

SCSL-04-16-A

(001-013)

630

**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR  
Freetown – Sierra Leone**

IN THE APPEALS CHAMBER

Before: Hon. Justice George Gelaga King, President  
Hon. Justice Emmanuel Ayoola  
Hon. Justice A. Raja N. Fernando  
Hon. Justice Renate Winter  
Hon. Justice Geoffrey Robertson, QC

Registrar: Mr. Herman Von Hebel

Date filed: 2 August 2007

**THE PROSECUTOR**

**Against**

**Alex Tamba Brima  
Brima Bazzy Kamara  
Santigie Borbor Kanu**

Case No. SCSL-04-16-A

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**PUBLIC  
PROSECUTION'S NOTICE OF APPEAL**

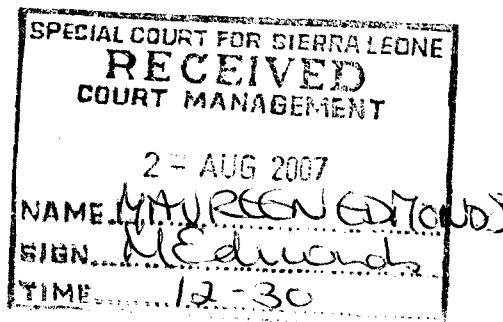
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1. Pursuant to Article 20 of the Statute of the Special Court and Rule 108 of the Rules of Procedure and Evidence, the Prosecution hereby files this Notice of Appeal setting forth its grounds of appeal against the Judgement of the Trial Chamber dated 20 June 2007 in Case No. SCSL-04-16-T, *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu*,<sup>1</sup> as revised pursuant to the Corrigendum issued by the Trial Chamber on 19 July 2007<sup>2</sup> (the “**Trial Chamber’s Judgement**”).

### **First Ground of Appeal**

2. The Trial Chamber erred in law and fact in not finding Brima, Kamara and Kanu each individually responsible, under both Article 6(1) and Article 6(3) of the Statute, for *all* crimes that the Trial Chamber found to have been committed in Bombali District and in Freetown and the Western Area.
3. The Prosecution requests the Appeals Chamber to reverse the Trial Chamber’s findings that Brima, Kamara and Kanu are not individually responsible, under Article 6(1) and/or Article 6(3) of the Statute, for certain of the crimes in Bombali District and in Freetown and the Western Area, and to revise the Trial Chamber’s Judgement by adding further findings:
  - (i) that Brima, Kamara and Kanu are each individually responsible under Article 6(1) of the Statute for planning, instigating, ordering, and/or otherwise aiding and abetting in the planning, preparation or execution of *all* of the crimes that the Trial Chamber found to have been committed in Bombali District and Freetown and the Western Area; and
  - (ii) that Brima, Kamara and Kanu are each individually responsible under Article 6(3) for all of those crimes.

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<sup>1</sup> SCSL-16-613, Registry page nos. 21465-22096.

<sup>2</sup> SCSL-16-628, Registry page nos. 23025-23678.

4. The Prosecution also requests the Appeals Chamber to revise the Trial Chamber's Judgement by making a further finding that in respect of all of the crimes committed in Bombali District and Freetown and the Western Area that are encompassed within the Prosecution's other Grounds of Appeal, to the extent that the other Grounds of Appeal are upheld:
- (i) Brima, Kamara and Kanu are each individually responsible under Article 6(1) of the Statute for committing, and/or planning, instigating, ordering, and/or otherwise aiding and abetting in the planning, preparation or execution of those crimes; and
  - (ii) Brima, Kamara and Kanu are each individually responsible under Article 6(3) of the Statute for those crimes.
5. The Prosecution also requests the Appeals Chamber to make any resulting amendments to the Disposition of the Trial Chamber's Judgement, and to increase the sentences imposed on Brima, Kamara and Kanu to reflect the additional criminal liability.

#### **Second Ground of Appeal**

6. The Trial Chamber erred in law and fact, and committed a procedural error, in failing to make findings in respect of the commission of, and/or of the individual responsibility of each Accused in respect of, crimes on which evidence was led at trial in locations including the following:
- (i) in **Koinadugu and Bombali Districts:** Yifin/Yiffin, Rosos, Colonel Eddie Town, Mandaha, Karina, Makeni, Mateboi, Kulaya, Kurubonla/Krubola, Mongo Bendugu, Koinadugu Town, Bumbunkura/Bamukura, Bambukoro, Yomadugu/Yemadugu, Yiraia, Baodia/Bafodeya, Woronbia, Serekolia;
  - (ii) in **Freetown and the Western Area:** Waterloo, Wellington Area;
  - (iii) in **Port Loko District** Mamamah, Gberibana, Makolo, Mile 38, Gberi Junction, Masiaka, Sumbuya, Tendakum;

- (iv) in **Kono District**: Yardu Sando, Wordu, Koidu Geiya, Bomboafuidu, Penduma, Paema;
  - (v) in **Kailahun District**: Segbwema, Buedu, Daru.
7. The Trial Chamber erred, in that:
- (i) these crimes were adequately pleaded in the Indictment; or alternatively,
  - (ii) if these crimes were not adequately pleaded in the Indictment, in all of the circumstances of the case, any defects were subsequently cured and/or were not such as to prejudice the Defence in a way that could justify the Trial Chamber failing to consider whether these crimes were committed and/or the liability of the Accused in relation to these crimes.
8. The Prosecution requests the Appeals Chamber to reverse the decisions of the Trial Chamber not to make findings in respect of these crimes, and either:
- (i) to revise the Trial Chamber's Judgement by adding findings that the Accused are individually responsible for these crimes under Article 6(1) and Article 6(3) of the Statute, to the extent that the Appeals Chamber is able to determine, without further findings of fact by the Trial Chamber, that these crimes were committed and that the Accused are individually responsible for these crimes, to make any resulting amendments to the Disposition of the Trial Chamber's Judgement, and to increase the sentences imposed on the Accused to reflect the additional criminal liability; and additionally or alternatively,
  - (ii) to the extent that the Appeals Chamber is unable to determine the matter without further findings of fact by the Trial Chamber, to remit the case to the Trial Chamber for further findings on whether these crimes were committed and whether each of the Accused is individually responsible for these crimes.

**Third Ground of Appeal**

9. The Trial Chamber erred in law and fact in finding, at paragraph 1955a of the Trial Chamber's Judgement, that the Prosecution did not adduce any evidence that Kamara committed, ordered, planned, instigated or otherwise aided and abetted any of the crimes committed in the Port Loko District, and that the Prosecution did not prove any of these modes of individual criminal responsibility against Kamara for the crimes committed in Port Loko District.
10. The Prosecution requests the Trial Chamber to reverse the Trial Chamber's finding, and to revise the Trial Chamber's Judgement by adding a finding that Kamara is individually responsible under Article 6(1) and Article 6(3) of the Statute for all of the crimes committed by AFRC troops in Port Loko District and/or in the area known as the "West Side", namely:
- (i) the attack on Manama (Trial Chamber's Judgement, especially paras. 955-963, 965), in respect of which Kamara was found individually responsible under Article 6(3) of the Statute only;
  - (ii) the acts of violence in Nonkoba and Tendekum (Trial Chamber's Judgement, especially paras. 1629-1630);
  - (iii) sexual slavery in Port Loko District (Trial Chamber's Judgement, especially paras. 1171-1188);
  - (iv) the killing of at least 36 civilians in Nonkoba (Trial Chamber's Judgement, especially paras. 964-965);
  - (v) all of the crimes committed by AFRC troops in Port Loko District and/or in the area known as the "West Side" that are encompassed within the Prosecution's other Grounds of Appeal, to the extent that the other Grounds of Appeal are upheld; and
  - (vi) based on (i) to (iv) above, acts of terror (Count 1) and collective punishments (Count 2) in Port Loko District.
11. The Prosecution also requests the Appeals Chamber to make any resulting amendments to the Disposition of the Trial Chamber's Judgement, and to

increase the sentences imposed on Brima, Kamara and Kanu to reflect the additional criminal liability.

#### **Fourth Ground of Appeal**

12. The Trial Chamber erred in deciding, at paragraphs 85, 1639 and 1668 of the Trial Chamber's Judgement, that joint criminal enterprise liability was defectively pleaded in the Indictment and that the Trial Chamber would therefore not consider joint criminal enterprise liability in its Judgement. This error was:

- (i) a procedural error and/or an error of law, in that the Trial Chamber decided at the stage of the final trial judgement to reconsider earlier interlocutory decisions in the case concerning defects in the form of the Indictment, without first reopening the hearings to allow the Prosecution to try to convince the Trial Chamber of the correctness of its initial pre-trial decisions on the form of the Indictment, or to argue that any defects had since been cured;
- (ii) a procedural error and/or an error of law, and/or and an error of fact, in that:
  - (a) joint criminal enterprise liability was not defectively pleaded in the Indictment; or alternatively,
  - (b) if joint criminal enterprise liability was defectively pleaded in the Indictment, in all of the circumstances of the case, any defects were subsequently cured and/or were not such as to prejudice the Defence in a way that could justify the Trial Chamber failing to consider the joint criminal enterprise liability of the Accused.

13. As a result of this error, in respect of all of the crimes for which the Trial Chamber found each Accused not to be individually responsible under Article 6(1) of the Statute, the Trial Chamber so found without giving any consideration to the criminal responsibility of the Accused by virtue of joint criminal enterprise liability.

14. The Prosecution requests the Appeals Chamber to reverse this finding of the Trial Chamber, and:
- (i) to revise the Trial Chamber's Judgement by adding findings that Brima, Kamara and Kanu are each individually responsible under Article 6(1) of the Statute, by virtue of joint criminal enterprise liability, for all of the crimes which the Trial Chamber found in its Judgement to have been committed, and for all of the crimes that are encompassed within the Prosecution's other Grounds of Appeal to the extent that the other Grounds of Appeal are upheld, to make any resulting amendments to the Disposition of the Trial Chamber's Judgement, and to increase the sentences imposed on the Accused to reflect the additional criminal liability; and additionally or alternatively,
  - (ii) to the extent that the Appeals Chamber is unable to determine the matter without further findings of fact by the Trial Chamber, to remit the case to the Trial Chamber for further findings on whether the three Accused are individually responsible for these crimes under Article 6(1) of the Statute on the basis of joint criminal enterprise liability.

**Fifth Ground of Appeal**

15. The Trial Chamber erred in law and fact in not finding all three Accused individually responsible on Counts 1 and 2 of the Indictment in respect of the three enslavement crimes (sexual slavery, abductions and forced labour, and recruitment and use of child soldiers) to the extent that each of the three Accused was individually responsible for those crimes, and in particular:
- (i) in finding, at paragraph 1450 of the Trial Chamber's Judgement, that in this particular factual context, the conscription and use of child soldiers cannot be considered as acts in furtherance of a primary purpose to terrorize protected persons;
  - (ii) in finding, at paragraph 1454 of the Trial Chamber's Judgement, that the commission of abductions and forced labour cannot be considered to

have been committed with the primary purpose to terrorize protected persons;

- (iii) in finding, at paragraph 1459 of the Trial Chamber's Judgement, that the acts of sexual slavery cannot be considered as having been committed with the primary purpose to terrorize the civilian population;
- (iv) in failing to find that the three enslavement crimes were punishments imposed indiscriminately and collectively upon persons for acts that they had not committed with the intent on the part of the perpetrator to punish the protected persons or group of protected persons for acts which form the subject of the punishment.

16. The Prosecution requests the Appeals Chamber to reverse the above findings, and to revise the Trial Chamber's Judgement by substituting findings that the three Accused are also guilty on Counts 1 and 2 of the Indictment to the extent of their individual responsibility for the three enslavement crimes.
17. The Prosecution also requests the Appeals Chamber to make any resulting amendments to the Disposition of the Trial Chamber's Judgement, and to increase the sentences imposed on Brima, Kamara and Kanu to reflect the additional criminal liability.

#### **Sixth Ground of Appeal**

18. The Trial Chamber erred, at paragraphs 94-95 and 696 of the Trial Chamber's Judgement, in holding that Count 7 of the Indictment was bad for duplicity and must be struck out. This error was:
  - (i) a procedural error and/or an error of law, in that the Trial Chamber decided at the stage of the final trial judgement to reconsider earlier interlocutory decisions in the case concerning defects in the form of the Indictment, without first reopening the hearings to allow the Prosecution to try to convince the Trial Chamber of the correctness of its initial pre-



trial decisions on the form of the Indictment, or to argue that any defects had since been cured;

- (ii) a procedural error and/or an error of law, and/or and an error of fact, in that:
    - (a) Count 7 of the Indictment was not defectively pleaded; or alternatively,
    - (b) if Count 7 of the Indictment was defectively pleaded, in all of the circumstances of the case, any defects were subsequently cured and/or were not such as to prejudice the Defence in a way that could justify the Trial Chamber failing to consider the liability of the Accused under Count 7.
19. In respect of acts of sexual slavery for which each of the Accused was found to be individually responsible, each of the Accused was found guilty of a war crime, namely outrages upon personal dignity, a violation of common Article 3 to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(e) of the Statute. However, as a result of the Trial Chamber's error, each Accused was not convicted in respect of these acts of a crime against humanity, namely sexual slavery, punishable under Article 2(g) of the Statute, as pleaded in Count 7 of the Indictment.
20. The Prosecution requests the Appeals Chamber to reverse the Trial Chamber's decision, and to revise the Trial Chamber's Judgement, by adding a corresponding conviction for all three Accused on Count 7 in respect of the acts of sexual slavery for which they were convicted under Count 9, in addition to the convictions under Count 9.
21. The Prosecution also requests the Appeals Chamber to make any resulting amendments to the Disposition of the Trial Chamber's Judgement, and to increase the sentences imposed on Brima, Kamara and Kanu to reflect the additional criminal liability.

**Seventh Ground of Appeal**

22. The Trial Chamber:
- (i) erred in law and in fact in holding, in paragraphs 697, 703, 710, 713 and 722 of the Trial Chamber’s Judgement, that there is no lacuna in the law which would necessitate a separate crime of “forced marriage” as an “other inhumane act”; and
  - (ii) erred in law and in fact in holding, in paragraph 704 of the Trial Chamber’s Judgement, that the Prosecution evidence proved no more than sexual slavery for purposes of establishing forced marriage as an “other inhumane act” as charged in Count 8.
23. As a result of these errors, the Trial Chamber wrongly failed to convict each Accused of the crime of forced marriage as an “other inhumane act” as charged in Count 8, and erred in law and fact, and committed a procedural error at paragraph 722 of the Trial Chamber’s Judgement, in dismissing Count 8 for redundancy.
24. The Prosecution requests the Appeals Chamber to reverse this finding of the Trial Chamber, and either:
- (i) to revise the Trial Chamber’s Judgement by adding findings that each of the Accused is individually responsible under Article 6(1) and Article 6(3) of the Statute for the crime against humanity of other inhumane acts (forced marriage) and to enter convictions for each Accused on Count 8, to the extent that the Appeals Chamber is able to determine, without further findings of fact by the Trial Chamber, that crimes of forced marriage were committed and that the Accused are individually responsible for these crimes, to make any resulting amendments to the Disposition of the Trial Chamber’s Judgement, and to increase the sentences imposed on the Accused to reflect the additional criminal liability; and additionally or alternatively,

- (ii) to the extent that the Appeals Chamber is unable to determine the matter without further findings of fact by the Trial Chamber, to remit the case to the Trial Chamber for further findings on whether these crimes were committed and whether each of the Accused is individually responsible for these crimes.
25. Alternatively to the remedy requested in paragraph 24 above, the Prosecution requests the Appeals Chamber to make a finding of law, as a matter of general importance in international law, that the crime against humanity of other inhumane acts includes the crime of forced marriage.

**Eighth Ground of Appeal**

26. The Trial Chamber erred in law, and committed a procedural error, in paragraph 726 of the Trial Chamber's Judgement, in finding that it would result in a duplicitous charge to consider both (i) mutilations (amputations), and (ii) other acts of violence (such as beatings and ill treatment), under the same count, and in deciding that therefore it would consider mutilations (amputations) under Count 10 only, and beatings and ill treatment under Count 11 only.
27. As a result of this error, in respect of the mutilations (amputations) for which each of the Accused was found criminally responsible, each Accused was convicted under Count 10 (a war crime) but not under Count 11 (a crime against humanity). Brima and Kamara were both found not guilty on Count 11, at paragraphs 2115 and 2119 of the Trial Chamber's Judgement respectively, and no conviction was entered against Kanu on Count 11.
28. The Prosecution requests the Appeals Chamber to reverse the Trial Chamber's decision, and to revise the Trial Chamber's Judgement by entering corresponding convictions against each of the three Accused on Count 11 in respect of the mutilations for which they are convicted under Count 10, in addition to the convictions under Count 10.

29. The Prosecution also requests the Appeals Chamber to make any resulting amendments to the Disposition of the Trial Chamber's Judgement, and to increase the sentences imposed on Brima, Kamara and Kanu to reflect the additional criminal liability.
30. Alternatively to the remedy requested in paragraphs 28 and 29 above, the Prosecution requests the Appeals Chamber to revise the Trial Chamber's Judgement, by entering convictions against each of the three Accused on Count 11 in respect of the mutilations for which they are convicted under Count 10, instead of the convictions under Count 10, and to increase the sentences imposed on Brima, Kamara and Kanu to reflect the additional criminal liability.

#### **Ninth Ground of Appeal**

31. The Trial Chamber:
  - (i) erred in law in finding, at paragraph 800 of the Trial Chamber's Judgement, that where the legal requirements pertaining to both Article 6(1) and Article 6(3) responsibility are met in respect of the same *count*, it would constitute a legal error to enter a concurrent conviction under both provisions;
  - (ii) on the basis of the findings in the Trial Chamber's Judgement, erred in law, and/or committed a procedural error, in the Disposition of the Trial Chamber's Judgement, in not convicting each of the Accused under Article 6(3) of the Statute, in addition to Article 6(1), in respect of all of the Counts on which they were convicted under Article 6(1).
32. In respect of each Count on which an Accused is found, following the determination of all of the Prosecution's other Grounds of Appeal, to be individually responsible, on that Count, for certain crimes under Article 6(1) only and other crimes under Article 6(3) only, the Prosecution requests the Appeals Chamber to revise the Trial Chamber's Judgement, and to enter

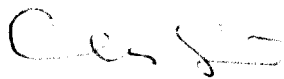
convictions against the Accused on that Count under Article 6(3) of the Statute, in addition to Article 6(1) of the Statute.

33. The Prosecution also requests the Appeals Chamber to make any resulting amendments to the Disposition of the Trial Chamber's Judgement, and to increase the sentences imposed on Brima, Kamara and Kanu to reflect the additional criminal liability.

### Sentences

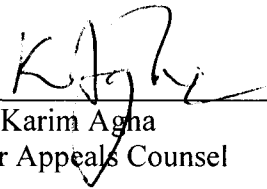
34. The Prosecution does not appeal, as such, against the Sentencing Judgement of the Trial Chamber dated 19 July 2007 in Case No. SCSL-04-16-T, *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (the "**Sentencing Judgement**").<sup>3</sup> However, the remedies sought by the Prosecution in respect of the above Grounds of Appeal against the Trial Chamber's Judgement include requests that the Appeals Chamber increase the sentence imposed on each of the three Accused, to reflect their additional criminal liability.

Filed in Freetown,  
2 August 2007  
For the Prosecution,



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Christopher Staker  
Deputy Prosecutor



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Karim Agha  
Senior Appeals Counsel

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<sup>3</sup> SCSL-16-624, Registry page nos. 22984-23019.