



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

THURSDAY, 19 JULY 2007
11.30 A.M.
SENTENCING

TRIAL CHAMBER II

Before the Judges:	Julia Sebutinde, Presiding Richard Lussick Teresa Doherty
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Mr Herman von Hembel Mr Thomas George
For the Prosecution:	Mr Chris Staker Mr Karim Agha Mr Charles Hardaway Mr Alain Werner Mr Vincent Wagona Ms Anne Althaus Ms Tamara Cummings-John (Case Manager) Ms Bridget Osho
For the Principal Defender:	Ms Haddijatou Kah-Jallow
For the accused Alex Tamba Brima:	Mr Kojo Graham Ms Glenna Thompson Mr Osman Keh Kamara Mr Stephen Akrong (legal assistant) Ms Soyoola
For the accused Brima Bazy Kamara:	Mr Andrew William Kodwo Daniels Mr Mohamed Pa-Momo Fofanah Ms Louisa Songwe (legal assistant)
For the accused Santigie Borbor Kanau:	Mr Geert-Jan Alexander Knoop Mr Ajibola E Manly-Spain Ms Karlijn van der Voort (legal assistant)

1 [AFRC19JUL07A- MD]

2 Thursday, 19 July 2007

3 [Open session]

4 [The accused present]

5 [Upon commencing at 11.30 a.m.]

6 PRESIDING JUDGE: Good morning. Maybe we will start with
7 appearances please.

8 MR STAKER: May it please the Chamber, for the Prosecution
9 Christopher Staker; with me Mr Karim Agha, Mr Charles Hardaway,
10 Mr Alain Werner, Mr Vincent Wagona, Ms Anne Althaus. Our senior
11 case manager is Tamara Cummings-John. A national visiting lawyer
12 is Ms Bridget Osho and we are accompanied by our intern, Ms
13 Chelan Bliss. Thank you.

14 MR GRAHAM: Good morning, Your Honours. May it please Your
15 Honours, Kajo Graham as lead counsel for the first accused, Alex
16 Tamba Brima. Your Honours, with me is Ms Glenna Thompson, Osman
17 Keh Kamara and our legal assistant, Stephen Akrong.

18 MR DANIELS: Good morning also, Your Honours. May it
19 please you, Andrew Daniels for Bazzy Kamara, as lead counsel,
20 together with me, Mohamed Pa-Momo Fofanah as co-counsel; legal
21 assistant Louise Songwe and national legal associate person, Ms
22 Soyoola.

23 MR KNOOPS: May it please the Chamber, Geert-Jan Alexander
24 Knoops, lead counsel for Mr Kanu; Mr Manly-Spain, co-counsel and
25 my legal assistant, Ms Karlijn van der Voort. Thank you.

26 PRESIDING JUDGE: I also recognise the presence of the
27 Principal Defender and members of staff from the Defence Office.

28 The Trial Chamber will today deliver sentence, sentencing
29 judgment in the case of the Prosecutor versus Alex Tamba Brima,

1 Ibrahim Bazy Kamara and Santigie Borbor Kanu. The sentencing
2 judgment is as follows:

3 On 20 June 2007, the Trial Chamber found each of the
4 accused Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie
11:47:18 5 Borbor Kanu guilty on 11 counts. The Chamber scheduled a hearing
6 meeting for 16 July and the parties submitted relevant
7 information for the assistance of the Trial Chamber pursuant to
8 Rule 100(A) of the Rules.

9 The Prosecution submission pursuant to Rule 100(A) of the
11:47:37 10 Rules was filed on 20 June; and the Brima Defence submission,
11 sentencing submission, and the Kamara sentencing brief were both
12 filed on 5 July 2007. The Kanu sentencing brief was also filed
13 on 5 July 2007.

14 At a sentencing hearing on 16 July 2007 oral submissions
11:48:18 15 were made by all parties and statements were also made by each of
16 the three accused persons.

17 The Prosecution submits that the appropriate sentence for
18 Brima and Kamara is imprisonment for 60 years each and for the
19 accused Kanu 50 years imprisonment. The Brima Defence makes no
11:48:43 20 submissions as to what sentence should be imposed but submits
21 that Brima should receive a lesser sentence than that proposed by
22 the Prosecution. The Kamara Defence also submits that Kamara
23 should receive lighter sentences for each of the crimes for which
24 he was convicted.

11:49:05 25 The Kanu Defence submits that Kanu should only receive a
26 sentence amounting to time served on remand or in the alternative
27 that he should receive a lesser sentence than that proposed by
28 the Prosecution. The Trial Chamber considered the written and
29 oral submissions of the parties in the determination of

1 appropriate sentences.

2 Now, by way of preliminary consideration, the Kanu Defence
3 objected to the documents annexed to the Prosecution sentencing
4 brief on the following grounds:

11:49:38 5 1. That the Prosecution purported thereby to introduce new
6 evidence through these documents.

7 2. That the Prosecution did not comply with its disclosure
8 obligations under the Rules in relation to annex G.

9 3. That the expert report was not objective and the
11:50:01 10 Defence was not in a position to call their own expert in
11 rebuttal on such a short notice.

12 4. That the introduction of new Prosecution evidence would
13 amount to abuse of process.

14 5. That the witness statements provided by the Prosecution
11:50:19 15 are inadmissible and, alternatively, that the Defence should have
16 an opportunity to cross-examine the proposed witnesses.

17 6. That other material submitted by the Prosecution is
18 irrelevant.

19 In its oral arguments the Prosecution submitted that, in
11:50:37 20 fact, it is allowed to introduce additional evidence at the
21 sentencing stage. It argued that since the Special Court has two
22 distinct procedures it is not necessary for it to adduce such
23 evidence at the trial stage.

24 Now, the Trial Chamber upholds the Defence objections and
11:50:57 25 has not taken into consideration the documents annexed to the
26 Prosecution sentencing brief in this judgment.

27 The Trial Chamber recalls the general principle that only
28 matters proved beyond reasonable doubt against the accused are to
29 be considered against him at the sentencing stage. Aggravating

1 circumstances must be proved beyond reasonable doubt whilst
2 mitigating circumstances need only be proved on a balance of
3 probability.

4 On the applicable law, sentencing in the Special Court is
11:51:35 5 regulated by the provisions of Article 19 of the Statute of the
6 Special Court and of Rule 101 of the Rules of Procedure and
7 Evidence.

8 Article 19 of the Statute provides as follows:

9 "1. The Trial Chamber shall impose upon a convicted
11:51:52 10 person, other than a juvenile offender, imprisonment for a
11 specified number of years. In determining the terms of
12 imprisonment the Trial Chamber shall, as appropriate, have
13 recourse to the practice regarding prison sentences in the
14 International Criminal Tribunal for Rwanda and the national
11:52:14 15 courts of Sierra Leone.

16 2. In imposing the sentences the Trial Chamber should take
17 into account such factors as the gravity of the offence and the
18 individual circumstances of the convicted person.

19 3. In addition to imprisonment, the Trial Chamber may
11:52:32 20 order the forfeiture of property, proceeds and any assets
21 acquired unlawfully or by criminal conduct and their return to
22 the rightful owner or to the State of Sierra Leone."

23 Now, Rule 101 of the Rules provides:

24 "A. That a person convicted by the Special Court other
11:52:52 25 than a juvenile offender may be sentenced to imprisonment for a
26 specific number of years.

27 B. In determining the sentence the Trial Chamber shall
28 take into account the factors mentioned in Article 19 sub-Article
29 2 of the Statute as well as such factors as:

1 (1). Any aggravating circumstances.

2 (2). Any mitigating circumstances including the
3 substantial cooperation with the Prosecutor by the convicted
4 person before or after conviction.

11:53:27 5 (3). The extent to which any penalty imposed by a court of
6 any state on the convicted person for the same act has already
7 been served, as referred to in Article 9.3 of the Statute.

8 C. The Trial Chamber shall indicate whether multiple
9 sentences shall be served consecutively or concurrently.

11:53:51 10 D. Any period during which the convicted person was
11 detained in custody, pending his transfer to the Special Court,
12 or pending trial or appeal, shall be taken into consideration on
13 sentencing."

14 That is the end of Rule 101.

11:54:07 15 According to the above provisions the Trial Chamber is
16 obliged to take into account such factors as the gravity of the
17 offence and the individual circumstances of the convicted person.

18 Aggravating and mitigating circumstances, and the general
19 practice regarding prison sentences in the ICTR and domestic
11:54:31 20 courts of Sierra Leone shall, where appropriate, be taken into
21 account. These requirements are not exhaustive and the Trial
22 Chamber has the discretion to determine an appropriate sentence
23 depending on the individual circumstances of the case.

24 The Trial Chamber agrees with the holding of the ICTR
11:54:53 25 Appeals Chamber in the Prosecution v Kambanda, and I quote: It
26 was held that:

27 "The Statute is sufficiently liberally worded to allow for
28 a single sentence to be imposed. Whether or not this practice is
29 adopted is within the discretion of the Chamber."

1 The governing criteria is that the final or aggregate
2 sentence should reflect the totality of the culpable conduct or
3 generally that it should reflect the gravity of the offence and
4 the overall culpability of the offender so that it is both just
11:55:33 5 and appropriate.

6 In the present case, the Trial Chamber finds that it is
7 appropriate to impose a global sentence, that is, a single
8 sentence for the multiple convictions in respect of Brima, Kamara
9 and Kanu.

11:55:52 10 Now regarding sentencing objectives. The preamble of the
11 United Nations Security Council Resolution 1315 of 2000
12 recognises that, and I quote:

13 "In the particular circumstances of Sierra Leone, a
14 credible system of justice and accountability for the very
11:56:15 15 serious crimes committed there would end impunity and would
16 contribute to the process of national reconciliation and to the
17 restoration and maintenance of peace."

18 Now, retribution, deterrence and rehabilitation have been
19 considered as the main sentencing purposes in international
11:56:38 20 criminal justice. Furthermore, international criminal tribunals
21 have held that retribution is not to be understood as fulfilling
22 a desire for revenge but, rather, as duly expressing the outrage
23 of the national and international community at these crimes and
24 that it is meant to reflect a fair and balanced approach to
11:57:02 25 punishment for wrongdoing. The penalty imposed must be
26 proportionate to the wrongdoing. In other words, the punishment
27 must fit the crime.

28 International criminal tribunals have further held that the
29 element of deterrence is important in demonstrating, and I quote:

1 "That the international community is not ready to tolerate
2 serious violations of international humanitarian law and human
3 rights."

11:57:38

4 It follows that the penalties imposed by the Trial Chamber
5 must be sufficient to deter others from committing similar
6 crimes. In the context of international criminal justice it is
7 recognised that one of the main purposes of the sentence is to
8 influence the legal awareness of the accused, the surviving
9 victims, their relatives, the witnesses and the general public in
10 order to reassure them that the legal system is implemented and
11 enforced. Additionally, sentencing is intended to convey the
12 message that globally accepted laws and rules have to be obeyed
13 by everybody.

11:57:58

11:58:17

14 International criminal tribunals have noted that unlike the
15 case in domestic courts rehabilitation cannot be considered a
16 predominant consideration in determining sentence, as the
17 sentencing aims of the national jurisdictions are different from
18 the aims of international criminal tribunals.

11:58:39

19 In deciding appropriate sentences the Trial Chamber has
20 taken into account all the factors likely to contribute to the
21 achievement of the above objectives.

22 Now, what factors has the Trial Chamber taken into account.
23 They are the following:

11:58:57

24 1. The gravity of the offences. In determining an
25 appropriate sentence, the gravity of the crime is the primary
26 consideration or litmus test. The determination of the gravity
27 of the crime must be individually assessed and in making such an
28 assessment the Trial Chamber may examine, amongst others, the
29 general nature of the underlying criminal conduct; the form and

1 degree of participation of the accused or the specific role
2 played by the accused in the commission of the crime; the degree
3 of suffering, impact or consequences of the crime for the
4 immediate victim, in terms of physical, emotional and
11:59:37 5 psychological effects; the effect of a crime on relatives of the
6 immediate victims and/or the broader targeted group; the
7 vulnerability of the victims and the number of the victims.

8 Where an accused has been found liable as a commander
9 pursuant to Article 6.3 of the Statute, two levels of
12:00:01 10 consideration are necessary in determining the gravity of the
11 offence.

12 Firstly, the gravity of the underlying crime committed by a
13 subordinate under the effective control of the accused and,
14 secondly, the gravity of the accused's own conduct in failing to
12:00:18 15 prevent or punish the crimes committed by that subordinate.

16 Now, after gravity of offence we take into account
17 aggravating circumstances.

18 The aggravating and mitigating circumstances to be taken
19 into account by the Trial Chamber are not exhaustively set out in
12:00:41 20 the Rules. Thus, the Trial Chamber is tasked with a charge of
21 weighing the individual circumstances of each case and has the
22 discretion to identify the relevant factors. The Trial Chamber
23 may consider, for example:

24 1. The position of the accused, that is his position of
12:01:00 25 leadership, his level in the command structure or his role in the
26 broader context of the conflict.

27 2. The discriminatory intent or the discriminatory state
28 of mind for crimes for which such a state of mind is not an
29 element or ingredient of the crime.

1 3. The length of time during which the crimes continued.

2 4. Active and direct criminal participation if linked to a
3 high-ranking period of command, the accused's role as a fellow
4 perpetrator, and the active perpetration of a superior in the
12:01:44 5 criminal acts of subordinates.

6 5. The informed willing or enthusiastic participation in
7 crime.

8 6. Premeditation and motive.

9 7. The sexual, violent and humiliating nature of the acts
12:02:01 10 and the vulnerability of the victims.

11 8. The status of the victims, their youthful age and
12 number and the effect of the crimes on the victims.

13 9. The character and conduct of the accused.

14 10. The circumstances of the offence generally.

12:02:26 15 The Trial Chamber may also consider the fact that attacks
16 directed against protected persons were carried out in places of
17 religious worship or sanctuary to be an aggravating factor in
18 sentencing.

19 Factors which go to proof of the gravity of the offence and
12:02:47 20 facts which constitute aggravating factors may overlap. The
21 practice of some Trial Chambers has been to consider the gravity
22 of the offence together with the aggravating circumstances.

23 This Trial Chamber considers that regardless of the
24 approach, where a factor has already been taken into account, in
12:03:08 25 determining the gravity of the offence, it cannot be considered
26 additionally as an aggravating factor and vice versa. Similarly,
27 if a factor is an element of an underlying offence then it cannot
28 be considered as an aggravating factor.

29 The Trial Chamber may consider the abuse of a position of

1 power by an accused held criminally responsible for a crime
2 pursuant to Article 6.1 of the Statute to be an aggravating
3 factor. Where an accused has been found liable for the crimes of
4 a subordinate, and pursuant to Article 6.3 of the Statute, his or
12:03:48 5 her mere position of command will not be considered by the Trial
6 Chamber as an aggravating factor as it is an element of
7 liability.

8 However, where it has been proved that an accused actively
9 abused his or her command position, or otherwise promoted,
12:04:06 10 encouraged or participated in the crimes of his or her
11 subordinates, such conduct may amount to an aggravating
12 circumstance.

13 Now, with regard to mitigating circumstances. Under Rule
14 101(B) any substantial cooperation with the Prosecutor by the
12:04:26 15 convicted person, before or after conviction, must be considered
16 as a mitigating circumstance. In addition, the Trial Chamber has
17 the discretion to identify and weigh other mitigating factors
18 according to the circumstance of each case, including but not
19 limited to:

- 12:05:01 20 1. Expression of remorse or a degree of acceptance of
21 guilt.
- 22 2. Voluntary surrender.
- 23 3. Good character with no prior criminal convictions.
- 24 4. Personal and family circumstances.
- 12:05:03 25 5. The behaviour or conduct of the accused subsequent to
26 the conflict.
- 27 6. Duress and indirect participation.
- 28 7. Diminished mental responsibility.
- 29 8. The age of the accused.

1 9. Assistance to detainees or victims.

2 10. In exceptional circumstances, poor health.

3 Now, sentencing practice in the national courts of Sierra
4 Leone and other ad hoc tribunals.

12:05:41 5 The Prosecution submits that comparisons with sentences
6 imposed by the ICTR are of limited value because most ICTR cases
7 concern genocide which is not a crime within the jurisdiction of
8 the Special Court.

9 Further, in many cases the penalty for genocide has been
12:06:04 10 life imprisonment, which is not a sentence that the Special Court
11 can impose.

12 The Prosecution argues that no specific guidance is
13 discernible from the national courts of Sierra Leone on
14 sentencing practice since war crimes and crimes against humanity
12:06:20 15 are not specifically addressed under Sierra Leonean law.

16 However, as a general overview, the Prosecution notes that
17 sentences imposed for murder include the death penalty while
18 manslaughter, attempted murder, rape and malicious damage are
19 punishable by the death penalty or lengthy terms of imprisonment
12:06:41 20 including life imprisonment.

21 The Prosecution thus submits that the crimes of which
22 Brima, Kamara and Kanu are convicted will be likely to lead to a
23 sentence of life imprisonment at the ICTR. The Prosecution
24 accordingly contends that the sentence imposed on the accused
12:07:03 25 Brima and Kamara should amount to an approximation of life
26 imprisonment while a very long sentence of imprisonment is
27 warranted for Kanu.

28 The Brima Defence submits that the Trial Chamber should not
29 seek guidance from the unduly harsh sentencing practice in Sierra

1 Leone. In the alternative, the Defence argues that Sierra
2 Leonean sentencing practice can only be considered as a guide but
3 is not binding on the Trial Chamber.

4 It further refers to the Serushago Trial Chamber assessment
12:07:39 5 of mitigating circumstances in that case and cites a number of
6 cases before the ICTY and ICTR in which high-ranking officials
7 convicted on numerous counts were given lighter sentences than
8 those proposed by the Prosecutor in the instant case.

9 The Kamara Defence notes that Kamara was convicted of
12:08:01 10 having ordered the killing of five girls in Karina, Bombali
11 District, and submits that the average sentencing period at the
12 ICTR for the offences of murder and extermination have been
13 between ten and 15 years. It further argues that Sierra Leonean
14 practice on sentencing for murder is not binding on the Trial

12:08:23 15 Chamber. The Kanu Defence proposes that the Trial Chamber should
16 take into account the sentencing practice of the ICTY as it is a
17 basis for ICTR practice and may provide the Trial Chamber with
18 additional guidance.

19 The Prosecution would appear to agree as it provided a
12:08:44 20 chart on the ICTY sentencing practice in annex B of its
21 submission sentencing brief.

22 The Kanu Defence contends that in Sierra Leone, a sentence
23 of life imprisonment can be imposed for a range of crimes
24 including rape, burglary and gilding coinage, while the ICTR has
12:09:07 25 only imposed life sentences on individuals convicted of the crime
26 of genocide. In oral arguments the Kanu Defence further
27 submitted that Sierra Leonean sentencing practice is only
28 relevant for convictions under Article 5 of the Statute which
29 deals with crimes under Sierra Leonean law which crimes were not

1 charged in the indictment.

2 Now, these are the deliberations of the Trial Chamber
3 regarding sentencing practice applicable in this case.

4 With regard to the practice in Sierra Leone, Article 19.1

12:09:50

5 of our Statute states that as appropriate, the Trial Chamber
6 shall have recourse to the practice regarding prison sentences in
7 the national courts of Sierra Leone. This does not oblige the
8 Trial Chamber to conform to that practice but, rather, to take
9 into account that practice as and when appropriate. The Trial
10 Chamber finds that it is not appropriate to adopt the practice in
11 the present case since none of the accused was indicted nor
12 convicted of offences under Article 5 of the Statute.

13 Now, with regard to sentencing practice of other

14 international tribunals. Article 19.1 of the Statute provides

12:10:36

15 that the Trial Chamber shall, where appropriate, have recourse to
16 the practice regarding prison sentences in the ICTR in
17 determining the terms of imprisonment.

18 The Trial Chamber will also consider the sentencing

19 practice of the ICTY as its statutory provisions are analogous to

12:11:03

20 those of the Special Court and of the ICTR. The Trial Chamber is
21 therefore guided by the sentencing practices at both the ICTR and
22 ICTY in this judgment.

23 The Chamber further notes that the pronouncement of global

24 sentences is a well-established practice at both tribunals. The

12:11:23

25 mitigating and aggravating factors that the Trial Chamber has
26 considered in the instant case have also been widely considered
27 by the ICTR and ICTY.

28 Determination of sentences.

29 Brima, Kamara and Kanu have been found responsible for some

1 of the most heinous, brutal and atrocious crimes ever recorded in
2 human history. Innocent civilians, babies, children, men and
3 women of all ages were murdered by being shot, hacked to death,
4 burnt alive, beaten to death. Women and young girls were
12:12:16 5 gang-raped to death. Some had their genitals mutilated by the
6 insertion of foreign objects. Sons were forced to rape mothers,
7 brothers were forced to rape sisters. Pregnant women were killed
8 by having their stomachs split open and the foetus removed merely
9 to settle a bet amongst the troops as to the gender of the
12:12:41 10 foetus. Men were disembowelled and their intestines stretched
11 across a road to form a barrier. Human heads were placed on
12 sticks on either side of the road to mark such barriers. Hacking
13 off the limbs of innocent civilians was commonplace. Victims
14 were babies, young children and men and women of all ages. Some
12:13:07 15 had one arm amputated, others lost both arms.

16 For those victims who survived the amputation, life was
17 instantly and forever changed into one of dependence. Most were
18 turned into beggars and able to earn any other living and even
19 today cannot perform even the simplest of tasks without the help
12:13:32 20 of others.

21 Children were forcibly taken away from their families,
22 often fed on drugs and used as child soldiers who were trained to
23 kill and to commit other brutal crimes against the civilian
24 population. Those child soldiers who survived the war were
12:13:55 25 robbed of a childhood and most of them lost a chance of an
26 education.

27 The Trial Chamber cannot recall any other conflict in the
28 history of warfare in which innocent civilians were subjected to
29 such savage and inhumane treatment. It is against this

1 background that Brima, Kamara and Kanu are sentenced for the
2 crimes of which each of them have been convicted.

3 Now I will begin by examining the circumstances for the
4 accused Alex Tamba Brima; the circumstances that we have taken
12:14:34 5 into account in imposing a sentence, an appropriate sentence for
6 him.

7 Firstly, the gravity of the offences. The Prosecution
8 submits that Brima was convicted of crimes which involved a very
9 large number of victims. In relation to the role and
12:14:56 10 participation of Brima in the crimes of which he was convicted,
11 the Prosecution submits that he was not an unwilling participant
12 but, rather, a primary initiator, an aggravator of the violence
13 and, further, that most of the crimes were deliberate,
14 unprovoked, brutal and were committed against unarmed civilians,
12:15:18 15 including men, women and children, the intention of which was to
16 kill, mutilate, abduct or enslave or otherwise terrorise or
17 collectively punish the civilian population and to shock the
18 international community.

19 The Brima Defence concurs that the crimes for which Brima
12:15:40 20 was convicted were serious, but submits that the Trial Chamber
21 must consider the context of the guerrilla warfare, in
22 determining the extent and gravity of the offences, as well as
23 the difficulty in assessing the precise number of victims.

24 These are the deliberations of the Chamber on that issue.

12:16:05 25 The Trial Chamber considers that the crimes for which Brima
26 was convicted were indeed heinous, deliberate, brutal and
27 targeted very large numbers of unarmed civilians and had a
28 catastrophic and irreversible impact on the lives of the victims
29 and their families.

1 Brima was convicted pursuant to Article 6.1 and Article
2 6.3. Specifically, the Trial Chamber found Brima responsible
3 under Article 6.1 for the following:

4 1. Committing extermination in Karina in Bombali District.

12:16:49 5 2. Committing the murder of five civilians at State House
6 Freetown and the Western Area.

7 3. Committing the mutilation of one civilian in Freetown
8 in the Western Area.

9 4. Ordering the terrorisation of the civilian population
12:17:05 10 in Karina, Bombali District, Rosos, Bombali District and in
11 Freetown and the Western Area.

12 5. Ordering the collective punishment of the civilian
13 population in Freetown and the Western Area.

14 6. Ordering and planning the recruitment and use of child
12:17:28 15 soldiers in Freetown, in the Western Area and in Rosos,
16 Bombali District.

17 7. Ordering the murders of civilians at Mateboi in Bombali
18 District, Gbendembu, Bombali District, State House, Freetown, in
19 the Western Area, Kissy Mental Home in Freetown, Western Area,
12:17:51 20 and Rogbalan Mosque, Freetown, Western Area.

21 8. Ordering and abetting the murder of civilians in Fourah
22 Bay, Freetown, Western Area.

23 9. Ordering and planning the enslavement of civilians in
24 Freetown, Western Area.

12:18:08 25 10. Ordering the looting of civilian property in Freetown,
26 Western Area.

27 11. Planning the commission of outrages upon personal
28 dignity in the form of sexual slavery in Bombali District and the
29 Western Area.

1 12. Planning the enslavement of civilians in
2 Bombali District.

3 Brima was further found liable pursuant to Article 6.3 for
4 crimes committed by his subordinates throughout Bombali District
12:18:53 5 and Freetown and the Western Area.

6 With regard to the crimes for which Brima is responsible,
7 pursuant to Article 6.1, the Trial Chamber recalls its factual
8 findings that Brima was the primary perpetrator of the murders of
9 at least 12 civilians in a mosque during an attack on Karina, a
12:19:15 10 fact indicative of the particular gravity of this offence.

11 With regards to recruitment and use of child soldiers, the
12 Trial Chamber recalls that the young victims were abducted from
13 their families, often in situations of extreme violence, often
14 drugged and forcibly trained to kill and to commit crimes against
12:19:38 15 civilian population. These children were robbed of their
16 childhood and many lost the chance of an education.

17 With regard to the crimes for which Brima is responsible
18 pursuant to Article 6.3, the Trial Chamber has examined the
19 gravity of the crimes committed by the subordinates under his
12:19:58 20 effective control. Many of the crimes detailed in the Chamber's
21 factual findings are of a particularly heinous nature.

22 The Trial chamber recalls in particular that in Karina
23 Brima's subordinates unlawfully killed children by throwing them
24 into flames of burning houses. In Rosos, five of Brima's
12:20:19 25 subordinates beat and orally and vaginally gang-raped a civilian
26 and another four raped a civilian so brutally that she was in
27 great pain, could not stand up and testified that "it seemed as
28 though all my guts were coming out."

29 With regard to the sexual crimes in general, the Chamber

1 notes that many of the victims were particularly young and
2 vulnerable and were held in captivity for protracted periods,
3 often coupled with unwanted pregnancies or miscarriages and
4 endured social stigma.

12:20:57 5 The Trial Chamber considers that the crime of
6 mutilation was particularly grotesque and malicious. The victims
7 who had their limbs hacked off not only endured extreme pain and
8 suffering, if they survived, but lost their mobility and capacity
9 to earn a living or even undertake simple daily tasks. These
12:21:24 10 victims have been rendered dependent on others for the rest of
11 their lives.

12 The Trial Chambers dismisses the Defence arguments that the
13 guerrilla nature of this conflict lessens the grievous nature of
14 the offences.

12:21:39 15 Now, I consider the individual circumstances of Brima.

16 The Prosecution submits that the personal circumstances of
17 Brima do not justify any mitigation of sentence since Brima was a
18 professional soldier who, by his own admission, knew that it was
19 wrong to commit crimes against the civilian population.

12:22:05 20 He was not of a young age, being 27 to 28 years old in the
21 period in which the crimes occurred and that he has family
22 members who are in a position to care for his dependents,
23 including his wife who receives his military pension.

24 The Brima Defence submits that the Trial Chamber must take
12:22:29 25 into account the culture of Sierra Leone where family
26 responsibilities are paramount. It emphasises that Brima has six
27 children and two wives as dependents. In addition, the Brima
28 Defence submits that Brima's age is a mitigating factor,
29 particularly given the young age at which he joined the army and

1 the influence of the army on his future development.

2 The Brima Defence further submit that the detrimental
3 effect that a long sentence would have on Brima's ill health is a
4 mitigating factor.

12:23:03 5 Now, these are the deliberations of the Chamber on the
6 above submissions.

7 The Trial Chamber finds nothing in Brima's personal
8 circumstances to justify any mitigation of his sentence.

9 The Trial Chamber considers that Brima was a professional
12:23:27 10 soldier whose duty it was to protect the people of Sierra Leone.
11 The fact that he instead attacked innocent and unarmed civilians
12 is considered by the Trial Chamber to be an aggravating factor.

13 I will now consider the aggravating circumstances in the
14 submissions of the parties with respect thereto.

12:23:51 15 The Prosecution submits that significant aggravating
16 circumstances exist in Brima's case including the following:

17 1. The vulnerability of many of the civilian victims,
18 namely, young children, especially young girls subjected to
19 sexual crimes, pregnant women and members of religious orders.

12:24:15 20 2. The particularly brutal and heinous nature of the
21 crimes, including the splitting open of the stomach of a pregnant
22 woman and removal of the foetus; the burning of civilians alive;
23 the brutal gang rapes; the drugging of child soldiers and the
24 amputation of limbs.

12:24:36 25 3. The use of coercion by Brima, in particular, the use of
26 his phrase "minus you, plus you" to secure the commission of
27 crimes by his subordinates.

28 4. The fact that Brima was a senior government official
29 prior to the commission of the crimes and the overall commander

1 at the time of the commission of the crimes for which he was
2 convicted.

3 The Prosecution submits that Brima's ongoing failure to
4 fulfil his duty to prevent or punish had an implicit effect of
12:25:11 5 encouraging subordinates to believe that they could commit
6 further crimes with impunity, thus contributing to the scale of
7 crimes committed.

8 Now, the Brima Defence made no submissions with respect to
9 aggravating circumstances in its sentencing brief, nor in their
12:25:30 10 oral arguments.

11 These are the deliberations of the Chamber on aggravating
12 circumstances.

13 The Trial Chamber agrees that all the factors submitted by
14 the Prosecution are aggravating factors. Moreover, the Trial
12:25:49 15 Chamber finds that Brima's position as overall commander of the
16 troops is an aggravating factor in relation to the crimes for
17 which he is responsible pursuant to Article 6.1 of the Statute.

18 Furthermore, the use by Brima of tactics of extreme
19 coercion, illustrated by the use of the infamous phrase "minus
12:26:12 20 you, plus you" to force his subordinates to engage in criminal
21 conduct, constitutes an abuse of his position of power and that
22 too is an aggravating factor in his case.

23 The Trial Chamber also finds that Brima was a zealous
24 participant in some of the crimes for which he has been found
12:26:33 25 liable. This factor will be considered as an aggravating
26 circumstance.

27 The Trial Chamber further finds that the prolonged period
28 of time over which the enslavement crimes were committed, the
29 vulnerability of the victims and the targeting of places of

1 worship or sanctuary are all aggravating factors.

2 I now come to consider mitigating circumstances, the
3 submissions of the parties and the deliberations with respect
4 thereto.

12:27:08 5 With respect to mitigating circumstances the Prosecution
6 submits that no mitigating circumstances exist in respect of
7 Brima as he did not at any time cooperate with the Prosecution or
8 express any remorse and there is no evidence that he acted under
9 duress.

12:27:27 10 In relation to Brima's alleged activities as a member of
11 the Commission for the Consolidation of Peace, the Prosecution
12 contends that no evidence was adduced at trial as to the
13 particular functions of this body or as to Brima's role within
14 that body. The Prosecution further submits that, given the
12:27:48 15 gravity of the crimes, very little weight, if any, should be
16 given to this mitigating factor.

17 In addition, the Prosecution argues that Brima cannot plead
18 good behaviour as he was responsible for various misdemeanours in
19 detention as well as outbursts in court which, on one occasion,
12:28:08 20 led to the adjournment of proceedings.

21 The Prosecution further submits that Brima's ill health
22 should be given little weight as a mitigating factor as high
23 blood pressure and hypertension are common ailments which, with
24 proper medication, are rarely life-threatening.

12:28:28 25 The Brima Defence submits in response that Brima is a
26 person of good character with a history of community
27 philanthropy, with no prior convictions and a military record
28 which includes assisting government when the RUF brokered the
29 cease-fire in 2000 and in negotiations to secure the release of

1 kidnapped UNAMSIL and ECOMOG personnel.

2 The Brima Defence further submits that the detrimental
3 effect that a long sentence would have on Brima's ill health is a
4 relevant personal circumstance. The Brima Defence argues that
12:29:17 5 Brima's membership of the Commission for Consolidation of Peace
6 signifies a contribution to peace in the region which should be
7 taken into account as a mitigating factor.

8 The Brima Defence further emphasises that Brima was only
9 convicted of offences in the Western Area and Bombali Districts
12:29:36 10 and was found not guilty for crimes committed in Bo, Kenema,
11 Kailahun, Kono and Port Loko districts. The Brima Defence
12 further argues that a harsh sentence would not promote a spirit
13 of reconciliation within the nation.

14 These are the deliberations of the Chamber with regard to
12:29:57 15 mitigating circumstances for the accused Brima.

16 The Trial Chamber does not consider Brima's service in the
17 army without incident to be a mitigating factor as this was
18 merely his duty. The Trial Chamber further finds that Brima's
19 alleged acts of philanthropy and alleged involvement in the
12:30:23 20 Commission for the Consolidation of Peace are also not mitigating
21 factors. The fact that Brima's convictions relate to crimes
22 committed in two districts, as opposed to the seven districts
23 particularised in the indictment, in no way lessens the
24 seriousness of the offences.

12:30:48 25 Now, on the issue of remorse, the Trial Chamber finds that
26 the statement made by Brima, at the sentencing hearing, whilst
27 containing a fleeting reference to "remorse to the victims of
28 this situation" cannot be accepted as an expression of genuine
29 remorse. This fact can therefore not be taken as mitigating his

1 sentence.

2 This brings me to the consideration of submissions and
3 deliberations with respect to Ibrahim Bazy Kamara and again here
4 the Trial Chamber considered a number of factors in assessing an
12:31:44 5 appropriate sentence.

6 First, the gravity of the offences of which Kamara was
7 convicted. The submissions of the parties. The Prosecution
8 submits that on account of the Trial Chamber's broad findings of
9 Kamara's liability under Article 6.3, the crimes of which he was
12:32:07 10 convicted involve a very large number of victims, particularly in
11 crime sites such as Tombodu in Kono District.

12 The Kamara Defence submits that Kamara's convictions under
13 Article 6.1 of the Statute were based on one incident of ordering
14 the killings of five girls in Bombali District and two incidents
12:32:33 15 of aiding and abetting the commission of various crimes in
16 Freetown and the Western Area.

17 The Kamara Defence, while not denying the seriousness of
18 the crimes for which Kamara has been convicted, submits that this
19 should not be a relevant factor in determining the gravity of the
12:33:36 20 offence.

21 Now, these are the deliberations of the Chamber on the
22 factor of gravity of the offences.

23 The Trial Chamber found Kamara responsible under Article
24 6.1 for the following offences:

- 12:33:51 25 1. Ordering the murder of five civilians in Karina,
26 Bombali District.
- 27 2. Planning the abduction and use of child soldiers in the
28 Bombali District and the Western Area.
- 29 3. Planning the commission of outrages upon personal

1 dignity in the form of sexual slavery in Bombali District and the
2 Western Area.

3 4. Planning the enslavement of civilians in
4 Bombali District and the Western Area.

12:34:22 5 5. Aiding and abetting the murder or extermination of
6 civilians at Fourah Bay Freetown in the Western Area.

7 6. Aiding and abetting the mutilation of civilians in
8 Freetown in the Western Area.

9 Kamara was further found liable pursuant to Article 6.3 for
12:34:43 10 crimes committed by his subordinates at Tombodu, Kono District
11 and throughout Bombali District and the Western Area and Port
12 Loko District.

13 The crimes for which Kamara was convicted were heinous,
14 deliberate, brutal and targeted very large numbers of unarmed
12:35:06 15 civilians and had a catastrophic and irreversible impact on the
16 lives of the victims and their families.

17 In relation to his criminal responsibility, the Trial
18 Chamber finds that the crimes committed by his subordinates were
19 crimes of the most serious gravity and Kamara's failure to
12:35:28 20 prevent or punish the commission of these crimes must be
21 considered correspondingly grave.

22 The Trial Chamber recalls its factual finding that in
23 Tombodu, Kamara subordinates purposely trapped some 68 people in
24 a house and burned them alive and that another 47 people were
12:35:48 25 beheaded and thrown into a diamond pit.

26 The Trial Chamber is satisfied that the crimes committed by
27 Kamara, or by his subordinates, affected a large number of
28 victims.

29 With regard to the recruitment and use of child soldiers,

1 the Trial Chamber recalls that the victims were abducted from
2 their families, often in situations of extreme violence, often
3 drugged and trained to kill and forced to commit crimes against
4 innocent civilians. These children were robbed of their
12:36:23 5 childhood and many lost a chance of an education.

6 With regards to the crimes for which Kamara is held
7 responsible under Article 6.3, the Trial Chamber has examined the
8 gravity of the crimes committed by subordinates under his
9 effective control. Many of the crimes detailed in the Chamber's
12:36:43 10 factual findings are of a particularly heinous nature.

11 The Trial Chamber recalls in particular that in Karina,
12 Kamara's subordinates unlawfully killed children by throwing them
13 into flames of burning houses. In Rosos, five of Kamara's
14 subordinates beat and orally and vaginally gang-raped a civilian
12:37:09 15 and another four raped a civilian so brutally that she was in
16 great pain and could not stand up and testified that "it seemed
17 as though all my guts were coming out."

18 With regard to the sexual crimes in general the Trial
19 Chamber notes that many of the victims were particularly young
12:37:29 20 and vulnerable and were held in captivity for protracted periods,
21 often coupled with unwanted pregnancies or miscarriages and
22 endured social stigma.

23 The Trial Chamber considers the crime of mutilation was
24 particularly grotesque and malicious. Victims who had their
12:37:51 25 limbs hacked off were not only under extreme pain and suffering,
26 if they survived, but also lost their mobility and capacity to
27 earn a living or even to undertake simple daily tasks.

28 I will now consider the individual circumstances of Kamara
29 as presented.

1 The Prosecution submits that the personal circumstances of
2 Kamara do not warrant any mitigation of his sentence. The
3 Prosecution submits that Kamara was a professional soldier who
4 must have known that it was wrong to commit crimes against
12:38:35 5 civilians and that his dependants can presumably rely on his
6 military pension and his other family members for support.

7 The Kamara Defence submits that Kamara gave loyal service
8 for many years to the Sierra Leone Army which he joined at a
9 young age. Additionally, the Kamara Defence submits that Kamara
12:38:57 10 was involved in a number of activities that enhanced peace and
11 reconciliation in Sierra Leone, including negotiating the release
12 of around 200 children from the West Side Boys to the Red Cross
13 and UNICEF, in 1999, taking part in military action against the
14 RUF in the year 2000, and working for the Commission for the
12:39:21 15 Consolidation of Peace in Sierra Leone.

16 The Kamara Defence submits that Kamara's personal
17 circumstances should be taken into account in mitigation of his
18 sentence.

19 These are the deliberations of the Chamber with regard to
12:39:36 20 Kamara's personal circumstances.

21 The Trial Chamber finds that nothing in Kamara's personal
22 circumstances justifies any mitigation of his sentence. The
23 Trial Chamber considers that Kamara was a professional soldier
24 whose duty it was to protect the people of Sierra Leone. The
12:39:59 25 fact that he instead attacked innocent and unarmed civilians is
26 considered by the Trial Chamber to be an aggravating factor.

27 This now brings me to aggravating circumstances as
28 presented by the parties.

29 The Prosecution submits a number of aggravating

1 circumstances exists in the case of Kamara including the
2 following:

3 1. The vulnerability of many of the civilian victims
4 especially young children and pregnant women.

12:40:36 5 2. The heinous nature of the crimes including the burning
6 alive of civilians in Karina and Tombodu.

7 3. The fact that Kamara was a senior government official
8 prior to the commission of the crimes and a senior commander at
9 the time of the commission of the crimes.

12:40:52 10 In the Prosecution's view the failure of Kamara to fulfil
11 his duty to prevent or punish shows a total disregard for the
12 sanctity of human life and dignity.

13 The Kamara Defence contends that Kamara was "a quiet, calm,
14 non-violent and often passive and unrecognised participant in the
12:41:22 15 crimes rather than an active and direct participant like Brima."

16 The Kamara Defence accordingly submits that Brima and
17 Kamara should not be viewed as equally liable for the purposes of
18 sentencing. The Kamara Defence submits that Kamara's position,
19 as a senior government official prior to the commission of the
12:41:47 20 crimes, cannot be used as an aggravating circumstance. The
21 Kamara Defence further argues that although the offences for
22 which Kamara has been convicted are serious they occurred in
23 situations in which he lacked sufficient command and control.

24 These are the deliberations of the Chamber on aggravating
12:42:10 25 circumstances.

26 The Trial Chamber agrees that all the factors submitted by
27 the Prosecution are aggravating factors. Moreover, the Trial
28 Chamber has given consideration to the vulnerability of some of
29 the victims of the crime for which Kamara was convicted with

1 regard to the gravity of the offence and will not consider this
2 fact additionally as an aggravating factor.

3 The Trial Chamber also finds that the killing of civilians
4 deliberately locked in their house and set ablaze, as was ordered
12:42:49 5 by Kamara and carried out by his subordinates, is a violent and
6 cruel circumstance of the offence amounting to an aggravating
7 factor. Further, this particular incident shows that Kamara was
8 a violent and active participant in the crimes contrary to the
9 Defence assertions.

12:43:20 10 The Trial Chamber further finds that the prolonged period
11 of time over which the enslavement crimes were committed, the
12 vulnerability of the victims and the targeting of places of
13 worship or sanctuary, by the perpetrators, are all aggravating
14 factors.

12:43:30 15 The Trial Chamber does not consider Kamara's position in
16 the AFRC government prior to the commission of the offences to be
17 an aggravating factor. However, the Trial Chamber considers his
18 position of command authority in relation to the crimes for which
19 he has been found liable under Article 6.1 of the Statute to be
12:43:52 20 an aggravating factor.

21 I will now examine the mitigating circumstances with
22 relation to Kamara as presented by the parties.

23 The Prosecution submits that no mitigating circumstances
24 exist in respect of Kamara as he did not at any time cooperate
12:44:14 25 with the Prosecution or express any remorse and there is no
26 evidence that he acted under duress. The Kamara Defence submits
27 that mitigating factors in the case of Kamara include the absence
28 of a prior criminal record; the stressful environment prevailing
29 at the time of the offences; and his responsibilities as an

1 income earner for his large family.

2 These are the deliberations of the Chamber on these
3 mitigating circumstances.

12:44:58

4 The Trial Chamber finds that there are no mitigating
5 circumstances in Kamara's case. In particular, although Kamara
6 chose to address the Trial Chamber at the sentencing hearing, he
7 failed to express any genuine remorse whatsoever for his crimes.

8 This now brings me to Santigie Borbor Kanu and the
9 considerations that the Trial Chamber has taken into account.

12:45:23

10 Firstly, the gravity of the offence.

11 The Prosecution submits that the accused Kanu was
12 criminally responsible under Article 6.1 for crimes involving a
13 number of victims and that the extent of his liability under
14 Article 6.3 is particularly significant as he was found to be
15 responsible for all crimes committed in Bombali District and the
16 Western Area.

12:45:44

17 The Kanu Defence submits that the RUF was responsible for
18 the bulk of human rights violations in Sierra Leone and that this
19 historical broader picture should be reflected in sentencing.

12:46:05

20 These are the deliberations of the Chamber.

21 The Trial Chamber found Kanu responsible under 6.1 for the
22 following offences:

23 1. Committing the mutilation of civilians in Kissy, in
24 Freetown, in Upgun, Freetown.

12:46:31

25 2. Committing the looting of civilian property in
26 Freetown.

27 3. Ordering the murder of persons hors de combat at State
28 House in Freetown.

29 4. Ordering the murder of civilians at Rogbalan Mosque in

1 Freetown.

2 5. Ordering the mutilations of civilians at Ferry Junction
3 and Uppun, Freetown.

12:47:00

4 6. Planning the abduction and use of child soldiers in
5 Bombali District and the Western Area.

6 7. Planning the commission of outrages upon personal
7 dignity in the form of sexual slavery in Bombali District and the
8 Western Area.

12:47:19

9 8. Planning the enslavement of civilians on numerous
10 occasions in Bombali District and the Western Area.

11 9. Instigating the murder of civilians in Freetown.

12 10. Aiding and abetting the murder or extermination of
13 civilians at Fourah Bay in Freetown and the Western Area.

12:47:44

14 Kanu was further found liable under Article 6.3 for crimes
15 committed by his subordinates throughout Bombali District and the
16 Western Area.

17 With regard to the crimes for which Kanu is responsible
18 under Article 6.3 the Trial Chamber has examined the gravity of
19 the crimes committed by subordinates under his effective control.

12:48:06

20 Many of these crimes detailed in the Chamber's factual findings
21 are of a particularly heinous nature.

22 The Trial Chamber recalls in particular that in Karina,
23 Kanu's subordinates unlawfully killed children by throwing them
24 into flames of burning houses. In Rosos, five of Kanu's
12:48:24 25 subordinates beat and orally and vaginally gang-raped a civilian
26 and another four raped a civilian so brutally that she was in
27 great pain and could not stand up and testified that "it seemed
28 as though all my guts were coming out."

29 With regard to the sexual crimes in general the Trial

1 Chamber notes that many of the victims were particularly young
2 and vulnerable and were held in captivity for protracted periods
3 often coupled with unwanted pregnancies or miscarriages and
4 endured social stigma.

12:49:01 5 The Trial Chambers considers the crime of mutilation was
6 particularly grotesque and malicious. The victims who had their
7 limbs hacked off not only endured extreme pain and suffering, if
8 they survived, but lost their mobility and capability to earn a
9 living or even to undertake simple daily tasks.

12:49:21 10 The Trial Chamber dismisses the Defence arguments that the
11 RUF was responsible for the bulk of the human rights violations
12 in Sierra Leone and finds that this allegation cannot be a
13 mitigating factor.

14 The Trial Chamber found that Kanu was a direct participant
12:49:40 15 in the unlawful killings, mutilations, the recruitment and use of
16 child soldiers and the commission of outrages upon personal
17 dignity and enslavement.

18 Now, these are the submissions and findings of the Chamber
19 with regard to individual circumstances of Kanu.

12:50:06 20 The Prosecution submits that the personal circumstances of
21 Kanu do not warrant any mitigation of his sentence, as Kanu was a
22 professional soldier who must have known that it was wrong to
23 commit crimes against civilians. He was not of a young age,
24 being in his 30s during the period in which the crimes were
12:50:27 25 committed, and he is without any pressing personal circumstances
26 or family concern to justify mitigation.

27 The Kanu Defence submits that the behaviour of Kanu after
28 the conflict constitutes individual circumstances which justify
29 mitigation, referring specifically to his role in the Commission

1 for Consolidation of Peace, his role in the May 8 incident and
2 his role after the 1999 Lome peace agreement.

3 In relation to the Lome peace agreement, the Kanu Defence
4 submits that Kanu was an early supporter of peace who worked with
12:51:12 5 ECOMOG and UNAMSIL in Freetown to build confidence between the
6 government, the ex-SLAs and the RUF.

7 In addition, Kanu was allegedly one of five people
8 commended by the UN Special Envoy, Francis Okello, for his
9 assistance in working to disarm the West Side Boys who were
12:51:39 10 holding UN peacekeepers and civilians captive.

11 The Kanu Defence contends that the activities of Kanu as a
12 member of the Commission for the Consolidation of Peace, which
13 included overseeing the reintegration of ex-combatants into the
14 community, and the provision of training for them in various
12:51:58 15 trades, indicate his desire to bring peace and stability to
16 post-conflict Sierra Leone.

17 The Kanu Defence recalls that it made efforts to obtain
18 salary vouchers from the national authorities to substantiate
19 Kanu's assertion that since the year 2000 he has been in receipt
12:52:19 20 of a salary from the military for his work for the Commission but
21 that these vouchers were no longer available.

22 Finally, the Kanu Defence submits that Kanu's assistance to
23 the British troops in a fire fight against the RUF on 8 May 2000,
24 in protest of the RUF's continued violation of the Lome peace
12:52:54 25 agreement, should mitigate his sentence.

26 Now, the Trial Chamber finds that nothing in Kanu's
27 personal circumstances justifies any mitigation of his sentence.
28 The Trial Chamber considers that Kanu was a professional soldier,
29 whose duty it was to protect the people of Sierra Leone. The

1 fact that he instead attacked innocent and unarmed civilians is
2 considered by the Trial Chamber to be an aggravating factor.

3 I will now consider the submissions of the parties on
4 aggravating circumstances.

12:53:34 5 The Prosecution submits that significant aggravating
6 circumstances exist in the case of Kanu, including the following:

7 1. The vulnerability of many of the civilian victims,
8 especially young children and pregnant women. The Prosecution
9 submits that the killing of civilians, in a place of worship, is
10 a particularly aggravating factor.

12:53:55

11 2. The heinous nature of the crimes including the
12 demonstration of amputations.

13 3. The fact that Kanu was a senior government official
14 prior to the commission of the crimes and a senior commander at
15 the time of the commission of the crimes.

12:54:13

16 In the Prosecution's view, the failure of Kanu to fulfil
17 his duty to prevent or punish shows a total disregard for the
18 sanctity of human life and dignity.

19 Now, in response the Kanu Defence objects to the
12:54:32 20 Prosecution's characterisation of Kanu's superior position as an
21 aggravating factor, arguing that this factor is an element of an
22 offence committed pursuant to Article 6.3 of the Statute and
23 therefore cannot also be considered an aggravating factor.

24 The Kanu Defence particularly objects to the Prosecution's
12:55:00 25 submissions that Kanu was a senior member of the AFRC government,
26 referring to the Trial Chamber's findings that the evidence
27 adduced was insufficient to draw any conclusion regarding the
28 seniority of Kanu in that role.

29 The deliberations of the Chamber on aggravating factors.

1 The Chamber agrees that all of the factors submitted by the
2 Prosecution are, in fact, aggravating factors. The Trial Chamber
3 finds that Kanu's failure to prevent or punish his subordinates
4 is an element of individual criminal responsibility under Article
12:55:46 5 6.3 of the Statute and therefore cannot be considered an
6 aggravating factor.

7 However, the Trial Chamber does consider Kanu's leadership
8 positions in Bombali and Freetown and the Western Area to be an
9 aggravating factor with regards to his Article 6.1 liability for
12:56:04 10 unlawful killings and mutilations.

11 Furthermore, the Trial Chamber is satisfied that Kanu's
12 demonstration of amputations in Freetown, and his orders to
13 commit killings at Rogbalan Mosque, a place of worship, are
14 undoubtedly aggravating factors with regard to those crimes.

12:56:26 15 This brings me to mitigating circumstances as submitted by
16 the parties in respect to Kanu.

17 The Prosecution submits that no mitigating circumstances
18 exist in respect of Kanu as he did not at any time cooperate with
19 the Prosecution or express any remorse and there is no evidence
12:56:45 20 that he acted under duress.

21 The Kanu Defence submit that a number of mitigating
22 circumstances exist in respect of Kanu. For convenience, I'm
23 going to go through each of these circumstances one-by-one and
24 indicate the Trial Chamber's deliberations and findings on each
12:57:08 25 one.

26 The first of the alleged mitigating circumstances, as
27 submitted by the Kanu Defence, is the relatively low position
28 that Kanu allegedly occupied. The Kanu Defence submits that Kanu
29 had a relatively low position throughout the conflict; even in

1 Freetown being only third in command and consequently that he
2 bears less responsibility.

3 The Kanu Defence recalls Article 1, sub-Article 1 of the
4 Statute which empowers the Special Court to prosecute persons
12:57:49 5 bearing the greatest responsibility for crimes committed in
6 Sierra Leone. The Kanu Defence argues that although the Trial
7 Chamber has found that this is not a jurisdictional requirement
8 it is a principle which should nevertheless be reflected in
9 sentencing.

10 This is now the Trial Chamber's ruling on that.

11 The Trial Chamber considers that Kanu's position as third
12 in command of armed forces was not a lowly one. He was not a
13 foot soldier, nor was he subject to duress. The fact that there
14 were two persons superior to him does not lessen his culpability
12:58:30 15 for crimes committed and does not mitigate his sentence.

16 The second argument by the Kanu Defence is that there
17 should be flexibility in sentencing superior responsibility. The
18 Kanu Defence emphasises that the responsibility of Kanu under
19 Article 6.3 for rape is limited to the failure to prevent or
12:58:54 20 punish the crimes and his sentence must reflect his culpability
21 for this omission rather than for the crimes themselves.

22 Now, the Trial Chamber takes into consideration that Kanu
23 was convicted for rape pursuant to Article 6.3 and not Article
24 6.1. Nonetheless, this distinction does not mitigate in his
12:59:20 25 favour as the offence remains grave and serious.

26 Family background.

27 The Kanu Defence contends that Kanu has a girlfriend who
28 wishes to marry him and that this family consideration should be
29 taken into account in sentencing or in mitigation of sentence.

1 In addition, the Kanu Defence submits that the harsh environment
2 of this specific armed conflict, as a whole, is a mitigating
3 factor. The Trial Chamber finds nothing in Kanu's family
4 background that would amount to mitigation of his sentence.

13:00:08 5 The next issue that the Kanu Defence raises is in
6 relationship to superior orders. The Kanu Defence recalls the
7 Trial Chamber's findings that on several occasions Kanu followed
8 or reiterated the orders of Brima and submits that this lesser
9 culpability is relevant to sentencing.

13:00:36 10 There is no evidence that Kanu acted under duress. The
11 fact that Kanu voluntarily reiterated criminal orders previously
12 issued by Brima cannot, in the Chamber's opinion, be considered
13 as mitigation on sentence.

14 Fifthly, the Kanu Defence submits that the increasingly
13:01:01 15 chaotic climate prevailing in Freetown after the troops lost
16 State House, during the January 1999 invasion, affected Kanu's
17 culpability in relation to the crimes committed subsequently.
18 The Kanu Defence submits that the difficult circumstances in
19 which a convicted person operates is a mitigating factor, citing
13:01:24 20 the Oric trial judgment in support of this proposition.

21 The Trial Chamber found that despite the deterioration of
22 the situation in Freetown, following the loss of State House by
23 the renegade SLAs, Kanu maintained effective control over his
24 troops. He was aware of the crimes committed by his troops and
13:01:50 25 he took no steps to prevent or punish the troops under his
26 command for the crimes that they committed. The battlefield is
27 always chaotic and this fact alone cannot be considered in
28 mitigation of his sentence.

29 Sixthly, was the point of lack of formal military training.

1 The Kanu Defence contends that Kanu joined the military at the
2 age of 25 and only received six months' training. The Kanu
3 Defence therefore argues that limited military experience is a
4 mitigating factor. The Trial Chamber finds that limited or lack
13:02:34 5 of military training is not a mitigating factor.

6 Seventhly, in relation to absence of knowledge of
7 criminality. In relation to Kanu's conviction on count 12,
8 namely the recruitment and use of child soldiers, the Kanu
9 Defence refers to expert evidence heard during the trial
13:03:00 10 establishing that the use of children under the age of 15 in the
11 Sierra Leonean military in recent decades was widespread under
12 normal practice and that there was no proper training given to
13 servicemen to make them aware of the international prohibition of
14 such conduct.

13:03:27 15 While the Kanu Defence accepts that mistake of law is not a
16 Defence, it submits that Kanu's absence of knowledge of the
17 criminality of the conduct is a substantial mitigating factor.

18 The Trial Chamber found in the instant case that young
19 children were forcibly kidnapped from their families, often
13:03:51 20 drugged, and forcibly trained to commit crimes against civilians.
21 In those circumstances the Chamber cannot accept that Kanu did
22 not know that he was committing a crime in recruiting and using
23 children for military purposes.

24 Point number 8 is his role of protecting women.

13:04:20 25 The Kanu Defence reiterates its argument presented
26 throughout the trial that Kanu's responsibilities towards
27 civilians in the jungle entailed their protection and that this
28 should be considered a mitigating factor. This submission is
29 contrary to the Trial Chamber's findings and is without merit.

1 The ninth point raised by the Kanu Defence in mitigation
2 was the lengthy proceedings.

3 The Kanu Defence submits that the Trial Chamber's delay
4 until the judgment, in deciding that joint criminal enterprise
13:05:05 5 was not properly pleaded, made the proceedings against Kanu
6 unnecessarily long as it resulted in additional evidence and
7 occupied a substantial amount of time in preparation and the
8 presentation of the parties' cases.

9 The Kanu Defence recalls that it raised objections
13:05:26 10 concerning the deficiency of the indictment in that respect on
11 several occasions, from the pre-trial proceedings until the
12 submission of final briefs, and argues that disproportionately
13 lengthy proceedings are a recognised mitigating factor in the
14 jurisprudence of the ICTY and the European Court of Human Rights.

13:05:51 15 The Trial Chamber holds that the appropriate time to
16 consider its findings on joint criminal enterprise was at the end
17 of the trial when all the evidence and final submissions had been
18 considered. The Trial Chamber therefore finds the Defence
19 argument without merit.

13:06:13 20 Point number 10 was in relation to alleged good behaviour
21 in the army and lack of a previous criminal record.

22 The Kanu Defence submits that Kanu's loyal and faithful
23 service to the army, described in his discharge booklet Exhibit
24 D11, and the absence of prior criminal convictions are mitigating
13:06:40 25 factors in his favour. In addition, the Kanu Defence submits
26 that Kanu was a person of good character who assisted vulnerable
27 people in the jungle, referring to evidence to this effect
28 contained in unsworn, signed written statements annexed to the
29 sentencing brief.

1 The Chamber does not consider Kanu's service in the army
2 without incident to be a mitigating factor as this was merely his
3 duty.

13:07:13 4 Point number 11 was the alleged breach of the Conakry
5 accord by ECOMOG.

6 The Kanu Defence recalls evidence at the trial to the
7 effect that the overthrow of the AFRC government, and the
8 reinstatement of the Kabbah government in Freetown, in February
9 1998, was in breach of the Conakry accord signed between ECOWAS
10 and Johnny Paul Koroma which provided for a peaceful handover of
11 power to Kabbah in May 1998.

12 The Kanu Defence submits therefore that this breach put
13 Kanu, as a member of the AFRC government, "in a dilemma which
14 fact mitigates his role in subsequent events." The Trial Chamber
13:07:59 15 finds no merit whatsoever in this Defence submission with regard
16 to the alleged breach of the Conakry accord.

17 The twelfth point raised was with regard to the amnesty.
18 The Kanu Defence submitted that Kanu's trial by the Special Court
19 has circumvented the amnesty granted to him as an ex-combatant
13:08:25 20 and that this factor should be taken into account in mitigation.

21 The Trial Chamber notes that Article 10 of the Statute
22 states that: "An amnesty granted shall not be a bar to
23 Prosecution." The Trial Chamber recalls that the Appeals Chamber
24 has addressed the legality of amnesties of international crimes
13:08:49 25 and found that the grant of such amnesties violates obligations
26 under international law. The Trial Chamber therefore finds no
27 merit in this Defence submission.

28 On the issue of remorse the Trial Chamber finds that the
29 statement made by Kanu at the sentencing hearing failed to

1 express any remorse whatsoever for his crimes.

2 This now brings me to the disposition of the Chamber. It's
3 a brief one and I will request the three accused persons to stand
4 before I hand down the sentences, please.

13:09:29 5 For the foregoing reasons that I have stated above, the
6 Trial Chamber unanimously sentences Alex Tamba Brima to a single
7 term of imprisonment of 50 years for all the counts on which he
8 has been found guilty. Credit shall be given to him for any
9 period during which he was detained in custody pending this
13:10:07 10 trial.

11 The Trial Chamber sentences Ibrahim Bazy Kamara to a
12 single term of imprisonment of 45 years for all the counts on
13 which he has been found guilty. Credit shall be given to him for
14 any period during which he was detained in custody pending this
13:10:30 15 trial.

16 The Trial Chamber sentences Santigie Borbor Kanu to a
17 single term of imprisonment of 50 years for all the counts on
18 which he has been found guilty. Credit shall be given to him for
19 any period during which he was detained in custody pending this
13:10:53 20 trial.

21 This is the judgment of this Court. The accused will now
22 be taken in custody and will begin to serve their sentences
23 immediately. I declare this trial closed.

24 [Whereupon the hearing adjourned at 1.12 p.m.]

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