

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  
Me Alain Werner  
Mr Vincent Wagona  
Ms Anne Althaus  
Ms Tamara Cummings-John (Case  
Manager)  
Ms Bridget Osho

For the Principal Defender:

Mr Vincent O Nmebilelle  
Ms Haddijatou Kah-Jallow

For the accused Alex Tamba

Mr Kojo Graham

assistant)	Brima:	Ms Glenna Thompson Mr Osman Keh Kamara Mr Stephen Akrong (legal
		Ms Oluwaseunl Soyoola
Daniels	For the accused Brima Bazzy	Mr Andrew William Kodwo
assistant)	Kamara:	Mr Mohamed Pa-Momo Fofanah Ms Louisa Songwe (legal
	For the accused Santigie Borbor Kanu:	Mr Geert-Jan Alexander Knoops Mr Ajibola E Manly-Spain
(legal assistant)		Ms Karlijn van der Voort

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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,	
11:45:24	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.

Your 14 MR GRAHAM: Good morning, Your Honours. May it please

11:45:51 15 Honours, Kojo 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,

11:46:07 20 together with me, Mohamed Pa-Momo Fofanah as co-counsel; legal  
21 assistant Louise Songwe and national legal associate person,  
22 Oluwaseunl Soyoola.

Alexander 23 MR KNOOPS: May it please the Chamber, Geert-Jan

24 Knoops, lead counsel for Mr Kanu; Mr Manly-Spain, co-counsel  
and

11:46:33 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,

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1 Ibrahim Bazzy 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 Bazzy 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

which

23 should receive lighter sentences for each of the crimes for  
24 he was convicted.

11:49:05 25  
alternative 26

The Kanu Defence submits that Kanu should only receive a  
26 sentence amounting to time served on remand or in the  
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

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Defence

sentencing

disclosure

11:49:38 5  
new

1 appropriate sentences.  
2 Now, by way of preliminary consideration, the Kanu  
3 objected to the documents annexed to the Prosecution  
4 brief on the following grounds:  
5 1. That the Prosecution purported thereby to introduce  
6 evidence through these documents.  
7 2. That the Prosecution did not comply with its  
8 obligations under the Rules in relation to annex G.  
9 3. That the expert report was not objective and the  
10 Defence was not in a position to call their own expert in

11:50:01 10

11 rebuttal on such a short notice.

would 12 4. That the introduction of new Prosecution evidence

13 amount to abuse of process.

Prosecution 14 5. That the witness statements provided by the

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

two 21 sentencing stage. It argued that since the Special Court has

22 distinct procedures it is not necessary for it to adduce such

23 evidence at the trial stage.

and 24 Now, the Trial Chamber upholds the Defence objections

11:50:57 25 has not taken into consideration the documents annexed to the

26 Prosecution sentencing brief in this judgment.

only 27 The Trial Chamber recalls the general principle that

28 matters proved beyond reasonable doubt against the accused are

to 29 be considered against him at the sentencing stage.

Aggravating

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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:

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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."

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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:

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

4 It follows that the penalties imposed by the Trial  
Chamber  
11:57:38 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  
11:57:58 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.

14 International criminal tribunals have noted that unlike  
the  
11:58:17 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.

19 In deciding appropriate sentences the Trial Chamber has  
11:58:39 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:

24 1. The gravity of the offences. In determining an  
11:58:57 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

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1 degree of participation of the accused or the specific role  
2 played by the accused in the commission of the crime; the  
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  
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.

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continued. 1 3. The length of time during which the crimes  
to a 2 4. Active and direct criminal participation if linked  
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.  
in 6 5. The informed willing or enthusiastic participation  
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  
gravity

21 practice of some Trial Chambers has been to consider the  
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

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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.

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1 9. Assistance to detainees or victims.  
2 10. In exceptional circumstances, poor health.  
Sierra 3 Now, sentencing practice in the national courts of  
4 Leone and other ad hoc tribunals.  
12:05:41 5 The Prosecution submits that comparisons with sentences  
cases 6 imposed by the ICTR are of limited value because most ICTR  
of 7 concern genocide which is not a crime within the jurisdiction  
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

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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  
the  
11 District, and submits that the average sentencing period at  
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  
15 Chamber. The Kanu Defence proposes that the Trial Chamber  
12:08:23 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

has 24 including rape, burglary and gilding coinage, while the ICTR  
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  
not 29 deals with crimes under Sierra Leonean law which crimes were

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1 charged in the indictment.  
2 Now, these are the deliberations of the Trial Chamber  
3 regarding sentencing practice applicable in this case.  
19.1 4 With regard to the practice in Sierra Leone, Article  
12:09:50 5 of our Statute states that as appropriate, the Trial Chamber  
in 6 shall have recourse to the practice regarding prison sentences  
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  
12:10:13 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

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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,

to 22 often fed on drugs and used as child soldiers who were trained  
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.

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

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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.

Fourah 21 8. Ordering and abetting the murder of civilians in  
22 Bay, Freetown, Western Area.  
in 23 9. Ordering and planning the enslavement of civilians  
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.

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1 12. Planning the enslavement of civilians in  
2 Bombali District.  
for 3 Brima was further found liable pursuant to Article 6.3  
District 4 crimes committed by his subordinates throughout Bombali  
12:18:53 5 and Freetown and the Western Area.  
responsible, 6 With regard to the crimes for which Brima is  
7 pursuant to Article 6.1, the Trial Chamber recalls its factual

of  
a  
12:19:15

8 findings that Brima was the primary perpetrator of the murders  
9 at least 12 civilians in a mosque during an attack on Karina,  
10 fact indicative of the particular gravity of this offence.

the  
from  
against  
12:19:38

11 With regards to recruitment and use of child soldiers,  
12 Trial Chamber recalls that the young victims were abducted  
13 their families, often in situations of extreme violence, often  
14 drugged and forcibly trained to kill and to commit crimes  
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  
Chamber's

20 effective control. Many of the crimes detailed in the  
21 factual findings are of a particularly heinous nature.

them  
12:20:19  
civilian  
as

22 The Trial chamber recalls in particular that in Karina  
23 Brima's subordinates unlawfully killed children by throwing  
24 into flames of burning houses. In Rosos, five of Brima's  
25 subordinates beat and orally and vaginally gang-raped a  
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  
28 though all my guts were coming out."

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

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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

victims

and

capacity

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

12:21:24

the

of

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

12:21:39

of

was a

was

15 Now, I consider the individual circumstances of Brima.  
16 The Prosecution submits that the personal circumstances  
17 Brima do not justify any mitigation of sentence since Brima  
18 professional soldier who, by his own admission, knew that it

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

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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 professional

The Trial Chamber considers that Brima was a

12:23:27 10 Leone.

soldier whose duty it was to protect the people of Sierra

11 civilians

The fact that he instead attacked innocent and unarmed

12 factor.

is considered by the Trial Chamber to be an aggravating

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 pregnant

crimes, including the splitting open of the stomach of a

22 alive;

woman and removal of the foetus; the burning of civilians

23

the brutal gang rapes; the drugging of child soldiers and the

24

amputation of limbs.

12:24:36 25 of

3. The use of coercion by Brima, in particular, the use

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 commander

prior to the commission of the crimes and the overall

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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

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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.

is a

2 The Brima Defence further submits that the detrimental  
3 effect that a long sentence would have on Brima's ill health

12:29:17  
Peace

4 relevant personal circumstance. The Brima Defence argues that  
5 Brima's membership of the Commission for Consolidation of

be

6 signifies a contribution to peace in the region which should  
7 taken into account as a mitigating factor.

Districts

8 The Brima Defence further emphasises that Brima was only  
9 convicted of offences in the Western Area and Bombali

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

spirit

12 further argues that a harsh sentence would not promote a  
13 of reconciliation within the nation.

to

14 These are the deliberations of the Chamber with regard

12:29:57

15 mitigating circumstances for the accused Brima.

the

16 The Trial Chamber does not consider Brima's service in  
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  
mitigating

20 Commission for the Consolidation of Peace are also not

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  
that

Now, on the issue of remorse, the Trial Chamber finds  
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

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1 sentence.

here

2 This brings me to the consideration of submissions and  
3 deliberations with respect to Ibrahim Bazzy Kamara and again

an

4 the Trial Chamber considered a number of factors in assessing  
5 appropriate sentence.

12:31:44

of

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

was

9 Kamara's liability under Article 6.3, the crimes of which he

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

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

for 9 Kamara was further found liable pursuant to Article 6.3  
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

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

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

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

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against 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  
4 innocent civilians. These children were robbed of their  
12:36:23 5 childhood and many lost a chance of an education.

the 6 With regards to the crimes for which Kamara is held  
7 responsible under Article 6.3, the Trial Chamber has examined  
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  
seemed 16 great pain and could not stand up and testified that "it  
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.

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of

1           The Prosecution submits that the personal circumstances  
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.

service

7           The Kamara Defence submits that Kamara gave loyal  
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  
release

11 was involved in a number of activities that enhanced peace and  
12 reconciliation in Sierra Leone, including negotiating the  
Cross  
13 of around 200 children from the West Side Boys to the Red  
14 and UNICEF, in 1999, taking part in military action against  
the  
15 RUF in the year 2000, and working for the Commission for the  
12:39:21 16 Consolidation of Peace in Sierra Leone.

his

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

to

12:39:36 20

Kamara's personal circumstances.

personal

21           The Trial Chamber finds that nothing in Kamara's  
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

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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 5 by Kamara and carried out by his subordinates, is a violent  
12:42:49 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.

10 The Trial Chamber further finds that the prolonged  
12:43:20 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.

15 The Trial Chamber does not consider Kamara's position in  
12:43:30 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  
submits 26 evidence that he acted under duress. The Kamara Defence  
absence 27 that mitigating factors in the case of Kamara include the  
prevailing 28 of a prior criminal record; the stressful environment  
29 at the time of the offences; and his responsibilities as an

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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  
Kamara 5 circumstances in Kamara's case. In particular, although  
he 6 chose to address the Trial Chamber at the sentencing hearing,  
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  
12:45:44 15 responsible for all crimes committed in Bombali District and  
the  
16 Western Area.

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.

4 6. Planning the abduction and use of child soldiers in  
12:47:00 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.

9 8. Planning the enslavement of civilians on numerous  
12:47:19 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.

14 Kanu was further found liable under Article 6.3 for  
crimes

12:47:44 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  
findings

21 are of a particularly heinous nature.

22 The Trial Chamber recalls in particular that in Karina,  
23 them Kanu's subordinates unlawfully killed children by throwing

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 seemed great pain and could not stand up and testified that "it

28 as though all my guts were coming out."

29 With regard to the sexual crimes in general the Trial

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1 Chamber notes that many of the victims were particularly young  
2 periods and vulnerable and were held in captivity for protracted  
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 their particularly grotesque and malicious. The victims who had  
7 if limbs hacked off not only endured extreme pain and suffering,

a 8 they survived, but lost their mobility and capability to earn  
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 15 in the unlawful killings, mutilations, the recruitment and use  
12:49:40 16 of 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



Defence

with

12:51:12

12:51:39

a

the

12:51:58

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

4 submits that Kanu was an early supporter of peace who worked

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

10 holding UN peacekeepers and civilians captive.

11 The Kanu Defence contends that the activities of Kanu as

12 member of the Commission for the Consolidation of Peace, which  
13 included overseeing the reintegration of ex-combatants into

14 community, and the provision of training for them in various  
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

receipt 19 Kanu's assertion that since the year 2000 he has been in  
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

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is 1 fact that he instead attacked innocent and unarmed civilians  
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

following:

6 circumstances exist in the case of Kanu, including the

is

12:53:55 10

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,  
10 a particularly aggravating factor.

11

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

14

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

at

12:54:13 15

16 the time of the commission of the crimes.

17

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

21

12:54:32 20  
an

22 Now, in response the Kanu Defence objects to the  
23 Prosecution's characterisation of Kanu's superior position as

an

24

25 aggravating factor, arguing that this factor is an element of  
26 offence committed pursuant to Article 6.3 of the Statute and  
27 therefore cannot also be considered an aggravating factor.

Prosecution's

12:55:00 25  
government,

26

27 The Kanu Defence particularly objects to the

28

29 submissions that Kanu was a senior member of the AFRC  
30 referring to the Trial Chamber's findings that the evidence  
31 adduced was insufficient to draw any conclusion regarding the  
32 seniority of Kanu in that role.

33

34 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

with 18 exist in respect of Kanu as he did not at any time cooperate  
evidence 19 the Prosecution or express any remorse and there is no  
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

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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.

12:58:06 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  
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.

18 Kanu Defence emphasises that the responsibility of Kanu under  
19 Article 6.3 for rape is limited to the failure to prevent or  
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.

environment

1 In addition, the Kanu Defence submits that the harsh  
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

followed

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  
8 or reiterated the orders of Brima and submits that this lesser  
9 culpability is relevant to sentencing.

13:00:36

previously

considered

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

13:01:01

14 Fifthly, the Kanu Defence submits that the increasingly  
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

citing

13:01:24

19 which a convicted person operates is a mitigating factor,

20 the Oric trial judgment in support of this proposition.

of

21 The Trial Chamber found that despite the deterioration

by

22 the situation in Freetown, following the loss of State House

and

23 the renegade SLAs, Kanu maintained effective control over his

24 troops. He was aware of the crimes committed by his troops

13:01:50

25 he took no steps to prevent or punish the troops under his

is

26 command for the crimes that they committed. The battlefield

27 always chaotic and this fact alone cannot be considered in

28 mitigation of his sentence.

training.

29 Sixthly, was the point of lack of formal military

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lack

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

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  
10 establishing that the use of children under the age of 15 in  
11 the 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  
14 of 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.

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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

vulnerable

26 that Kanu was a person of good character who assisted

27 people in the jungle, referring to evidence to this effect

28 contained in unsworn, signed written statements annexed to the

29 sentencing brief.

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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.

4 Point number 11 was the alleged breach of the Conakry

13:07:13 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  
13:07:35 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.

It's

2 This now brings me to the disposition of the Chamber.

stand

3 a brief one and I will request the three accused persons to

4 before I hand down the sentences, please.

13:09:29

5 For the foregoing reasons that I have stated above, the

single

6 Trial Chamber unanimously sentences Alex Tamba Brima to a

he

7 term of imprisonment of 50 years for all the counts on which

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 Bazzy Kamara to a

12 single term of imprisonment of 45 years for all the counts on

for

13 which he has been found guilty. Credit shall be given to him

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

for

18 which he has been found guilty. Credit shall be given to him

19 any period during which he was detained in custody pending

this

13:10:53 20 trial.

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

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

25

26

27

28

29