence of Kamara and Kanu. I have outlined how that plan came about following the visit of the Registrar and a telephone call to the lawyer Andrew Daniels. The fact that the plan could not succeed is not relevant. What is relevant is that steps where taken to implement the plan and those steps constituted contempt of court.

73. However, I am also satisfied that there is no evidence before me to show that Bangura was part of the initial planning and the identification of which witnesses would be approached. My findings are that he was used because of his position and for that reason, I consider him less culpable than Kamara and Kanu but, given his misuse of his superior position, not much less. I consider a clear message must be sent that witnesses cannot be interfered with and a deterrent sentence is warranted.

74. On the side of Bangura, he has clearly behaved himself while in custody and he shows great and commendable concern for the welfare of his family who, as often the case, are those who may suffer most. He stresses his work for peace and this is supported by character statements. He stresses his Christian beliefs and I have no reason to doubt this statement or that of Mr. Williams. I have also given considerable thought to Mr. Nicol-Wilson's submission in relation to the period that Bangura was in custody without warrant and without trial.

75. There is no doubt that he and others were held for a period of four years without trial or warrant and this was a grave abuse of their constitutional and human rights. It is a serious indictment on those responsible for the administration of the Pademba Road Prison that they would allow 14 people to be held without warrant or charge indefinitely and, equally, an indictment on a judicial system which is charged with the duty under the Prisons Act to check on such matters. I considered this a serious abuse of human rights and I am still of that opinion. However, the application of these facts to this case is difficult to assess. The matters that led to Bangura's incarceration were not before this Court, this Court was in no way responsible for the breach (and in fact the Court was not in existence for part of that time), and that breach cannot be said to have a bearing on this case.

Defendant Samuel Kargbo

76. I already noted that Kargbo pleaded guilty and cooperated with the Independent Counsel in his investigations and in the subsequent trial. As I found, he was a friend of TF1-334/Sesay and he allowed his friendship to be abused in order to persuade TF1-334 to change his testimony and to offer him unspecified amount of money in order to do so. There is no doubt that Kargbo was also under pressure, and I have referred in my findings to the evidence of Kargbo's plea to Sesay that "these men" were harassing him and he wanted "peace" from that harassment. He went along with the attempt to persuade TF1-334, and pressurised TF1-334 for personal financial gain.

77. I am satisfied that, like Bangura, there is no evidence that Kargbo was part of the initial planning of the scheme, and for this reason he is less culpable. I accept his Counsel's submission that he has conformed to his bail conditions, and I note he appeared at trial. I accept that, of all the Accused in this case, he alone made no effort to excuse or extricate himself from his conduct. It is clear that he accepted that he acted wrongly from the start and

cooperated throughout the proceedings both at the investigative and at the trial stage. He pleaded guilty thereby avoiding a trial. I accept that his feelings of remorse are genuine and that he has resiled from his previous behaviour.

78. Whilst I also consider a deterrent sentence is called for to send a clear message that the administration of justice cannot be abused by interfering with witnesses, I accept that the mitigating factors in his case weigh heavily in his favour. I also take note of his personal circumstances as shown by the character references filed on his behalf, his *allocutus* and his Counsel's submissions.

Defendant Santigie Borbor Kanu

79. As I have already noted, this scheme to have a witness or witnesses recant their testimony was devised in Rwanda between the Rwandan detainees. The evidence before me indicates it involved the AFRC detainees Kamara and Kanu. There is reference to Alex Tamba Brima but as he is not on trial in these proceedings and I make no findings in relation to his activities. Kamara and Kanu used their contacts and others they knew in Sierra Leone to influence a witness who, in Kamara's statement and the evidence of Andrew Daniels was important in the AFRC trial, *viz* TF1-334. Kamara also testified that TF1-033 was, in his view, an important witness.[66] I consider that Kamara and Kanu induced Bangura and Kargbo's contemptuous conduct.

80. Counsel for Kanu has referred to the case of *Haraqija* to make submissions concerning a term of imprisonment imposed therein, and to show that the ICTY considered the abuse of a position of trust as an aggravating factor. I would add that the *Haraqija* case also showed that in the view of the sentencing court, the fact that he induced another person's contemptuous conduct warranted a heavier sentence than his co-accused. I concur with that view that

[66] Transcript 22 Aug 2012 pp. 1246-1247; SCSL-11-02-T-66, para. 324.

inducing another to a crime is serious misconduct, and one which I take into account in this trial. I have already commented on Kanu's persistent allegations of criminal conduct by others, which were unnecessary and are an aggravating factor in his trial.

81. I agree with Counsel that Kanu was convicted on the evidence of facts arising from his telephone conversation with TF1-334/Sesay. However, the evidence also shows that he took part in other telephone conversations along with Kamara and that were in furtherance of their scheme, (but he did not participate in the conversation with Daniels). Despite the conflicting evidence between him and Kamara, I consider he was as much an instigator of this scheme as his co-accused and for this reason is as culpable as Kamara and more culpable than Bangura and Kargbo.

82. In comparing the evidence against Kanu with that found in the Senessie case, Counsel submits that the most damaging thing that can be said about Kanu's interaction with Sesay and Kargbo is that it amounted to "encouraging the latter to try and convince the former."[67] However, that interaction was enough for Kargbo to speak of being harassed and Sesay to subsequently consider himself "tormented;" the impact was more than "encouraging." Counsel also submits that, when considering the gravity of the offence, I should consider that "this plan could seen as a preparatory plan which, in itself, is unlikely to have had the effect of successfully interfering with the Special Court administration of justice."[68] I do not consider that the likelihood of success or otherwise is a relevant matter in a contempt proceedings. As I have quoted above from *RE B(JA) (an infant)*, that "is neither here nor there." It is the act of interfering with the witness, not the success of the interference, that is relevant.

83. Counsel for Kanu points to Kanu's family commitment, and I recall Counsel for Kamara's submission that he is only able to see family once year. Counsel submits that Kanu's comportment in prison during his sentence has been excellent. I have no direct evidence of

[67] SCSL-11-02-T-69, para. 16.
[68] SCSL-11-02-T-69, para 17.

this, but I note the evidence of improper and misleading communications with a journalist, which I did not consider in assessing guilt or innocence but is indicative of the behaviour of Kanu and runs counter to this particular submission. It appears to me from Kanu's behaviour and from his planning and implementation of this offence that he has not reconciled to his conviction or sentence, a matter I bear in mind when considering rehabilitation. I know that in his allocutus, Kanu stated he was showing remorse in order to demonstrate mitigation. His acceptance that he has done wrong is an essential element of remorse. In *allocutus* he too stressed his family commitments, including an eight-month old baby and his daughter. I agree that the Court did see her, and he should be proud of her. However, as I have stated in relation to Bangura, this matter requires a deterrent sentence.

Defendant Brima Bazzy Kamara

84. Kamara has been convicted of two offences of knowingly and wilfully interfering with the Special Court administration of justice by 1) otherwise interfering with a witness who is giving testimony before a Chamber and 2) disclosing information relating to proceedings in knowing violations of an order of a Chamber.

85. On the evidence, Kamara was found not guilty of offering a bribe but as I have already noted, it is apparent that he took part in the plan and was as active, if not more active, than his co-accused. He contacted the lawyer Daniels, and there is a reference to his contact with a relative who is in a political position with the intention of seeking help (in my findings I could not determine if it was financial or moral help.) It is clear that he was instrumental in using telephone contact to reach Bangura and Kargbo and to persuade them to contact TF1-334/Sesay. His evidence and that of Kanu contradict each other on the role Kanu played. I have already quoted the effect his and Kanu's persistence had on Kargbo and TF1-334/Sesay.

86. As noted above and in the judgement, Kamara also acknowledged his view that TF1-033 was an important witness in the *AFRC* trial, and I have no doubt that his inquires about the whereabouts of TF1-033 were linked to the plan to have the Rwandan prisoners' convictions and/or sentences overturned. I have already commented, in relation to Kanu, that it is irrelevant whether the plan came to fruition.

87. *In allocutus*, Kamara spoke of his regret of his role in the plan, his acceptance of the decision of the Court and asked for forgiveness and mercy. His Counsel stresses his age, distance from family and his having to endure a long sentence in an alien environment. I accept that these things are extremely difficult to bear. However, they are not an excuse for committing further crimes and are indicative of a non-acceptance of responsibility for his previous offences.

88. Counsel for both Kanu and Kamara stress the detrimental effect a further custodial sentence at their age would have on their clients given the long sentences they are presently serving, and the effect of these convictions and sentence on any parole consideration. As requested, I weigh these factors against the deterrent aspect of any punishment, which for the foregoing reasons, I consider appropriate in this trial.

89. As requested by Counsel, I have considered the imposition of a fine. However, given the circumstances of each of the Defendants it is apparent that it would be their families and not them individually who would be responsible for the payment. Their families are already in difficult circumstances and it would unfair to make their situation worse. A fine, therefore, would not necessarily be a deterrent to the Defendants individually. Further, I consider that the circumstances of these convictions warrant a deterrent sentence.

90. For each of the individual and collective reasons above I sentence as follows:

91. Hassan Papa Bangura to 18 months imprisonment for each of the two counts for which he is convicted. As the counts arise from the same sequence of related events I consider the two sentences should be served concurrently. From this I deduct the period that he has already

served in remand. Notwithstanding a dearth of legislation or jurisprudence, I am of the view that when a court considers a sentence and looks to a convicted person's past behaviour, both good and bad, a court should be entitled to give some credit for suffering caused through a breach of that convicted person's human rights. On that basis, I add to the period in remand a notional period for the abuse of his human rights whilst he was incarcerated without trial, and order that he serve 12 months with effect from today, 11 October 2012.

92. I also consider that the two offences of which Kargbo is convicted should be served concurrently, as they arise from the same sequence of related events. I sentence him to a period of 18 months imprisonment on each count', to be served concurrently but in the light of his plea, his cooperation with the Court, his acceptance of his wrong-doing, and his honest admission of his wrong doing, I suspend the entire sentence provided he is of good behaviour for a period of two years from today's date. I also release him from the terms and conditions of his bail.

93. I note that Kanu was convicted of two counts which arose out of his actions during one incident and in the circumstances it is appropriate that any sentence be served concurrently. I consider, as aggravating factors in the case, his role as an instigator of this plan; the use of others in the plan's implementation; and his refusal to accept his own culpability by putting forward a defence over and above that required to challenge the evidence of the Prosecution. I consider a term of two years' imprisonment on each count to be served concurrently is appropriate. I do not consider it appropriate that this term be served concurrently to his existing sentence as they are not related offences and are separated by a considerable period of time. I therefore order that the sentence of two years be served consecutively on his existing sentence.

94. Despite my finding that Kamara was not guilty of one of the three offences for which he was indicted, I consider that he was a planner and instigator of this scheme, and used others in his

attempt to implement it. Therefore, for this and the other reasons I have given, I believe he is more culpable than Bangura or Kargbo. His actions in disclosing the identity of a protected witness were part of the plan and were implemented in the same series of events that gave rise to his conviction for interfering with a witness who had given evidence. For that reason, I consider it appropriate that his sentence be served concurrently, and I sentence him to two years imprisonment on each count to be served concurrently. As in the case of Kanu, I consider these crimes separate and apart from the sentence which he is presently serving and therefore order that it be served consecutively to his present sentence.

95. Following pronouncement of sentence, Counsel for Kanu has asked the Court to take into consideration the fact that Kanu and Kamara were incarcerated at Kigali Central Prison, away from the Mpanga Prison where they normally serve sentence, for the duration of the hearings. At the opening of the hearings, the Rwandan prisoners themselves objected to staying at Kigali Central Prison and threatened to boycott the proceedings. Kamara said that Kigali was "a local prison" but where he is "it's an international prison." He asked how many international prisons do "we" have, and stated that he could not "be in a public place where you have too many prisoners" and could not "adjust to such standards," and that he was concerned about his health. Kanu "buttressed" what had been said by Kamara and objected to being taken to "a local prisoner [sic]"[69]

96. As I stated in response to that objection, I am not aware of any special provision giving a prisoner convicted by an international tribunal a different status to another person convicted by a court, be it a high court or a lower court. A convicted person is a convicted person; because a person has been convicted of serious crimes such as war crimes or crimes against humanity, does not give him a superior position to claim better or different treatment from any other convicted prisoner.

[69] Transcript 6 June 2012 pp. 42-44.

97. As I noted, the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Special Court for Sierra Leone or Otherwise Detained under the Authority of the Special Court for Sierra Leone ("Rules of Detention of the Special Court") state standards for accommodation, hygiene, medical care, etc.[70] There is no suggestion that these have not been adhered to.

98. In the "Agreement Between the Special Court for Sierra Leone and the Government of the Republic of Rwanda on the Enforcement of Sentences of the Special Court for Sierra Leone," the parties recalled the accepted international standards governing the treatment of prisoners, including the standard minimum rules for the treatment of prisoners approved by ECOSOC [the United Nations Economic and Social Council] Resolution 663(C). The detention facilities agreed to and adopted by the Special Court and the Government of Rwanda conform to those standards. In no part of the sentencing judgement relating to the Accused Kanu and Kamara was it stated that they had a special status over and above those applied to any other convicted persons.

99. I say again that the fact that a person is convicted by an international war crimes tribunal does not give them some superior status to other convicted persons that enables them to demand different and superior treatment.

100. I remain of that view and again, no jurisprudence, legislation or international convention has been put before me to allow me to deviate or change that opinion. However, in the light of the various changes to location, travel, and inconveniences arising from this trial, I will allow a deduction from sentence of two weeks in the case of both Kamara and Kanu.

DISPOSITION

101. In relation to each of these counts I impose the following penalty:

[70] Transcript 16 June 2012 pp. 80-82.

Hassan Papa Bangura:

COUNT 1: Sentenced to 18 months' imprisonment from which is deducted the period in remand and a notional period in respect of breaches of his human rights to a total of six months to be deducted.

COUNT 2: Sentenced to a period of 18 months' imprisonment from which is deducted the period in remand and a notional period in respect of breaches of his human rights to a total of six months to be deducted.

Both sentences to be served concurrently.

Samuel Kargbo

COUNT 1: Sentenced to a period of 18 months' imprisonment.

COUNT 2: Sentenced to a period of 18 months' imprisonment.

All of which is suspended on condition that the said Samuel Kargbo is of good behaviour for a period of two years with effect from the 11 October 2012.

Santigie Borbor Kanu

COUNT 1: Sentenced to two years' imprisonment from which is deducted a period of two weeks, to serve one year and 50 weeks.

COUNT 2: Sentenced to two years' imprisonment from which is deducted a period of two weeks, to serve one year and 50 weeks.

Both sentences to be served concurrently and to be served consecutively on his present sentence.

Brima Bazzy Kamara

COUNT 2: Sentenced to two years' imprisonment from which is deducted a period of two weeks, to serve one year and 50 weeks.

COUNT 3: Sentenced to two years' imprisonment from which is deducted a period of two weeks, to serve one year and 50 weeks.

Both sentences to be served concurrently and to be served consecutively on his present sentence.

Rendered in Freetown, Sierra Leone on the 11th day of October 2012.

Doherty J.

Justice Teresa Doherty
Single Judge

[Seal of the Special Court for Sierra Leone]