

Prosecutor v. Brima, Kamara, and Kanu

Special Court for Sierra Leone Appeals Chamber
Case No. SCSL-2004-16-A Conviction Conformation (22 February 2008)

Author's Note: This tribunal was mentioned earlier, in the materials on international criminal courts [§8.5.C.3(a)]. This edited version of the case addresses Count 12 regarding crimes involving children. The court's footnotes are omitted. Some minor organizational conventions have been changed to improve readability.

Court's Opinion:

...

I. INTRODUCTION

A. The Special Court For Sierra Leone

1. In 2000, following a request from the Government of Sierra Leone, the United Nations Security Council authorised the United Nations Secretary-General to negotiate an agreement with the Government of Sierra Leone to establish a Special Court to prosecute persons responsible for the commission of crimes against humanity, war crimes, other serious violations of international humanitarian law, and violations of Sierra Leonean law....

2. As a result, the Special Court for Sierra Leone ("Special Court") was established in 2002 by an agreement between the United Nations and the Government of Sierra Leone ("Special Court Agreement"). The Special Court's mandate is to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since ... 1996.

3. In particular, the Statute of the Special Court ("Statute") empowers the Special Court to prosecute persons who committed crimes against humanity, serious violations of Article 3 Common to the 1949 Geneva Conventions for the Protection of War Victims and of Additional Protocol II, other serious violations of international humanitarian law and specified crimes [which had also violated] ... Sierra Leonean law.

B. The Armed Conflict in Sierra Leone

4. The armed conflict in Sierra Leone started in March 1991 ... [designed] to overthrow the Government of Sierra Leone.

...

12. ... Hostilities ceased in January 2002.

C. The Trial Proceedings

1. The Indictment

...

14. The ... Indictment ("Indictment") comprised a total of 14 Counts. These Counts charged Brima, Kamara and Kanu (the "Accused") with:

(i) Seven Counts of crimes against humanity, namely: extermination, murder, rape, sexual slavery and any other form of sexual violence, "Other Inhumane Acts" and enslavement (Counts 3, 4, 6, 7, 8, 11, and 13, respectively);

(ii) Six Counts of violations of Article 3 Common to the Geneva

Conventions and of Additional Protocol II, namely: acts of terrorism, collective punishments, violence to life, health and physical or mental well-being of persons (in particular murder and mutilation of civilians), outrages upon personal dignity and pillage (Counts 1, 2, 5, 9, 10 and 14, respectively);

(iii) A single Count of “other serious violation of international humanitarian law” (Count 12) consisting of conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities.

15. The Indictment stated that the Accused were individually criminally responsible ... for the crimes [while they] ... participated in a joint criminal enterprise (“JCE”) with the RUF [Revolutionary United Front], the objective of which was to take any action necessary to gain and exercise political power and control over the territory of Sierra Leone and in particular the diamond mining areas.

...
2. The Accused

17. Consequent upon the May 1997 *coup d'état*, the Accused became members of the Supreme Council of the AFRC [Armed Forces Revolutionary Council], the highest decision-making body of the [post-coup] military junta.

...
4. The Verdict

22. The Accused were found guilty and convicted of six Counts of violations of Article 3 Common to the 1949 Geneva Conventions for the Protection of War Victims and of Additional Protocol II, four Counts of crimes against humanity pursuant to Articles 2.a, 2.b, 2.c and 2.g of the Statute, and *one Count of other serious violations of international humanitarian law* [italics added].

...
5. The Sentence

26. For all the Counts of which they were found guilty, Alex Tamba Brima and Santigie Borbor Kanu were each sentenced to a single term of imprisonment of fifty (50) years, and Brima Bazzy Kamara to a single term of imprisonment of forty-five (45) years. The Trial Chamber ordered that each be given credit for any period during which they were detained in custody pending trial [although the length of these sentences essentially amounted to life in prison].

V. THE PROSECUTION’S APPEAL

...
183. In order to assess the correctness of the trial chamber’s finding, regard must be given to the objective of the prohibition of “other inhumane acts” in international criminal law. First introduced under article 6.c of the Nuremberg Charter, the crime of “other inhumane acts” is intended to be a residual provision so as to punish criminal acts not specifically recognised as crimes against humanity, but which, in context, are of comparable gravity to the listed crimes against humanity. It is therefore inclusive in nature, intended to avoid unduly restricting the statute’s application to crimes against humanity. the prohibition against “other inhumane acts” is now included in a large number of inter-

national legal instruments and forms part of customary international law.

184. ... In effect, the determination of whether an alleged act qualifies as an “other inhumane act” must be made on a case-by-case basis taking into account the nature of the alleged act or omission, the context in which it took place, the personal circumstances of the victims including age, sex, health, and the physical, mental and moral effects of the perpetrator’s conduct upon the victims.

C. Kanu’s Seventh Ground of Appeal: *Mens Rea* for Crimes Related to Child Soldiers

1. Introduction

293. In his Seventh Ground of Appeal, Kanu alleges that the Trial Chamber erred in law in dismissing his argument that “the absence of criminal knowledge on his part vitiated the requisite *mens rea* to the crimes relating to child soldiers.” He argues that the *mens rea* element required for the crime was in this instance negated by a mistake of law on his part. Due to various factors, detailed in his Appeal Brief, Kanu submits that “he believed that his conduct [of conscripting or enlisting children under the age of 15 years] was legitimate.” He contends that at all material times, he lacked the requisite criminal intent required for the crime of “conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities” punishable under Article 4.c of the Statute of the Special Court.

294. In the alternative, Kanu argues that conscripting or enlisting children under the age of 15 was not a war crime at the time alleged in the Indictment.

295. The Prosecution observes that the Appeals Chamber has already ruled that conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities was a crime entailing individual criminal responsibility at the time of the acts alleged in the Indictment. The Appeals Chamber refers to its dictum [in another case] that:

The rejection of the use of child soldiers by the international community was widespread by 1994. ... Citizens of Sierra Leone, and even less, persons in leadership roles, cannot possibly argue that they did not know that recruiting children was a criminal act in violation of international humanitarian law. Child recruitment was criminalized before it was explicitly set out as a criminal prohibition in treaty law and certainly by November 1996, the starting point of the time frame relevant to the indictments. As set out above, the principle of legality and the principle of specificity are both upheld.

296. Kanu’s submission that conscripting or enlisting children under the age of 15 was not a war crime at the time alleged in the Indictment is without merit. Furthermore it is frivolous and vexatious for Kanu to contend that the absence of criminal knowledge on his part vitiated the requisite *mens rea* in respect of the crimes relating to child soldiers.

297. Kanu’s Seventh Ground of Appeal therefore fails.

**D. Kanu’s Ninth Ground of Appeal: Findings of Responsibility
Pursuant to Article 6(1) of the Statute**
1. The Parties’ Submissions and the Findings of the Trial Chamber

298. In his Ninth Ground of Appeal, Kanu submits that the Trial Chamber erred in convicting him under Article 6(1) for planning the commission of ... the conscription and use of children for military purposes (Count 12)... The Trial Chamber held that Kanu “planned, organised and implemented the system to abduct and enslave civilians which was committed by AFRC troops in Bombali and Western Area.” It further held that Kanu “had the direct intent to establish and implement the system of exploitation involving the three enslavement crimes, namely, sexual slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour.” The Trial Chamber was, therefore, satisfied beyond reasonable doubt that Kanu bore individual criminal responsibility under Article 6(1) for planning the commission of the above crimes in the Bombali District and the Western Area.

...
2. Discussion

303. The Appeals Chamber now turns to the Trial Chamber’s findings regarding the conscription and use of children for military purposes, as well as abductions and forced labour in the Bombali District and the Western Area. In the case of Bombali District, the Trial Chamber found that Kanu was in charge of forced military training of civilians at Camp Rosos and that children below the age of 15 years were among those forced to undergo training. On the basis of this evidence, the Trial Chamber was satisfied beyond reasonable doubt that in the Bombali District Kanu was not only responsible for planning the conscription of children under the age of 15 into an armed group, but also for using such children to participate actively in hostilities, as well as for the crime of enslavement.

304. Regarding the Western Area, the Trial Chamber also found that Kanu “continued in his positions as Chief of Staff and commander in charge of civilians in Freetown and the Western Area” and that he had “approximately ten child combatants in his charge in Benguema following the retreat from Freetown.” On the basis of this evidence, the Trial Chamber found that Kanu was responsible for planning the conscription of children under the age of 15 into an armed group, or the use of such children to participate actively in hostilities, and enslavement in the Western Area.

...
G. Sentence: General Conclusion

326. Having considered all the Grounds of Appeal relating to the Sentencing Judgment of the Trial Chamber, the Appeals Chamber is satisfied that the Trial Chamber has overall properly exercised its discretion within the provisions of the Statute of the Court.

...
328. The Trial Chamber, in applying this provision to the case, had this to say:

Brima, Kamara and Kanu have been found responsible for some of the most heinous, brutal and atrocious crimes ever recorded in human history. ... Innocent civilians—babies, children, men and women of all ages—were murdered by being shot, hacked to death, burned alive, beaten to death. Women and young girls were gang raped to death. Some had their genitals mutilated by the insertion of foreign objects. Sons were forced to rape mothers, brothers were forced to rape sisters. Pregnant women were killed by having their stomachs slit open and the foetus removed merely to settle a bet amongst the troops as to the gender of the foetus. Men were disembowelled and their intestines stretched across a road to form a barrier. Human heads were placed on sticks on either side of the road to mark such barriers. Hacking off the limbs of innocent civilians was commonplace. The victims were babies, young children and men and women of all ages. Some had one arm amputated, others lost both arms. For those victims who survived an amputation, life was instantly and forever changed into one of dependence. Most were turned into beggars unable to earn any other living and even today cannot perform even the simplest of tasks without the help of others. *Children were forcibly taken away from their families, often drugged and used as child soldiers who were trained to kill and commit other brutal crimes against the civilian population. Those child soldiers who survived the war were robbed of a childhood and most of them lost the chance of an education.* [italics added].

The Appeals Chamber is, therefore, satisfied that having regard to that finding, the Trial Chamber was justified in imposing a prison sentence of fifty (50) years on the Appellant Alex Tamba Brima, forty-five (45) years on the Appellant Brima Bazzy Kamara, and fifty (50) years on Santigie Borbor Kanu.

...
X. DISPOSITION
...

ORDERS [unanimous decision of the five judges] that this Judgment be enforced immediately pursuant to Rule 102 of the Rules of Procedure and Evidence.

...
Delivered on 22 February 2008 at Freetown, Sierra Leone.