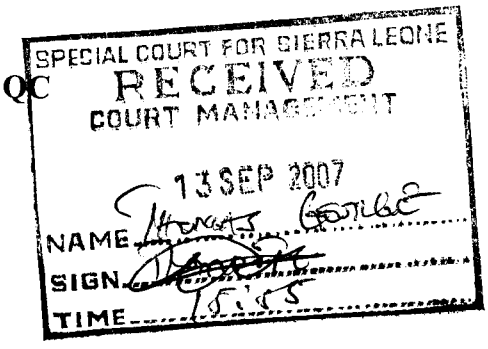
649.) SCSL-04-16-A (1088 – 1167) 1088

SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

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



Registrar: Mr. Herman von Hebel

Date Filed: 13 September 2007

THE PROSECUTOR **Against** **ALEX TAMBA BRIMA**
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU

Case No. SCSL–2004–16-A

KAMARA APPEAL BRIEF

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TABLE OF CONTENTS

A. Introduction.....3

B. The Appeal.....3

C. Brima Bazzy Kamara 5

D. Procedural Background.....6

E. A Summary of the Context of the Alleged Crimes.....7

F. First Ground of Appeal.....18

G. Second, Third and Fourth Grounds of Appeal 28

H. Fifth and Sixth Grounds of Appeal 40

I. Seventh Ground of Appeal 50

J. Eighth Ground of Appeal 58

K. Ninth Ground of Appeal.....62

L. Tenth Ground of Appeal.....64

M. Eleveth Ground of Appeal.....67

N. Twelfth Ground of Appeal.....68

O. Thirteenth Ground of Appeal.....68

A. INTRODUCTION

1. On 2 August 2007 the Kamara Defence filed a Notice of Appeal pursuant to Article 20 (Appellate Proceedings) of the Statute[1] and Rule 108 of the Rules of Procedure and Evidence[2] against the Judgment[3] and Sentence[4] of Trial Chamber II pronounced on 20 June 2007 and rendered on 19 July 2007 respectively in the case of the Prosecutor against Alex Tamba Brima, Brima Bazzy Kamara (hereafter referred to as "the Appellant") and Santigie Borbor Kanu case no. SCSL 04-16-T.

2. On 2 August 2007 both the Prosecution and all Defence teams filed a Public Urgent Joint Defence and Prosecution motion[5] for an extension of time to 13 September 2007 for the filing of Appeals Briefs.

3. On 10 August 2007 the Appeals Chamber rendered its Decision[6] on the Public Urgent Joint Defence and Prosecution motion and granted the motion for extension of time and ordered the parties to file their Appeal Briefs no later than 13 September 2007.

4. Pursuant to Rule 111[7] and the Order of the Appeals Chamber the Kamara Defence hereby files its written submissions contained in this document referred to as the Kamara Appeal Brief.

B. THE APPEAL

[1] Statute of the Special Court for Sierra Leone
[2] Rules of Procedure and Evidence
[3] Prosecutor against Alex Tamba Brima, Brima Bazzy Kamara and Santigie Bobor Kanu Case No. SCSL-04-16-T, Judgment, 20 June 2007 ("Judgment").
[4] Prosecutor against Alex Tamba Brima, Brima Bazzy Kamara and Santigie Bobor Kanu Case No. SCSL-04-16-T, Sentencing Judgment 19 July 2007.
[5] SCSL-04-16-631
[6] SCSL-04-16-640
[7] Rules of Procedure and Evidence

6. In this Appeal the Kamara Defence will limit its arguments to matters that fall within the scope of its grounds of appeal, namely an error of law invalidating the judgment or an error of fact involving a miscarriage of justice. The Appeal is against both conviction and sentence.

7. As regards errors of law, the Appeals Chamber has stated:

> Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law[8].

8. As regards errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by the Trial Chamber:

> Where the Defence alleges an erroneous finding of fact, the Appeal Chamber must be given deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[9]

9. The Appeals Chamber should not disturb the Trial Chamber findings to substitute its own, unless the evidence relied on by the Trial Chamber could not have been

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[8] See Gacumbitsi Appeal Judgment, para. 7, quoting Ntakirutimana Appeal Judgment, para. 11 (internal citations omitted). See also Kajelijeli Appeal Judgment, para. 5; Staki} Appeal Judgment, para 8; Vasiljevic Appeal Judgment, para. 6.

[9] Gacumbitsi Appeal Judgment, para. 8, quoting Krsti} Appeal Judgment, para. 40 (internal citations omitted). See also Kajelijeli Appeal Judgment, para. 5.

accepted by any reasonable tribunal of fact, or where its valuation has been "wholly erroneous"[10]

10. The Kamara Defence submits that it will demonstrate that the evidence relied on by the Trial Chamber to arrive at the conviction and sentence of the Appellant "could not have been accepted by any reasonable tribunal of fact" and will show further that where its arguments were not successful at the trial, the Trial Chamber's rejection of those arguments constitute an error warranting the intervention of the Appeals Chamber[11]

C. IBRAHIM BAZZY KAMARA

11. Brima Bazzy Kamara was born on 7 May 1968 or 1970 at Wilberforce Village in Freetown.[12] On 20 May 1991, he joined the Sierra Leone Army ("SLA"). According to the Prosecution, he was promoted to the rank of Staff Sergeant during the period of AFRC rule. Kamara asserts that he rose only to the rank of Sergeant. According to the Kamara Defence, the Accused served as a military driver during the years before the coup in May 1997.

12. Mr. Kamara was born on the 7th of May 1970 in Freetown, and not 1968 as claimed in the Indictment. Though he now carried the nickname "Bazzy", Mr. Kamara's actual name at birth is Ibrahim Kamara. He was born into a family that includes eight sisters and three brothers and grew up in Wilberforce, Freetown in the Western Area of Sierra Leone. Having attempted the 'Ordinary Level' of the General Certificate of Exams (GCE) at age seventeen, he left High School in search of job to help support his family. He is married with two children, aged ten and eleven respectively. Mr. Kamara lost his father in 1996.

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[10] Tadic, Appeals Chamber Judgment, July 15, 1999 at para. 64; Aleksovski, Appeals Chamber Judgment, Mar. 24, 2000 at para. 63; Delalic et al., Appeals Chamber Judgment, Feb. 20, 2001 at para. 434, 491; Kupreškic et al., Appeal Judgment, Oct. 23, 2001 at para. 30.

[11] Ndindabahizi Appeal Judgement, para.11; Gacumbitsi Appeal Judgment, para. 9; Niyitegeka Appeal Judgment, para. 9. See also Staki} Appeal Judgment, para 11; Naletili} and Martinovi} Appeal Judgment, para. 13

[12] The Prosecution assert that the Accused was born in 1968 (Indictment, para. 3), while Kamara states that he was born in1970 (Kamara Pre-Trial Brief, para. 7).

13. Shortly after joining the SLA, Mr. Kamara was, in 1991, deployed at Daru Military Barracks in the Kailahun District, east of Sierra Leone where he fought bravely to repel the advancing forces of the then Revolutionary United Front of Sierra Leone ("RUF-SL").

14. Between 1995 and May 1997, Mr. Kamara was a military driver attached to various military personnel in Sierra Leone. During that period, he drove escort vehicles to several battlefronts between the SLA and RUF forces, which were involved in combat then. This was in defence of Sierra Leone, his fatherland.

15. In May 1997, Mr. Kamara was in military custody when a coup was staged by members of the Armed Forces Revolutionary Council ("AFRC"). Being a member of the rank and file of the SLA, Mr. Kamara continued to serve in the army until his arrest and detention by the Special Court for Sierra Leone.[13]

D. PROCEDURAL BACKGROUND

16. The initial Indictments against the Accused Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu each contained 17 counts of crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and other serious violations of international humanitarian law.[14]

17. On 27 January 2004, having ordered a joint trial of the Accused Brima, Kamara and Kanu, Trial Chamber I ordered the Prosecution to file two consolidated indictments and that new case numbers be assigned to the two joint cases.[15] On 5

[13] Kamara Pre-Trial Brief filed on 21 February 2005.
[14] *Prosecutor v. Brima*, SCSL-03-06-I, Indictment (Annexes: Prosecutor's Memo to Accompany Indictment, Investigator's Statement, Draft Order Confirming Indictment), 7 March 2003; *Prosecutor v. Kamara, Kanu*, SCSL-03-10-PT, Prosecutor's Memorandum to Accompany the Indictment, 26 May 2003; *Prosecutor v. Kanu*, SCSL-03-13-PT, Indictment, 15 September 2003.
[15] *id.*, Corrigendum – Decision and Order on Prosecution Motion for Joinder, 28 January 2004. See also *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision for the Assignment of a New Case Number, 3 February 2004.

February 2004, the Prosecution filed a new indictment ("Consolidated Indictment") in compliance with the Order of Trial Chamber I.[16]

18. On 9 February 2004, the Prosecution applied for leave to amend the Consolidated Indictment and add a count of "other inhumane acts" pursuant to Article 2(i) of the Statute for acts of "forced marriage". Moreover, the Prosecution moved for other modifications of the Consolidated Indictment.[17]

19. On 6 May 2004, Trial Chamber I granted the proposed amendments to the Consolidated Indictment, which included a new Count 8 of "other inhumane acts", along with other amendments ("Amended Consolidated Indictment").[18]

20. On 17 January 2005 the President of the Special Court assigned the trial of the Accused Brima, Kamara and Kanu to the newly created Trial Chamber II.[19]

21. On 7 February 2005, the Prosecution requested leave to withdraw Counts 15-18 from the Amended Consolidated Indictment. On 15 February 2005, the Trial Chamber granted the Prosecution's request.[20] The operative indictment in this case, the Further Amended Consolidated Indictment, was filed on 18 February 2005.

22. The Prosecution case-in-chief commenced on 7 March 2005 and closed on 21 November 2005. The Prosecution called 59 witnesses. The Defence case-in-chief started on 5 June 2006 and finished on 26 October 2006. Final briefs were filed on

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[16] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Indictment, 5 February 2004.
[17] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Request for Leave to Amend the Indictment, 9 February 2004.
[18] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004; see also *id.*, Consequential Order and Corrigendum to the Decision on the Prosecution Request for Leave to Amend the Indictment, 12 May 2004.
[19] Order Assigning a Case to the Trial Chamber, SCSL-2004-16-PT, 17 January 2005.
[20] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005 and Corrigendum to Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005.

1 December 2006 and Closing Arguments were heard on 7 and 8 December 2006. The Trial Chamber sat 176 trial days.[21]

E. A SUMMARY OF THE CONTEXT OF THE ALLEGED CRIMES

23. It is necessary for the Appeals Chamber to have a thorough understanding of the facts and sequence of events as and when they occurred within the time frame of the Indictment. The Kamara Defence will therefore attempt to summarize from the Judgment these facts and events without distracting detail.

POLITICAL PRECURSORS

24. The Revolutionary United Front ("RUF ") was established in the late 1980's as an organized armed opposition group to overthrow the government of Sierra Leone. The Leader of the RUF. was Foday Saybena Sankoh, a former colonel in the army who served a 7 year sentence for alleged involvement in a failed coup in 1971.[22]

THE ARMED CONFLICT 1991-1997

25. R.U.F. initiated armed operations in Sierra Leone in March 1991, consolidating positions in Kailahun district, and occupying a small part of Pujehun District.[23]

26. In 1992 junior ranks of the SLA staged a coup by Captain Valentine Strasser and established the National Provisional Ruling Council (N.P.R.C.) Government.[24]

27. After 1992, the RUF took control over Bo and Bonthe Districts. The advance triggered the emergence of local military (the Civil Defence Force) consisting primarily of traditional hunters who fought on behalf of the Government.[25]These

[21] Paragraphs 16 to 22 of the Kamara Appeal Brief have been adopted from paragraphs 4 to 10 of the Judgment.
[22] See paragraph 156 of Judgment.
[23] See paragraph 157 of Judgment.
[24] See paragraph 158 of Judgment.
[25] See paragraph 159 of Judgment.

were the Kamajors in the East and South, the donzos in the far East, the Gbettis or Kapras in the North and the Tamaboros in the far North of Sierra Leone.

28. By 1995, the RUF was in control of large parts of Sierra Leone with a strong hold in the North. In March the Government employed the services of a private South African security company, Executive Outcomes, who trained the S.L.A. and dislodged the R.U.F. from most positions.[26]

29. In March 1996 elections were held and Almed Tejan Kabbah, emerged victorious. Tensions mounted between S.L.A. and C.D.F., and S.L.A. lost control of 2 Districts to the Kamajors, one of C.D.F. groups. This led to clashes. In September 1996, retired S.L.A. officer Johnny Paul Koroma staged an unsuccessful coup against President Kabbah and was jailed.[27]

30. The Abidjan Peace Agreement was entered into on 30th November 1996 between the Government and R.U.F. It called for a cessation of hostilities, and amnesty for R.U.F. fighters for any crimes committed before the signing.

31. Early in 1997 the peace process broke down. Foday Sankoh was arrested in Nigeria on 1st March 1997, allegedly for a weapons violation, and put under house arrest.[28]

A.F.R.C./R.U.F. GOVERNMENT PERIOD (MAY 1997-FEB. 1998

32. On 25th May 1997, 17 junior rank soldiers of the S.L.A., disgruntled and discontented, seized power from the elected Government of Kabbah via a Coup d'Etat. Johnny Paul Koroma was released from prison by the Coup plotters and appointed Chairman of the new A.F.R.C. Government. Koroma invited the R.U.F. to join the A.F.R.C. Government. Foday Sankoh accepted and R.U.F. fighters and commanders entered the capital.[29]

[26] See paragraph 160 of Judgment.
[27] See paragraph 161 of Judgment.
[28] See paragraph 163 of Judgment.
[29] See paragraph 164 of Judgment.

33. The A.F.R.C. suspended the 1991 Constitution, dissolved the democratically elected Government and banned political parties. Sankoh was appointed Koroma's deputy but as Sankoh was absent, the position was de facto vacant. At a later stage, S.A.J. Musa, a senior member of S.L.A., became de facto deputy to Koroma.[30]

34. When A.F.R.C. took power in May 1997, Bo and Kenama Districts were controlled by the C.D.F. The armed forces of A.F.R.C./R.U.F. undertook joint operations to gain control. Bo town was captured in June 1997. A.F.R.C. troops under Sam Bockarie (Mosquito) took control over Kenema District in May 1997 till Febuary 1998 but hostilities continued throughout the period.[31]

35. From June, 1997, A.F.R.C. Government controlled most parts of Freetown and Western Area, Bo, Kenema, Kono, Bombali, and Kailahun. However the Government remained under constant threat from C.D.F. and E.C.O.M.O.G.[32]

36. E.C.O.M.O.G. maintained control of the International Airport at Lungi (Port Loko District) on the north bank of Sierra Leone river, opposite Freetown. E.C.O.M.O.G. launched attacks against the A.F.R.C. Government in June, July and at the end of 1997.[33]

RELATIONS BETWEEN A.F.R.C. AND R.U.F.

37. The Coalition following the 1997 Coup was not based on long standing common interest. On 18th June 1997, R.U.F. issued an official apology to the Nation for its crimes and went on to praise Koroma's government.[34]

38. Commanders of both factions initially attended co-ordination meetings at which they planned operations, and jointly obtained arms and ammunition.[35]

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[30] See paragraph 165 of Judgment.
[31] See paragraph 166 of Judgment.
[32] See paragraph 167 of Judgment.
[33] See paragraph 168 of Judgment.
[34] See paragraph 169 of the Judgment.
[35] See paragraph 170 of the Judgment.

39. In October 1997 Koroma ordered the arrest of two R.U.F. leaders on charges that they were plotting with the C.D.F. to overthrow his government. Koroma ordered Issa Sesay, another top Commander of R.U.F., arrested for his part in looting the Iranian Embassy. In response R.U.F. stopped attending joint meetings. In June 1998 Sam Bockarie, Vice Chair of A.F.R.C. in Sankoh's absence, left Freetown for Kenema District because of discontent with A.F.R.C. commanders.[36]

40. Outside Freetown A.F.R.C./R.U.F. engaged in joint operations in Bo and Kenema relating to diamond mining. As this relationship deteriorated each faction began hoarding its own share of profits. On one occasion Sam Bockarie refused instructions from Koroma to attack Nigeria soldiers arriving through Liberia.[37]

MILITARY PRESSURE OF A.F.R.C. GOVERNMENT

41. A.F.R.C. government was subjected to military pressure from E.C.O.M.O.G. International political pressure mounted as human rights violations escalated. On 8 October, the U.N imposed international sanctions on the A.F.R.C. Government.[38]

42. On 23rd October the A.F.R.C. Government was forced to accept the Conakry Accord, which called for a six-month Peace Plan, Cessation of hostilities and the restoration of the constitution by 22 May 1998.[39]

E.C.O.M.O.G ATTACK ON FREETOWN

43. Soon after the Conakry Accord, hostilities resumed. E.C.O.M.O.G attacked Freetown on 13th and 14th of February 1998. A.F.R.C. forces escaped through the Freetown Peninsula. The Government of Kabbah was reinstated in March 1998.[40]

44. Retreat from Freetown was uncoordinated. Troops fleeing passed through the villages of Lumley, Goderich, York and Tumbo. From Tumbo, troops crossed

[36] See paragraph 171 of the Judgment.
[37] See paragraph 172 of the Judgment.
[38] See paragraph 173 of the Judgment.
[39] See paragraph 174 of the Judgment.
[40] See paragraph 175 of the Judgment.

Yawri Bay to Fo-gbo. Then proceeded to Port Loko District. This period lasted 3-4 days and is referred to as "The Intervention".[41]

ARMED CONFLICT 1998-2001 - A-POST A.F.R.C./R.U.F. COURT PERIOD FEBRUARY TO MAY 1998

1. Post A.F.R.C./R.U.F. Government period (Febuary to May 1998)

(a) Restruction of A.F.R.C./R.U.F. Troops

45. After a chaotic retreat from Freetown, the A.F.R.C. and R.U.F. gathered at Masiaka but organisation and control remained minimal. An initiative to recapture Freetown was abandoned due to insufficient arms and ammunition.[42]

46. At Masiaka, Koroma announced "Operation Pay Yourself' over British Broadcasting Corporation immediately after the rebels began a widespread campaign of looting.

(b) Planning the Attack on Koidu Town (end of February 1998)[43]

47. In the following days, troops moved without any obvious strategic aim except survival. Koroma retreated to his native village Magbonkineh in Bombali District. At Kabaka senior commanders met to discuss strategy. S.A.J. Mussa called for an attack on Kono district believing it would lead to international recognition.[44]

48. After commanders agreed, Koroma arrived and held a muster parade at which he explained to his Soldiers that he could no longer pay them and henceforth they could be subordinate to R.U.F. Commander S.A.J. Mussa was furious, insisting

[41] See paragraph 176 of the Judgment.
[42] See paragraph 177 of the Judgment.
[43] See paragraph 178 of the Judgment.
[44] See paragraph 179 of the Judgment.

the purpose of his group was to reinstate the army and the R.U.F. could not lead such a mission.[45]

49. Before the operation to recapture Kono took place a dispute erupted over command and control issues resulting in hostilities and deaths of several fights. As result S.A.J. Mussa, and a significant number of A.F.R.C. troops loyal to him opted not to support the operation.[46]

50. The remaining A.F.R.C./R.U.F. troops traveled towards Koidu Town. At Njema Sewafe the advancing troops were forced to retreat by C.D.F. Koroma and his fights returned to Makeni. Another group of A.F.R.C./R.U.F. rebels launched a second successful attempt to capture Koidu town on 1st March 1998. Koroma arrived in Koidu town shortly thereafter.[47]

KONO DISTRICT MARCH TO MAY/JUNE 1998

51. Koroma took overall command of the A.F.R.C./R.U.F. troops. At a meeting at R.U.F. commander Denis Mingo's house, chaired by him, Koroma agreed with Mingo that A.F.R.C. troops would be subordinate to the R.U.F., a decision unpopular with some of his own commanders.[48]

52. As larger parts of Kono fell to rebel control, Koroma announced that he would travel via Kailahun district in order to organize logistics for the troops. Prior to his departure he announced that the civilians had betrayed the troops by calling for support of C.D.F. and Kono should thus become a 'civilian no go area'. Rebels were ordered to execute weak civilians and force stronger ones to join the movement. Koroma also ordered that civilian housing in areas surrounding rebel headquarters was to be burned to prevent settling. Rebels immediately began implementing Koroma's orders.[49]

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[45] See paragraph 180 of the Judgment.
[46] See paragraph 181 of the Judgment.
[47] See paragraph 182 of the Judgment.
[48] See paragraph 183 of the Judgment.
[49] See paragraph 184 of the Judgment.

53. On 4th March 1998, within three days of his arrival, Koroma departed for Kailahum. Most of A.F.R.C. force remained in Kono District alongside the R.U.F troopos. Although A.F.R.C. was subordinate there was cooperation and joint operations.[50]

54. The villages targeted by rebels in Kono district during the indictment period included Koidu Geya, Koidu Buma, Paema, Penduma, Tombodu, Kaima (Kayima), Koidu Town, Foendor, Bomboafuido, Yardu Sandu, Penduma and Mortema.[51]

KOINADUGU AND KAIHUM DISTRICT (FEB-NOV. 1998)

55. A faction of A.F.R.C. Soldiers under command of S.A.J. Mussa remained in Koinadugu District throughout this period. The main stronghold of the R.U.F. was Kailahum District, which was under the control of Sam Bockarie (Mosiquito).[52]

56. When Koroma departed for Kailahum district he was given to believe that he would be welcomed by the R.U.F. However he encountered a hostile R.U.F. leadership. He was arrested by Sam Bockarie, Issa Sesay and other R.U.F. fighters. He was then stripped and searched for diamonds and his wife was sexually assaulted. Bockarie placed Koroma under house arrest in Kagama village near Buedu where he remained until mid 1999. No evidence was adduced suggesting Koroma had any form of contact whatsoever with any of his former associates during the remaining period covered by the Indictment.[53]

KOINADUGU AND BOMBALI DISTRICT

[50] See paragraph 185 of the Judgment.
[51] See paragraph 186 of the Judgment.
[52] See paragraph 187 of the Judgment.
[53] See paragraph 188 of the Judgment.

(a). Retreat from Kono District (April-May 1998)

57. A.F.R.C. troops maintained control over Kono District until April 1998 when E.C.O.M.O.G. advanced into Kono District. Tensions between A.F.R.C. and R.U.F. escalated. The majority of A.F.R.C. moved to Mansofinia in Koinadugu district. Some former soldiers remained, notably 'Savage' who remained in Tombodu as Commander.[54]

58. At a meeting in Koinadugu District, various A.F.R.C. commanders met with S.A.J. Musa to discuss future military strategy. Commanders agreed troops from Kono district should act as an advance party which would establish a base in north western Sierra Leone in preparation for an attack on Freetown. The purpose was to restore the S.L.A. No evidence the R.U.F. was involved in these deliberations.[55]

59. The split with the R.U.F. had considerable consequences for the A.F.R.C. troops. They no longer controlled diamond mining areas, thus no revenue. The only sources available to them was source available to them was stocks captured from E.C.O.M.O.G. or the C.D.F.[56]

(b.) A.F.R.C. TROOP MOVEMENT FROM EAST TO WEST (MAY-NOVEMBER 1998)

60. The advance team returned to Mansofinia and started a three month journey through Sierra Leone to Rosos, located in the Eastern Bombali district. They traveled south into Kono district and passed Kondea, Worodu and Yarya, hometown of the accused Brima. Then troops headed north east Yifin and then moved eastwards passing Kumala and Bendugu towards Tonkilili district. They then headed further north east into Bombali district, passing Kamagbengbeh, Bonoya, Karina, Pendembu and Mateboi before finally arriving at Rosos. The civilian population was targeted and villages attacked by troops included Yiffin, Yiraye, Kumalu in Kionadugu district and Mandaha, Rosos, Bornoya, Mateboi,

[54] See paragraph 189 of the Judgment.
[55] See paragraph 190 of the Judgment.
[56] See paragraph 191 of the Judgment.

Gbendembu, Madina Loko, Kamadogbo, Kamagbengbe and Bat Kanu in Bombali district.[57]

61. The journey was on foot, troops had their families and hundreds of civilians ubducted from targeted villages. Troops settled in Rosos and stayed for three months (July-September). E.C.O.M.O.G. bombed the camp thus they traveled west to a village known as 'Colonel Eddie Town'. From here troops staged a number of attacks on E.C.O.M.O.G. positions in order to supplement their dwindling stocks of arms and ammunition.[58]

62. The faction of A.F.R.C. fighting forces under the command of SAJ Musa remained in Koinadugu District where they worked together with R.U.F. troops loyal to R.U.F. commander Denis Mingo, also known as 'Superman'. Significant evidence was adduced regarding the commission of crimes by the troops under the command of SAJ Musa and Denis Mingo including at Koinadugu Town, Kabala, Yomadugu, Bafodeya, Kurubonla, Bambukura and Fadugu.

ADVANCE ON FREETOWN

63 As the different factions were unable to communicate with each other, S.A.J. Musa sent a second advance party to locate the first in or about September 1998. The troops appeared to take the same route as the first group.[59]

64 In October 1998, following clashes with Dennis Mingo, S.A,J. Musa left Koinadugu district to join the advance team and prepare for an assault on Freetown. S.A.J. Musa used a different route from those used by the advanced teams.[60]

65 Upon arrival at 'Colonel Eddie Town' in November 1998, S.A.J. Musa assumed command. He stressed his discontent with the R.U.F. and explained the importance of his troops arriving in Freetown before the R.U.F. S.A.J. Musa

[57] See paragraph 192 of the Judgment.
[58] See paragraph 193 of the Judgment.
[59] See paragraph 196 of the Judgment.
[60] See paragraph 197 of the Judgment.

reorganized, and begun to move toward Freetown. Troops passed through the villages of Mange, Lunsar, Masiaka and Newton before arriving in Benguema in the western area in December 1998. During the move, troops withstood frequent attacks by E.C.O.M.O.G. Little evidence was adduced that troops targeted civilians, they concentrated on purely military targets.[61]

66 While the A.F.R.C. troops advanced on Freetown, R.U.F. troops recaptured Koidu and planned an advance on Makeni in Bombali district. They reached Makini in the final days of 1998.[62]

67 During the advance S.A.J. Musa and A.F.R.C. troops heard a B.B.C interview with Sam Bockarie over the radio. Bockarie revealed the position of the A.F.R.C. fighting forces and explained that the R.U.F. were approaching Freetown. Soon after, E.C.O.M.O.G. bombarded the area. S.A.J. Musa immediately contacted Sam Bockarie and insulted him, saying he had no right to claim that the troops approaching Freetown were R.U.F.[63]

68 On 23rd December, shortly after the arrival in Benguema, S.A.J. Musa was killed in an explosion during an attack on an E.C.O.M.O.G. weapons depot.[64]

ATTACK ON FREETOWN

69 After the death of S.A.J. Musa, troops reorganized. On the 6th of January 1999, they invaded Freetown. From Benguema, the troops passed through Waterloo, Hastings, Wellington and Kissy villages. The civilian population was targeted during the advance. A.F.R.C. were able to capture the seat of Government on the morning of 6th January. Sam Bockarie announced over Radio France International that troops had taken Freetown and would continue to defend it.[65]

70 One of the first acts of the invading troops on entering Freetown was to attack the central prison at Pademba road and release all the prisoners. This contributed to

[61] See paragraph 198 of the Judgment.
[62] See paragraph 199 of the Judgment.
[63] See paragraph 200 of the Judgment.
[64] See paragraph 201 of the Judgment.
[65] See paragraph 202 of the Judgment.

the general breakdown of order amongst the troops. However 3 days after the capture of State House, A.F.R.C fighting force were able to control large parts of Freetown.[66]

71 From State House A.F.R.C. officers contacted Sam Bockarie asking for reinforcements which did not come. Bockarie instructed them to burn down Freetown if they could not hold the city. Bockarie then announced over the B.B.C. that if E.C.O.M.O.G. did not stop attacking troop positions the whole of Freetown would be burnt down.[67]

72 A.F.R.C. troops remained in Freetown for around three weeks. Although they were unable to advance to the western part of the city. Period is referred to as the 'Freetown Invasion'.[68]

RETREAT FROM FREETOWN

73 Following heavy assaults from E.C.O.M.O.G., the troops were forced to retreat from Freetown. This marked the end of the A.F.R.C. offensive as troops were running out of ammunition. A.F.R.C. managed a controlled retreat, engaging E.C.O.M.O.G. and Kamajor troops blocking their way. R.U.F. reinforcements arrived at Waterloo but were either unable or unwilling to provide the necessary support to A.F.R.C. troops.[69]

74. Most of the damage to Freetown, especially the damage to infrastructure and civilian housing, was inflicted by the retreating AFRC forces. The AFRC were also responsible for massive civilian casualties

LOKO DISTRICT (FEBUARY-APRIL 1999)

75 A.F.R.C. forces withdrew, reorganized and established bases in the western area including in Newton and Benguema. They remained until early April 1999 when

[66] See paragraph 203 of the Judgment.
[67] See paragraph 204 of the Judgment.
[68] See paragraph 205 of the Judgment.
[69] See paragraph 206 of the Judgment.

the A.F.R.C. divided. One group traveled to Makeni in Bombali district to Port Loko district and settled in the region of the Okra hills near Rogberi. This group became known as the 'West Side Boys' who frequently targeted and attacked the civilian population. Towns and villages attacked included Masaika, Geribana, Manaarma, Sumbaya, Nonkoba and Tendakum. These troops remained in Port Loko district until the negotiation of the Lomé Peace Accord.[70]

1999 LOMÉ PEACE ACCORD AND CESSATION OF HOSTILITIES IN 2001

76 Following atrocities committed in Freetown in January 1999, the Kabbah Government was under pressure to enter a peace agreement with the warring factions. The A.F.R.C. was not represented during the negotiations. On 7th July 1999 the Government of Tejan Kabbah and the R.U.F signed the Lome` Peace Accord. The Accord resulted in a power sharing arrangement between the Kabbah Government and the R.U.F. Foday Sankoh, who until this time remained under house arrest in Nigeria, returned to Sierra Leone and became Vice-President. Hostilities resumed shortly after. A final cessation of which only occurred in January of 2002.[71]

F. FIRST GROUND OF APPEAL

77. The Trial Chamber erred in law and or fact in paragraphs 1915[72] and 2117[73] in finding Kamara responsible/guilty under Article 6(1) for *ordering* the unlawful killing of five civilians in Karina in the Bombali District pursuant to *Counts 3, 4 and 5* of the Indictment, thereby invalidating the Trial Judgment and leading to a miscarriage of justice.

THE LAW

[70] See paragraph 208 of the Judgment.
[71] See paragraph 209 of the Judgment.
[72] Trial Judgment
[73] Trial Judgment

78. Under Kordic, and as cited in para.772 of the Kamara judgment, '[t]he *actus reus* of "ordering" means that a person in a position of authority instructs another person to commit an offence. A formal superior-subordinate relationship between the accused and the perpetrator is not required.'[74] This is therefore unlike the position regarding command responsibility.

79. In addition, 'the existence of an order may be proven through circumstantial evidence'[75] and 'what is important is the commander's *mens rea*, not that of the subordinate executing the order.'[76]

80. As per paragraph 1915 of the Trial Judgment the Trial Chamber found that the Appellant ordered the unlawful killing of five young girls in Karina. The Appellant ordered that the girls be locked in a house and that the house then be set on fire. This order was obeyed by AFRC troops. As per paragraph 1916 the Trial Chamber found that as the deputy commander in Bombali District the Appellant had sufficient authority over the troops to instruct the commission of the crimes. On all the evidence adduced, the Trial Chamber found that the Accused Kamara was aware of the substantial likelihood that the burning to death of the five young girls in Karina would be carried out.

PROSECUTION EVIDENCE

81. The Prosecutions case through witness TFI-334 is that soldiers attacked Karina, a Mandingo village in Bombali district and that perviously, at Kamagbengbe, the First Apellant ordered his troops to specifically target Karina, as he alleged that it

[74] (IT-95-14/2) 17 Dec 2004 (citing the Trial Judgment at para 388) at para 28. See also *Gacumbitsi* (ICTR-01-64) Appeal Judgment at para 182: in respect of ordering not requiring the superior-subordinate relationship (unlike accusations under s.6 (3): 'it requires merely authority to order, a more subjective criterion that depends on the circumstances and the perceptions of the listener.')
[75] Kordic Trial Judgment at para 388, citing Blaškić (IT-95-14) Trial Judgment, para. 281.
[76] Kordic Trial Judgment at para 388, citing Blaškić (IT-95-14) Trial Judgment, para. 282.

was the home town of President Kabbah. All three accused participated in the attack.[77]

82. Prosecution Witness TFI-334 stated that the accused Kamara and two other 'juntas' locked five young girls into a house and subsequently set it ablaze. The five girls were burnt alive.[78]

83. Prosecution George Johnson stated that a certain Eddie Williams, a.k.a. 'Maf', wrapped an unknown number of people in a carpet inside a house and set the house on fire. The people were burnt alive. He alleged that he was together with the Appellant Kamara he alleged was watching from outside the house, together with Witness George Johnson and several personal security guards of the Accused Kamara.[79] The defence presented a different version of events as regards Karina. Defence Witness DBK-094 testified to seeing only seven dead bodies during the attack on Karina.

84. Prosecution Witness TFI-055 who was in Karina at the time of the attack, did not mention that anybody was burnt in a house in Karina. TFI-055 testified that he and the other villagers buried 5 people; including those killed by the mosque, in the same grave[80] and that some people told TFI-055 that Jabbie was the one that came in and fought in Karina.[81]

85. Witness TFI-033 testified that Bonoya and Karina suffered the worst atrocities ever meted out on civilians. About 500 civilians were killed, 300 amputated, over 200 women raped. [82] Witness TFI-033 testified that he knew the Second Accused[83] and he testified on the troop's movement in the Bombali district and the commanders but failed to mention the Appellant as being present in the Bombali district. TFI-033 from his testimony should be in a position to know if

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[77] See paragraph 886 of the Judgment.
[78] See paragraph 887 of the Judgment.
[79] See paragraph 890 of the Judgment.
[80] TFI-055 Transcript, 12 July 2005 page 138.
[81] Transcript, 12 July 2005 page 142.
[82] Transcript, 11 July 2005 page 19, Transcript, 12 July 2005 page 80-81 Cross-examination.
[83] Transcript , 11 July 2005 page 6.

Appellant was present and second in command to Gullit during the attacks in Bombali as alleged by Witness TFI-334 and TFI-167.

DEFENCE EVIDENCE

86. Defence Witness DBK-094 testified that he was in Karina on May 8, 1998, when it was attacked at around 6.00 a.m.[84] DBK-094 stated that the next day, he saw only seven bodies in front of one of the two-story buildings in Karina. DBK-094 and others buried those dead bodies in two mass graves. They buried three men in one grave and four in another grave. [85] Witness DBK-094 confirms that he saw seven dead bodies the day following the attack. DBK-094 did not see any other dead bodies after that.[86] Witness DBK-094 testified that the Imam in Karina was not present in Karina on that particular day.[87] Witness DBK-094 testified that the names he heard that attacked Karina on May 8, 1998, were Jabbie and Adama Cut Hand.[88] He heard from some of his friends in Kono that Junior Lion, the Killer, Boby, were some of the gunmens that entered into Karina.[89]
Witness DBK-094 testified that he heard the name Ibrahim Bazzy Kamara over the radio when witnesses were talking about him at the Special Court. DBK-094 testified apart from the radio, he never heard the name of the Appellant anywhere.[90]

87. Defence Witness DBK-113 testified that the he was with the troop when they got to Karina and the leaders were FAT, Colonel Eddie and Junior Lion. Colonel Eddie led the troops to Karina, and the operation commander was Junior Lion. The soldiers were moving with their families. [91] Junior Lion said that Karina was Tejan Kabba's village, so it should be burnt down. [92] DBK-113 testified that

[84] Transcript 11 July 2006, page 27.
[85] 11 July 2006, page 38-39.
[86] 11 July 2006, page 65.
[87] 11 July 2006, page 43.
[88] 11 July 2006, page 73.
[89] 11 July 2006, page 74.
[90] 11 July 2006, page 101-102.
[91] Transcript 13 October 2006 page 100.
[92] Transcript 13 October 2006 page 21.

during this period at Karina, he did not see or hear that the Appellant as being at Karina and he did not see or hear that the Appellant gave orders to burn houses or to burn civilian houses at Karina. [93]

ANALYSIS OF THE LAW AND EVIDENCE

88. The Trial Chamber relied exclusively on witnesses 334 and Junior Johnson to find the Appellant guilty of ordering the unlawful killing of five civilians in Karina.

89. The evidence of Prosecution witness TF1 334 as testified 23 May 2005 in relation to Karina is set out as follows:

> Q. Go on witness, tell us what you were going to happen – what happened?
> A. I, Bazzy and Bazzy's CSO moved into one of the houses in Karina when we entered Karina Town
> Q. Did anything happen?
> A. Yes
> Q. What happened?
> A. I and Bazzy entered this place, we met.... I and Bazzy and the CSO met five young girls in this one flat house.
> Q. Are you able to recall how old these young girls were?
> A. They were young girls.
> Q. Go on.
> A. When I and Bazzy with the CSO Bazzy entered this house, immediately Bazzy said the doors were to be closed. In fact, we put the place on fire, while that was going on the girls started begging; they said "we beg of you people not to kill us."
> J. I am not sure what was set ablaze. Could the witness repeat that part please?
> Q. What was to be set ablaze, witness?
> A. Bazzy said the house was to be set ablaze.
> Q. Remind us, who was in the house?
> A. Five young girls were in this house.
> Q. You started telling us what they were saying, please go on.
> A. These young girls and they started begging. They were begging us .... I and Bazzy and the CSO ..... not to kill them. Rather they said that we should take them, because they said that they were young girls, let us take them along. Bazzy said no. He said "I have told you that you should set this house ablaze now". So immediately I, the CSO and he himself, Bazzy, we started setting the house ablaze while the main doors closed.

[93] Transcript 13 October 2006 page 48-49.

Q. What happened next?

A. I, Bazzy and the Bazzy CSO, we set a house ablaze while the main door was closed by Bazzy while the house was burning.

Q. Do you know what happened to the girls?

A. Well, they had no way to escape, so the house continued burning. We stood there until the house burnt to ashes.[94]

90. The evidence of Junior as testified 15 September 2005 in relation to Karina is set out as follows:

A. As we are entering Karina there was a house that was on the right-hand side of the street and a Benz vehicle was parked outside.

Q. Pause a moment.

PRESIDING JUDGE: I didn't hear what the witness said was parked outside.

MS PACK: He said a Benz vehicle.

THE WITNESS: Mercedes Benz vehicle.

PRESIDING JUDGE: Thank you, Mr Witness.

MS PACK:

Q. Who were you with at this point?

A. I was with Ibrahim Bazzy Kamara.

Q. Anyone else with you?

A. Eddie Williams, aka Maf was also there.

Q. What happened after you got to this house on the right-hand side with the Mercedes Benz outside it?

A. Eddie Williams went into the house, wrapped people with the carpets of the house and set the house on fire.

Q. Let's just break that down a little. You said he grabbed people with the carpet from the house. What do you mean by that?

A. I mean the carpet in the house in the parlour was wrapped with the people he met inside the house.

Q. Where did this take place?

A. It happened -- it happened just before we entered Karina. The first houses into Karina Town.

Q. How did you know that people were wrapped in the carpet from inside the house?

A. I was standing just opposite the building with Ibrahim Bazzy Kamara and Baski.

Q. Do you know how many people were wrapped in the carpet?

A. I could not give a specific number because I did not go inside the building.

Q. How did you know that people were wrapped in a carpet?

A. When Eddie Maf placed the house on fire, then he came and joined us opposite the house and told us that he wrapped people with carpet in the house.

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[94] TF1- 334 Transcript 23 May 2005 pages 65 to 67.

Q. Did you see how he put the house on fire?
A. Yes.
Q. What did he do?
A. He drew fuel from the Benz, Mercedes Benz car that was parked outside the house, and sprinkled it right around the parlour, inside the house and outside. And the house was -- he scratched a match and dumped it in the house and the house went ablaze.
Q. At the time that this was going on and you said you were outside the house --
A. Yes, opposite the house.
Q. -- Who was with you?
A. I was Ibrahim Bazzy Kamara, Saidu Kambulai, and some other security guards.
Q. What were you doing?
A. We were standing outside the house waiting for Maf.
Q. After the house was set on fire, what did you do?
A. We went into Karina Town.
Q. Who did you go in with?
A. I went with Ibrahim Bazzy Kamara together into the town.

91. Prosecution witness TF1- 334 places the Appellant in the house where it was alleged that the Appellant ordered the unlawful killing of five young girls in Karina in the Bombali District. The fact of the Appellant's presence within the house where the unlawful killings took place is set out in paragraph 82 above no less than three times.

92. Prosecution witness Junior Johnson says in his testimony at paragraph 84 above on no less than 3 occasions that he and the Appellant were outside the House when the incident about the burning/unlawful killing of persons was taking place. Hence the evidence of Prosecution witnesses TF1 334 and Junior Johnson on the exact location of the Appellant at the time of the unlawful killings is both contradictory and unreliable.

93. As regards who gave the order to unlawfully kill persons Prosecution witness TFI-334 places the blame squarely on the Appellant

He said "I have told you that you should set this house ablaze now"[95]

[95] See paragraph 82 *supra*.

This in the words of the Appellant is in apparent reference to Prosecution witness TF1-334.

94. Prosecution witness Junior Johnson had a different story to tell about who gave the order to kill under cross examination.[96]

> Q: Now when you saw this man Williams wrapping people in the carpet at Karina and then setting the house on fire, did you do anything as provost marshal in charge of discipline?
>
> A: I could not do anything because it is an order that has been passed down from the High Command that there should be a lot of killing and burning at Karina, so I could not do any thing about that.

Hence the evidence of Prosecution witnesses TF1 334 and Junior Johnson on who ordered the unlawful killings is both contradictory and unreliable.

95. In respect of where the incident of the unlawful killings actually took place both the Prosecution witnesses TF1-334 and Junior Johnson have different things to say. Prosecution witness TF1-334 gave direct evidence as follows:

> Q. Go on witness, tell us what you were going to happen
> A. I, Bazzy and Bazzy's CSO moved into one of the houses in Karina when we entered Karina Town.[97]

Prosecution witness Junior Johnson had this to say in direct evidence:

> A. I mean the carpet in the house in the parlour was wrapped with the people he met inside the house.
> Q. Where did this take place?
> A. It happened -- it happened just before we entered Karina. The first houses into Karina Town.

Hence the evidence of Prosecution witnesses TF1 334 and Junior Johnson on where it was that the unlawful killings took place is both contradictory and unreliable.

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[96] Junior Johnson, Transcript 20 September 2005 page 36 .
[97] See paragraph 82 *supra.*

96. Perhaps of even greater significance is the fact that both Prosecution witnesses who testified about the unlawful killings in "Karina" failed to mention the presence of one another. The unanswered question then becomes this: Why did the Trial Chamber rely on the evidence of Prosecution witness TF1-334 in preference to Prosecution witness Junior Lion?

97. Rule 89 of the Rules of Procedure and Evidence provides the general rules of evidence for the court. All witness evidence, including hearsay[98], is admissible if the court deems it to have "probative value". This is a wide test, designed to allow as much relevant testimony as possible[99]. However, this is subject to the requirement to ensure a fair trial,[100] and Rule 95 which states that:

No evidence shall be admitted if its admission would bring the administration of justice into serious disrepute.

98. The admission of witness testimony from a witness who is clearly unreliable, or has previously contradicted himself could be claimed to be inadmissible by virtue of this rule. The witness must be so unreliable that no reasonable tribunal of fact could have relied upon his or her testimony[101], and in appeal proceedings, this error of fact must have occasioned a miscarriage of justice[102].

99. It is the case for the Appellant that in the light of the contradictions of Prosecution witnesses TF1-334 and Junior Johnson as to, the location of the Appellant at the time of the unlawful killings, as to who ordered the unlawful killings and as to locus of the unlawful killings in Karina in the Bombali District the Trial Chamber failed to exclude the evidence of Prosecution witness TF1-334 as being unreliable thereby occasioning a miscarriage of justice.

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[98] *Brdanin and Talic*, Admission of Evidence Order (15 February 2002), para 21.
[99] Cryer, Robert "Witness Evidence Before International Criminal Tribunals" in *The Law and Practice of International Courts and Tribunals* Vol 3 2003 411-439 (attached).
[100] This is not explicitly included in the statute of the court, but the ICTR has taken into account the necessity to ensure a fair trail. See the case of *Akayesu* Judgment (2 Sept 1998) Case No ICTR-96-4-T, para 136, and Bantekas, Ilias and Nash, Susan *International Criminal Law (2nd ed)* Cavendish Publishing 2003 p298.
[101] *Musema*, Appeal Judgment (16 November 2001), para 17.
[102] Art 20(1)(c).

100. On the subject of reliability the authors of *International Criminal Law*[103] stated:

"Reliability is not a separate condition for admission, but an inherent and implicit component of relevance and probative value under r89.[104] *Reliability is the invisible golden thread that runs through all components of admissibility*[105]*. Lack of reliability should therefore result in exclusion of the evidence*[106]*."*

101. It is also the case for the Appellant that in the light of the contradictions as to, the location of the Appellant at the time of the unlawful killings, as to who ordered the unlawful killings and as to locus of the unlawful killings the Prosecution has failed to discharge the burden of proof beyond a reasonable doubt as regards the Second Accused's criminal liability for unlawful killings in Karina in the Bombali District.

102. It is submitted that the burden of proof (beyond a reasonable doubt) lies with the prosecutor[107]. If the prosecution is unsuccessful in discharging this burden then the court will have to acquit[108].

103. The trial Chamber relied substantially on the evidence of Prosecution witness TF1 334 in convicting the Appellant for unlawful killings in Karina in the Bombali District. Prosecution witness TF1-334 confessed in his testimony to taking part in these crimes thereby giving him the status of a co-perpetrator of the crimes committed. His testimony is set out below[109]

"Q. Go on.

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[103] Bantekas, Ilias and Nash, Susan *International Criminal Law (2nd ed)* Cavendish Publishing 2003 p.301.
[104] *Tadic* decision on hearsay (5 August 1996), para 15; confirmed in the *Musema* Judgment (27 Jan 2000), paras 35-36.
[105] *Delalic* decision on admission of evidence (19 January 1998), para 32; *Musema* Judgment (27 January 2000), para 53.
[106] *Tadic* decision on hearsay (5 August 1996), para 15.
[107] As a consequence of the presumption of innocence contained in Art 17 (3) (Statute of the SCSL).
[108] By implication of Art 19 of the and Rule 87 of the Rules of Procedure and Evidence.
[109] See paragraph 82 supra and also TF1-334 Transcript 23 May 2005 pages 65 to 67.

A. When I and Bazzy with the CSO Bazzy entered this house, immediately Bazzy said the doors were to be closed. In fact, we put the place on fire, while that was going on the girls started begging; they said "we beg of you people not to kill us."

J. I am not sure what was set ablaze. Could the witness repeat that part please?"

"Q. You started telling us what they were saying, please go on.

A. These young girls and they started begging. They were begging us .... I and Bazzy and the CSO ..... not to kill them. Rather they said that we should take them, because they said that they were young girls, let us take them along. Bazzy said no. He said "I have told you that you should set this house ablaze now". So immediately I, the CSO and he himself, Bazzy, we started setting the house ablaze while the main doors closed."

104. It is the case for the Appellant that by virtue of Prosecution witness TF1 334's status as a co perpetrator the Trial Chamber erred in law in not cautioning itself about how to treat his evidence.

105. In addition the Trial Chamber has emphasised the need to "scrutinise" uncorroborated evidence "with great care" before relying on it to find the accused guilty[110].

RELIEF SOUGHT

106. The Appellant respectfully prays the Appeals Chamber to revise the Judgment and enter a verdict of NOT GUILTY in respect of Counts 3, 4, and 5 of the Indictment to reflect the fact that Kamara was not responsible under Article 6(1) for ordering the murder of five civilians in Karina in the Bombali District

G. SECOND, THIRD AND FORTH GROUNDS OF APPEAL

Second Ground

107. The Trial Chamber erred in law and or fact in paragraphs 1278, 1919, 1970 and 2117 of the Judgment in finding Kamara responsible/guilty under Article 6(1) for planning the abduction and use of child soldiers in Bombali District and the

[110] *Krnojelac* Judgment (15 March 2002), para 8.

Western Area pursuant to Count 12 of the Indictment thereby invalidating the Trial Judgment and leading to a miscarriage of justice.

Third Ground

108. The Trial Chamber erred in law and or fact in paragraphs 1919, 1970 and 2117 of the Judgment in finding Kamara responsible/guilty under Article 6(1) for planning the commission of outrages upon personal dignity in the form of sexual slavery in Bombali District and the Western Area pursuant to Count 9 of the Indictment thereby invalidating the Trial Judgment and leading to a miscarriage of justice

Forth Ground

109. The Trial Chamber erred in law and or fact in paragraphs 1919, 1970 and 2117 of the Judgment in finding Kamara responsible/guilty under Article 6(1) for planning the enslavement of civilians in Bombali District and the Western Area pursuant to Count 13 of the Indictment thereby invalidating the Trial Judgment and leading to a miscarriage of justice

110. The Appellant will consider the second, third and fourth ground of Appeal together as the mode of perpetration of the crimes committed is the same.

THE LAW ON PLANNING AS IT RELATES TO COUNTS 9, 12, AND 13 OF THE INDICTMENT.

111. Kamara was tried on the grounds of his alleged individual criminal responsibility under Article 6(1) of the Statute of the Special Court for Sierra Leone, which states,

"A person who *planned*, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime."

112. Kamara was convicted of planning the commission of outrages on personal dignity (count 9), planning the abduction and use of child soldiers (count 12), and planning the enslavement of civilians (count 13).

113. "Planning" implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases.[111] Proof of the existence of a plan may be provided by circumstantial evidence.[112] Responsibility is incurred when the level of the accused's participated is substantial, even when the crime is actually committed by another person.[113]

114. The *actus reus* requires that the accused, alone or together with others, designated the criminal conduct constituting the crimes charged. It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.[114] The *mens rea* requires that the accused acted with direct intent in relation to his or her own planning or with the awareness of the substantial likelihood that a crime would be committed in the execution of that plan. Planning with such awareness has to be regarded as accepting that crime.[115]

THE EVIDENCE AS IT RELATES TO COUNT 12

115. The Trial Chamber relied on the evidence of Prosecution and defense expert witnesses in support of the Prosecutions case against the Appellant pursuant to Count 12 of the Indictment[116]

116. The evidence of two former child soldiers was also relied upon in assisting the Trial Chamber arrive at it conviction against the Appellant. These were the testimonies of Prosecution child soldier witnesses TF1- 157and TF1-158.[117]

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[111] *Akayesu* Trial Judgment, para. 477; *Brdanin*b Trial Judgment, para 268; *Stakic* Trial Judgment, para. 443; *Krstic* Trial Judgment, para. 601.
[112] Balskic Trial Judgment, para 279.
[113] *Bagilishema* Trial Judgment, para. 30.
[114] *Kordic* Appeal Judgment, para. 26.
[115] *Kordic* Appeal Judgment, paras 29, 31.
[116] See paragraph 1248 of Judgment at page 351.

117. Prosecution witness TF1 157 mentioned one "Mohamed" as being responsible for his abduction and describes the tasks he was forced to carry out as including carrying rice and luggage[118]. Prosecution witness TF1-157 mentions one "Abdul" as being his commander during the 6 January invasion of Freetown.[119]

THE EVIDENCE AS IT RELATES TO COUNT 9 - BOMBALI

118. In respect of Count 9 the Trial Chamber in arriving at its conclusions with regards to Bombali district relied on the evidence of Prosecution and Defense witnesses TFI – 334, TFI – 094, TFI – 033 and DAB – 095 to find the Appellant guilty.

119. Witness TFI – 334 testified that he and other "soldiers" under the command of "Woyoh" captured approximately 35 civilian women during the attack on Karina in June of 1998.[120]

120. When the soldiers left Karina they stopped at a temporary base in the jungle. There Woyoh handed the women over to 'Five-Five'who was Chief of Staff.[121] 'Five-Five' distributed the women among the soldiers under his command by requiring them to "sign for" a woman. The women were "wives to the soldiers"[122]and they remained with their "husbands"until the soldiers invaded Freetown.

121. Witness TFI – 334 testified that "Five-Five" continued to regulate the "marriages" of the women abducted in Karina at Camp Rosos, and 'Gullit' appointed a "Mammy Queen" – a woman at the camp who looked after women's affairs,

[117] See paragraph 1252 of Judgment at page 351.
[118] See paragraph 1253 of Judgment at page 354.
[119] See paragraph 1255 of Judgment at page 355
[120] TFI – 334 Transcript 23 May 2005, pp. 63, 72.
[121] TFI – 334 Transcript 23 May 2005, p. 73.
[122] TFI – 334 Transcript 23 May 2005, p.77.

including pregnancy, birth and sickness.[123] 'Five-Five issued a disciplinary order that women who were unfaithful to their husbands should be punished.[124] In one instance, witness TFI – 334 observed a Staff Sergeant named "Junior" a.k.a. "General Bagehgeh" report to "Five-Five" that he suspected his "wife" of misbehaving. "Five-Five" called the woman before him and found her guilty. He ordered that she be sent to the Mammy Queen, to be given a dozen lashes and be locked in the box. The witness escorted her to the box.[125]

122. TFI – 033 who testified to having been taken along with AFRC troops to Rosos during the rainy season in 1998.[126] He testified that rape was widespread throughout the time he was in captivity and that according to "jungle justice" rules at the time, any fighter who raped another fighter's abducted and forcefully married wife would be put to death. The witness specifically recalled an incident in which Alhaji Kamanda alais 'Gunboot' killed an AFRC fighter for raping another fighter's forcefully abducted and married wife.[127]

123. Prosecution witness TFI – 094 was found by the Trial Chamber to have been subject to sexual slavery in Koinadugu District, who also testified that during the period of her sexual slavery, she was brought by the troops to Rosos.[128]

124. Defence witness DAB – 095 testified that he was in Colonel Eddie Town when it was used as a military camp for the SLAs under SAJ Musa. The witness was present during a muster parade held by SAJ Musa in Eddie Town when SAJ Musa gave an order that the SLAs should not attack civilians. Witness did not know about a Mammy Queen at Eddie Town. Soldiers were not allowed to rape civilians.[129]

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[123] TFI – 334 Transcript 23 May 2005, p. 62.
[124] TFI – 334 Transcript 23 May 2005, pp.65-67.
[125] TFI – 334 Transcipt 24 May2005, p. 67-69.
[126] TFI – 033 Transcript 11 July 2005, p. 22.
[127] TFI – 033, Transcript 12 July 2005, p. 9.
[128] Factual Findings, Outrages on Personal Dignity, paras 1078 -1083.
[129] DAB – 095, Transcript 28 September 2006, pp.49-54.

THE EVIDENCE AS IT RELATES TO COUNT 9 – WESTERN AREA

125. In respect of Count 9 the Trial Chamber in arriving at its conclusion with regards to Freetown and Western Area relied on Prosecution witnesses TFI - 023, TFI - 334, TFI - 094 and Defence witnesses DBK - 113 and DBK - 126.

126. Prosecution witness TFI - 023 testified that she was 16 when the AFRC invaded Freetown in January 1999. She and her family tried to hide but she was captured by "rebels" in Calaba Town on 22 January 1999.[130] At Calaba town she was given to an AFRC rebel who handed the witness over to a known AFRC Colonel who took her as his "wife".[131] That night the Colonel came into the room where the witness was instructed to sleep. He told her to undress, threatened her and had sex with her without her consent. Prior to this incident, the witness was a virgin.[132]

127. Prosecution witness TFI - 023 testifed that after that night she was taken along with the rebels as they attempted to evade ECOMOG attacks, travelling to Allen Town, Waterloo, Benguema, Lumpa and Four Mile.[133] At Four mile the witness spent three weeks with the Colonel who had sex with the witness frequently, referred to her as his wife and asked her to cook for him, but she did not because she did not know how.[134] The Colonel sent an armed escort with her wherever the witness went and the witness knew that those who tried to escpace were caught and beaten by the rebels.[135] The witness testified that the Colonel told her that the senior commander at Four Mile was Brigadier 'Bazzy'.[136] The witness testified that she saw Brigadier 'Bazzy' regularly when he visited the Colonel.[137]

EVIDENCE AS IT RELATES TO COUNT 13 - BOMBALI

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[130] TFI - 023, Transcript 09 March 2005, pp.33, 37.
[131] TFI - 023, Transcript 09 March 2005, p. 46.
[132] TFI - 023, Transcript 09 March 2005, pp 46-47.
[133] TFI - 023, Transcript 09 March 2005, pp. 48-49.
[134] TFI - 023, Transcript 09 March 2005, pp. 49-51.
[135] TFI - 023, Transcript 09 March 2005, pp. 51-53.
[136] TFI - 023, Transcript 07 November 2005, pp. 27, 34.
[137] TFI - 023, Transcript 10 March, pp. 32-33, 07 November 2005, p. 27 .

128. In respect of Count 13 the Trail Chamber in arriving at its findings with regards to Bombali district considered the testimony of Prosecution witnesses George Johnson, TFI – 334, TFI – 184, TFI – 157, TFI 158, TFI – 058 and Defense witnesses DBK – 101, DBK – 089 and DBK – 094.

Journey to Rosos

129. Prosecution witness TFI – 334 testified that 'Gullit' ordered at Mansofinia that any strong civilian encountered on the journey north should be captured and made part of the troop.[138]TFI – 334 also testified that he was present during the attack on Karina, which he stated took place in the early morning, from around 2am until 7am.[139]He testified that around 35 women were abducted in Karina and placed under the control of one Woyoh, who stripped them naked initially then handed control of the women to the Chief of Staff 'Five-Five'.[140]Prosecution witness TFI – 334 also testified that 'Gullit' subsequently ordered, in the presence of the witness, that the children be distributed among the various commanders.[141]After the attack on Karina, the soldiers arrived in Gbendembu, where they captured several young men and women.[142]

130. Defense witnesses DBK – 101 and DBK – 100 testified that fighters abducted a number of civilians in the attack on Kamagbengbeh in May 1998. When some of the abductees subsequently escaped and returned to the village, they told the other civilians that the attackers had forced them, under the threat of violence, to carry loads to Kamabai.[143]

131. Prosecution witness TFI – 058 was captured during the attack on Karina and ordered to sit with a group of other civilians being guarded by armed

[138] TFI – 334, Transcript 23 May, p. 17.
[139] TFI – 334, Transcript 23 May 2005, p. 75.
[140] TFI – 334, Transcript 23 May 2005, p. 73.
[141] TFI – 334, Transcript 23 May 2005, pp. 74-75.
[142] TFI – 334, Transcript 23 May 2005, p. 84
[143] DBK – 100, Transcript 17 July 2006, pp. 13-16; DBK – 101, Transcript 14 July 2006, pp. 72-77.

"juntas".[144]The "juntas" instructed some of the civilians to stand up and form two lines. The men were forced to carry goods and the women to follow behind. All of the women were naked, except for one who wore a loincloth. Armed men accompanied the civilians.[145]

132. Prosecution witness George Johnson and TFI – 157, who were traveling with the troops, testified that the abducted civilians were used as forced labour. Johnson stated that hundreds of civilians were forcefully captured in the villages on the journey and the women were used as cooks, whiles the men were either used to carry arms, ammunition and food, or trained as fighters.[146]Prosecution witness TFI – 157 stated that civilians were forcefully abducted in Bornoya, Daraya, Mayogbo, Kagbemneh, Kamanameh, Kamatelun, Kamabai and Karina in Bombali district and compelled to carry looted goods for the rebels to Rosos.[147]

Rosos

133. While at Rosos, the troops staged an operation to nearby village of Gbendembu, where additional civilians were abducted.[148]During the three months the troops stayed at Rosos, civilian abductees were used to perform domestic labour, including food finding, fetching water and cleaning dishes.[149]

134. Abductees were forced to undergo military training.[150]Trainees that attempted to escape during the three week training program in weapons handling, tactics, and maneuvering, were killed.[151]Prosecution witness George Johnson estimated that

[144] TFI – 058, Transcript 14 July 2005, pp. 61-64.
[145] TFI – 058, Transcript 14 July 2005, pp. 63-65.
[146] George Johnson Transcript 15 September 2005, pp. 66-87.
[147] TFI – 157, Transcript 22 July, p. 66-87.
[148] George Johnson Transcript 15 September 2005, p. 63; TFI – 158, Transcript 26 July 2005, p. 44.
[149] TFI – 158, Transcript 26 July 2005, pp.38-39; TFI – 157, Transcript 22 July 2005, pp. 96, 104, Transcript 25 July 2005, pp. 9-10.
[150] TFI – 334, Transcript 24 May 2005, p. 24; TFI – 158, Transcript 26 July 2005, pp. 39-40; TFI – 157, Transcript 25 July 2005, pp. 3-4.
[151] George Johnson Transcript 15 September 2005, pp 64-65.

about 520 civilians were trained in this manner at Rosos after which they were integrated into the battalions by FAT Sesay.[152]

EVIDENCE AS IT RELATES TO COUNT 13 - WESTERN AREA

135. In respect of Count 13 the Trial Chamber in arriving at its findings with regards to Freetown and the Western Area relied on the testimony of Prosecution witnesses TFI – 024,TFI – 227, TFI – 084, TFI – 023, TFI – 085, George Johnson and TFI – 334.

Freetown

136. Prosecution witness George Johnson testified that as the AFRC faction advanced on Freetown on 6 January 1999, they were accompanied by a large number of abductees who carried arms, ammunition and foodstuffs.[153]

137. Prosecution witness TFI – 334 testified that a few weeks after the invasion, at a meeting of senior commanders in the Upgun area during the retreat from Freetown, 'Gullit' ordered that troops should begin abducting civilians to attract the attention of the international community.[154] TFI – 334 then testified that he subsequently observed troops breaking into houses and capturing civilians, especially young girls that were taken back to headquarters at PWD.[155]It was the responsibility of the abducting commander to ensure that the civilians were 'well-secured', which meant that they could not escape.[156]

Kissy

138. Prosecution witness TFI – 334 testified that while the troops were based at Ferry Junction, during the retreat from Freetown, 'Gullit' issued a further order for

[152] George Johnson Transcript 15 September 2005, pp. 65-66.
[153] George Johnson Transcript 16 September 2005, pp. 8, 21.
[154] TFI – 334, Transcript 14 June 2005, pp. 62-63.
[155] TFI – 334, Transcript 14 June 2005, pp. 63-64.
[156] TFI – 334, Transcript 14 June 2005, p. 119.

abductions to start again.[157]The orders were followed and the abductees were taken to Kissy Mental Home.[158]

139. Prosecution witness TFI – 084 testified that he was in Kissy, Freetown, during the January 1999 retreat and saw 'rebels' in military dress capturing people including a 14 year old girl, putting them in vehicles and driving then away.[159]

Calaba Town

140. Prosecution witness TFI – 024 testified that he was captured in Freetown on January 8 by three armed rebel boys dressed in ECOMOG uniforms who took him to State House, beat him up, and locked him in the kitchen.[160]After four days of being locked up in the kitchen with 50 other civilians ECOMOG was approaching and the rebels forced the witness and the other civilians to flee with them out of Freetown. During this time the witness was forced to carry a heavy bomb to Calaba town were it was taken from him and he managed to escape.[161]

141. Prosecution witness TFI – 023 testified that on the afternoon of 22 January 1999, he and ten other civilians were captured by an armed young boy in Calaba town and added to a group of about two hundred rebels and civilians who had just been captured.[162]Following that day, the civilians were taken to Allen Town where there were more rebels and abductees who were guarded by armed boys who prevented them from moving around freely.[163]

Other locations in Freetown and Western Area.

142. Prosecution witness TFI -227 testified about being captured late in January 1999 in Kola Tree by soldiers who accused him of being a Kamajor and put in captivity

[157] TFI – 334, Transcript 14 June 2005, pp. 77-78.
[158] TFI – 334, Transcript 14 June 2005, pp. 78-79; Transcript June 15 2005, pp. 8-9; George Johnson Transcript 16 September 2005, pp. 52-53.
[159] TFI – 084, Transcript 6 April 2005, pp. 38-40.
[160] TFI – 024, Transcript 7 March 2005, pp. 43-45, 63-65.
[161] TFI – 024, Transcript 7 March 2005, pp. 48, 50-51, 53,81.
[162]TFI – 023, Transcript 9 March 2005, pp. 30-31.
[163] TFI – 023, Transcript 9 March, p. 35.

for ten months. At Kola Tree there were about 200 civilians who were forced by the AFRC to join them in their retreat to Benguema.[164]During the retreat to Benguema the AFRC used civilians to carry loads , perform domestic tasks or act as guards.[165]

143. Prosecution witness TFI-334 testified that from Benguema the troops retreated to Newton, where civilians did chores and 'Five-Five' was responsible for all the young girls at the camp.[166]

ANALYSIS OF THE LAW AND EVIDENCE

144. The Trail Chamber stated[167] that it does not agree with "such a narrow construction of the responsibility for planning" as set out in the Brdanin Trial Judgment which contends that responsibility for planning a crime only arises when an accused is "substantially involved at the preparatory stage of the crime in the concrete form it took, which implies that he possessed sufficient knowledge thereof in advance"

145. The Appellant submits that the reasoning in the Brdanin Judgment may be interpreted in accordance with established interpretations of planning, as set out in the Akayesu case,

> "*Planning implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases.*" (para 480)

146. The Brdanin Judgment set out a test requiring that the accused was,

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[164] TFI – 227, Transcript 8 April 2005, pp. 96,98; Transcript 11 April 2005, p. 6.
[165] TFI – 227, Transcript 8 April 2005, p. 98.
[166] TFI – 334, Transcript 15 September, pp 13-15.
[167] See paragraph 678 of Judgment at page 236

> *"substantially involved at the preparatory stage of that crime in the concrete form it took, which implies that he possessed sufficient knowledge thereof in advance." (para 357)*

147. The Appellant argues that the requirement in the Akayesu case of designing the commission of a crime at the execution phase is equivalent to the requirement in the Brdanin Judgment that the accused must have had a level of foreknowledge about the concrete form of the crime. This is backed by paragraph 358 of the Brdanin Judgment which states that the accused must have been,

> *"involved in the immediate preparation of the concrete crimes. This requirement of specificity distinguishes 'planning' from other modes of liability." (para 358)*

148. However the test followed by the Trial Judgment against Kamara was indeed a less strict one, taken from the Kordic case. In paragraph 768 the Trial Chamber held that, whilst it is necessary for there to be a *"Sufficient link between the planning of a crime at the preparatory and execution phases,"..."it is sufficient that the planning was a factor substantially contributing to such criminal conduct."*

Thus under this test the planning need only contribute to the commission of a crime, whilst under the Brdanin or Akayesu test the actual crime must be planned.

149. The Appellant therefore argues that the Trial Chamber went further than the Kordic judgment, since the Kordic judgment requires that the accused

"designated the criminal conduct constituting the crimes charged".

150. The use of the word designated could imply a level of specificity that is absent from the test set out in paragraph 768, which again suggests that the trial court

adopted a loose interpretation of the level of knowledge required for the offence of planning and therefore erred in law.

151. In paragraph 1917 of the Trial Judgment readily concedes that as Prosecution witness TF1-334 did not name the commanders who planned the attack on Karina it was "not prepared to infer merely by virtue of the accused Kamara's position as deputy commander he was one of them".

152. Indeed the Trial Chamber states categorically that[168] there is no evidence adduced "that the accused Kamara made a substantial contribution to the planning of any crimes under Counts 3 through 6, 10 through 11 and 14 in Bombali District" but was able through "reasonable inference" to deduce that as a result of the systematic commission of the crimes committed on a large scale the crimes were planned thereby erroneously assigning culpability to the Second Accused.[169]

153. The Trial Chamber could only have based its conviction of the Appellant for the Planning of the crimes under Counts 12, 9 and 13 on circumstantial evidence. The Appeals Chamber has said:

> A circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him.... Such conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from the evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.[170]

154. It is the case for the Appellant that the conclusion arrived at in finding the Second Accused guilty of the crimes of planning the crimes as set out in Counts

[168] See paragraph 1918 of Trial Judgment at page 524.
[169] See paragraph 1971 of the Trial Judgment at page 535.
[170] *Delalic et al.*, Appeals Chamber Judgment, Feb. 20, 2001 at paragraph 458.

12, 9 and 13 is not a conclusion established beyond a reasonable doubt thereby rendering the conviction against the Appellant erroneous in law.

RELIEF'S SOUGHT

155. The Appellant respectfully prays that the Appeals Chamber:

(1). revise the Judgment and enter a verdict of NOT GUILTY in respect of Counts 12 of the Indictment to reflect the fact that Kamara was not responsible under Article 6(1) for planning the abduction and use of child soldiers in Bombali District and the Western Area and,

(2) revise the Judgment and enter a verdict of NOT GUILTY in respect of Count 9 of the Indictment to reflect the fact that Kamara was not responsible under Article 6(1) for planning the commission of outrages upon personal dignity in the form of sexual slavery in Bombali District and the Western Area.

(3) revise the Judgment and enter a verdict of NOT GUILTY in respect of Count 13 of the Indictment to reflect the fact that Kamara was not responsible under Article 6(1) for planning the enslavement of civilians in Bombali District and the Western Area.

H. FIFTH AND SIXTH GROUND OF APPEAL

156. The Trial Chamber erred in law and or fact in paragraphs 1939, 1940, 1941 and 2117 of the Judgment in finding Kamara guilty under Article 6(1) of the Statute for **aiding and abetting** the murder/extermination of civilians at Fourah Bay, Freetown, and the Western Area pursuant to **Counts 3, 4, and 5** of the Indictment thereby invalidating the Trial Judgment and leading to a miscarriage of justice.

157. The Trial Chamber erred in law and or fact in paragraphs 1939, 1940, 1941 and 2117 of the Judgment in finding Kamara guilty under Article 6(1) for **aiding and abetting** the mutilation of civilians in Freetown, Western Area pursuant to **Count 10** of the Indictment thereby invalidating the Trial Judgment and leading to a miscarriage of justice.

158. Grounds five and six both deal with the Appellant's liability based on his responsibility under Article 6(1) for **aiding and abetting.** For an appropriate analysis of the issues, the legal aspects of grounds five and six will be discussed together and the factual analysis will be considered separately.

159. At paragraphs 775-777, the Trial Chamber stated;

> The *actus reus* of 'aiding and abetting' requires that the accused gave practical assistance, encouragement, or moral support which had a substantial effect on the perpetration of a crime. "Aiding and abetting" may be constituted by contribution to the planning, preparation or execution of a finally completed crime. Such contribution may be provided directly or through an intermediary and irrespective of whether the participant was present or removed both in time and place from the actual commission of the crime. Mere presence at the scene of crime without preventing its occurrence does not *per se* constitute aiding and abetting. However, the presence at a crime scene of a person who is in a position of authority may be regarded as an important indication for encouragement or support.
>
> The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed.[171]

160. In *Vasiljevic*, the Appeals Chamber set out the *actus reus* and *mens rea* of aiding and abetting as:

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[171] *TrialChamber* Judgment, para. 775-777.

> The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination , rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial effect upon the perpetration of the crime. [...] In the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist [in] the commission of the specific crime of the principal.[172]

161. The Appellant submits that one of the requirements of the *actus reus* of aiding and abetting is that the support of the aider and abettor should have had a substantial effect upon the perpetration of the crime.[173] The act of the aider and abettor must have a direct link with the other person's offence.

162. The requirement of a substantial effect on the perpetration of a crime has been clarified by the International Law Commission (ILC). The ILC require that the accomplice "provide the kind of assistance which contributes directly and substantially to the commission of the crime for example by providing the means which enable the perpetrator to commit the crime".[174] In the *Tadic* case it was stated that participation is substantial if "the criminal act most probably would not have occurred in the same way had not someone acted in the role that the accused in fact assumed".[175] But "assistance need not constitute an indispensable element, that is, a condition *sine qua non* for the acts of the principal".[176]

163. The Trial Chambers in *Kunarac* and *Krnojelac* explained that the *mens rea* of aiding and abetting consists of the knowledge (or awareness) that the acts performed by the aider and abettor assist in the commission of a *specific* crime by

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[172] *Vasiljevic* Appeal Judgment, para. 102.
[173] *Blaškić* Appeal Judgment, para.48
[174] Report of the International Law Commission on the work of its forty-eighth session, 6 May – 26 July 1996, UN Doc. A/51/10, p. 24.
[175] *Prosecutor* v.*Tadic* (Case No. IT-94-1-T), Opinion and Judgment, 7 May 1997, para. 688.
[176] *Prosecutor* v. *Furundzija* (Case no. IT-95-17/1-T), Judgment, 10 December 1998, para 209.

the principal.[177] The Trial Chamber in the *Simic* case held that the stricter definition set out in *Kunarac* and *Krnojelac* was persuasive and endorsed it.[178]

164. The Appellant submits that the liability for aiding and abetting requires a strict actual knowledge. He submits that not only must the aider and abettor know that his acts provide support to another person's offence, but he must also know the specifics of that offence. Indeed, the aider and abettor must know the essential matters which constitute the specific offence in question and armed with such knowledge, proceeds to assist the principal offender to commit the offence. In the *Krnojelac* Appeals it was held that "it is not necessary to show that the aider and abettor shared the *mens rea* of the principal, but it must be shown that [...] the aider and abettor was aware of the essential elements of the crime which was ultimately committed by the principal."[179]

165. The Appellant maintains that the Trial Chamber erroneously applied a wider standard of liability instead of the stricter standard to find the Appellant guilty as an aider and abettor based on its analysis of the *mens rea* of aiding and abetting.[180]

166. The Appellant contends that that Trial Chamber erred in law when it find to consider the fact that it must show that the aider and abettor was aware of the essential elements of the crime which was ultimately committed by the principal.

Killing of civilians in Fourah Bay

167. The Trial Chamber erred in law in paragraph 1939 of the Judgment when it failed to clearly state the support of the Appellant in aiding and abetting the commission of the crime and secondly the link between this support and the offence of the perpetrator. The Trial Chamber stated that the Appellant "partook" in the attack

[177] *Krnojelac* Trial Judgment, para. 90; *Kunarac* Trial Judgement, para. 392
[178] *Simic* Trial Judgment , para 165.
[179] *Krnojelac* Appeal Judgment, para 51 citing *Aleksovski* Appeal Judgment, para. 162.
[180] Trial Chamber Judgment para 776.

on Fourah Bay, but was unable to precisely explain the meaning of "partook". The Appellant submits that he cannot he held liable for aiding and abetting when the very basis for which he is held liable by the Trial Chamber is unclear.

168. An individual's position of superior authority does not suffice to conclude from his mere presence at the scene of the crime that he encouraged or supported the crime. However, the presence of a superior can be perceived as an important *indicium* of encouragement or support.[181] Nonetheless, responsibility is not automatic and merits consideration against the background of the factual circumstances.[182]

169. In *Mpambara* the Trial Chamber held that mere presence of a person in authority at the scene of a crime constitutes aiding and abetting, provided that it is shown that the inaction of the accused had an encouraging or approving effect on the perpetrators; that the effect was substantial; and that the accused knew of this effect and of the perpetrators' criminal intention, without necessarily sharing the perpetrators' criminal intent.[183]

164. The Appellant holds that the Trial Chamber established only that he was present at the scene of the crime, whereas the Judgment states that presence alone cannot constitute aiding and abetting.[184] He contends that the Trial Chamber omitted to state clearly and unequivocally the concrete acts and omissions by which he made a significant contribution to the perpetration of the crime. The Trial Chamber's finding that he was an aider and abettor to the crime, without establishing unequivocally that he knew that, by his acts or omissions, he was contributing significantly to the underlying crime committed by the principal offenders was erroneous.

170. The Appellant submits that the basis for asserting that the Appellant partook in the attack derives from that fact that the Trial Chamber erroneously found that the

[181] *Brdjanin* Trial Judgment, para 271.
[182] *Aleksovski* Appeal Judgment, para. 65.
[183] *Mpambara* (Case No. ICTR-01-65-T) Judgment.
[184] Trial Judgment, para 775.

Appellant was present during the commission of the crimes. This goes to the Trial Chamber's error of facts.

171. The Appellant was found liable for aiding and abetting the killing of civilians in Fourah Bay based on the testimony of Witness 334 whose evidence on that incident was inconsistent with that of Witness 184. In its analysis of this incident, the Trial Chamber stated that Witness 184's evidence was more detailed.[185]

> Q. Slow down. Mr Witness, just to make sure I understand your testimony, at this point are you with Bazzy, Gullit and Five-Five?
> A. I was with Five-Five, Gullit, Bazzy. Was if you can see -- if you can see Old Road Kissy Road -- Kissy Old Road, just after you crossed the bridge, there is another road that will follow to go to the new road. That was where Bazzy was. Five-Five and Gullit, they were in one of the burnt houses which was a storey building.
> Q. Mr Witness, again, the question that I asked you is a simple one. So again I am going to ask you to listen to the question and just answer the question as simply as you can, but feel free to explain yourself. The question that I asked you was whether or not -- and I will do it differently this time. Was Gullit present when this young boy came up and told you that a soldier had been killed by some civilians?
> A. Gullit and Five-Five --
> Q. No, I'm just [overlapping speakers].
> A. Yes.
> Q. Thank you. Was Five-Five present when this person came up and told you all about the soldier being killed by civilians?
> A. Yes.
> Q. Was Bazzy directly present, not nearby, not a hundred yards away --
> A. No, no.
> Q. Mr Witness, if anything, did Gullit or Five-Five say.....[186]

172. Witness 184 clearly stated that Bazzy was not present when the others where told about the soldier who was killed by civilians. In his subsequent testimony witness 184 did not mention Bazzy as being present in Fourah Bay. The Trial Chamber after indicating that the evidence of Witness TF1-184 was more detailed did not provide a clear reasoning as to why Witness 334's testimony on the incident, which was not clear and also inconsistent with that off TFI-184, was conceded.

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[185] Trial Judgment, para.924.
[186] TFI-184, Transcript 27 September 2005, p.72.

173. The Appellant argues that his presence at the scene was not proved beyond reasonable doubt. Even though Witness-334 testified that troops including himself, 'Gullit', 'Bazzy', 'Five-Five', the Operation Commander, the Deputy Operation Commander and his superior "Commander A" moved to Fourah Bay, he further stated that all of the commanders participated in the attack, naming specifically only 'Gullit' and 'Five-Five'.[187] He never mentioned the Appellant's name indicating that the Appellant was not there which would be in line with Witness-184's testimony that the Appellant was not present.

175. The Appellant submits that the Trial Chamber erred in its evaluation of the evidence and reached a conclusion that no reasonable tribunal could have reached thereby leading to a miscarriage of justice. The guilty verdict in paragraph 2117 and the subsequent 45 year sentencing was based on this erroneous evaluation of the evidence thus leading to a miscarriage of justice

Mutilation of civilians in Freetown, Western Area

176. The Trial Chamber erred in fact in paragraph 1941 of the Judgment in finding the Appellant guilty for aiding and abetting the mutilation of civilians in Freetown, Western Area based on the evidence of Prosecution witness TFI-153.

177. The Trial Chamber stated that;

> The Accused Kamara led a mission to loot machetes from the World Food Program warehouse. He later explained to Tina Musa, the late SAJ Musa's wife, that they had been used that day in "Operation Cut Hand," meaning that his troops had used the machetes to amputate civilians.[188] The Trial Chamber is satisfied that the Accused, in providing weapons to the troops, with knowledge of how these weapons were to be used, the Accused Kamara gave practical assistance which had a substantial effect on the perpetration of unlawful killings and physical violence in Freetown. It further finds that the Accused Kamara was aware of the substantial likelihood that the use of the machetes would assist in the commission of these crimes. The Trial Chamber therefore finds the Accused Kamara liable for aiding and abetting physical violence.[189]

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[187] TF1-334, Transcript 14 June 2005, pp. 66-67.
[188] TF1-153, Transcript 23 September 2005, p. 18.
[189] Trial Chamber Judgment, para 1941.

178. In its analysis of the credibility of Witness 153 the Trial Chamber stated that:

> Although the witness was not entirely clear in his examination in chief, the Trial Chamber finds that inconsistencies between the evidence he gave at trial and his prior statement to the Prosecution were not of sufficient gravity to cast doubt as to his credibility.[190]

179. The Appellant submits that the Trial Chamber erred in accepting Witness 153 as a credible witness. The Appellant argues that the Trial Chamber erred in failing to give due weight to the inconsistencies referred to in the Trial Judgment and, moreover, failed to address other material inconsistencies between Witness TFI-153's in-court testimony, which coupled with the inconsistencies between the evidence he gave at trial and his prior statement to the Prosecution sufficiently casts grave doubts as to his credibility.

180. Witness TFI 153 stated in his testimony that he never saw Bazzy at PWD

> Q. Do you know if Tina Musa spoke with Bazzy at the PWD headquarters?
> A.Well, I didn't see Bazzy at the PWD headquarters. It was Five-Five, Gullit and Woyoh.
> Q. Sorry. The question is very simple.
> A. Sorry.
> Q. Yes or no: Do you know if Tina Musa spoke with Bazzy at the PWD headquarters?
> A. I did not see that. I never saw Bazzy.[191]

Later when asked about the raid of a warehouse, Witness 153 had this to say:

> Q. Thank you, Mr Witness. Did you hear of any raids of any warehouses?
> A. Oh, yes.
> Q. What did you hear about a raid of a warehouse, Mr Witness?
> A. That was a WFP warehouse that is at the PWD area.
> Q. What did you hear about the raid of the warehouse of the WFP?
> A. I heard that Bazzy went there and unlocked the warehouse in the pretext that there was food in it. But when he opened the warehouse, he met machetes.
> Q. Mr Witness, did you learn what happened to those machetes?
> A. Yes, I learnt about it in the evening.
> Q. What did you learn about the machetes?
> A. Well, in the evening I saw Bazzy. He came to inform Tina Musa that he was having this weapon but all his boys were having machetes. So, Tina Musa asked him, "Why your men are holding machetes?" He said, "We are

[190] Trial Chamber Judgment, para 368.
[191] TF1-153, Transcript 23 September 2005, p. 14-15.

> just from Operation Cut Hand." That was how I knew that the machetes that they took out of the WFP warehouse they used to amputate people.
> Q. Mr Witness, at some point did you move from the headquarters at PWD?
> A. Yes.[192]

181. He later testified that ;

> Q. Can you remember if he was playing any role within the movement to Freetown?
> A. Well, he was in Bazzy's group.
> Q. Can you remember what he was doing within that group?
> A. Well, when we came to Freetown, I did not see him any more. I did not see him. I didn't even see Bazzy.[193]

182. The Appellants' liability for aiding and abetting physical violence in Freetown was based on the testimony which was false. When asked in cross-examination Witness 153 had some thing different to say:

> [.....So the question I want to put to you is that did you or didn't you see Tina Musa speak with Bazzy at the PWD headquarters?
> A. I said at Shankardass. I didn't say at PWD. I said Shankardass, at Shankardass.
> Q. Mr Witness, what I am reading is what has been recorded from your own conversation this morning.
> A. I said when we left Shankardass -- when we left PWD we went to Shankardass. We left PWD and went to Shankardass. When we went to Shankardass, there we sat and saw Bazzy come.
> Q. I want to put to it you again that --....]
> Q. [.....I want to put it to you again that you have not been truthful to this Court.
> A. I am also telling you that, as long as I have taken an oath, I am saying the truth.
> Q. We shall move on then. Just before that could you just confirm whether or not you were present when the warehouse was raided?
> A. I was not there when they raided that store.[194]

183. The Appellant submits that Witness 153's testimony on the raid of the ware house at PWD was based on hearsay. The Trial Chamber erred in attributing weight or giving the statement probative value, when the witness did not personally witness the raid and was not certain as to where the raid took place (either at PWD or

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[192] TF1-153, Transcript 23 September 2005, p. 18. Trial Chamber Judgment.
[193] TF1-153, Transcript 23 September 2005, p. 55.
[194] TF1-153, Transcript 23 September 2005, p. 87-88 Cross-examination.

Shankardass). Secondly Witness 153 was inconsistent as to whether Bazzy was at PWD and if Bazzy spoke to Tina Musa at PWD or at Shankardass or if this conversation ever took place at all. Although it is not a legal requirement that the testimony of a single witness on a material fact be corroborated before it can be accepted as evidence,[195] the evidence must be credible.

184. Noting that the allegation that Bazzy raided a warehouse and took machetes that were subsequently used to mutilate people was a very important material fact in the Trial Chamber's decision to convict him, the Appellant submits that the Trial Chamber should have discussed the discrepancies in Witness 153 testimony.

185. In the ICTY case of Kupreskic, the Appeal Chamber stated that

> ...it is incumbent upon a Trial Chamber to consider the evidence of every witness in light of the entire trial record and to explain why, despite material inconsistencies, it nonetheless accepts the evidence of the witness. It is a fundamental principle, affirmed in the jurisprudence of this Tribunal, that the credit of a witness can never be finally determined until all of the evidence has been given.[196]

186. The Appellant submits that the credibility of a witness is assessed based on (1) credibility in terms of internal consistency and details;[197] (2) strength under cross-examination;[198] (3) consistency against prior statements of the witness;[199] (4) credibility vis-à-vis other witness accounts or other evidence submitted in the case;[200] (5) possible motives on behalf of the witness.[201] If the testimony would show weakness in any of these respects, the Trial Chamber would look for corroboration. If this was not found, or if the corroboration consisted of hearsay, it should refuse to base a conviction on that testimony.[202] The Appellant submits

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[195] *Delalic et al.* Appeal Chamber Judgment Feb 2001, para 506. *Kunarac et al.*, Appeal Chamber Judgment June 2002, para 268.
[196] Kupreskic et al., Appeal Chamber Judgement, Oct 2001, para 202.
[197] Bagilishema Judgement June 2001, para 532.
[198] *Id.* Para 615.
[199] *Id.* Para 374, 411.
[200] *Id.* Para 374.
[201] *Id.* Para 749.
[202] International Criminal Evidence by Judge Richard May Marieke Wierda, 2002.

that the Trial Chamber erred in accepting the evidence of Witness 153 in the absence of any corroboration.

188. This discrepancy is extremely material as it goes directly to strongly suggest that the Appellant other wise aided and abetted the mutilations in Freetown. In the interest of justice, the Appellant submits that the Appeals Chamber carefully assess the discrepancies the Trial Chamber overlooked.

189. The Appellant submits that the *Tadic* Appeals Judgment demonstrates that, in evaluating the sufficiency of the evidence in support of a conviction, the Appeals Chamber must determine whether the standard of proof beyond reasonable doubt was correctly applied by the Trial Chamber.[203]

190. The Appellant submits that the Trial Chamber erred in its evaluation of the evidence, and reached a conclusion that no reasonable tribunal could have reached there by leading to a miscarriage of justice.

RELIEF SOUGHT

191. The Appellant respectfully prays that the Appeals Chamber:

(1). revise the Judgment and enter a verdict of NOT GUILTY in respect of Counts 3, 4 and 5 of the Indictment to reflect the fact that Kamara was not responsible under Article 6(1) for aiding and abetting the murder/extermination of civilians at Fourah Bay, Freetown and the Western Area and,

(2) revise the Judgment and enter a verdict of NOT GUILTY in respect of Count 10 of the Indictment to reflect the fact that Kamara was not responsible under Article 6(1) for aiding and abetting the mutilation of civilians in Freetown, Western Area.

[203] *Tadic* Appeal Judgment, para 64. *See* also *Aleksovski* Appeal Judgment, para 63.

I. SEVENTH GROUND OF APPEAL

191. The Trial Chamber erred in law and or fact in paragraphs 1884, 1893 (Kono), 1928 (Bombali), 1950 (Western Area), 1969 (Port Loko) and 2117 of the Judgment in finding Kamara criminally responsible/guilty under Article 6(3) for crimes **committed** by his subordinates at Tombodu, Kono District and throughout Bombali District and the Western Area and Port Loko District pursuant to **Counts 1, 2, 3, 4, 5, 6, 9, 10, 12, 13, and 14** of the Indictment thereby leading to a miscarriage of justice.

192. Command responsibility under Article 6(3) of the Statute of the Special Court for Sierra Leone is the same as Articles 6(3) and 7(3) of the ICTR and ICTY respectively. In respect of the meaning of a commander or superior as laid down in Article 7(3) of the Statute, the Appeals Chamber held in *Aleksovski*:

> Article 7(3) provides the legal criteria for command responsibility, thus giving the word "commander" a juridical meaning, in that the provision becomes applicable only where a superior with the required mental element failed to exercise his powers to prevent subordinates from committing offences or to punish them afterwards. This necessarily implies that a superior must have such powers prior to his failure to exercise them. If the facts of a case meet the criteria for the authority of a superior as laid down in Article 7(3), the legal finding would be that an accused is a superior within the meaning of that provision.[204]

193. The Appeals Chamber therefore agrees with the Trial Chamber's conclusion in the *Celebici* case stating that:

> The doctrine of command responsibility is ultimately predicated upon the power of the superior to control the acts of his subordinates. A duty is placed upon the superior to exercise this power so as to prevent and repress the crimes committed by his subordinates, and a failure by him to do so in a diligent manner is sanctioned by the imposition of individual criminal responsibility in accordance with the doctrine. It follows that there is a threshold at which persons cease to possess the necessary powers of control over the actual perpetrators of offences and, accordingly, cannot properly be considered their "superiors" within the meaning of Article 7(3) of the Statute.[205]

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[204] *Aleksovski* Appeal Judgment, para 76.
[205] *Celebici* Appeal Judgment, para. 197, citing *Celebici* Trial Judgment, para. 377.

194. The Appellant submits that command and control are inseparable. To hold a person liable on the basis of superior responsibility there needs to be proof of both command and control. Command needs to be exercised through control.[206] To have control means having effective authority over subordinates.[207] Being called commander in itself is not sufficient to infer subordination; there must be exercise of superior authority over the institution and its personnel.[208]

> "Effective control has been accepted, as a standard for the purposes of determining superior responsibility. The showing of effective control is required in cases involving both de jure and de facto superiors."[209]

195. The Appellant argues that the reliance by the Trial Chamber on the evidence cited in the Trial Judgment in support of the finding that he exercised superior authority was unreasonable.

196. The doctrine of superior responsibility does not establish a standard of strict liability for superiors for failing to prevent or punish the crimes committed by their subordinates. Instead, it provides that a superior may be held responsible only where he knew or had reason to know that his subordinates were about to or had committed the acts.[210] The indicators of effective control are more a matter of evidence than of substantive law.[211]

KONO

197. The Appellant submits that the Trial Chamber erred in fact in paragraph 1869 of its judgment in concluding that Witness TF1-334 testified that the AFRC troops

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[206] The Criminal Responsibility of Individuals for Violations of International Humanitarian Law by E. van Sliedregt. 2003 page 152.
[207] *See* para. 378, *Celebici* Trial Judgment, endorsed by the *Celebici* Appeal Judgment, paras. 256 and 265-266.
[208] *Celebici* Judgment, para. 763.
[209] *Celebici* Appeal Judgment, para. 196. The Appeals Chamber referred to Article 28 of the ICC Statute which reaffirmed the standard of effective control.
[210] *Čelebici* Trial Judgment para 383.
[211] Blaskic Appeal Judgment para 69.

held muster parades every week in Kono, until they were prohibited from doing so by Morris Kallon (RUF).[212]

> Q. You use the word muster, M-U-S-T-E-R; what do you mean by muster?
> A. This is a military term that is to bring together the various forces and address them. That is what we call mustered.
> Q. How often does a muster generally occur in a military context?
> A. Well, this was a weekly address. Every week the two groups were addressed.
> Q. Now, go on. You were talking about Morris Kallon saying something about the SLAs and that they should not muster? And again he said the SLA should -- had no right to call themselves SLA in Kono, and neither AFRC, because he only knew of one faction and that is the RUF faction. So this brought confusion between the RUF and the SLA.[213]

198. Following the testimony of Witness 334, he talked about how often a muster generally occurs in a military context and not how often there was a muster in Kono. The Trial Chamber's interpretation of that statement was wrong. Noting that the Trial Chamber clearly stated that

> .....the Trial Chamber finds that it has not been established beyond reasonable doubt that the Accused Kamara's authority extended to all battalions active in Kono District. Thus, it cannot be stated with certainty that Kamara exercised effective control over the entire AFRC and RUF troops in Kono District during this period...[214]

199. The Trial Chamber erred in fact when it found the Appellant liable for the crimes committed by Savage in Kono. The Appellant submits that the both Prosecution and Defence witnesses gave extensive evidence to support the fact that the RUF headed by Mosquito, Superman and Morris Kallon had total command and control over Kono.[215]

200. The Appellant submits that Witness TF1-334 did not testify that the Accused Kamara promoted Staff Alhaji to Lieutenant after the capture of Kono District. Witness TFI-334 testified that Savage was promoted from Corporal to Lieutenant by Bazzy.[216] His statement was contrary to the previous testimony of TFI-334 that

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[212] Trial Judgment para 1870.
[213] TF1-334, Transcript 19 May 2005, pp. 9-10.
[214] Trial Judgment para 1870.
[215] DBK-113 Transcript, 13 October 2006 page 66, DBK-129 Transcript, 09 October 2006 page 69- 71. TFI-167 Transcript of 19 September 2005, page 60. TFI-334 Transcript 18 May 2005 page 24.
[216] TF1-334, Transcript 19 May 2005, pp. 50-51.

Mohamed Savage was made Captain on the recommendation of Superman[217] and to the testimony of Witness TFI-167 that Savage was appointed Lieutenant by Denis Mingo, aka Superman. TFI-167 further testified that he knew about the appointment because he too was promoted on the same day.[218]

201. The Appellant contends that the issue of who appointed Savage is a material fact in the determination of Bazzy's liability. The Trial Chamber erred in fact in considering on this issue the testimony of Witness TFI-334, rather than testimony of Witness TFI-167 who clearly stated that he was promoted on the same day so he was able to know who appointed Savage. The Trial Chamber failed to provide an explanation why they relied on the testimony of Witness TFI-334.

202. Both Prosecution witnesses 334 and 167 clearly testified that Savage reported to and took orders from Superman.[219] The Appellant submits that as noted by the Trial Chamber, 'Savage' was subordinate to the RUF.[220] Witness TFI-167 testified that in the absence of Johnny Paul Koroma in Kono, the SLAs were under the RUF and took instructions from Superman, who took instructions from Mosquito.[221] Witness TF1-334 stated that Denis Mingo was in Tombodu shortly after the crimes were committed by Savage and that Denis Mingo condemned Savage's action and stated that he had committed crimes against humanity.[222] On one occasion, prior to the time, 'Savage' became "abnormal", the witness saw 'Savage' flogging two individuals in the presence of the Accused Brima and the Accused Kanu. Brima told him to stop, which he did, but witness George Johnson testified that after they returned to Koidu Town, 'Savage' executed the two men.[223]

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[217] TF1-334, Transcript 19 May 2005, pp. 22-23
[218] TFI-167, transcript 15 September 2005 p. 46
[219] TF1-334, Transcript 19 May 2005, p. 23, TFI-167, transcript 19 September 2005 p. 41
[220] Trial Chamber Judgment para 1878
[221] Transcript of 19 September 2005, page 60
[222] Trial Chamber Judgment para 1878. TF1-334, Transcript 20 May 2005, p. 17.
[223] George Johnson, 19 September 2005, pp. 49-50.

203. It is necessary that the superior have effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent or punish the commission of these offences.[224] The factor that determines liability for this type of criminal responsibility is the actual possession, or non-possession, of powers of control over the actions of subordinates.[225] The evidence unequivocally stated that only Johnny Paul Koroma and Superman exercised effective control over Savage when he was controllable.

204. The Appellant notes that in paragraph 1881-1883 of the Judgement, the trial Chamber notes that, 'Savage' was unruly in character and operated independently from his superiors. 'Savage' was very difficult to control and was an "unpredictable character". "In the early stages" 'Savage' was under the command of Denis Mingo and would listen to his instructions and carry them out, but later became "abnormal" and he would not listen to anyone except Johnny Paul Koroma. 'Savage' had possession of enough weapons to protect himself and his men and because of this no one dared to tell him what to do or not to do.[226]

205. The Appellant argues that, following the doctrine of command responsibility, culpability is ultimately predicated upon the power of the superior to control the acts of his subordinates. The above mentioned evidence clearly indicates that while in Kono, Bazzy did not have the power to control the acts of Savage.

206. The Appellant submits that when a person ceases to possess the necessary powers of control over the actual perpetrators of offences, he cannot properly be considered their "superior".[227]

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[224] *Čelebici* Appeals Judgment para 197 Note Blaskic Trial Chamber I (3 March 2000) **(IT-95-14-T)** at para. 295: "The Prosecution submitted that the term "superior" is not limited to commanders who are above the perpetrators of crimes in the regular chain of command. The determining factor in the case in point is whether or not the commander exercised control over the acts of his subordinates. Proof is required that the superior has effective control over the persons committing the violations of international humanitarian law in question, that is, has the material ability to prevent the crimes and to punish the perpetrators thereof."
[225] *Čelebici* Trial Judgment para 370.
[226] Trial Chamber Judgment para 1881-1883.
[227] *Celebici* Appeal Judgment, para. 197, citing *Celebici* Trial Judgment, para. 377.

207. The Appellant contends that in evaluating the evidence the Trial Chamber must at all times exercise great care lest an injustice be committed in holding individuals responsible for the acts of others in situations where the link of control is absent or too remote.[228] He submits that the link of control between Bazzy and Savage was absent.

208. The Appellant contends that the Trial Chamber erred in finding that he had effective control over Savage, which included the material ability to punish him. He argues that, in light of the absence of any evidence in the Trial Judgment which supports the assertion that the Appellant had a duty to punish Savage, the Trial Chamber's conviction under Article 6(3) is clearly erroneous."

209. The Appellant submits that the Trial Chamber erred in finding that he did not take reasonable measures to punish Savage who was responsible for the crimes in Kono, because he had no *de jure* power to punish the alleged culprit.

210. The Appeals Chamber considers that even though a determination of the necessary and reasonable measures that a commander is required to take in order to prevent or punish the commission of crimes, is dependent on the circumstances surrounding each particular situation, it generally concurs with the *Celebici* Trial Chamber which held:

> It must, however, be recognised that international law cannot oblige a superior to perform the impossible. Hence, a superior may only be held criminally responsible for failing to take such measures that are within his powers. The question then arises of what actions are to be considered to be within the superior's powers in this sense. As the corollary to the standard adopted by the Trial Chamber with respect to the concept of superior, we conclude that a superior should be held responsible for failing to take such measures that are within his material possibility.[229]

211. The Appellant submits that in light of the foregoing, the Appeals Chamber should assessed evidence admitted and that the only finding a reasonable trier of fact

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[228] *Celebici* Trial Judgment, para. 377.
[229] *Celebici* Judgment, para. 395.

could have reached is that the Appellant was not guilty as a commander for the crimes committed in Kono.

212. In paragraph 1923 of the Judgment, the Trial Chamber stated that evidence of a *de jure* position of authority does not *per se* suffice to prove the existence of a superior-subordinate relationship, especially in the context of a non-traditional military organisation such as the AFRC troops.[230]

BOMBALI

213. The Appellant submits that the Trial Chamber erred in fact in finding Bazzy liable as a commander in the Bombali district based on the fact that he ordered troops in Karina and participated in decision making. The Appellant contends that the Trial Chamber failed to reconcile the conflicting testimony of Witnesses TFI-334 and TFI-167 with regards to the burning of people in a house in Karina.

214. Witness TFI-334 testified that in Karina, he, Bazzy and Bazzy's CSO met five young girls in a flat house and set the house ablaze while the main door was closed by Bazzy. Witness TFI-167 who as Witness TFI-334 stated was CSO[231] stated that as they were entering Karina, there was a house with a Benz vehicle parked outside. He was there with Bazzy and Eddie Williams aka Maf, when Eddie Williams went into the house, wrapped people in carpets of the house and set the house on fire.[232] Prosecution Witnesses TFI-334 and TFI-167 gave contradictory evidence of the same incident. Prosecution Witness TFI-055 who was in Karina at the time of the attack, does not mention that anybody was burnt in a house in Karina. The Trial Chamber failed to take into account the testimony of the Defence witnesses who testified that people were not burnt in a house in Karina.[233]

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[230] Trial Chamber Judgment para 1923.
[231] Transcript 19 May 2005 page 13.
[232] Transcript 15 September 2005 page 54-55.
[233] DBK-094, 11 July 2006, page 38-45 and 65-75

215. The Appellant submits that, while recognising that the Trial Chamber need not address every discrepancy in the evidence, the Appellant contends that discrepancies on issues that may be determinative of guilt or innocence must be addressed in a reasoned manner. In failing to provide a reasoned opinion to explain its evaluation of the conflicting evidence the Trial Chamber failed to establish that the evidence proves beyond reasonable doubt that the Appellant was liable as a commander.

216. The Appellant submits that he only had powers to issue orders but not powers to discipline them. The Trial Chamber clearly stated that there was no direct evidence with regard to Kamara's precise involvement in giving orders.[234] This indicates that the threshold of effective control over the troops was not established beyond reasonable doubt.

217. The Appellant further contends that, as to the application of the standard of proof beyond reasonable doubt, the Appeals Chamber must find that guilt was not merely a reasonable conclusion based on the evidence, but rather the only "fair and rational hypothesis which may be derived from the evidence".[235]

FREETOWN

218. In paragraph 1944-1948 of the Judgment, the Trial Chamber erred in fact when it found the Appellant liable as a commander for crimes committed in Freetown.[236]

219. The Appellant submits that the reliance by the Trial Chamber on the fact that Bazzy was present at meetings and was also present at State House cannot form the bases on which his criminal responsibility with regard to command responsibility could and should be assessed.[237]

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[234] Trial Chamber Judgment, para 1924.
[235] *Tadic* Appeal Judgment, para 174.
[236] Trial Chamber Judgment para 1944-1948.
[237] Trial Chamber Judgment para 1945.

220. The Appellant contends that the Trial Chamber relied on the evidence of Witness TFI-167 to establish the fact that Kamara ordered that the released prisoners should move to State House.[238] The evidence contradicts that of TFI-334 who also testified regarding the prison attack but does not mention Kamara as one of the commanders who took part in that attack.[239]

221. Similarly TFI-184 testified that after the loss of State House, the Accused Kamara gave an order to AFRC troops to burn houses,[240] contradicting TFI-334 testimony that as Gullit came to the State House, and said CID and the police station should be burned burnt down. The discrepancies were a grave issue because they dealt with facts which the Trial Chamber relied on in finding the Appellant guilty as a commander. The Trial Chamber failed to give a reasonable explanation as to it choice of evidence to consider.

222. The Appellant submits that the Trial Chamber erred in considering that Bazzy was often in the company of other senior commanders, including the Accused Brima and the Accused Kanu, and gave a number of orders himself, he participated in decision making and did not distance himself from decisions made,[241] so he had effective control over the troop.

RELIEF SOUGHT

221. That the Appeals Chamber revise the Judgment and enter a plea of NOT GUILTY in respect of Counts 1, 2, 3, 4, 5, 6, 9, 10, 12, 13 and 14 of the Indictment to reflect the fact that Kamara was not responsible under Article 6(3) for crimes committed by his subordinates at Tombodu, Kono District and throughout Bombali District and the Western Area and Port Loko by virtue of Kamara's alleged exercise of leadership and effective control.

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[238] George Johnson, Transcript 16 September 2005, pp. 27-29.
[239] TF1-334, Transcript 14 June 2005, pp. 5-7.
[240] Trial Chamber Judgement, para 1947., TF1-184 Transcript 30 September 2005, p. 9.
[241] Trial Chamber Judgement, para 1948

J. EIGHTH GROUND OF APPEAL

223. The Trial Chamber erred in fact in paragraphs 356 to 371 of the Judgment in failing to consider in sufficient detail the question of the credibility of witnesses TF1 -334, TF1- 153, TF1-184 and George Johnson as being likely to be affected by ulterior motives thereby invalidating the Trial Judgment and leading to a miscarriage of justice.

224. The Appellant submits that the Trial Chamber erroneously relied on the testimony of Prosecution Witnesses TFI-334, TFI-153, TF1-184 and George Johnson in determining the liability of Bazzy. Witnesses TFI-334, TFI-184 and TFI-167 were directly involved as participants in all the crimes in the Indictment. These witnesses could be considered as co-perpetrators or accomplices, thus a trier of fact has to exercise particular caution in examining every detail of the witnesses' testimony.[242]

225. The Appellant submits the Trial Chamber failed to keep in mind that the presumption that a witness gives evidence honestly is not in itself sufficient to establish the reliability of that evidence. The issue is not merely whether the evidence of a witness is honest; it is also whether the evidence is objectively reliable.[243] He submits that very often, a confident demeanour is a personality trait and not necessarily a reliable indicator of truthfulness or accuracy.

226. The Appellant notes that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration. [244] However, in the *Brdjanin* case, where only one witness had given evidence of an incident with which the Accused was charged or otherwise involved, the Trial Chamber stated that it has scrutinised

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[242] Trial Chamber I, Judgment para 278,
[243] *Brdjanin* Trial Judgment, para 25, *Fonana* Trial Judgment, para 257.
[244] *Prosecutor v. Zlatko Aleksovski* , Case No. IT-95-14/1-A, Judg.ment, 24 March 2000 ("*Aleksovski* Appeal Judgement"), para. 62; *Krnojelac* Trial Judgment, para. 71.

the evidence of such witnesses with circumspection and in some instances decided not to rely on such evidence.[245]

227. The Trial Chamber in *Kordic* stated that it is essentially a matter of common sense that a witness with an interest to serve (particularly an interest to get his sentence reduced) may seek to inculpate others and exculpate him from liability. However, it does not follow that such a witness is incapable of telling the truth. In each case it is necessary to consider the witness's evidence and all the circumstances, particularly the extent to which evidence is corroborated.[246]

228. The Appellant submits that Witness DBK-012 testified that he met Witness TFI-334 at Pademba Road Prison in the year 2002.[247] While in prison Witness TFI-334 received preferential treatment in exchange for his testimony against Tamba Brima, Bazzy Kamara, and Borbor Santigie Kanu.[248] DBK-113 testified that Witnesses TFI-184 and TFI-334 enjoyed lots of privileges while in prison because they agreed to testify.[249] Witness DBK-131 testified that Alabama and Bobson Yapo Sesay enjoyed privileges in prison because they agreed to testify and boasted about it.[250] Prosecution Witness TFI-167 in cross-examination said that the more information he provides to OTP, the more the Office of the Prosecution helped him. [251]

229. The Appellant submits that it is important to assess the credibility of a witness in light of the trial record as a whole. The Appeals Chamber in *Kupreskic* reiterated the importance of such a holistic approach to assessing credibility within its own jurisprudence:

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[245] *Brdjanin* Trial Judgment, para 27
[246] *Kordic* Trial Judgment, para. 627.
[247] DBK-012, Transcript 09 October 2006 page 22 .
[248] DBK-012, Transcript 09 October 2006 page 24-32
[249] Witness DBK-113, TT 13 October 2006 page 58-59 and 60-65.
[250] Witness DBK-131, TT 10 October 2006 page 109-114; TT 11 October 2006 page 10-15.
[251] Witness TFI-167 TT 19 September 2005 page 31.

> A tribunal of fact must never look at the evidence of each witness separately, as if it existed in a hermetically sealed compartment; it is the accumulation of *all* the evidence in the case which must be considered.[252]

230. The Appellant contends that the Trial Chamber committed numerous errors in relying "exclusively" on Witnesses TFI-334, TFI-184 and TFI-167 to conclude that Bazzy was responsible for the crimes of which he was convicted. It is submitted that this is a matter requiring careful consideration, especially given the qualified importance of these witnesses to the findings of the Trial Chamber in this case.

231. The Appellant submits that the discrepancies in Witness TFI-334's testimony were not minor because they concerned material facts of the case.[253] Witness TFI-334's testified that Savage was appointed by Bazzy and this was a major factor in the determination of Bazzy's liability as a commander in Kono.[254] This evidence was contrary to the evidence of Witness TFI-167 that Savage was appointed by Superman.[255]

232. Similarly Witness TFI-334 testified that in Karina, he, Bazzy and Bazzy's CSO locked five young girls into a house and subsequently set it ablaze. The five girls were burnt alive.[256] Witness TFI-167 stated that as they were entering Karina he was there with Bazzy and Eddie Williams aka Maf when Eddie Williams went into the house, wrapped people in carpets of the house and set the house on fire. He drew fuel from the Mercedes Benz.[257] The Appellant was found liable for ordering the killing and also as a commander based on the evidence of Witness TFI-334.

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[252] *Kupreskic* Appeal Judgment, para 332. *Prosecutor v Tadic*, Case No.: IT-94-1-A-AR77, Appeal Judgment on Allegations of Contempt against Prior Counsel, Milan Vujin, 27 February 2001, para. 92.
[253] Trial Chamber, Judgment para 359.
[254] Trial Chamber, Judgment para 1884.
[255] Transcript 15 September 2005 page 54-55.
[256] TF1-334, Transcript 23 May 2005, pp. 65-67.
[257] Transcript 15 September 2005 page 54-55.

233. Based on the testimony of Witness TFI-334 regarding the killings in Fourah Bay[258] which was contradictory to the evidence of Witness TFI-184,[259] the Appellant was found liable for aiding and abetting. In all of the above instances, the Trial Chamber failed to provide a reasonable opinion to explain its evaluation of the conflicting evidence. The Appellant contends that the Trial Chamber failed to reconcile the conflicting testimony.

234. The Appellant submits that not only was Witness TFI-153's testimony inconsistent with his prior statement to the Prosecution but also his in-court testimony was contradictory and this was of sufficient gravity to cast doubt as to his credibility.

235. In *Kupreskic et al.,* the Appeals Chamber emphasized that a Trial Chamber is required to provide a fully reasoned opinion, and that where a finding of guilt was made in a case on the basis of identification evidence given by a single witness under difficult circumstances, the Trial Chamber must be especially rigorous in the discharge of that obligation.[260] A Trial Chamber may thus convict an accused on the basis of a single witness, although such evidence must be assessed with the appropriate caution, and care must be taken to guard against the exercise of an underlying motive on the part of the witness.

236. The Appellant argues that the Trial Chamber erred in fact when it attached undue weight to the evidence of the above Prosecution witnesses. The Trial Chamber did not exercise due caution and provide a reasonable explanation to the inconsistencies and contradictions in the evidence of these witnesses where a finding of guilt relied exclusively on their individual evidence.

237. The probative value and weight of the evidence of these witnesses was not considered in light of the entire circumstance and record of the entire case as a whole. In determining whether the guilt of the Accused has been established to

[258] TF1-334, Transcript 14 June 2005, pp. 66-67.
[259] TFI-184, Transcript 27 September 2005, p.72.
[260] *Kupreskic et al.* Appeal Judgment, para. 135.

this standard with respect to each particular count in the Indictment, the Trial Chamber must be careful to consider whether there is any reasonable explanation of the evidence accepted by it other than the guilt of the Accused.[261]

RELIEF SOUGHT

238. The Appellant requests that the Appeals Chamber review the evidence given by Witnesses TFI-153 TFI-334, TFI-184 and TFI-167 especially with regard to issues on which the Trial Chamber relied in order to enter a guilty verdict.

K. NINTH GROUND OF APPEAL (SENTENCE)

237. The Trial Chamber erred in law and or fact in paragraph 80 of the Sentencing Judgment in finding that there were no mitigating circumstances to warrant a corresponding reduction in sentence for Kamara.

238. The Trial Chamber is required by Article 19.2 of the Statute to take into account the individual circumstances of the Appellant to mitigate his sentence. The Appellant contends that the Trial Chamber failed to honour Article 19.2 despite the overwhelming evidence adduced by the Defence in relation to mitigating circumstances. Though individual circumstances are often considered separately from mitigating circumstances, it is submitted that the former is an index of the latter. Indeed, the Trial Chamber did not give any serious consideration to the evidence relating to the individual circumstances of the Appellant. It merely stated in a cavalier manner at paragraph 80 of the Sentencing Judgment that "nothing in Kamara's personal circumstances justifies any mitigation of sentence."

239. By summarily dismissing the argument on mitigating circumstances in that manner, the Trial Chamber appears to take the stance that either the individual circumstances of the Appellant are not worth examining or at best that mitigating

[261] *Brdjanin* Trial Judgment, para 23. *Celebici* Appeal Judgment, para 458.

circumstances are directly related to the offence. However, international criminal jurisprudence, as captured in Article 19.2 of the Statute is emphatic that the individual circumstances of a convict is germane to the sentence to be imposed on him and that such mitigating circumstances need not be directly linked to the offence committed. As the Trial Chamber observed in the *Kunarac* case:

240. Mitigating circumstances not directly related to the offence, such as co-operation with the Prosecutor, an honest showing of remorse and a guilty plea, may be considered.[262]

241. In addition, the Appellant is an ill educated man, who, at a very tender age was saddled with the responsibility of fending for his siblings. The only life he has known is that of obtaining the necessaries of life at one's peril. At the early age of 21, he risked his life and limb by fighting as a dedicated soldier for his country in order to repel the marauding RUF Forces. Moreover, the Appellant was involved in a number of activities that enhanced peace and reconciliation in Sierra Leone, including negotiating the release of about 200 children from the West Side Boys to the Red Cross and UNICEF in 1999 and working for the Commission for the Consolidation of Peace in Sierra Leone. It is also instructive to note that the Appellant was neither in the very highest levels of the overall hierarchy in the conflict in Sierra Leone, nor was he one of its architects. This submission is in line with the "need for sentences to reflect the relative significance of the role of the [Appellant] in the broader context of the conflict in [Sierra Leone]."[263]

242. These personal circumstances should no doubt mitigate the sentence of the Appellant since mitigating circumstances need not be directly linked to the offence for which one is convicted. Then again, although the Trial Chamber asserts at paragraph 91 of the Sentencing Judgment that the Appellant "failed to express any genuine remorse whatsoever for his crimes", it should be conceded that the show of remorse is not only characterized by breaking in tears and

[262] *Prosecutor v. Kunarac*, Case No. IT-96-23-T, Judgment, 22 February 2001, para. 850.
[263] *Prosecutor v. Tadic,* Judgment in Sentencing Appeals, para. 55.

begging for leniency, as the tenor of the Trial Chamber's deliberation is wont to suggest.

L. TENTH GROUND OF APPEAL (SENTENCE)

243. The Trial Chamber erred in law on page 36 of the Sentencing Judgment in imposing a sentence that is excessive and disproportionate in all the circumstances of the case against Kamara.

244. The Trial Chamber sentenced the Appellant to forty-five imprisonment. The Trial Chamber's jurisdiction to impose a custodial sentence is conferred by Article 19.1 of the Statute. The first part of this provision requires the Trial Chamber to impose a custodial sentence of a *specified number of years*. This requirement of specificity necessary implies that the incarceration should be for a definite period of time. Therefore, the Trial Chamber cannot. For instance, impose a life sentence, since the remaining period of person's natural life is ordinarily indeterminable. It is also submitted that this injunction of specificity precludes the imposition of a factual life sentence on a convicted person.

245. Thus, for instance, the Trial Chamber cannot impose a sentence of a century on a convict, however definite the period, since it would factually amount to incarcerating that person for life. Were it not so, it would mean that the Trial Chamber could validly impose a sentence of say 200 years on a convict. Therefore, the definitive or specificity requirement under Article 19.1 is not merely theoretical or formalistic but are steeped deep in the human experience. The imposition of a factual life sentence on a convict is not warranted by Article 19.1 and no stretch of legal ingenuity can make a contrary argument whole. In the present case, the Trial Chamber's imposition of a forty-five year sentence on the Appellant, a middle-aged aged man, practically amounts to incarcerating him for life. This result is in direct conflict with the requirement of Article 19.1 and should not be made to stand.

246. The second part of Article 19.1 requires the Trial Chamber to engage in comparative jurisprudence by having "recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone." The use of the mandatory "shall" in the requirement, instead of the permissive "may" suggests that the Trial Chamber is duty bound to do so.

247. The requirement in the second part of Article 19.1 is in keeping with the concept of equal justice in criminal law, both domestic and international. This concept engenders public confidence in the criminal justice systems by guarding against determining sentencing according to foot-sizes of the members of a tribunal. It has been observed that:

248. Concerning the aims of penalties, the ICTs [International Criminal Courts], in determining sentence, pay particular attention to its exemplary role and the need for credibility. To such an extent, that jurisprudence founds the limits to the structure of its discretion on the need for consistent tariffs, and, in its turn, the need for consistency finds its ground in the need for exemplarity and credibility.[264]

249. Uniformity, then, is the object sought to be achieved by Article 19.1. As one author remarks, "[J]udical fairness requires that the highest degree of uniformity be guaranteed in sentencing individuals."[265] The Trial Chamber, once again, failed to honour the requirements of Article 19.1. Had it done so, it would have realized that a careful examination of the jurisprudence of the ICTR, in respect of sentences for similar and indeed graver offences than that for which the Appellant has been convicted of, exposes the forty-five sentence by the Trial Chamber as harsh and excessive. A few examples will suffice to establish a grave disparity between the Trial Chamber's sentencing and the practice of the ICTR.

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[264] Jones & Powles, *International Criminal Practice* (Oxford University Press, 2003) para. 9.116.
[265] Andrea Carcano, "Sentencing and the Gravity of the Offence in International Criminal Law" (2002) 51 ICLQ 583 at 583.

250. In *The Prosecutor v Omar Serushago*, the defendant was convicted of three counts of crimes against humanity and one count of genocide, which the Court emphasised must be considered as the "crime of all crimes"[266], a fact which "must be taken into account when deciding the sentence."[267] The defendant, who was a leader of the Interahamwe in Gisenyi, was sentenced to 15 years imprisonment. In *The Prosecutor v Semanza*, the defendant was convicted of one count of complicity in genocide and four counts of crimes against humanity. He was sentenced entence to 25 years imprisonment. In *The Prosecutor v Gerard Ntakirutimana*, the defendant was convicted of one count of genocide and one court of crimes against humanity and sentenced to 25 years imprisonment. Then, in *The Prosecutor v Elizaphan Ntakirutimana*, the defendant was convicted of 3 counts of crimes against humanity, one count of conspiracy to commit genocide, one count of complicity in genocide, and one count of war crimes. She was sentenced to 10 years imprisonment.

251. The case of *Serushago* in particular highlights the harsh nature of the Trial Chamber's decision. Given that the Appellant has not been convicted of genocide, a sentence of 30 years in excess of Serushago's, despite the latter's cooperation seems out of line with the Tribunal's obligations under Article 19.1 of the Statute. Clearly, the Appellant is being made to suffer a graver sentence than the offenders in the cited cases though unlike those offenders the Appellant did not commit genocide, the supposed crime of crimes. This violates the principle of proportionality in sentencing. Thus, if this sentence is upheld, the credibility of the process in Sierra Leone will be irreparably dented leading to immense public diffidence in the system. Accordingly, the Appellant prays the Appellate Chamber to reduce his sentence from forty-five to ten years.

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266 The Prosecutor Vs Omar Serushago para 15. "Regarding the crime of genocide, in particular, the preamble to the Genocide Convention recognizes that at all periods of history, genocide has inflicted great losses on humanity and reiterates the need for international cooperation to liberate humanity from this scourge. The crime of genocide is unique because of its element of dolus specialis (special intent) which requires that the crime be committed with the intent 'to destroy in whole or in part, a national, ethnic, racial or religious group as such', as stipulated in Article 2 of the Statute; hence the Chamber is of the opinion that genocide constitutes the "crime of crimes", which must be taken into account when deciding the sentence."

267 Ibid

M. ELEVENTH GROUND OF APPEAL (SENTENCE)

252. The Trial Chamber erred in law in paragraphs 14, 15 and 16 of the Sentencing Judgment in giving undue prominence to retribution and deterrence as the main sentencing purposes in international criminal justice in the determination of the sentence for Kamara.

253. The Appellant submits that the Trial Chamber erred by placing excessive weight on the concept of deterrence in assessing the sentence to be imposed upon him. Specifically the Appellant suggests that the Trial Chamber was in error in agreeing with the views expressed in the *Kambanda* and *Tadic* cases regarding the effect of deterrence and questions the Trial Chamber's approval of the proposition that "[d]eterrence is probably the most important factor in the assessment of appropriate sentences for violations of international humanitarian law." The Appellant submits that the most potent deterrent against violations of international humanitarian law is not the length of the prison sentence itself, but the subjective assessment of the offender as to the likelihood of his being indicted, arrested, tried and convicted.

254. The Appellant further submits that deterrent sentencing is not required either to combat impunity or to contribute to the restoration and maintenance of peace in Sierra Leone. The Appellant contends that these two goals are best achieved by the imposition of a punishment which is deserved for the offence committed , having regard to the seriousness of the harm caused by the offender, his degree of culpability and any extenuating circumstances.

256. The Appellant further argues that, even if deterring future violations of humanitarian law did warrant the imposition of lengthy terms of imprisonment, it may be questioned whether that goal can be achieved where the offenders are not high-ranking officials. In this context, the Appellant also emphasizes that these offences were committed at a time when there was a total breakdown of the Sierra Leone Army.

N. TWELFTH GROUND OF APPEAL (SENTENCE)

257. The Trial Chamber erred in law in paragraph 13 of the Sentencing Judgment in failing to give due consideration to the true intention of the preamble of the United Nations Security Council Resolution 1315 (2000) in the determination of the sentence for Kamara.

258. The preamble of the United Nation Security Council Resolution 1315 (2000) states:-\

> [...] in particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.

259. The Appellant submits that the Trial Chamber erred in law in failing to uphold the true intention and adopting the literal meaning or true mischief of the United Nations Security Council Resolution 1315 as cited above. The Appellant submits that in its failure the Trial Chamber gave a contradicting interpretation to this Resolution in deciding the appropriate sentence the Appellant avers that such a sentence does not in anyway contribute to the process of national reconciliation and to the restoration and maintenance of peace.

O. THIRTEENTH GROUND OF APPEAL (SENTENCE)

260. The Trial Chamber erred in law in paragraph 14 of the Sentencing Judgment in failing to give due prominence to reconciliation as a main sentencing purpose in international criminal justice.

261. National reconciliation is one of the cardinal goals for the establishment of the Special Court of Sierra Leone (SCSL). Again this important object of the SCSL is articulated in the United Nations Security Council Resolution 1315 (2000) – the mandate that gave birth and purpose to the SCSL.

262. It is the contention of the Appellant that the imposition of an unduly long custodial sentence on the Appellant – such as the 45 years by the Trial Chamber – will frustrate and severely undermine any real possibility of attaining genuine national reconciliation in Sierra Leone. It is important to point out that reconciliation occurs at three principal levels – interpersonal, communal and societal (or national). The Appellant concedes that there is probably no real hope of fostering reconciliation between the convict and the several individual victims of the crime for which he stands convicted.

263. The Appellant contends, however, that the ends of communal and societal reconciliation, as vital *forms* and components of national reconciliation, will be best served with the imposition of a moderate custodial punishment that is consistent with the established international case law, and which, most importantly, enhances the possibility of the Appellant having a real chance of some day coming out of prison (after serving his sentence), having contact with survivors and families or relations of victims of his crimes, and reconciling with them.

264. In this regard, the Appellant wishes to draw attention to the fact that Kamara is a product of Sierra Leonean society, to the fact that he is an integral part of a community severely impacted by his life and conduct, and to the fact that he is a family man with wife and children living in a community that is an integral part of Sierra Leonean society.

265. The foregoing submission for the mitigation the Appellant's sentence on the basis that giving him a lesser sentence will help promote reconciliation in post-conflict Sierra Leone is grounded in sound empirical research from the well-studied field of transitional justice .

266. In her classic work, Unspeakable Truths: Facing the Challenge of Truth Commissions (2002), Priscilla Hayner, a Senior Associate at the New York-based

International Centre for Transitional Justice (ICTJ) observes that "the degree to which there is contact between former opponents will help determine whether reconciliation develops".

267. The Appellant contends that, in a post-conflict society such as Sierra Leone, reconciliation is best promoted where former opponents – the victims and perpetrators – are allowed and given a *real* rather than a theoretical opportunity for contact and reconciliation. Locking up Kamara for 60 years will effectively obliterate any such substantive possibility.

268. Locking up Kamara for 60 years will be tantamount to giving him the death sentence through the back-door. And it is trite that the death sentence defeats the object of reconciliation which constitutes one of the fundamental underpinnings of the transitional justice scheme on Sierra Leone in general, and this very honourable Special Court of Sierra Leone in particular. It is submitted that the accepted criminological wisdom worldwide is that the death penalty is not a deterrent against most violent crimes.

269. The Appellant urges that the Appeals Chamber open the aperture for real reconciliation in Sierra Leone beyond the life of this Honourable Chamber, by rendering a sentence that will truly and substantively enable reconciliation to occur, and not to give *undue prominence* to the object of deterrence – an object which, in the context of post-war Sierra Leone, is irrelevant because the possibility of the resurgence of conflict is simply non-existent.

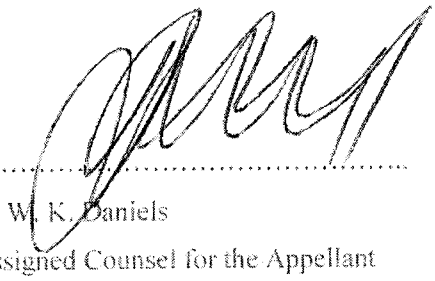
270. The Appellant urges the Appeals Chamber to revise the sentence imposed so that it accords with principles and trends in contemporary sentencing for the kinds of crimes for which the Appellant stands convicted, namely 15 – 20 years maximum, as was the case with persons convicted of the more egregious crime of genocide in Rwanda and elsewhere.

271. The Appellant urges the Appeals Chamber to revise the sentence impose in other that he is still useful (physically and mentally), to atone for his crimes, to seek forgiveness from the surviving victims and relations of his crimes, to help bury the ghosts of the past, and to promote healing and reconciliation at all three levels of Sierra Leonean society– individual, communal and national.

RELIEF'S SOUGHT IN RESPECT OF GROUNDS 9, 10, 11, 12 AND 13

272. The Appellant urges the Appeals Chamber to decrease the sentence imposed on Kamara from FORTY FIVE YEARS to NOT MORE THAN FIFTEEN[268] years of imprisonment to reflect the true nature and extent of his criminal culpability.

Respectfully submitted,



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A. W. K. Daniels
Assigned Counsel for the Appellant

Special Court

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