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SCSL-04-16-1
(21449 - 21456)

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

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

Registrar: Mr Lovemore G Munlo SC

Date filed: 25 January 2007

SPECIAL COURT FOR SIERRA LEONE	
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THE PROSECUTOR

Against

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

Case No. SCSL-04-16-T

PUBLIC

**PROSECUTION LIST OF AUTHORITIES REFERRED TO IN ORAL CLOSING
SUBMISSIONS**

Office of the Prosecutor:
Dr. Christopher Staker
Mr. Karim Agha
Mr. Charles Hardaway
Mr. Vincent Wagona

Defence Counsel for Alex Tamba Brima
Mr. Kojo Graham
Ms. Glenna Thompson

Defence Counsel for Brima Bazzy Kamara
Mr. Andrew Daniels
Mr. Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu
Mr. Geert-Jan Alexander Knoops
Ms. Carry Knoops
Mr. Abibola E. Manly-Spain

1. As foreshadowed during the oral closing arguments on 7 December 2006 (transcript, p. 58, lines 17-20), the Prosecution files this list of authorities for certain points made by counsel for the Prosecution in its closing arguments, which are additional to the authorities contained in the Prosecution final trial brief.

1. **Defects in the form of the Indictment cannot be raised by the Defence at this stage; alternatively the Defence arguments as to alleged defects in the Indictment should be rejected on their merits (Transcript, 7 December 2006, p. 57, line 7 to p. 63, line 18):**

Cf. Brima Brief, paras. 126-156
 Kamara Brief, paras. 37-40 and 89-103
 Kanu Brief, paras. 291-292

- *Prosecutor v. Brdjanin*, IT-99-36-T, “Judgement,” Trial Chamber II, 1 September 2004, para. 48.
<http://www.un.org/icty/brdjanin/trialc/judgement/index.htm>
- *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-279, “Decision on Renewed Defence Motion for Defects in the Form of the Indictment and Application for Extension of Time,” Trial Chamber, 24 May 2005.
- *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-164, “Decision on the Defence Motion for Defects in the Form of the Indictment,” Trial Chamber, 3 March 2005.
- *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-46, “Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment,” Trial Chamber, 1 April 2004.
- *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-469, “Decision on Defence Motions for Judgment of Acquittal Pursuant to Rule 98,” Trial Chamber, 31 March 2006 (the “**Rule 98 Decision**”), paras. 173-174, 323; and Separate Opinion of Judge Sebutinde, para. 9.

- *Prosecutor v. Sesay*, SCSL-03-05-PT-080, “Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment,” Trial Chamber, 13 October 2003.

2. “Those bearing greatest responsibility” is not a matter that is required to be proved at trial in order to secure a conviction (Transcript, 7 December 2006, p. 63, line 18 to p. 66, line 2):

Cf. Brima Brief, paras. 111-125
 Kamara Brief, paras. 72-88
 Kanu Brief, paras. 105-123

- *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-469, “Decision on Defence Motions for Acquittal Pursuant to Rule 98,” Trial Chamber, 31 March 2006 (the “**Rule 98 Decision**”), paras. 31-36-39. (This authority is cited in connection with the Prosecution’s alternative submission that even if the Trial Chamber was required to determine whether an accused is one of “those bearing the greatest responsibility”, that category is relatively broad, and can include, for instance, children between the ages of 15 and 18)

3. Pillage as a war crime (Statute, Article 3(f)) does *not* require appropriation for personal use, and *does* include the destruction or burning of property (Transcript, 7 December 2006, p. 66, line 3 to p. 68, line 28):

Prosecution Brief, paras. 1035-1040

Cf. Brima Brief, paras. 153-156
 Kanu Brief, paras. 193-194

- *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, “Decision on Motions for Acquittal Pursuant to Rule 98bis of the Rules of Procedure and Evidence,” Trial Chamber, 27 September 2004, paras. 95-107.
<http://www.un.org/icty/hadzihas/trialc/judgement/index.htm>

- *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-AR73.3, “Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal,” Appeals Chamber, 11 March 2005, paras. 26-30.
<http://www.un.org/icty/hadzihas/appeal/decision-e/050311.htm>
- *Prosecutor v. Kupreškić*, IT-95-16, “Judgement”, Trial Chamber, 14 January 2000, para. 741-748.
<http://www.un.org/icty/kupreskic/trialc2/judgement/index.htm>

4. Acts of terrorism (Statute, Article 3(d)) may include crimes against the property of victims (Transcript, 7 December 2006, p. 68, line 29 to p. 70, line 3):

Cf. Kanu Brief, paras. 2-18

- *Prosecutor v. Galić*, IT-98-29-T, “Judgement and Opinion,” Trial Chamber I, 5 December 2003, para. 133.
<http://www.un.org/icty/galic/trialc/judgement/index.htm>
- *Prosecutor v. Galić*, IT-98-29-A, “Judgement,” Appeals Chamber, 30 November 2006, para. 102 (and see footnote 317, contemplating that even propaganda may be used as a possible method of terror).
<http://www.un.org/icty/galic/judgment/gal-acj061130e.pdf>

5. Definition of “planning” (Statute, Article 6(1)) (Transcript, 7 December 2006, p. 70, lines 4-17):

Cf. Kamara Brief, paras. 18-20

- *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-469, “Decision on Defence Motions for Judgment of Acquittal Pursuant to Rule 98,” Trial Chamber, 31 March 2006 (the “**Rule 98 Decision**”), paras. 290-292.

6. For joint criminal enterprise liability (Statute, Article 6(1)), the joint criminal enterprise need only amount to *or involve* the commission of a crime provided for in the Statute (Transcript, 7 December 2006, p. 70, line 18 to p. 71, line 12):

Cf. Brima Brief, paras. 56, 58-59
Kamara Brief, para. 47

- *Prosecutor v. Tadić*, IT-94-1-A, “Judgement,” Appeals Chamber, 15 July 1999, paras. 227-228, esp. para. 227(ii).
<http://www.un.org/icty/tadic/appeal/judgement/index.htm>

7. The second category of joint criminal enterprise liability (Statute, Article 6(1)) is not confined to “concentration camp cases” only (Transcript, 7 December 2006, p. 73, line 7 to p. 74, line 24):

Cf. Brima Brief, para. 60
Kanu Brief, para. 296

- *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, “Judgement”, Appeals Chamber, 13 December 2004, paras. 464-465.
<http://69.94.11.53/ENGLISH/cases/NtakirutimanaE/judgement/Arret/Index.htm>
- *Prosecutor v. Vasiljević*, IT-98-32-A, “Judgement”, Appeals Chamber, 25 February 2004, para. 98.
<http://www.un.org/icty/vasiljevic/appeal/judgement/index.htm>
- *Prosecutor v. Krnojelac*, IT-97-25-A, “Judgement”, Appeals Chamber, 17 September 2003, para. 89.
<http://www.un.org/icty/krnojelac/appeal/judgement/index.htm>

8. For joint criminal enterprise liability (Statute, Article 6(1)), the accused need not have made a “substantial contribution” to the joint criminal enterprise (Transcript, 7 December 2006, p. 74, line 25 to p. 75, line 12):

Cf. Kamara Brief, para. 42
Kanu Brief, para. 286-289

- *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, “Judgement,” Appeals Chamber, 28 February 2005, paras. 97-99.
<http://www.un.org/icty/kvočka/appeal/judgement/index.htm>
- *Prosecutor v Krajisnik*, IT-00-39-T, “Judgement,” Trial Chamber I, 27 September 2006, para. 883(iii).
<http://www.un.org/icty/krajisnik/trialc/judgement/kra-jud060927e.pdf>

9. For joint criminal enterprise liability (Statute, Article 6(1)), it need not be shown that the accused as well as the physical perpetrator of the crime were both parties to an agreement to commit criminal activity (Transcript, 7 December 2006, p. 75, line 13 to p. 76, line 27):

Cf. Kanu Brief, para. 305

- *Prosecutor v Krajisnik*, IT-00-39-T, “Judgement,” Trial Chamber I, 27 September 2006, para. 883.
<http://www.un.org/icty/krajisnik/trialc/judgement/kra-jud060927e.pdf>
- *Prosecutor v Milutinovic et al.*, IT-05-87-PT, “Decision on Ojdanic’s Motion Challenging Jurisdiction: Indirect Co-Perpetration”, Trial Chamber, 22 March 2006, Separate Opinion of Judge Bonomy, especially para. 13.
<http://www.un.org/icty/milutino87/trialc/decision-e/060322.htm>
- *Prosecutor v. Stakić*, IT-97-24-A, “Judgement,” Appeals Chamber, 22 March 2005, paras. 68-85 (where the participants in the joint criminal enterprise were found (at para. 69) to include “the leaders of political bodies, the army, and the police who held power in the Municipality of Prijedor”, but where the Appeals Chamber did not look to establish whether the physical perpetrators

were also individually parties to an agreement with the accused to commit crimes).

<http://www.un.org/icty/stacic/appeal/judgement/index.htm>

- *Prosecutor v. Krnojelac*, IT-97-25-A, “Judgement”, Appeals Chamber, 17 September 2003, para. 97.

<http://www.un.org/icty/krnjelac/appeal/judgement/index.htm>

10. Members of the cabinet may bear collective superior responsibility for acts of subordinates; superior responsibility (Statute, Article 6(3)) applies not only to military commanders, but also to political leaders and other civilian superiors in positions of authority (Transcript, 7 December 2006, p. 76, line 28 to p. 78, line 13):

- International Military Tribunal for the Far East (Tokyo Tribunal), Judgment, 1948, p. 31.
<http://www.ibiblio.org/hyperwar/PTO/IMTFE/>
- *Prosecutor v. Musema*, IT-96-13-A, “Judgement and Sentence”, Trial Chamber, 27 January 2000, paras. 128-136, 148.
<http://69.94.11.53/ENGLISH/cases/Musema/judgement/>
- *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, ICTR-99-52-T, “Judgement and Sentence”, Trial Chamber I, 3 December 2003, para. 976.
<http://69.94.11.53/ENGLISH/cases/Ngeze/judgement/mediatoc.pdf>
- *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, “Judgement”, Trial Chamber, 26 February 2001, para. 97.
<http://www.un.org/icty/kordic/trialc/judgement/index.htm>

11. Whether or not there is a defence of mistake of law, there is no defence of *ignorance of the law* (Transcript, 7 December 2006, p. 78, line 14 to p. 80, line 7):

Prosecution Brief, paras. 157-166

Cf. Brima Brief, paras. 124-136, and 453-456

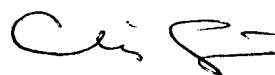
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- Rome Statute of the International Criminal Court, Article 32(2).
[http://www.un.org/law/icc/statute/english/rome_statute\(e\).pdf](http://www.un.org/law/icc/statute/english/rome_statute(e).pdf)
- *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-AR72-131,
“Decision on Preliminary Motion Based on Lack of Jurisdiction (Child
Recruitment)”, Appeals Chamber, 31 May 2004, para 52.

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