



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

FRIDAY, 22 FEBRUARY 2008  
10.30 A.M.  
APPEAL

APPEALS CHAMBER

---

Before the Judges:	George Gelanga King, President Emmanuel Ayoola Renate Winter Raja Fernando Jon M. Kamanda
For Chambers:	Mr Steven Kostas Mr Kamran Choudhry
For the Registry:	Mr Herman von Hebel Ms Advera Kamuzora
For the Prosecution:	Mr Stephen Rapp Mr Christopher Staker Mr Karim Agha Mr Francis Banks-Kamara Ms Bridget Osho Ms Regine Gachoud
For the Principal Defender:	Mr Vincent Nmeielle Ms Claire Carlton-Hanciles
For the accused Alex Tamba Brima:	Mr Kojo Graham Mr Osman Keh Kamara Mr Carlis Appiah Brako
For the accused Brima Bazy Kamara:	Mr Andrew William Kodwo Daniels Mr Cecil Osho-Williams Ms Oluwaseun Soyoola
For the accused Santigie Borbor Kanau:	Mr Ajibola E Manly-Spain

1 [AFRC\_22FEB08-MD]

2 Friday, 22 February 2008

3 [Appeal Judgment]

4 [Open session]

10:38:10 5 [The Appellants present]

6 [Upon commencing at 10.30 a.m.]

7 PRESIDING JUDGE: Thank you very much. Will the Appellants  
8 please stand up while your name is called, as your name is  
9 called, and then you can sit down after that. Could you call  
10 their names again.

10:41:29

11 MS KAMUZORA: Alex Tamba Brima; Brima Bazzy Kamara;  
12 Santi gie Borbor Kanu.

13 [Appellants stand]

14 PRESIDING JUDGE: Thank you very much. May we have  
15 representations, please?

10:41:29

16 MR STAKER: May it please the Chamber, for the Prosecution,  
17 Christopher Staker; with me Stephen Rapp, Karim Agha, Francis  
18 Banks-Kamara, Bridget Osho and Regine Gachoud.

19 PRESIDING JUDGE: Thank you.

10:41:29

20 MR GRAHAM: Good morning, Your Honours, for the first  
21 appellant --

22 PRESIDING JUDGE: I can't hear you.

23 MR GRAHAM: Good morning, Your Honours. For the first  
24 appellant you have Kojo Graham as lead appeals counsel; with me  
25 is Osmond Keh Kamara and our legal consultant Carlis Appiah  
26 Brako. Thank you, Your Honours.

10:41:31

27 MR DANIELS: Good morning, Your Honours. Andrew Daniels  
28 for the second accused or Appellant Kamara. With me Mr Cecil  
29 Osho-Williams and with me also is Miss Soyoola, S-0-Y-0-0-L-A.

1 MR MANLY-SPAIN: May it please Your Honours, for the third  
2 accused, third Appellant, A Manly-Spain.

3 PRESIDING JUDGE: Thank you. The Appeals Chamber of the  
4 Special Court for Sierra Leone convenes today pursuant to its  
10:42:11 5 scheduling order issued on 6 February 2008 in order to deliver  
6 its judgment on appeal in the case of Prosecutor v. Alex Tamba  
7 Brima, Brima Bazzy Kamara and Santigie Borbor Kanu.

8 In today's session, I shall only be reading out a summary  
9 of the judgment and not the judgment itself. I shall briefly  
10:42:44 10 discuss the issues raised by the parties in this appeal, and then  
11 state the findings of the Appeals Chamber. I shall then read out  
12 the Appeals Chamber's disposition.

13 I would like to emphasise that this summary is not part of  
14 the written judgment which is the only authoritative account of  
10:43:12 15 the findings and reasoning of the Appeals Chamber. Copies of the  
16 written judgment shall be made available by the Registrar to the  
17 parties in due course.

18 Let me say at this stage that, in fact, when the written  
19 judgment is out, and even from today, I announce that the  
10:43:38 20 decision of the Appeals Chamber is unanimous.

21 Background.

22 The armed conflict in Sierra Leone started in March 1991  
23 with an attack initiated in Kailahun District by an organised  
24 armed opposition group known as the Revolutionary United Front,  
10:44:02 25 also known as the RUF.

26 The RUF's aim was to overthrow the Government of Sierra  
27 Leone. By the end of 1991, the RUF held consolidated positions  
28 in a number of districts within Sierra Leone and in the years  
29 that followed it took control of more districts.

1 In March 1995, however, the Sierra Leone Army was able to  
2 dislodge the RUF from most of its positions. Subsequently, in  
3 March 1996, presidential elections were held in Sierra Leone and  
4 Ahmed Tejan Kabbah, the head of the Sierra Leone People's Party  
10:44:59 5 was pronounced the winner. On 25 May 1997 some members of the  
6 Sierra Leone Army seized power from the elected government of  
7 President Ahmed Tejan Kabbah in a coup d'etat. The coup was  
8 planned and executed by 12 junior rank officers, or soldiers.

9 Following this coup a new government called the Armed  
10 Forces Revolutionary Council, also known as the AFRC, was formed  
11 with one Johnny Paul Koroma being appointed its chairman.

12 The AFRC suspended the 1991 Constitution of Sierra Leone,  
13 dissolved the elected government and banned political parties.  
14 Johnny Paul Koroma then invited the RUF to join the AFRC in a  
10:46:01 15 so-called government.

16 After seizing power, the AFRC was not immediately able to  
17 exercise control over the entire territory of Sierra Leone.  
18 Therefore, the armed forces of the AFRC undertook military  
19 operations to gain control over districts. This resulted in  
10:46:29 20 widespread atrocities being committed in various locations  
21 throughout Sierra Leone.

22 On 23 October 1997, political military and economic  
23 pressure on the AFRC forced it to accept a six-month peace plan  
24 known as the Conakry Accord brokered by the Economic Community of  
10:46:58 25 West African States, ECOWAS.

26 The Conakry Accord called for the immediate cessation of  
27 hostilities throughout Sierra Leone and the restoration of  
28 constitutional government by 22 May 1998.

29 However, soon after the accord was signed, hostilities

1 resumed and AFRC forces were dislodged from their positions. The  
2 ousted government of President Kabbah was reinstated in March  
3 1998. After the fall of the AFRC, widespread atrocities  
4 continued to be committed throughout Sierra Leone and it was not  
10:47:50 5 until January 2002 that hostilities ceased.

6 The accused.

7 This case concerns the role of Alex Tamba Brima, Brima  
8 Bazzy Kamara, and Santigie Borbor Kanu, herein after referred to  
9 as the Appellants in the events that occurred during the armed  
10:48:18 10 conflict in Sierra Leone.

11 Following the May 1997 coup d'etat the Appellants became  
12 members of the Supreme Council of the AFRC, the highest  
13 decision-making body of the military junta. In that capacity  
14 they attended coordination meetings between leaders of the AFRC  
10:48:44 15 and the RUF. In the period following December 1998, Alex Tamba  
16 Brima took over as the overall commander of the AFRC force with  
17 Brima Bazzy Kamara, as deputy commander, and Santigie Borbor Kanu  
18 as Chief of Staff. From then on they remained the three most  
19 senior commanders of the AFRC until the cessation of hostilities  
10:49:18 20 in January 2002.

21 The trial and judgment.

22 The trial of the Appellants commenced on March 7, 2005 and  
23 concluded on 8 December 2006. On 20 June 2007, Trial Chamber II  
24 delivered its judgment and found all three Appellants criminally  
10:49:48 25 responsible for war crimes, crimes against humanity and other  
26 serious violations of International Humanitarian Law.

27 Verdict.

28 In its general findings of fact, the Trial Chamber found  
29 that there was an armed conflict in Sierra Leone between March

1 1991 and January 2002, and that the crimes charged related to the  
2 armed conflict. It found that there was a systematic or  
3 widespread attack by the AFRC and RUF forces directed against the  
4 civilian population of Sierra Leone and that each incident  
10:50:42 5 described in the indictment formed part of a widespread or  
6 systematic attack within the meaning of Article 2 of the Statute  
7 of the Special Court.

8 The Trial Chamber also found that several operations  
9 conducted by AFRC forces targeted civilians and that the  
10:51:01 10 Appellants knew that their conduct formed part of a widespread or  
11 systematic attack.

12 With respect to all three Appellants, the Trial Chamber  
13 evaluated the evidence relating to the individual criminal  
14 responsibility of each of them under Articles 6(1) and 6(3) of  
10:51:25 15 the Statute of the Special Court.

16 Specifically, Brima, Kamara, and Kanu were convicted of six  
17 counts of violations of Article 3, Common to the 1949 Geneva  
18 Conventions for the Protection of War Victims and of Additional  
19 Protocol II. Four counts of crimes against humanity, pursuant to  
10:51:58 20 Articles 2(a), 2(b), 2(c) and 2(g) of the Statute, and a single  
21 count of other serious violations of International Humanitarian  
22 Law pursuant to Article 4(c) of the Statute.

23 The Trial Chamber did not enter convictions under counts 7  
24 and 8 of the indictment. Count 7 charged the offence of sexual  
10:52:29 25 slavery and any other form of sexual violence. A majority of the  
26 Trial Chamber held that the charge violated the rule against  
27 duplicity and dismissed it for that reason.

28 Count 8, which raises the issue of forced marriage, was  
29 dismissed on the ground that the evidence led in support of that

1 count did not establish any offence distinct from sexual slavery.

2 The Trial Chamber also acquitted Brima and Kamara of the  
3 crime of other inhumane acts as a crime against humanity, charged  
4 under count 11 of the indictment.

10:53:17 5 The Trial Chamber finally held that "with respect to joint  
6 criminal enterprise as a mode of criminal liability the  
7 indictment had been defectively pleaded" and that it would not  
8 therefore consider joint criminal enterprise as a mode of  
9 criminal responsibility.

10:53:44 10 Sentence.

11 For all the counts of which they were found guilty, Brima  
12 and Kanu were each sentenced to a single term of imprisonment of  
13 50 years, and Kamara to a single term of imprisonment of 45  
14 years. The Trial Chamber ordered that each be given credit for  
10:54:14 15 any period during which they were detained in custody pending  
16 trial.

17 The appeal.

18 All three Appellants and the Prosecution appealed against  
19 the judgment of the Trial Chamber and oral hearings on appeal  
10:54:32 20 took place on 12, 13 and 14 November 2007. Many of the grounds  
21 of appeal raised by Brima and Kamara share a common deficiency in  
22 that although each of them alleges error in law or in fact, few  
23 of them give particulars of such error. The Appeals Chamber is  
24 constrained to repeat what should by now be regarded as  
10:55:05 25 commonplace: That is, in order for the Appeals Chamber to  
26 adjudicate on the parties' arguments on appeal, the party must  
27 set out its grounds of appeal clearly and logically giving the  
28 particulars on which he intends to rely.

29 I shall now turn to the substance of the parties' grounds

1 of appeal , starting with the Prosecution.

2 The Prosecution's grounds of appeal .

3 The Prosecution filed nine grounds of appeal . Grounds two  
4 to three raised the question whether the Appellants should have  
10:55:51 5 been found criminally responsible for additional crimes in  
6 Bombali District, Freetown and other parts of the Western Area  
7 and Port Loko District, and whether the Trial Chamber should have  
8 made factual findings on crimes in certain other locations.

9 In ground four, the Prosecution complains that the Trial  
10:56:15 10 Chamber failed to consider joint criminal enterprise liability.

11 The substance of ground five of the Prosecution's appeal is that  
12 the Trial Chamber erred in not including evidence of the crimes  
13 of recruitment of child soldiers, abductions and forced labour  
14 and sexual slavery hereinafter referred to as the three  
10:56:43 15 enslavement crimes as the basis of criminal responsibility for  
16 offences in counts 1 and 2 of the indictment which charged acts  
17 of terrorism and collective punishments respectively.

18 Grounds six, seven and eight raised questions of duplicity.  
19 Finally, ground nine concerns the Trial Chamber's approach to  
10:57:06 20 cumulative convictions.

21 The Appellants' grounds of appeal .

22 Brima's grounds of appeal .

23 The Appellant Brima filed 12 grounds of appeal of which  
24 four were abandoned. Ground one raises the issue of equality of  
10:57:29 25 arms complaining that the Trial Chamber failed "to consider the  
26 fact that the inequality of arms between the Prosecution and  
27 Defence denied or substantially impaired the right of Brima to a  
28 fair trial resulting in a miscarriage of justice."

29 Six of Brima's grounds of appeal state that the Trial



1 Chamber erred in law and in fact in its evaluation of the  
2 evidence by finding that he was individually criminally  
3 responsible under Articles 6(1) and 6(3) of the Statute for the  
4 crimes stated in the indictment.

10:58:17 5 In his 12th ground of appeal he complains that the Trial  
6 Chamber erred in law and in fact by failing to consider a number  
7 of mitigating factors that the imposition of a global sentence of  
8 50 years was excessive and disproportionate and that the Trial  
9 Chamber impermissibly double-counted aggravating factors.

10:58:45 10 Kamara's grounds of appeal.

11 Kamara filed 13 grounds of appeal of which five were  
12 against sentence.

13 In grounds one to six he contends that the Trial Chamber  
14 erred in law and fact by misapplying the modes of liability for  
10:59:06 15 ordering, planning and aiding and abetting. In ground seven he  
16 complains that the Trial Chamber misapplied the requisite  
17 standard for superior responsibility. In ground eight he  
18 contends that the Trial Chamber erred in its evaluation of  
19 evidence in respect of the credibility of witnesses.

10:59:32 20 In grounds nine to thirteen, he states that the Trial  
21 Chamber failed to consider mitigating circumstances,  
22 misunderstood underlying sentencing principles and consequently  
23 imposed an excessive sentence.

24 Kanu's grounds of appeal.

10:59:53 25 Kanu filed 19 grounds of appeal of which eight relate to  
26 sentencing. The issues raised by the grounds of appeal against  
27 conviction relates to:

- 28 1. The greatest responsibility requirement.
- 29 2. The indictment, particularly in regard to pleading

1 principles when mode of committing is alleged and waiver of  
2 defects in indictments by reason of failure to object to  
3 evidence of material fact not pleaded.

11:00:35

4 3. Evidential issues, particularly in regard to the  
5 evaluation of evidence of witnesses and treatment of  
6 accomplice evidence.

7 4. Superior responsibility under Article 6(3) of the  
8 Statute.

11:00:58

9 5. In regard to crimes of conscription of child soldiers,  
10 whether the absence of criminal knowledge on the part of an  
11 accused vitiated the requisite mens rea.

12 6. Cumulative convictions argued only in regard to  
13 sentencing.

11:01:17

14 7. Whether the Trial Chamber's finding that joint criminal  
15 enterprise, as a mode of criminal liability, had been  
16 defectively pleaded did not affect the validity of the  
17 entire indictment.

11:01:40

18 The grounds of appeal raised by Kanu against sentence  
19 relates to the application of various sentencing principles and  
20 the consideration of mitigating factors.

21 Common grounds.

22 The Appeals Chamber opines that although the grounds of  
23 appeal filed by the parties advance different arguments there is  
24 similar issues with respect to:

11:01:59

25 1. The general pleading principles applicable to  
26 indictments at international criminal tribunals.

27 2. The evaluation of evidence and witness credibility and  
28 superior responsibility.

29 Where appropriate, the Appeals Chamber will deal with these

1 common issues together.

2 I shall now address the common grounds of appeal which  
3 relates to the indictment.

4 1. Prosecution's second ground of appeal: Locations not  
11:02:39 5 pleaded in the indictment.

6 The substance of the Prosecution's second ground of appeal  
7 is that the Trial Chamber erred in law and in fact in failing to  
8 make findings on the responsibility of each Appellant for crimes  
9 committed in several locations in Koinadugu and Bombali

11:03:04 10 Districts, Freetown and other parts of the Western Area and in  
11 Port Loko District and other locations in respect of which  
12 evidence had been led.

13 The Prosecution submits that contrary to the Trial  
14 Chamber's findings, locations were properly pleaded in the  
11:03:25 15 indictment and that in the alternative any defects in the  
16 indictment were cured by providing timely, clear and consistent  
17 information to the Appellants.

18 It further argued that Trial Chamber II's findings that  
19 locations weren't properly pleaded amounted to a reversal of  
11:03:51 20 previous interlocutory decisions made by Trial Chamber I.

21 We find that Trial Chamber II reconsidered the decision  
22 reached by Trial Chamber I and came to its own conclusion with  
23 respect to the pleading of locations in the indictment. Whether  
24 or not an issue relating to the form of an indictment should be  
11:04:19 25 reconsidered by the Trial Chamber should be determined on a  
26 case-by-case basis, having regard to the stage of proceedings,  
27 the issues raised by the earlier decision, and the effect of  
28 reconsideration or reversal on the rights of the parties.

29 We opine that although the Trial Chamber erred in not

1 giving notice to the parties of its intention to reconsider the  
2 pre-trial decision as it ought to have done, that error did not  
3 invalidate the decision.

4 The Trial Chamber's summary treatment of the evidence, in  
11:05:03 5 respect of crimes committed in such locations, were a proper  
6 exercise of its discretion in the interest of justice, taking  
7 into account that it is the Prosecution's obligation to plead  
8 clearly material facts it intends to prove so as to afford an  
9 accused a fair trial.

11:05:29 10 The Prosecution's second ground of appeal therefore fails.

11 I shall now turn to the grounds of appeal that touch upon  
12 the issue of joint criminal enterprise, as contained in the  
13 Prosecution's fourth ground, and Kanu's tenth ground of appeal.

14 The Prosecutions fourth ground of appeal and Kanu's tenth  
11:05:57 15 ground of appeal: Joint criminal enterprise.

16 In its fourth ground of appeal the Prosecution challenged  
17 the Trial Chamber's finding that the joint criminal enterprise  
18 was defectively pleaded and further argued that the Trial Chamber  
19 committed a procedural and legal error by reconsidering at the  
11:06:20 20 judgment stage earlier interlocutory decisions with respect to  
21 the form of the indictment and the pleading of joint criminal  
22 enterprise as a form of liability.

23 In the alternative, the Prosecution submits that even if  
24 joint criminal enterprise liability was defectively pleaded, the  
11:06:44 25 defects were subsequently cured or were of such a nature that  
26 they did not prejudice the Defence so as to justify the Trial  
27 Chamber's failure to consider joint criminal enterprise  
28 liability.

29 Kanu, in his tenth ground of appeal, submits that the Trial

1 Chamber, having found that joint criminal enterprise had been  
2 defectively pleaded, should have quashed the indictment. He  
3 further contends that the defective indictment substantially  
4 prejudiced him in the preparation of his defence because at all  
11:07:28 5 material times he was unsure of the exact nature of the case  
6 against him.

7 The Appeals Chamber concludes that the requirement that the  
8 common plan, design or purpose of a joint criminal enterprise is  
9 inherently criminal means that it must either have as its  
11:07:59 10 objective a crime within the Statute or contemplate crimes within  
11 the Statute as a means of achieving its objective.

12 The Appeals Chamber holds that the common purpose of the  
13 joint criminal enterprise was not defectively pleaded. Although  
14 the objective of gaining and exercising political power and  
11:08:27 15 control over the territory of Sierra Leone may not be a crime  
16 under the Statute, the actions contemplated as a means to achieve  
17 that objective are crimes within the Statute. The Trial Chamber  
18 erred in law by concluding that the Prosecution could not plead  
19 the basic and extended forms of joint criminal enterprise  
11:08:52 20 liability in the alternative on the ground that the two forms, so  
21 pleaded, logically exclude each other.

22 The Trial Chamber further erred in law in finding that the  
23 indictment failed to specify the period covered by the joint  
24 criminal enterprise when it is clear, from perusing the whole of  
11:09:19 25 the indictment that the period covered by the joint criminal  
26 enterprise is between 25 May 1997, the date of the coup d'etat,  
27 and January 2000.

28 The Appeals Chamber, having found that joint criminal  
29 enterprise was not defectively pleaded in the indictment, the

1 question of whether the Prosecution failed to cure the defect  
2 obviously does not arise.

3 Kanu's tenth ground, that the Trial Chamber erred in law by  
4 failing to quash the entire indictment after finding that joint  
11:09:59 5 criminal enterprise was defectively pleaded, must therefore fail.

6 Prosecution's sixth ground of appeal: The duplicity of  
7 count 7.

8 I shall now turn to the Prosecution's fifth ground of  
9 appeal which raises the issue of duplicity. In its sixth ground  
11:10:22 10 of appeal the Prosecution challenges the Trial Chamber's finding  
11 that count 7 of the indictment violated the rule against  
12 duplicity and prejudiced the rights of the Appellants.

13 Count 7 of the indictment alleged that the Appellants bore  
14 individual criminal responsibility for "sexual slavery and any  
11:10:50 15 other form of sexual violence, a crime against humanity  
16 punishable under Article 2(g) of the Statute."

17 The Prosecution further argues that the Trial Chamber  
18 committed procedural and legal errors by reconsidering earlier  
19 interlocutory decisions concerning defects in the form of the  
11:11:14 20 indictment at the final judgment stage without first reopening  
21 hearings on the issue.

22 We opine that the Prosecution's argument that the Trial  
23 Chamber reconsidered its prior decision is misconceived because  
24 until its final judgment the Trial Chamber had not ruled on  
11:12:17 25 whether or not count 7 was defective.

26 We hold that count 7 of the indictment, which charges the  
27 commission of "sexual slavery and any other form of sexual  
28 violence" offends the rule against duplicity by charging two  
29 offences in the same count.

1 From the evidence accepted by the Trial Chamber, and the  
2 findings it had made, it should have chosen the option to proceed  
3 on the basis that the offence of sexual slavery had been properly  
4 charged in count 7, return appropriate verdict on that count in  
11:12:25 5 respect of the crime of sexual slavery and struck out the charge  
6 of "any other form of sexual violence."

7 We find that although the Trial Chamber had not chosen that  
8 option no miscarriage of justice has resulted therefrom. It is  
9 not necessary for the Appeals Chamber to substitute a conviction  
11:12:49 10 for sexual slavery since the Trial Chamber relied upon the  
11 evidence of sexual slavery to enter convictions for count 9 which  
12 charged the offence of "outrages upon personal dignity."

13 Kanu's second ground of appeal: Waiver of indictment  
14 defects.

11:13:14 15 In his second ground of appeal, Kanu alleges that the Trial  
16 Chamber erred in law in finding him guilty under Article 6(1) of  
17 the Statute of committing three crimes in Freetown and other  
18 parts of the Western Area after it had found that the indictment  
19 was defective as regards to the crimes relating to an amputation  
11:13:39 20 carried out near Kissy Old Road and another carried out at Upgun.

21 Kanu submits that the Trial Chamber ought to have dismissed  
22 all charges that allege his personal commission of crimes after  
23 it had established that these counts of the indictment were  
24 defective.

11:14:03 25 Whether or not the Appellant raised a timely objection at  
26 the trial will affect the question on appeal whether he was, in  
27 fact, prejudiced by the defective indictment. Perusing the  
28 record on appeal, Kanu's preliminary motion on defects in the  
29 indictment, it is clear that Kanu did not previously complain

1 that the indictment was defective in respect of his personal  
2 commission of the criminal acts alleged.

3 In making this complaint for the first time Kanu must show  
4 that he was prejudiced.

11:14:48 5 The Appeals Chamber finds no merit in Kanu's second ground  
6 of appeal, neither in his appeal brief nor during oral argument  
7 did he say that he had no notice of the crime he was alleged to  
8 have personally committed.

9 Further, he neither demonstrated that he was prejudiced nor  
11:15:11 10 that the preparation of his defence was materially impaired by  
11 the defect in the indictment. On the contrary, counsel for Kanu  
12 cross-examined witnesses as to specific incidents and when asked  
13 during the appeal hearing why no objection was raised when  
14 evidence was being led in respect of the aforementioned crimes he  
11:15:38 15 replied that it was "a question of strategy" at trial.

16 The Appeals Chamber accordingly rejects Kanu's second  
17 ground.

18 Common issues of fact: Evaluation of evidence and witness  
19 credibility.

11:16:01 20 I now turn to the common issues of fact relating to the  
21 Trial Chamber's evaluation of the evidence and witness  
22 credibility.

23 Brima's ninth ground of appeal: Error of Trial Chamber in  
24 the evaluation of evidence.

11:16:19 25 In his ninth ground of appeal Brima submits that the Trial  
26 Chamber committed an error of law or fact by resolving doubts in  
27 the evidence in favour of the Prosecution.

28 The Appeals Chamber dismisses ground nine of Brima's appeal  
29 because he failed to demonstrate how the Trial Chamber erred in



1 its evaluation of the evidence of the Prosecution witnesses or  
2 that its conclusion were unreasonable.

3 Brima's tenth and eleventh grounds of appeal: Failure to  
4 consider the rivalry between Brima and witness TF1-334;  
11:17:08 5 disproportionate reliance on the evidence of TF1-334 and TF1-167.

6 Under grounds ten and eleven, Brima alleges that the Trial  
7 Chamber failed to consider his testimony of the rivalry that  
8 existed between him and Prosecution witness TF1-334 and that this  
9 occasioned a miscarriage of justice. Similarly, he submits that  
11:17:42 10 out of a total of 146 Prosecution and Defence witnesses called to  
11 testify at the trial, the Trial Chamber disproportionately relied  
12 on the evidence of two witnesses, namely, TF1-334 and TF1-167 and  
13 that this occasioned a further miscarriage of justice.

14 Brima adopts the submissions made under ground eight of  
11:18:20 15 Kamara's appeal. The Appeals Chamber therefore will consider  
16 grounds ten and eleven of Brima's appeal in the evaluation of  
17 ground eight of Kamara's appeal.

18 Kamara's eighth ground of appeal.

19 In his eighth ground of appeal Kamara challenges the  
11:18:47 20 credibility of Prosecution witnesses TF1-334, TF1-167, TF1-184  
21 and TF1-153, and submits that these witnesses were  
22 co-perpetrators of the crimes for which the accused were  
23 convicted and, therefore, the Trial Chamber ought to have  
24 approached their evidence with caution.

11:19:14 25 In addition, he submits that in return for their testimony  
26 before the Trial Chamber witnesses TF1-334, TF1-167 and TF1-184  
27 received preferential treatment while in detention in Pademba  
28 Road Prison.

29 Furthermore, according to Kamara, there were unresolved

1 discrepancies in the evidence of the Prosecution witnesses and  
2 the Trial Chamber failed to provide a reasonable explanation why  
3 it chose to rely on the evidence of one witness and not the  
4 other.

11:20:02 5 The Appeals Chamber finds that the Trial Chamber erred in  
6 finding that the witnesses of the Prosecution were not  
7 accomplices simply because they were not charged with any  
8 criminal offence. In assessing the reliability of accomplice  
9 evidence the main consideration for the Trial Chamber should be  
11:20:29 10 whether or not the accomplice has an ulterior motive to testify  
11 as he did. Even though the Trial Chamber did not say that  
12 Prosecution witnesses TF1-334, TF1-184 and TF1-167 (George  
13 Johnson) were accomplices, it was mindful of Kamara's allegations  
14 that these witnesses may have been involved in criminal conduct  
11:20:59 15 or otherwise have reason to give false testimony.

16 It further carried out a detailed and careful analysis of  
17 the evidence of all the aforementioned witnesses and looked for  
18 corroboration.

19 The Appeals Chamber therefore concludes that even though  
11:21:23 20 the Trial Chamber erred, in not characterising the evidence of  
21 witnesses TF1-334, TF1-184 and TF1-167 as accomplice evidence, it  
22 did, in fact, carefully consider the evidence of each witness and  
23 assessed their credibility in the light of the totality of the  
24 evidence before it.

11:21:53 25 Kamara further submits that there were discrepancies in the  
26 evidence of Prosecution witnesses TF1-334, TF1-184, TF1-167 and  
27 TF1-153 with respect to events for which the Trial Chamber found  
28 him guilty and submits that the Trial Chamber failed to resolve  
29 those discrepancies or to give a reasoned decision why it

1 preferred one account to the other.

2 With respect to Prosecution witnesses TF1-334, TF1-184 and  
3 TF1-167 the Appeals Chamber opines that a Trial Chamber has a  
4 wide discretion to determine whether discrepancies discredit a  
11:22:56 5 witness's testimony. The Appeals Chamber will only find that an  
6 error of fact was committed when it determines that no reasonable  
7 tribunal could have made the impugned finding.

8 Kamara further states, without giving particulars, that  
9 there were significant inconsistencies in the testimony of  
11:23:21 10 Prosecution witness TF1-153. Since he has not referred to any  
11 particular instance of error in the Trial Chamber's evaluation of  
12 the witness's evidence, or referred to any error in the Trial  
13 Chamber's evaluation of evidence, this argument fails.

14 The Appeals Chamber reiterates that it will not consider  
11:23:49 15 submissions which are obscure, contradictory, vague or suffer  
16 from formal or other deficiencies.

17 Kamara further submits that the Trial Chamber erred in  
18 relying exclusively on Prosecution witnesses TF1-334, TF1-184 and  
19 TF1-167. Brima adopts this aspect of Kamara's submissions and  
11:24:21 20 submits that the Trial Chamber erred in relying  
21 disproportionately on two Prosecution witnesses, that is to say,  
22 TF1-334 and TF1-167.

23 A Trial Chamber must look at the totality of the evidence  
24 on record in evaluating the credibility of a witness. A party  
11:24:51 25 who alleges on appeal that the finding as to the credibility of a  
26 witness was made without considering the totality of the evidence  
27 on record must show clearly that some error occurred.

28 The Appeals Chamber opines that there is no bar to the  
29 Trial Chamber relying on a limited number of witnesses or even a

1 single witness provided it took into consideration all the  
2 evidence on the record.

3 For the aforementioned reasons ground eight of Kamara's  
4 appeal as well as grounds ten and eleven of Brima's appeal must  
11:25:38 5 fail.

6 Kanu's third ground of appeal: Evaluation of witnesses'  
7 evidence.

8 In his third ground of appeal Kanu alleges that the Trial  
9 Chamber erred in law and in fact in its evaluation of the  
11:25:52 10 evidence before it, and he submits that the Trial Chamber failed  
11 to evaluate objectively the evidence of witnesses for the Defence  
12 and evidence of witnesses for the Prosecution.

13 Kanu has not established that the Trial Chamber erred in  
14 its evaluation of the evidence of the witnesses or that its  
11:26:17 15 evaluation was unreasonable. The Appeals Chamber reiterates that  
16 the Trial Chamber has a broad discretion to determine whether the  
17 weight to be given to discrepancies between a witness's testimony  
18 and his prior statements. The Appeals Chamber defers to the  
19 Trial Chamber's judgment on issues of credibility, including its  
11:26:58 20 resolution of disparities among different accounts of witnesses  
21 and will only find that an error of fact was committed when it  
22 determines that no reasonable tribunal could have made the  
23 impugned finding.

24 The Trial Chamber gave a reasonable explanation for the  
11:27:10 25 discrepancies in the witness's evidence. Kanu has not  
26 demonstrated any reason why the Appeals Chamber should interfere  
27 with the Trial Chamber's finding.

28 For the foregoing reasons Kanu's third ground of appeal  
29 fails in its entirety.

1 Kanu's fourth ground of appeal: Evidence of accomplice  
2 witnesses.

3 In his fourth ground of appeal Kanu challenges the Trial  
4 Chamber's evaluation of the evidence of Prosecution witnesses.

11:27:56 5 He makes submissions similar to those made in Kamara's eighth  
6 ground of appeal. In view of the conclusions that the Appeals  
7 Chamber had earlier come to, on similar submissions in respect of  
8 ground eight of Kamara's appeal, as well as on grounds ten and  
9 eleven of Brima's appeal, it is not necessary for us to consider  
11:28:20 10 these submissions afresh.

11 For the reasons already given in those conclusions this  
12 ground must also fail.

13 I shall now address the remaining grounds of appeal for  
14 each party beginning with the Prosecution's appeal.

11:28:45 15 Prosecutions first and third grounds of appeal: The  
16 Bombali/Freetown campaign and Kamara's alleged responsibility  
17 under Article 6(1) for crimes committed in Port Loko District.

18 Grounds one and three of the Prosecution's grounds of  
19 appeal address certain legal and factual issues, namely:

11:29:08 20 1. That the Trial Chamber erred in law and in fact in not  
21 finding the accused individually responsible under both  
22 Article 6(1) and 6(3) of the Statute for all crimes that  
23 the Trial Chamber found to have been committed in  
24 Bombali District, Freetown and other parts of the Western  
11:29:25 25 Area and:

26 2. That it erred in law and in fact in finding that the  
27 Prosecution did not adduce any evidence that Kamara  
28 committed, ordered, planned, instigated or otherwise aided  
29 and abetted any other crimes committed in the Port Loko

1 District and the Prosecution did not prove any of the modes  
2 of individual responsibility against Kamara for the crimes  
3 committed in Port Loko District.

4 As the Appellants have, however, been convicted and  
11:30:00 5 sentenced to terms of 50 years and 45 years imprisonment for  
6 crimes committed in Bombali District, Freetown and other parts of  
7 the Western Area, and Kamara in Port Loko under Article 6(1)  
8 and/or 6(3) of the Statute, taking all the circumstances into  
9 consideration and, in particular, having regard to the length of  
11:30:27 10 the sentences, the Appeals Chamber is of the opinion that it  
11 becomes an academic exercise and also pointless to adjudicate  
12 further on minute details raised in the Prosecution's first and  
13 third grounds of appeal.

14 Prosecution's fifth ground of appeal: The enslavement  
11:30:50 15 crimes as acts of terrorism and collective punishments.

16 With respect to the Prosecution's fifth ground of appeal,  
17 the Trial Chamber found all three Appellants guilty of acts of  
18 terrorism, count 1 of the indictment, and of collective  
19 punishments, count 2 of the indictment.

11:31:37 20 The Prosecutor complains that in the particular factual  
21 context of the case the Trial Chamber erred in law in holding  
22 that the three enslavement crimes were not acts of terrorism and  
23 were also not collective punishments.

24 The Appeals Chamber opines that the Trial Chamber was  
11:31:59 25 correct in stating that certain acts of violence were of such a  
26 nature that the primary purpose can only be reasonably inferred  
27 to be spreading terror among the civilian population.

28 The Appeals Chamber is of the opinion that certain acts  
29 found by the Trial Chamber to have been committed by the

1 Appellants were so heinous and revolting that the only reasonable  
2 conclusion that could be drawn was that such acts were committed  
3 with the specific intent to spread extreme fear amongst the  
4 civilian population. Amputations; the burning alive of civilians  
11:32:54 5 in a house; and the grotesque public display of a mutilated body;  
6 the splitting open of the bellies of pregnant women are but a few  
7 acts that justify the Trial Chamber's finding that the Appellants  
8 were guilty of acts of terrorism.

9 The Appeals Chamber opines that the Prosecution's attempt  
11:33:22 10 to search for further acts of terrorism, by adding the three  
11 enslavement crimes to this list, is an unnecessary and fruitless  
12 exercise since the Appellants had already been convicted of acts  
13 of terrorism and an adequate sentence had been imposed.

14 The Appeals Chamber further finds the Prosecution's  
11:33:47 15 submissions regarding the crime of collective punishments to be  
16 imprecise and without merit. The Prosecution failed to  
17 demonstrate how the manner in which the Trial Chamber either  
18 erred in law, invalidating its decision, or erred in fact,  
19 occasioning a miscarriage of justice.

11:34:09 20 The Prosecution's fifth ground of appeal therefore fails in  
21 its entirety.

22 Prosecution's seventh ground of appeal: Forced marriage.

23 Under the seventh ground of appeal the Prosecution  
24 challenges the Trial Chamber's dismissal of count 8 of the  
11:34:29 25 indictment which charged Brima, Kamara and Kanu with the crime of  
26 other inhumane acts punishable under Article 2(i) of the Statute.  
27 The Prosecution submits that a majority of the Trial Chamber,  
28 Justice Doherty dissenting, made three distinct errors of law,  
29 and fact by finding that:

1 1. The residual category of crimes against humanity, other  
2 inhumane acts under Article 2(i) of the Statute should be  
3 confined to acts of a non-sexual nature.

11:35:16

4 2. The evidence adduced by the Prosecution was not capable  
5 of establishing the elements of a non-sexual crime of  
6 forced marriage independent of the crime of sexual slavery  
7 under Article 2(g) of the Statute and:

11:35:35

8 3. The evidence adduced by the Prosecution is completely  
9 subsumed in the crime of sexual slavery and that there is  
10 no lacuna in the law which would necessitate a separate  
11 crime of forced marriage as an other inhumane act.

11:36:03

12 The Prosecution submits that forced marriage is distinct  
13 from the crime against humanity of sexual slavery since forced  
14 marriage "consists of words or conduct intended to confer a  
15 status of marriage by force or threat of force ... with the  
16 intention of conferring the status of marriage."

11:36:34

17 It further contends that forced marriage essentially  
18 involves a "forced conjugal association by the perpetrator over  
19 the victim" and is not predominantly sexual, since victims of  
20 forced marriage need not necessarily be subjected to  
21 non-consensual sex, and argues that the imposition of a forced  
22 conjugal association, causing great suffering to the victim, to  
23 its victims, is as grave as the other crimes against humanity,  
24 such as imprisonment.

11:36:58

25 The Appeals Chamber finds that the Trial Chamber erred in  
26 law by finding that "other inhumane acts" under Article 2(i) must  
27 be interpreted restrictively to exclude sexual crimes whereas  
28 other inhumane acts was intended to be residual.

29 The Appeals Chamber finds that forced marriage is distinct



1 from the crime of sexual slavery. It is of the opinion that  
2 forced marriage involves a perpetrator compelling a person by  
3 force or threat of force, through words, or conduct of the  
4 perpetrator, or anyone associated with him, into a forced  
11:37:47 5 conjugal association resulting in great suffering or serious  
6 physical or mental injury on the part of the victim.

7 It is not necessarily a sexual crime because sex is not the  
8 only incident of the forced relationship.

9 The Appeals Chamber therefore concludes that the Trial  
11:38:14 10 Chamber erred in law in holding that forced marriage is subsumed  
11 in sexual slavery and is satisfied that forced marriage amounts  
12 to other inhumane acts under Article 2(1) of the Statute.

13 The Appeals Chamber therefore upholds ground seven of the  
14 Prosecution's appeal but declines to enter additional conviction  
11:38:41 15 for forced marriage as other inhumane act.

16 Prosecution's eighth ground of appeal: Cumulative  
17 convictions under counts 10 and 11.

18 In its eighth ground of appeal the Prosecution argues that  
19 the Trial Chamber erred in not considering mutilations under  
11:39:17 20 count 10 as well as under count 11 because considering  
21 mutilations and beatings and ill-treatment under the same count  
22 would have made it duplicious.

23 The Appeals Chamber finds that the Trial Chamber was  
24 correct in considering mutilations under count 10 only, because  
11:39:42 25 the Prosecution's combination of the material facts that support  
26 counts 10 and 11, created a degree of ambiguity in the  
27 indictment.

28 In light of this ambiguity it was within the discretion of  
29 the Trial Chamber to consider evidence of mutilations solely

1 under count 10.

2 Ground eight of the Prosecution's appeal therefore fails.

3 Prosecution's ninth ground of appeal: Cumulative  
4 convictions.

11:40:17 5 In its ninth ground of appeal, the Prosecution argues that  
6 the Trial Chamber erred in law when it held that the accused  
7 could not be found guilty under Article 6(1) and Article 6(3)  
8 under the same count where the legal requirements of both of  
9 these heads of responsibility are met. It submits, further, that  
11:40:40 10 the Trial Chamber does not have the discretion to refrain from  
11 entering a finding of responsibility when it is satisfied of the  
12 accused's guilt beyond reasonable doubt. It also argues that the  
13 bar on concurrent convictions under Article 6(1) and Article 6(3)  
14 only applies when the convictions are based on the same facts.

11:41:07 15 The Appeals Chamber is of the opinion that although the  
16 Trial Chamber erred in failing to convict the Appellants while it  
17 had found that the legal requirements for entering convictions  
18 under Article 6(3) had been met, no useful purpose will be served  
19 in convicting the Appellants on the basis of such findings having  
11:41:31 20 regard to the adequate global sentence imposed on each Appellant.

21 I shall now turn to Brima's grounds of appeal.

22 Brima's first ground of appeal: Equality of arms.

23 In his first ground of appeal, Brima alleges that the Trial  
24 Chamber erred in law and in fact in failing to ensure equality of  
11:42:14 25 arms between the Prosecution and Defence. Brima did not make any  
26 submission on the particular circumstances of his own case except  
27 to complain generally or file any written request seeking  
28 additional time or resources. He cannot now complain about this  
29 lapse.

1           Brima's first ground of appeal therefore fails in its  
2           entirety.

3           Brima's fourth and sixth grounds of appeal: Superior  
4           responsibility for crimes committed in Bombali District, Freetown  
11:42:44 5           and other parts of the Western Area.

6           Brima's fourth and sixth grounds of appeal both complain  
7           that the Trial Chamber erred in law and/or in fact in finding  
8           that Brima is liable as a superior under Article 6(3) for crimes  
9           committed by his subordinates in Bombali District, ground four,  
11:43:07 10          and in Freetown and other parts of the Western Area, ground six,  
11          during the period covered in the indictment.

12          Both grounds of appeal are grossly defective because they  
13          do not give particulars of the errors alleged. The Appeals  
14          Chamber, in perusing the judgment of the Trial Chamber, finds  
11:43:29 15          that it had made appropriate legal and factual findings upon  
16          which it based its conclusion that Brima was responsible as a  
17          superior under Article 6(3). Nothing useful has been urged in  
18          his appeal to make us come to the conclusion that the Trial  
19          Chamber was in error.

11:43:51 20          For these reasons grounds four and six of Brima's grounds  
21          of appeal must fail.

22          Brima's fifth ground of appeal, Article 6(1):  
23          Responsibility for murder and extermination in Bombali District.

24          In respect of Brima's fifth ground of appeal the Appeals  
11:44:13 25          Chamber repeats the opinion it expressed in grounds four and six  
26          since ground five of Brima's appeal has the same defects as these  
27          other two grounds.

28          For the reasons stated in respect of those grounds, ground  
29          five of Brima's appeal must also fail.

1 I shall now turn to Kamara's grounds of appeal.

2 Kamara's first ground of appeal: Ordering murder of five  
3 civilians in Karina.

4 In his first ground of appeal Kamara submits that the  
11:44:59 5 "Trial Chamber erred in law and/or fact in paragraphs 1915 and  
6 2117 in finding Kamara responsible/guilty under Article 6(1) for  
7 ordering the unlawful killing of five civilians in Karina in the  
8 Bombali District pursuant to counts 3, 4 and 5 of the indictment  
9 thereby invalidating the trial judgment and leading to a  
11:45:35 10 miscarriage of justice."

11 The Trial Chamber properly exercised its discretion in  
12 favouring and relying upon the account of unlawful killings in  
13 Karina given by witness TF1-334.

14 For reasons already given the Appeals Chamber will not  
11:45:58 15 disturb the factual findings of the Trial Chamber with respect to  
16 the unlawful killings in Karina. This ground of appeal therefore  
17 fails.

18 Kamara's second, third and fourth grounds of appeal:  
19 Planning crimes in Bombali District and other parts of the  
11:46:25 20 Western Area.

21 The Appeals Chamber has considered Kamara's grounds two,  
22 three and four where the substance of complaint is: That the  
23 Trial Chamber erred in fact in finding that Kamara planned the  
24 crimes alleged in counts 9, 12 and 13.

11:46:45 25 Having scrutinised the record on appeal, the Appeals  
26 Chamber concludes that the grounds of appeal are misconceived.  
27 The Trial Chamber, in its findings, had found that Kamara did not  
28 plan the crimes set out in counts 9, 12 and 13. However, the  
29 Appeals Chamber has noted that the Trial Chamber, in its

1 disposition, had mistakenly stated that Kamara was guilty of the  
2 crimes in counts 9, 12 and 13 pursuant to Article 6(1) of the  
3 Statute when it should have been Article 6(3).

4 Accordingly, the Appeals Chamber revises the Trial  
11:47:39 5 Chamber's disposition by substituting Article 6(3) for Article  
6 6(1) in respect of the counts 9, 12 and 13.

7 Kamara's fifth and sixth grounds of appeal: Aiding and  
8 abetting crimes in Freetown and other parts of the Western Area.

9 In his fifth and sixth grounds of appeal, Kamara contends  
11:48:07 10 that the Trial Chamber erred in law and in fact by finding him  
11 guilty under Article 6(1) for aiding and abetting the mutilation  
12 of civilians in Freetown and other parts of the Western Area. In  
13 particular, he argues that the Trial Chamber erroneously "applied  
14 a wider standard of liability instead of the stricter standard to  
11:48:36 15 find the Appellant guilty as an aider and abetter based on its  
16 analysis of the mens rea of aiding and abetting."

17 The Appeals Chamber finds that the Trial Chamber was  
18 correct in its analysis of the mental element for aiding and  
19 abetting.

11:49:01 20 Kamara then also alleges that the Trial Chamber erred in  
21 law in failing to require that "the aider and abetter was aware  
22 of the essential elements of the crime which was ultimately  
23 committed by the principal."

24 Liability for aiding and abetting requires proof that the  
11:49:27 25 accused knew that one of a number of crimes would probably be  
26 committed; that one of those crimes was, in fact, committed and  
27 that the accused was aware that his conduct assisted the  
28 commission of that crime.

29 Although the judgment did not explicitly refer to the

1 essential elements requirement, but instead limited its statement  
2 of the law to whether the Appellant knew or was aware of the  
3 substantial likelihood that his acts would assist the commission  
4 of a crime by the perpetrator, the Trial Chamber found that  
11:50:08 5 Kamara was aware of the substantial likelihood that, as deputy  
6 commander of the AFRC troops, his presence would provide moral  
7 support and assist the commission of killings in the Fourah Bay  
8 area and killings and mutilations during Operation Cut Hand, in  
9 Freetown.

11:50:36 10 Kamara was present during the attacks at Fourah Bay and led  
11 a mission to loot machetes for Operation Cut Hand with full  
12 knowledge of the purpose for which the weapons were to be used.  
13 Therefore, the Trial Chamber was correct to conclude that Kamara  
14 was aware of the intention of the perpetrators to mutilate  
11:51:03 15 people.

16 We are of the opinion that nothing useful has been urged in  
17 this appeal to make us come to the conclusion that the Trial  
18 Chamber was in error.

19 He further argues that his presence at Fourah Bay was not  
11:51:20 20 proved beyond reasonable doubt because the Trial Chamber erred in  
21 its evaluation of the evidence. Kamara further argues that  
22 inconsistencies between witnesses TF1-334 and witness TF1-184  
23 should have been given more weight by the Trial Chamber.

24 The Appeals Chamber is of the opinion that Kamara failed to  
11:51:45 25 show that the Trial Chamber did not properly exercise its  
26 discretion in resolving the differences between the testimony of  
27 witnesses TF1-334 (George Johnson) and TF1-184.

28 Grounds five and six of Kamara's appeal must therefore  
29 fail.

1 Kamara's seventh ground of appeal: Superior  
2 responsibility.

3 In Kamara's seventh ground of appeal he submits that the  
4 "Trial Chamber erred in law and/or fact in finding him criminally  
11:52:52 5 responsible or guilty under Article 6(3) for crimes committed by  
6 his subordinates at Tombodu, Kono District and throughout  
7 Bombali District and the Western Area and Port Loko District  
8 pursuant to counts 1, 2, 3, 4, 5, 6, 9, 10, 12, 13 and 14 of the  
9 indictment, thereby leading to a miscarriage of justice."

11:53:12 10 Kamara submits that contrary to the Trial Chamber's  
11 finding:

12 1. He did not have effective control or the ability to  
13 control the actions of Savage and consequently could not be  
14 liable for crimes committed by Savage in Kono District.

11:53:33 15 2. He did not have effective control over AFRC troops in  
16 Kono District.

17 3. The Trial Chamber erred in its evaluation of witness  
18 TF1-334's evidence.

19 4. The Trial Chamber erred in fact in finding him  
11:53:52 20 criminally responsible as a superior for crimes committed  
21 in Bombali District on the basis of evidence demonstrating  
22 that he ordered crimes and participated in decision-making.

23 5. The Trial Chamber erred in finding him responsible as a  
24 superior for crimes committed by AFRC troops in Freetown on  
11:54:19 25 the basis of evidence indicating that he was present at  
26 meetings and at headquarters at State House immediately  
27 following its capture on 6 January 1999.

28 The Appeals Chamber finds no merit in any of these  
29 contentions and holds that ground seven of Kamara's appeal is

1 untenable.

2 Turning now to Kanu's grounds of appeal.

3 Kanu's first ground of appeal: Those bearing the greatest  
4 responsibility.

11:55:01 5 In his first ground of appeal Kanu submits that the Trial  
6 Chamber erred in law and in fact by finding that the words "the  
7 Special Court ... shall ... have the power to prosecute persons  
8 who bear the greatest responsibility..." enacted in Article 1(1)  
9 of the Statute is not a jurisdictional requirement.

11:55:29 10 Kanu submits that the Trial Chamber committed a further  
11 error by convicting him without first establishing whether it had  
12 jurisdiction over him.

13 According to Kanu, the drafters of the Statute were aware  
14 of the fact that the Special Court would have limited time and  
11:55:53 15 resources and therefore deliberately circumscribed the Court's  
16 personal jurisdiction through the "greatest responsibility  
17 requirement."

18 Kanu argues that the United Nations Security Council  
19 rejected the Secretary-General's proposal for the "most  
11:56:21 20 responsible" standard in favour of the "greatest responsibility"  
21 standard in Article 1 of the Statute in order to limit the  
22 Court's competence to those who played a leadership role.

23 Kanu contends that the Court must be the ultimate arbiter  
24 on the issue, and this purpose would be defeated if the  
11:58:42 25 requirement were interpreted as a mere mode to prosecutorial  
26 strategy.

27 He further relies on the findings of Trial Chamber that the  
28 greatest responsibility standard was a jurisdictional  
29 requirement.



1 Kanu submits that the determination of whether the  
2 appellant is one of those who bear the greatest responsibility  
3 should be made either at the pre-trial stage or at the close of  
4 the Prosecution's case when considering the motion for acquittal .

11:58:43 5 He submits further that the Trial Chamber's assessment  
6 should be based on a consideration of the leadership position of  
7 the accused.

8 In conclusion, he submits that he is not one of those who  
9 bear the greatest responsibility for the crimes committed and  
11:58:43 10 because this jurisdiction requirement was not met in his case all  
11 convictions against him should be set aside.

12 The Appeals Chamber refers to Articles 1, 11 and 15 of the  
13 Statute.

14 In interpreting Article 1 of the Statute it should be noted  
11:58:43 15 that there are different organs of the Special Court, each of  
16 which has its own functions. Each organ of the Special Court  
17 performs specific functions as set out in the Statute. The  
18 Chambers constitute the adjudicating organ of the Court. The  
19 Prosecutor, by virtue of Article 15(1) of the Statute, is the  
11:58:47 20 organ vested with the responsibility "for the investigation and  
21 prosecution of persons who bear the greatest responsibility for  
22 serious violations of International Humanitarian Law and crimes  
23 under Sierra Leonean law committed in the territory of Sierra  
24 Leone since November 1996. The Prosecutor shall act  
11:59:20 25 independently as a separate organ of the Special Court. He or  
26 she shall not seek or receive instructions from any government or  
27 from any other source." (And emphasis supplied).

28 It is evident that it is the Prosecutor who has the  
29 responsibility and the competence to determine who are to be

1 prosecuted as a result of investigation undertaken by him.

2 It is the Chambers that have the competence to try such  
3 persons brought before them by the Prosecutor as persons who bear  
4 the greatest responsibility.

12:00:12 5 The Appeals Chamber agrees with the Prosecution that the  
6 "only workable interpretation of Article 1(1) is that it guides  
7 the Prosecutor in the exercise of his prosecutorial discretion.  
8 That discretion must be exercised by the Prosecution in good  
9 faith based on sound, professional judgment, that it would also  
12:00:40 10 be unreasonable and unworkable to suggest that the discretion is  
11 one that should be exercised by the Trial Chamber or the Appeals  
12 Chamber at the end of the trial."

13 In the opinion of the Appeals Chamber, it is inconceivable  
14 that after a long and expensive trial the Trial Chamber could  
12:01:07 15 conclude that although the commission of serious crimes had been  
16 established beyond reasonable doubt against an accused the  
17 indictment ought to be struck out on the ground that it had not  
18 yet been proved that the accused was not one of those who bore  
19 the greatest responsibility.

12:01:31 20 Kanu's interpretation of Article 1 of the Statute is a  
21 desperate attempt to avoid responsibility for crimes for which he  
22 had been found guilty.

23 Kanu's first ground of appeal is therefore without merit.

24 Kanu's fifth and sixth grounds of appeal: Effective  
12:02:00 25 control for superior responsibility.

26 The fifth and sixth grounds of Kanu's appeal both allege  
27 error relating to the Trial Chamber's findings that he bears  
28 superior responsibility under Article 6(3) of the Statute. Kanu  
29 advances identical legal arguments in support of these grounds.

1 Consequently, the Appeals Chamber will consider them together.

2 Kanu submits that the Trial Chamber adopted a flawed  
3 approach in assessing whether he had effective control over AFRC  
4 troops in Bombali District, fifth ground of appeal, and Freetown  
12:02:48 5 and the Western Area, sixth ground of appeal.

6 Specifically, Kanu submits that the Trial Chamber adopted a  
7 two-pronged approach in determining effective control which  
8 sought first, to establish whether the AFRC leadership  
9 collectively had effective control and, second, to establish  
12:03:11 10 whether Kanu individually had effective control over AFRC troops.

11 He contends that the approach is legally flawed because it  
12 imputes criminal responsibility to him on the basis of collective  
13 responsibility, rather than on the basis of individual criminal  
14 responsibility.

12:03:38 15 The Appeals Chamber notes that the existence of a superior  
16 subordinate relationship is paramount to the determination of  
17 superior responsibility.

18 The Appeals Chamber rejects Kanu's above submissions. The  
19 Appeals Chamber considers that Kanu's assertion is premised on an  
12:04:01 20 incorrect interpretation of the Trial Chamber's findings. It is  
21 of the opinion that the Trial Chamber properly examined the AFRC  
22 structure in order to determine whether it created an enabling  
23 atmosphere for the exercise of effective control.

24 As to the issue of effective control in respect of superior  
12:04:30 25 responsibility, the Appeals Chamber reiterates the conclusion it  
26 arrived at in Kamara's seventh ground of appeal.

27 Kanu's fifth and sixth grounds of appeal therefore fail.

28 Kanu seventh ground of appeal: Mens rea for crimes related  
29 to child soldiers.

1 In his seventh ground of appeal, Kanu alleges that the  
2 Trial Chamber erred in law in dismissing his argument that "the  
3 absence of criminal knowledge on his part vitiated the requisite  
4 mens rea to the crimes relating to child soldiers."

12:05:26 5 He argues that the mental element required for the crime  
6 was in this instance negated by a mistake of law on his part.  
7 Due to various factors detailed in his appeal brief Kanu submits  
8 that "he believed that his conduct of conscripting or enlisting  
9 children under the age of 15 years was legitimate." He contends  
12:05:58 10 that at all material times he lacked the requisite criminal  
11 intent required for the crimes of "conscripting or enlisting  
12 children under the age of 15 years into armed forces or groups or  
13 using them to participate actively in hostilities" punishable  
14 under Article 4(c) of the Statute of the Special Court.

12:06:27 15 In the alternative, he argues that conscripting or  
16 enlisting children under the age of 15 was not a war crime at the  
17 time alleged in the indictment. He makes this submission in the  
18 teeth of this Appeals Chamber's decision that recruitment of  
19 children under the age of 15 was indictable as a crime against  
12:06:54 20 humanity. Kanu's submission that conscripting or enlisting  
21 children under the age of 15 was not a war crime at the time  
22 alleged in the indictment is without merit.

23 Furthermore, it is frivolous and vexatious for him to  
24 contend that the absence of criminal knowledge on his part  
12:07:19 25 vitiated the requisite mens rea in respect of the crimes relating  
26 to child soldiers.

27 Kanu seventh ground of appeal therefore fails.

28 MR DANIELS: With respect, My Lord, the second accused is  
29 desperate to use the bathroom.

1 PRESIDING JUDGE: I can't hear you.

2 MR DANIELS: The second accused would like to use the  
3 bathroom facility desperately.

12:07:56

4 PRESIDING JUDGE: He may go and then come back. We will  
5 continue with the judgment. You are here to represent him.

6 MR DANIELS: I am most grateful.

7 PRESIDING JUDGE: We will continue.

8 Kanu's ninth ground of appeal: Findings of responsibility  
9 pursuant to Article 6(1) of the Statute.

12:12:43

10 In his ninth ground of appeal, Kanu submits that the Trial  
11 Chamber erred in convicting him under Article 6(1) for planning  
12 the commission of sexual slavery, count 9, the conscription and  
13 use of children for military purposes, count 12, and abductions  
14 and forced labour, count 13.

12:12:43

15 Kanu argues that while the evidence shows that it fell upon  
16 him as Chief of Staff to manage the system of slavery within the  
17 AFRC faction, he could not be convicted on that basis for  
18 planning the crimes of sexual slavery, conscription and use of  
19 children for military purposes and abductions and force labour.

12:12:44

20 He further argues that, at best, the evidence implicates  
21 him at the execution stage in the military training of children  
22 and the exploitation of women for sexual purposes.

12:13:03

23 The Appeals Chamber concurs with the Trial Chamber's  
24 definition of "planning" under Article 6(1) that "planning"  
25 implies that one or several persons contemplate designing the  
26 commission of a crime at both the preparatory and execution  
27 phases.

28 The Trial Chamber was satisfied beyond reasonable doubt  
29 that Kanu was responsible for planning the commission of the

1 crime of sexual slavery in the Bombali District and in the  
2 Western Area. The Trial Chamber was also satisfied beyond  
3 reasonable doubt that in the Bombali District and in the Western  
4 Area Kanu was not only responsible for planning the conscription  
12:13:43 5 of children under the age of 15 into an armed group but also for  
6 using such children to participate actively in hostilities as  
7 well as for the crime of enslavement.

8 The Appeals Chamber agrees with the Trial Chamber's  
9 conclusions.

12:14:04 10 Finally, the Appeals Chamber finds that the evidence led  
11 before the Trial Chamber warrants an examination of Kanu's  
12 responsibility for aiding and abetting the commission of sexual  
13 slavery and forced labour in Newton in the Western Area.

14 The Appeals Chamber notes that witness TF1-334, whom the  
12:14:30 15 Trial Chamber found to be credible and reliable, stated that Kanu  
16 was responsible for the women and girls in the camp at Newton.

17 The Appeals Chamber is satisfied that in this position of  
18 responsibility regarding the women and girls at Newton, Kanu  
19 provided practical assistance to a system of sexual slavery and  
12:14:57 20 forced labour.

21 It is further satisfied that Kanu was aware that his acts  
22 would assist in the implementation of this system of sexual  
23 slavery and forced labour.

24 In light of the evidence, the Appeals Chamber is satisfied  
12:15:17 25 that Kanu aided and abetted the commission of sexual slavery and  
26 forced labour in the Western Area.

27 Thus, the Appeals Chamber finds that the Trial Chamber  
28 erred in failing to convict Kanu for aiding and abetting the  
29 commission of sexual slavery and forced labour in the Western

1 Area.

2 The Appeals Chamber upholds the conviction of Kanu for  
3 planning the commission of sexual slavery and the use of children  
4 for military purposes as well as abductions and forced labour in  
12:15:56 5 the Bombali District and the Western Area.

6 The Appeals Chamber furthermore finds that there is  
7 sufficient evidence that Kanu aided and abetted the commission of  
8 the said crimes. However, as he has already been convicted of  
9 planning those crimes, the question of convicting him on the  
12:16:20 10 basis of aiding and abetting does not arise.

11 Appeals relating to sentence.

12 Having considered the sentencing judgment of the Trial  
13 Chamber, and its grounds of appeal against sentence, the Appeals  
14 Chamber is satisfied that the Trial Chamber exercised its  
12:16:50 15 discretion in accordance with the provisions of the Statute of  
16 the Special Court. Article 19(2) of the Statute states as  
17 follows.

18 "In imposing the sentences the Trial Chamber should take  
19 into account such factors as the gravity of the offence and  
12:17:18 20 the individual circumstances of the convicted persons."

21 The emphasis is on "gravity."

22 The Trial Chamber, in applying this provision to the case,  
23 had this to say:

24 "Brima, Kamara and Kanu have been found responsible for  
12:17:44 25 some of the most heinous, brutal and atrocious crimes ever  
26 recorded in human history. Innocent civilians - babies,  
27 children, men and women of all ages - were murdered by  
28 being shot, hacked to death, burned alive, beaten to death.  
29 Women and young girls were gang raped to death. Some had

1           their genitals mutilated by the insertion of foreign  
2           objects. Sons were forced to rape mothers, brothers were  
3           forced to rape sisters. Pregnant women were killed by  
4           having their stomachs slit open and the foetus removed  
12:18:56 5           merely to settle a bet amongst the troops as to the gender  
6           of the foetus. Men were disembowelled and their intestines  
7           stretched across a road to form a barrier. Human heads  
8           were placed on sticks on either side of the road to mark  
9           such barriers. Hacking off the limbs of innocent civilians  
12:19:29 10          was commonplace. The victims were babies, young children  
11          and men and women of all ages. Some had one arm amputated,  
12          others lost both arms. For those victims who survived an  
13          amputation, life was instantly and forever changed into one  
14          of dependance. Most were turned into beggars unable to  
12:20:06 15          earn any other living and even today cannot perform even  
16          the simplest of tasks without the help of others. Children  
17          were forcibly taken away from their families, often drugged  
18          and used as child soldiers who were trained to kill and  
19          commit other brutal crimes against the civilian population.  
12:20:40 20          Those child soldiers who survived the war were robbed of a  
21          childhood and most of them lost the chance of an  
22          education."

23          The Appeals Chamber is therefore satisfied that, having  
24          regard to that finding, the Trial Chamber was justified in  
12:21:07 25          imposing a sentence, a prison sentence of 50 years on the  
26          Appellant Alex Tamba Brima; 45 years on the Appellant Bazy  
27          Kamara; and 50 years on Santigie Borbor Kanu.

28          The Appeals Chamber therefore finds no reason to interfere  
29          with the quanta of the sentences of imprisonment passed on the



1 Appellants.

2 The Appellants' appeal against sentence therefore fail.

3 Let them stand.

4 [Appellants stand]

12:22:12

5 For the foregoing reasons, the Appeals Chamber allows in  
6 part the Prosecution's appeal; dismisses the Appellants' appeal;  
7 orders that pursuant to Rule 102 of the Rules of Procedure and  
8 Evidence the judgment and sentence of the Trial Chamber be now  
9 enforced.

12:22:47

10

11

---

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29