

**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL 2004-16-T

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

Interim Registrar: Lovemore Munlo

Date Filed: 30 January 2006

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU**

.....
**(FACTUALS) REPLY TO PROSECUTION RESPONSE TO
DEFENCE
MOTION FOR JUDGMENT OF ACQUITTAL -BRIMA**
.....

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1. Part two- Factual Issues raised in the Prosecution's Response with respect to the First Accused (Brima)

Counts 1 and 2: Acts of Terrorism and Collective Punishments

1. The First Accused denies that there is sufficient evidence to convict him in respect of counts 1 and 2

Counts 3 to 5: Unlawful Killings

2. **Bo District**-The evidence of witness TF1-004 is contradictory and cannot be relied upon¹. Specifically it cannot be relied upon as evidence of individual criminal responsibility of the First Accused or that he commanded or led the attacks in the Bo district.
3. Even Exhibit P.61 the RUF's Apology to the Nation and Exhibit P6 and P7 which apparently shows the Accused as being part of the Supreme Council cannot be used as evidence that the First Accused exercised any control during the period of military occupation in May 1997 to February 1998 in Bo District or elsewhere.
4. **Kenema District**-The First Accused relies on its assertion in the motion filed on 12 December 2005. The Defence continues to assert that the Prosecution's own evidence showed that Sam Bockarie (aka Mosquito) exercised complete control of Kenema District and parts of the Eastern territories.²
5. Similarly no evidence was adduced which demonstrated that the First Accused was in a position of command during the period May 1997 to February or at any time thereafter in the Kenema District. This is the same for any assertion that the First Accused bears any individual criminal responsibility.

¹ Witness TF1-004, 23 June 2005

² Prosecution Response, para 124

6. **Kono District**-The Prosecution is seeking to rely here on the evidence of witness TF1-144 that First Accused was present at Mortema between Makeni and Koidu. The witness also stated that Johnny Paul Koroma was there and this appears to be on the evidence for Prosecution. However, this piece of evidence is totally contradictory to all the evidence led by the Prosecution which does not place Johmmy Paul Koroma and First Accused at the same place on the retreat. In fact evidence led was that First Accused did not retreat with the others to Kono³.
7. Moreover only TF1-334 gave evidence that First Accused was in Kono at the time of the pull out, but left to go to Kailahunon hearing of the intervention.⁴ Witness TF1-167 said in his evidence under cross-examinations that the command in Kono was Superman . When they arrived Kono First Accused was not there.⁵ Witness TF1-045 did not mention Gullit being in Kono and retract such suggestion under cross-examination.⁶
8. In Kono immediately after the intervention the evidence suggest that First Accused left Kono. Even if he came back, the Defence contends that there is no evidence to link him to Tombodu or any other atrocities in the Kono District.
9. **Kailahun District**-The First Accused relies on the evidence to support its contention that Kailahun was controlled by the RUF and a place where the AFRC never had command.
10. **Bombali District** -The inconsistencies are so fundamental that it cannot be reduced to a matter of weight. The Prosecution must accept that the Defence contends that there is an insufficiency of evidence to convict the First Accused

Count 6 to 9: Sexual Violence

11. The prosecution bears the burden to prove that the First accused acts were directly or indirectly part of the widespread and systematic sexual attacks on the civilian

³ Brima Motion, para 41-44, Prosecution Response, para 126

⁴ Witness TF1-334, TT 17 May 2005, p83

⁵ Witness TF1-167, TT 19 September 2005, p 40 and 91

⁶ Witness TF1-045, TT 21 July 2005 2005, pp 40-46

population. The First Accused asserts that the Prosecution has not led any evidence to prove that the First Accused is criminally liable for sexual violence against the civilian population. It rather enumerated the different instances and did not indicate how the First Accused was responsibly for these acts.

12. **Kono-** The First Accused argues that it is of great important for the witness to identify whether the perpetrators were from the AFRC or the RUF, owing to the fact that the two groups had different commands. The First Accused cannot be criminally responsible for acts committed by the RUF. From the seven witnesses mentioned by the Prosecution with regards to sexual violence, only witness TF1-033 alleges that the First Accused was indirectly involved and the Prosecution was unable to corroborate this evidence.⁷

13. **Koinadugu District-** The Prosecution clearly led evidence to confirm that the perpetrators in Koinadugu were controlled by SAJ Musa and Superman and these two are superior in command to the First Accused.⁸

Count 10 and 11: Physical Violence

14. **Kono-** Even though it is alleged that the First Accused was present in Kono, he was not in command. Superman was the overall command of AFRC/RUF and Johnny Paul Koroma was also still in command.⁹

15. **Kenema-** As earlier stated in the Brima Motion, Kenema was totally controlled by Mosquito. The Prosecution have not denied that fact or led any evidence to show the First Accused involvements in the crimes committed in Kenema.¹⁰

⁷ Prosecution Response, para 151-152

⁸ Prosecution Response, para 157

⁹ Witness TF1-334, TT 20 June 2005, pp 123-124, Witness TF1-167, TT 19 September 2005, pp 40 and 61-62

¹⁰ Prosecution Response, para 169

Count 12-Use of Child Soldiers

16. The First Accused stands by the arguments put forward in the Brima Motion and maintains that he bears no criminal liability in respect of all the factual allegations enumerated in count 12.

Count 13-Abductions and Forced Labour

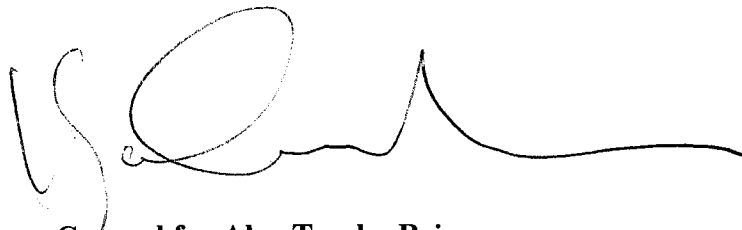
17. **Kenema-** No evidence was led to show that the First Accused was liable for this crime. Kanneh, who was the resident minister for the east was supervised by the deputy-chairman, SAJ Musa.¹¹ Witness TF1-114 was responsible in implementing the law and punishing.¹²

Count 14-Looting and Burning

18. The Prosecution has not stated what common plan was shared, who formed the joint enterprise, to indicate with certitude that the looting was reasonably foreseeable to the First Accused. Johnny Paul Koroma and Mosquito who are superior in command to the First Accused engineered the Looting, so the First Accused does cannot be said to bear the greatest responsibility for the crimes as alleged.

Conclusion

19. The First Accused respectfully prays that the Rule 98 motion be determined in his favour and that he be acquitted on all counts.



Defence Counsel for Alex Tamba Brima

¹¹ Witness TF1-334, TT 17 May 2005, p 17

¹² Witness TF1-114, TT 14 July 2005, pp 128-129