SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995
FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

THE TRIAL CHAMBER

Before: Judge Bankole Thompson, Presiding Judge,
Judge Benjamin Mutanga Itoe
Judge Pierre Boutet

Registrar: Robin Vincent

Date: 19th day of November, 2003

The Prosecutor against

Santigie Borbor Kanu
(Case No.SCSL-2003-13-PT)

DECISION AND ORDER ON DEFENCE PRELIMINARY MOTION FOR DEFECTS IN THE FORM OF THE INDICTMENT

Office of the Prosecutor:
Mr. Luc Côté, Chief of Prosecutions
Mr. Robert Petit, Senior Trial Counsel
Mr. Christopher Santora

Defence Counsel:
Professor Geert-Jan Alexander Knoops

THE SPECIAL COURT FOR SIERRA LEONE ("the Special Court"),

SITTING as Trial Chamber ("the Trial Chamber") composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet and Judge Benjamin Mutanga Itoe;

BEING SEIZED of the Defence Preliminary Motion for Defects in the Form of the Indictment filed on the 17th day of October 2003 on behalf of Santigie Borbor Kanu ("the Motion") pursuant to Rule 72 (B) (ii) and (D) of the Rules of Procedure and Evidence of the Special Court ("the Rules");

CONSIDERING that the said Motion is one which, according to Rule 72 (B) (ii), falls within the jurisdiction of the Trial Chamber for determination;

NOTING that the several challenges raised by the Defence in the Motion are as to alleged formal defects in the Indictment against Santigie Borbor Kanu approved by Judge Pierre Boutet on the 16th day of September, 2003 sitting as designated Judge of the Trial Chamber pursuant to Rules 28 and 47 of the Rules;

CONSIDERING ALSO the paramount importance of the right of the Accused to object preliminarily to the formal validity of the Indictment and not the substantive issue as to whether the criteria for approving the Indictment were satisfied, and the need to keep the two issues separate and distinct;

CONSIDERING the Response filed by the Prosecution on the 24th day of October, 2003 to the Motion ("the Response");

CONSIDERING ALSO the Reply filed by the Defence on the 30th day of October, 2003 to the Prosecution's Response ("the Reply");

WHEREAS acting on the Chamber's Instructions, the Court Management Section advised the parties on the 14th day of November 2003 that the Motion, the Response and the Reply would be considered and determined on the basis of the "Briefs" (Written Submissions) of the Parties **ONLY** pursuant to Rule 73 (A) of the Rules;

NOTING THE SUBMISSIONS OF THE PARTIES

The Defence Motion

1. By the instant Motion, the Defence seeks the following REMEDIES:

> "As regards the judicial consequences and remedies for the analyzed deficiencies, in the particular Indictment, the Defence respectfully prays that primarily the Prosecutor be ordered to specify or particularize the elements of the Indictment as mentioned in Chapter III above within a time frame as to be set by your Court, failure of which should result in dismissal of the Indictment.

> With regard to the particularization of the Indictment, the Defence refers to paras 31-33 of the above mentioned *Sesay* Decision, and respectfully prays the Special Court to implement them equally in the case of Mr. Kanu. Accordingly the Defence respectfully prays that the Prosecution be ordered to provide a Bill of Particulars as set out in the Annexure to the *Sesay* Decision, in order to remedy the deficiencies in the present Indictment."

2. Specifically, the Defence raises several challenges to the formal validity of the Indictment. They are grouped as follows:

(A) Lack of Specificity Regarding Different Forms of Individual Criminal Responsibility,

(B) Lack of Specificity Regarding Various Counts.

The Prosecution's Response

3. In response, the Prosecution submits for reasons set out *in extenso* at paragraphs 4-17 of their Response, that the Defence Motion has no basis in fact or in law, and should, therefore, be dismissed.

The Defence Reply

4. In reply to the Prosecution's Response, the Defence reinforces the submissions and contentions put forward in the Motion.

AND HAVING DELIBERATED AS FOLLOWS:

5. Expounding the law governing the framing of indictments in international criminal law, the Court in its recent Decision in the *Prosecutor v. Issa Hassan Sesay*[1] had this to say:

> "The fundamental requirement of an indictment in international law as a basis for criminal responsibility underscores its importance and nexus with the principle of *nullum crimen sine lege* as a *sine qua non* of international criminal responsibility. Therefore, as the foundational instrument of criminal adjudication , the requirements of due process demand adherence, within the limits of reasonable practicability, to the regime of rules governing the framing of indictments."[2]

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[1] (Case No. SCSL-2003-05-PT) Decision and Order on Defence Preliminary Motion for Defects In the Form of the Indictment dated 13 October 2003 at para. 5 *per* Judge Thompson.

[2] Id. *supra* note 1. The Court in the said Decision further noted as follows: " the rules governing the framing of indictments within the jurisdiction of the Special Court are embodied in the Founding Instruments of the Court. Firstly, according to Article 17 (4) of the Court's Statute, the accused is entitled to be informed "promptly" and in "detail" of the nature of the charges against him." Secondly, Rule 47(C) of the Rules of Procedure and Evidence of the Special Court expressly provides:" The Indictment shall contain, and be sufficient if it contains, the name

6. Consistent with the general and specific principles governing the framing of indictments adumbrated by the Court in the aforesaid Decision, this Chamber, guided by the said principles and criteria enunciated in paragraphs 5-9 therein, now proceeds to examine *seriatim* the several challenges and submissions put forward by the Defence as to the formal validity of the Indictment herein.

7. As already noted, the challenges or objections taken by the Defence to the form of the Indictment are (A) lack of specificity regarding different forms of individual criminal responsibility and (B) lack of specificity regarding various counts.

8. Under group (A) of the objections, the Defence contends generally that the Prosecution's allegations in paragraphs 23-26 of the Indictment that "(i) primarily, the Accused participated in a joint criminal enterprise and (ii) alternatively, the Accused would bear individual criminal responsibility.....lack the requisite specificity" as required by Article 17(4) of the Court's Statute and Rule 47 (C) of its Rules of Procedure and Evidence. Specifically, this challenge is of a four-fold dimension. It is that the doctrine of joint criminal enterprise, as pleaded, lacks specificity as to the role and position of the Accused in the alleged joint criminal enterprise; that the Indictment, in its present form, does not particularize how the Accused, as an individual, could have played a relevant role in an alleged joint criminal enterprise comprising two organised armed factions; that the Indictment does not adequately specify the category of the joint criminal enterprise alleged; and further that the Indictment fails to establish the nexus between the joint criminal enterprise and the specific crimes alleged.

9. Paragraph 23 of the Indictment charges the Accused in these terms:

> "The AFRC, including the ACCUSED, and the RUF shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise."

10. Paragraph 24 of the Indictment alleges:

> "The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize resistance to their geographic control, and to use members of the population to provide support to the members of the joint criminal enterprise. The crimes alleged in this Indictment, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonable consequence of the joint criminal enterprise."

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and particulars of the suspect, a statement of each specific offence of which the named suspect is charged and a short description of the particulars of the offence. It shall be accompanied by a Prosecutor's case summary briefly setting out the allegations he proposes to prove in the making of his case."

11. Paragraph 25 of the Indictment alleges:

> "SANTIGIE BORBOR KANU, by his acts or omissions, is individually criminally responsible pursuant to Article 6.1 of the Statute for the crimes referred to in Articles 2, 3, and 4 of the Statute as alleged in this Indictment, which crimes the ACCUSED planned, instigated, ordered, committed, or in whose planning preparation or execution the Accused otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which the ACCUSED participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which the ACCUSED participated."

12. From a close examination of the entire Indictment and paragraphs 23 -26, it is inaccurate to suggest that the alleged joint criminal enterprise is not pleaded with sufficient particularity as to the role and position of the Accused. For example, paragraph 25 delineates with much specificity the details of the Accused's alleged role in the joint criminal enterprise. The allegation is that he "planned, instigated, ordered, committed the said crimes within the joint criminal enterprise or "otherwise aided and abetted" in the planning, preparation or execution of the said crimes. As regards his position in the joint criminal enterprise, the Chamber finds that, according to the Indictment, the Accused was "a senior member of the AFRC/RUF, Junta and AFRC/RUF forces" (para. 18 of Indictment) and variously, that he was "a member of the Junta governing body, the AFRC Supreme Council" (para. 19 of the Indictment), and that he was also "a senior commander of the AFRC/RUF forces in Kono District" (para. 20 of the Indictment, and "one of the three Commanders of AFRC/RUF forces during the attack on Freetown on 6th July, 1999" (para. 20 of Indictment). The Chamber, accordingly, rejects this challenge as untenable.

13. The Chamber also rejects the Defence contention that the Indictment does not particularize how the Accused, as an individual, would have played a relevant role in an alleged joint criminal enterprise comprising two organised armed forces not constituted of private persons. This contention is meritricious since it is clear from the Indictment that the AFRC/RUF forces comprised "private persons" of which the Accused was, allegedly, one. The Indictment alleges throughout that there was an alliance between the two organized armed factions even though, initially, they were separate entities.

14. The Defence contention that the Indictment does not adequately specify the category of joint criminal enterprise alleged, in the opinion of the Chamber, lacks substance for the reasons hereinafter articulated. In this connection, the Chamber disagrees with the Defence submission that there is an obligation on the Prosecutor to elect between the basic joint criminal enterprise concept of liability and the extended one. The Chamber finds nothing in the case-law authorities requiring the Prosecution to elect between the basic category of joint criminal enterprise theory of liability and the extended category theory. The Appeals Judgment in *Prosecutor v Tadic*[3] imposes no such obligation. On this issue, all the Court did in that case was recall that a close scrutiny of the relevant case-law on the subject "shows that broadly speaking, the notion of common purpose encompasses three distinct categories of collective criminality", and then

[3] Case No. IT-94-IA, July 15,1999.

articulate in paragraphs 196 - 206 the different categories of joint criminal enterprise, and the extent to which the second category is a variant of the first. The Chamber also wishes to emphasize that the *Prosecutor v Krnojelac*[4] is no authority for the proposition that there is an obligation on the Prosecution to elect in an indictment between the two categories of joint criminal enterprise liability. Clearly, in that case the Trial Chamber held that where "only a basic joint criminal enterprise had been pleaded, it would not be fair to the Accused to allow the Prosecutor to rely upon the extended form of joint criminal enterprise liability in the absence of such an amendment to the Indictment to plead it expressly"[5]. For the foregoing reasons, the Chamber cannot sustain the Defence challenge.

15. As regards the issue that the Indictment fails to establish a nexus between the joint criminal enterprise and the specific crimes alleged, the Chamber's response is that such nexus seems clear from a careful reading of paragraph 24 of the Indictment, the scope of which is of general applicability to the whole Indictment, to wit:

> "The crimes alleged in this Indictment, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise".

16. Further, under group (A) challenges, the Defence contends that nowhere in the Indictment are the factual and material elements as to the alleged "effective control over his subordinates" by the Accused specified in respect of the alleged superior responsibility doctrine. The pith of this objection is that the Prosecution has not provided the factual foundation for the assertion that the Accused had "effective control over his subordinates" as mentioned in paragraph 26 of the Indictment. The short answer of the Chamber to this complaint is that the factual basis for the allegation is found at paragraphs 18-21 of the Indictment. Further, as was emphasized in the *Sesay* Decision,[6] whether or not the Accused exercised actual control over the subordinate members of the RUF and AFRC/RUF forces is an evidentiary matter that must be determined at the trial.[7]

17. Under group (B) challenges, the first complaint of the Defence is "about the lack of specificity of the language of the Indictment" concerning the phrases "*but not limited to these events*" as well as "*included but were not limited to*" used variously in the Indictment. Relying on the ruling in *Sesay* on the first of those phrases, the Defence submits that the Prosecution must elect for the purpose of this Indictment in respect of the same issue as in *Sesay*. After a close scrutiny of the Indictment as to the use of the phrase "*but not limited to these events*", consistent with that ruling, this Chamber finds merit in the Defence Motion on this point. The Prosecution is, accordingly, put to its election: either to delete the said phrase in every count or wherever it appears in the Indictment or provide in a Bill of Particulars specific additional events alleged against the Accused in each count. In so far as the phrase " *included but were not limited to*" is concerned, the Court's decision in *Sesay* left open the possibility that the said phrase could be impermissibly broad if it referred to *'events'* as distinct from *'locations'* and *'dates'*. A close examination of the Indictment herein shows that the phrases "*including but not limited to*" and

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[4] IT-95-25 "Decision on the Defence Preliminary Motion on the Form of the Indictment", 24 February 1999.
[5] Id. *supra* note 4. Judgment 15 March 2002 para.86.
[6] *Supra* note 1 para. 16.
[7] Id.

"included, but were not limited" appear at paragraphs 20, 46, and 51 of this Indictment. The Chamber finds that their use in those paragraphs is inextricably interwoven with other key elements of the alleged crimes than mere locations and dates of the events. Hence, the Prosecution is directed to elect in the same manner as in relation to the phrase "*including, but not limited to these events*".

18. The second Defence complaint under this class of challenges is about the use of these allegedly impermissible phrases: (a) "*unknown number of*", (b) "*hundreds of*", (c) "*large- scale*", (d) "*widespread*", (e) "*unknown number of civilians*", (f) "*an unknown number of*", (g) " *widespread and large-scale*", (h) "*a large number of children*".

19. As regards each of these phrases, based upon a thorough examination of the entire Indictment and in particular paragraphs 33-45, paragraphs 51-57, paragraphs 59-64, the Chamber adopts the reasoning of this Court in the *Sesay* case that whether these phrases " are permissible" for the purposes of an indictment alleging criminality in the international domain as distinct from criminality in the domestic sphere "depends primarily upon the context". The Chamber is strongly of the opinion that the use of such phrases " is clearly permissible in situations where the alleged criminality was of what seems to be cataclysmic dimensions,"[8] and where statistics are hard to come by. The Chamber takes note that where there is mass criminality, statistical data collection may not yield exactitude in, for example, the number of civilians or children killed *en masse*. In this connection, the Chamber restates its exposition of the law in the *Sesay* case that:

> *"in framing an indictment, the degree of specificity required must necessarily depend upon such variables as (i) the nature of the allegations; (ii) the nature of the specific crimes charged, (iii) the scale or magnitude on which the acts or events allegedly took place (iv) the circumstances under which the crimes were allegedly committed, (v) the duration of time over which the said acts or events constituting the crimes occurred, (vi) the time span between the occurrence of the events and the filing of the indictment, (vii) the totality of the circumstances surrounding the commission of the alleged crimes"*[9]

20. Applying the foregoing principle to the instant situation, the Chamber is of the view that having regard, ***as alleged,*** to the totality of the circumstances under which the crimes charged in the Indictment were committed, the superior position of the Accused at the material time, the nature of the crimes, their magnitude and scale, the widespread character of the same in terms of locations, the regularity with which the acts took place, that the specificity requirement must be assessed with reference to the nature and peculiarities "of the crimogenic setting in which the crimes charged allegedly took place....."[10] For these reasons, the Chamber rejects these complaints as lacking merit.

21. Another objection put forward by the Defence is that "the Indictment does not make any mention of names or particulars of the victims mentioned therein", and that this "leads to insufficient specificity given the fact that,.....the Indictment does not even provide a close indication of the number of the alleged victims of the mentioned crimes." A submission on this point is made in paragraph 35 of the Motion. The Chamber's response to this complaint is that

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[8] *Supra* note 1 para. 23.
[9] Id. para. 8.
[10] Id. 9.

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given, ***as alleged***, the scale of the mass killings and destruction, and the widespread and systematic nature of the crimes charged together with their frequency, it would seem unrealistic to expect *pin-point particularity in laying the charges in the Indictment on matters like identity of victims, locations and dates of the events. It is also trite law, as recognised by this Court, that in cases of mass criminality, "the sheer scale of the offences makes it impossible to identify the victims"*[11] *and the time and place of the events"*[12]. Taking the Indictment as whole and particularly paragraphs 33-39, 41-45, 47-49, 50, 52-57, 59-63, 41-45, 49, 53 and 64, the Chamber finds pleaded, within the limits of reasonable practicability, sufficient information as to the identities of victims, locations and dates of events in respect of the alleged crimes. To require more is tantamount to asking the Prosecution "to do the impossible".[13] The Chamber is convinced, therefore, that no unfair prejudice is done to the Accused by the use of such phrases. At the end of the day, in the Chamber's view, *"having regard to the cardinal principle of the criminal law that the Prosecution must prove the case against an accused beyond reasonable doubt, the onus is on the Prosecution to adduce evidence at the trial to support the charges, however formulated."*[14] *In effect, the Prosecution must stand or fall by their own charges.*

22. The final complaint put forward by the Defence concerns Count 2 of the Indictment. For a fuller comprehension of its gravamen, it is reproduced below *verbatim*:

> Concerning **Count 2** of the Indictment, The Defence holds the opinion that the term "collective punishments" has not been specified because it is as such not keyed to the alleged events set forth in the paras. 32-57 to which paragraphs the Indictment here refers. Para 31 of the Indictment merely states that the charges in Count 3-13 were committed to punish the civilian population for allegedly supporting the elected government of President Kabbah, or for failing to provide sufficient support to the AFRC/RUF. However, when reading the paras. 32-57 of the Indictment, no mention is made of these crimes being committed as part of the alleged collective punishments. It is thus not clear to the Accused what exactly he has been accused of in this matter. Moreover, as this term "collective punishments" is only inserted in Article 4(2) of the Additional Protocol II to the Geneva Conventions, without being explicitly employed in common Article 3 of the Geneva Conventions, arguably this is not a self-evident term. This part of Count 2 does therefore not fulfil the requirement mentioned in the *Sesay* Decision, namely the observation that "[allegations in an indictment are defective in form if they are not sufficiently clear and precise so as to enable the accused to fully understand the nature of the charges brought against him". The Defence therefore submits that the term "collective punishments" be deleted in the Count or, in the alternative, the Prosecutor be ordered to provide particulars as to the alleged nexus between this term and the separate Counts 3-13.

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[11] *Prosecutor V. Kvocka et al.* IT-98-30-PT "Decision on Preliminary Motion on Form of Indictment" TC III,12 April 1999, para.22. *Prosecutor v. Issa Hassan Sesay,* Case No. SCSL-2003-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 13 October, 2003 para. 7

[12] *Prosecutor v. Elizaphan and Gerald Ntakirutima*, Judgment and Sentence, Case No ICTR-96-10 and ICTR 96-17-T, TCI, 2 February 2003.

[13] *Prosecutor v. Radoslav Brdanin & Momir Tadic*, IT-99-36, "Decision on Objections by Momir Tadic to the Form of the Amended Indictment", 20 February, 2001 para. 22.

[14] *Sesay, supra* note 1 at para 23 *per* Judge Thompson.

23. The Indictment charges the Accused in Counts 1 and 2 respectively (page 1) with "Terrorizing the Civilian Population *and Collective Punishment*". The Indictment further alleges that:

> "Members of the AFRC/RUF subordinate to and/or acting in concert with SANTIGIE BORBOR KANU *committed the crimes set forth below in paragraphs 32 through 57 and charged in Counts 3 through 13*, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone," (para. 31).

There is the further allegation that:

> "The AFRC/RUF *also committed the crimes to punish the civilian population* for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF." (para. 31).

The Chamber's interpretation of the above extracts ***is that the same crimes which were committed to terrorize the civilian population, and those set forth in paragraphs 32 through 52 and also charged in Counts 3-13 were the same crimes that were committed to punish the civilian population.*** The Chamber is strongly of the view that any other interpretation is tantamount to doing violence to the language of the Indictment. From the Chamber's perspective, the phrase "collective punishments" is not problematic; what acts constitute "collective punishments" is a function of evidence that will be determined at the trial. The Defence contention, therefore, fails.

24. The Chamber notes with interest that relying on a proposition found at page 104 of his recently published book[15], learned Counsel for the Defence made this submission at paragraph 35 of his Motion under the theme "Criteria Deriving From Case Law with Respect To Forms of Indictment":

> "Therefore, the indictment should not prevent the defense in, for example, investigating the potential alibi or in the cross-examination of witnesses. In the event the identity of victims, place and date of the events and other factual elements are more material, the degree of specificity is required to be more particular."

Evidently, as a proposition deducible from the ICTY case-law on the subject, learned Counsel is correct in referencing the point. But he himself rightly notes, at the same page, that the ICTY held in *Kvocka case*[16] that "the massive scale of crimes (.....) make it impractical to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of crimes." The citation also references the *Krnojelac* [17] decision as authority for the proposition that "albeit ....the indictment must enable the accused and the defence to finally and adequately prepare the defence so that it must provide (some) information as to the identity of victims, place, date of the alleged crimes and means by which the offence was committed". The clear effect, in the Chamber's view, of *Kvocka* is to postulate, as learned Counsel himself

[15] Geert-Jan Alexander Knoops, An Introduction to the Law of International Criminal Tribunals, A Comparative Study , New York: Transnational Publishers,2003.
[16] *Supra note* 11.
[17] "Decision on the Defence Preliminary Motion on the Form of the Indictment", IT-99-25, 24 February 1999.

acknowledges, *that specificity in cases of such extraordinary crimes, as alleged, is not absolute.* This view of the law is consistent with the principles developed by this Court in *Sesay*, relying persuasively upon logically coherent and consistent decisions of ICTY and ICTR on the subject.

25. Based upon those principles and consistent with the decision in *Sesay*, the Chamber finds that the Indictment, as a whole, *except in relation to the use of the formulations "but not limited to these events" "including, but not limited to," "included but were not limited to"*, contains sufficient information to put the Accused on notice as to the charges against him. The Chamber also finds that, in the context of the extraordinary character of the crimes alleged, the dates, locations and offences charged are sufficiently clear to notify the Accused of the charges against him as one of those who ***allegedly*** "bear the greatest responsibility" for the said crimes, and to enable him to put forward the defence of *alibi*. Further, the Chamber does not find legally compelling and cogent the contention that specificity is required to enable an accused person to engage in cross-examination of witnesses. Of course, the Chamber agrees with learned Counsel that the requirement of specificity is part and parcel of the notion of a fair trial. *However, the Chamber wishes to emphasize that it remains true (as noted in paragraph 23) that, in the ultimate analysis, the crux of the matter is whether the Prosecution have proved their case beyond a reasonable doubt predicated upon the charges as formulated.*

26. In conclusion, based on the analysis in paragraphs 5-25 herein and a thorough view of the Sample Indictments and Charges contained in Appendix H of *Archbold*[18], the Chamber finds the Indictment in substantial compliance with Article 17 (4) (a) of the Court's Statute and Rule 47 (C) of the Rules as to its formal validity.

AND BASED ON THE FOREGOING DELIBERATION, THE CHAMBER HEREBY DENIES THE DEFENCE MOTION in respect to the several challenges raised as to the form of the Indictment except as regards the challenge hereinbefore (paragraph 17) found to be meritorious and upheld, an ORDER to which effect is set out *in extenso* in the annexure hereto for the sake of completeness.

Done at Freetown
on the 19th day of November, 2003

Judge Bankole Thompson
Presiding Judge, Trial Chamber

Seal of the Special Court

[18] International Criminal Courts, Practice, Procedure and Evidence, Sweet and Maxwell, London, 2003, pages 1409 -1481.

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JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995
FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

THE TRIAL CHAMBER

Before: Judge Bankole Thompson, Presiding Judge,
Judge Benjamin Mutanga Itoe
Judge Pierre Boutet

Registrar: Robin Vincent

Date: 19th day of November, 2003

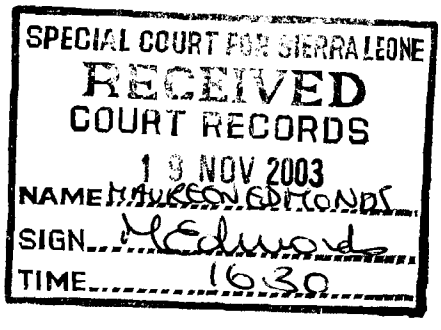
The Prosecutor against

Santigie Borbor Kanu
(Case No. SCSL -2003-13-PT)

ANNEXURE TO THE DECISION AND ORDER ON DEFENCE PRELIMINARY MOTION FOR DEFECTS IN THE FORM OF THE INDICTMENT

Office of the Prosecutor:
Mr. Luc Côté, Chief of Prosecutions
Mr. Robert Petit, Senior Trial Counsel
Mr. Christopher Santora, Senior Trial Counsel

Defence Counsel:
Professor Geert-Jan Alexander Knoops



THE SPECIAL COURT FOR SIERRA LEONE ("the Special Court")

SITTING as Trial Chamber ("the Trial Chamber ") composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet and Judge Benjamin Mutanga Itoe;

BEING SEIZED of the Defence Preliminary Motion for Defects in the Form of the Indictment filed on the 16th day of October, 2003 on behalf of Santigie Borbor Kanu ("the Motion") pursuant to Rule 72 (B) (ii) and (D) of the Rules;

CONSIDERING that the said Motion is one which, according to Rule 72 (B) (ii), falls within the jurisdiction of the Trial Chamber for determination;

NOTING that the several challenges raised by the Defence in the Motion are as to alleged defects in the form of the Indictment against Santigie Borbor Kanu approved by Judge Pierre Boutet on the 16th day of September, 2003 sitting as designated Judge of the Trial Chamber pursuant to Rules 28 and 47 of the Rules;

CONSIDERING ALSO the paramount importance of the right of the Accused to object preliminarily to the formal validity of the Indictment as distinct from raising the substantive issue as to whether the criteria for approving the Indictment were satisfied, and the need to keep the two issues separate and distinct;

HAVING METICULOUSLY EXAMINED the merits of the challenges and submissions by the Defence in support of the Motion alongside those contained in the Prosecution's Response, and those of the Defence in their Reply;

CONVINCED that the several challenges raised by the Defence as to the formal validity of the Indictment, except two, are devoid of merit; and having so ruled in the Decision herein;

HEREBY DENIES THE SAID MOTION AND ORDER as follows:

(i) that the Defence Preliminary Motion for Defects in the Form of the Indictment filed on the 16th day of October, 2003 on behalf of Santigie Borbor Kanu is denied in so far it relates to all challenges except those found to be meritorious and upheld in paragraph 17 of the Decision;

(ii) that consistent with the qualification to (i) above the Prosecution elect either to delete in every count and wherever it appears in the Indictment the phrases "but not limited to those events", "including but not limited to", and "included, but were not limited to" or provide in a Bill of Particulars specific additional events alleged against the Accused in each count;

(iii) that the aforesaid Amended Indictment or Bill of Particulars be filed within 7 days of the date of the service of this Decision and also on the Accused according to Rule 50 of the Rules;

(iv) that this Annexure is deemed to form part of the Decision herein.

Done at Freetown
on the 19th day of November 2003

Judge Bankole Thompson
Presiding Judge

Seal of the Special Court