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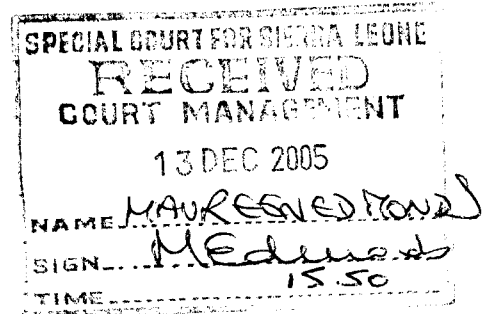
**SPECIAL COURT FOR  
SIERRA LEONE**

**Case No. SCSL-2004-16-T**

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

Registrar: Lovemore Munlo

Date filed: 13 December 2005



**THE PROSECUTOR**

**against**

**SANTIGIE BORBOR KANU**

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**KANU – FACTUAL PART  
DEFENCE MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE 98**

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Office of the Prosecutor:  
Luc Coté  
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Defence Counsel for Kanu:  
Geert-Jan A. Knoops, Lead Counsel  
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A.E. Manly-Spain, Co-Counsel

## VI NO GREATEST RESPONSIBILITY

1. The Defence respectfully submits that the Prosecution failed to present evidence supporting its statutory requirement that its power is limited to “prosecute persons who bear the greatest responsibility” for the crimes committed during the conflict.<sup>1</sup>
2. Whilst the Prosecution witnesses did provide some evidence relating the Accused Kanu’s presence and alleged crimes during the conflict, the Defence holds that this evidence is insufficient to reach the jurisdictional requirement of greatest responsibility.
3. Mainly, the bulk of evidence against the third Accused relates to him being a G5 commander,<sup>2</sup> in charge of civilians, more specifically in charge of women,<sup>3</sup> and in charge of the training.<sup>4</sup> However, the evidence as a whole fails to support the Prosecution contention that Mr. Kanu was one of those who bear the greatest responsibility for the crimes committed during conflict.
4. Therefore, the Defence suggests that on the basis of this argument and the evidence presented by the Prosecution, the Prosecution has failed to show that Mr. Kanu was one of those who bear the greatest responsibility, and thus the case against the third Accused should be dismissed in its entirety.

## VII THE ABSENCE OF EVIDENCE AS TO EACH INDICTMENT COUNT

### 7.1 Introduction

1. The Defence is of the humble opinion that the absence of evidence supporting any of the elements of the counts of the Indictment, including evidence for the responsibility of the Accused (both individual as well as superior), has to result in a judgement of acquittal on several counts of the Indictment.

<sup>1</sup> Article 1(1) of the Special Court Statute.

<sup>2</sup> See for instance Witness TF1-334, T 22 June 2005, p. 69, and TF1-167 (Junior Lion), T 15 September 2005, p. 40.

<sup>3</sup> See for instance TF1-167 (Junior Lion), T 23 May 2005, p. 76.

<sup>4</sup> See for instance Witness TF1-167 (Junior Lion), T 24 September 2005, p. 24.

**7.2 Count 1 – Acts of Terrorism**

2. For this aspect, the Defence refers to Part A of this Motion for Acquittal.

**7.3 Count 2 – Collective Punishments**

3. The indictment does not make mention of any specific area within the country where these crimes would have been committed, nor does it mention any specific time frame, other than the general time frame of the Indictment, i.e. after 30 November 1996.

**(i) Individual Criminal Responsibility**

4. The Defence submits that no evidence has been adduced throughout the Prosecution case, that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of collective punishments as defined by Article 3(b) of the Statute. Throughout the whole indictment period the evidence submitted by the Prosecution does not mention any involvement of the Accused Kanu in collective punishments, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime.

**(ii) Superior Responsibility and Joint Criminal Enterprise**

5. Nor has any evidence been presented throughout the Prosecution case of proof that the Accused bears any superior responsibility (Article 6(3) of the Statute) or joint criminal enterprise relating to this crime.

**Conclusion**

6. Therefore, no evidence has been adduced in respect of any form of liability regarding collective punishments, and that there is no evidence capable of supporting a conviction on this count of the Indictment. The Defence thus submits that its motion for acquittal should be granted with regard to this count.

#### 7.4 Count 3 – Extermination

7. **Primarily**, the Defence submits that no evidence has been submitted showing that extermination by, or on behalf of, or in joint criminal enterprise with the Accused took place. No evidence has been presented through Prosecution witness evidence that mass destruction<sup>5</sup> took place in which the Accused was involved. Thus, this specific element has not been fulfilled. Moreover, nor has evidence been produced supporting the element “calculated to bring about the destruction of part of a population.”

##### (i) Individual Criminal Responsibility

8. The Defence therefore holds that two of the specific elements of this crime of extermination have not been fulfilled, and thus the Accused cannot be held individually responsible for this crime.

##### (ii) Superior Responsibility and Joint Criminal Enterprise

9. Nor has any evidence been submitted in relation to Kanu’s alleged superior role or joint criminal enterprise with regard to the crime of extermination. Also for superior responsibility the two elements referred to above have not been fulfilled, and thus the motion for acquittal should be granted on this aspect.

10. **In the alternative**, in case the Trial Chamber finds that in fact evidence has been submitted by the Prosecution in relation to the two abovementioned elements of this specific crime, the Defence refers to Count 4 – Murder below, where the evidence regarding the count of murder is specified. The elements for murder and extermination coincide, except for the two, abovementioned specific elements for extermination.

#### Conclusion

11. **Therefore**, no evidence has been adduced in respect of any form of liability regarding extermination, as the constitutive elements of this crime have not been fulfilled; in the alternative, the Defence refers to its argument as set out under

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<sup>5</sup> *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999, para. 82.

Count 4 – Murder, below. The Defence thus submits that its motion for acquittal should be granted with regard to this count.

**7.5 Count 4 – Murder and Count 5 – Violence to life, health and physical or mental well-being of persons, in particular murder**

**A Bo District**

**(i) Individual Criminal Responsibility**

12. The Defence submits that no evidence has been adduced that the Accused was present in Bo District “between about 1 June 1997 and 30 June 1997.” More specifically, no evidence shows that the Accused was present in the villages Tikonko, Telu, Sembehun, Gerihun, and Mamboma, as mentioned in the Indictment.

**(ii) Superior Responsibility and Joint Criminal Enterprise**

13. No evidence has been adduced that the crimes as laid down in counts 4 and 5 have been committed in the villages Telu and Sembehun. For the other places mentioned in the Indictment no evidence shows that the Accused bore any form of superior liability or was involved in any form of joint criminal enterprise relating to this count of the Indictment.

**B Kenema District**

**(i) Individual Criminal Responsibility**

14. The Defence submits that no evidence has been adduced that the Accused was present in Kenema District or Kenema town “between about 25 May 1997 and 19 February 1998.”

**(ii) Superior Responsibility and Joint Criminal Enterprise**

15. No evidence has been adduced that the crimes as set out in counts 4 and 5 have been committed in Kenema town. As regards the rest of Kenema District, there is no evidence which shows that the Accused bore any form of superior liability or was involved in any form of joint criminal enterprise relating to this count of the Indictment.

**C Kono District****(i) Individual Criminal Responsibility**

16. As regards the villages Foindu, Willifegh, Mortema, Biaya, the Defence submits that no evidence has been produced supporting that the acts as alleged in counts 4 and 5 were committed in these places by either the RUF or AFRC during the indicted period, i.e. between about 14 February 1998 and 30 June 1998. Therefore, Kanu cannot be held liable for those.

17. Moreover, it has not been established by witnesses that "several hundreds of civilians were unlawfully killed in various locations in Kono District," as alleged in the Indictment. It is for this reason alone that these two counts cannot be proved for Kono District.

**(ii) Superior Responsibility and Joint Criminal Enterprise**

18. As regards the villages Foindu, Willifegh, Mortema, Biaya, the Defence submits that no evidence has been produced supporting that the crimes alleged under counts 4 and 5 were committed in these places by either the RUF or AFRC during the indicted period. Therefore, the Accused cannot be held liable for those.

19. Moreover, it has not been established by witnesses that "several hundreds of civilians were unlawfully killed in various locations in Kono District," as alleged in the Indictment. It is for this reason alone that these two counts cannot be proved for Kono District.

**D Kailahun District****(i) Individual Criminal Responsibility**

20. The Defence submits that no evidence has been adduced that the Accused was present in Kailahun District or Kailahun town "between about 14 February 1998 and 30 June 1998."

(ii) Superior Responsibility and Joint Criminal Enterprise

21. No evidence has been adduced that the crime of murder has been committed in Kailahun District. Moreover, there is no evidence which shows that the Accused bore any form of superior liability or was involved in any form of joint criminal enterprise relating to these two counts of the Indictment.

**E** Koinadugu District

(i) Individual Criminal Responsibility

22. No evidence has been adduced by the Prosecution that the Accused was present in the villages Heremakono, Kumalu/Kamalu, Katombo and Fadugu. Moreover, regarding the other places mentioned in the Indictment, the Prosecution has not shown that the Accused was involved in crimes as alleged under counts 4 and 5 of the Indictment in the Koinadugu District.

(ii) Superior Responsibility and Joint Criminal Enterprise

23. Nor has any evidence been brought forward supporting the indicted allegation that the Accused would have born superior responsibility or have been involved in a joint criminal enterprise to this end.

**F** Bombali District

(i) Individual Criminal Responsibility

24. No evidence has been adduced by the Prosecution that the Accused was present in the villages Bonyoyo/Bornoya and Mafabu. Moreover, regarding the other places mentioned in the Indictment, the Prosecution has not shown that the Accused was involved in counts 4 and 5 of the Indictment in Bombali District.

(ii) Superior Responsibility and Joint Criminal Enterprise

25. Nor has any evidence been brought forward supporting the indicted allegation that the Accused would have born superior responsibility or have been involved in a joint criminal enterprise to this end.

been in these districts during the Indictment period, no evidence suggests that the Accused partook in the crimes as alleged in counts 4 and 5 of the Indictment, or bore any other form of liability, to this end.

30. Therefore, the Accused cannot bear any form of liability for the crimes alleged in counts 4 and 5 of the Indictment. Moreover, as regards Kono District, it has not been proved that "several hundreds of civilians were unlawfully killed in various locations in Kono District," and also for this reason, the Accused cannot bear any form of liability for the Indictment.

**7.6 Count 6 – Rape**

**A Kono District**

31. Firstly, the Prosecution did not present any evidence to support the crime of rape - as defined by Article 2(g) of the Statute - of hundreds of women and girls between about 14 February and 30 June 1998 (regarding the Kono District) at AFRC/RUF camps such as "Superman camp" and Kissi-town (or Kissy town) camp, Tomendeh, Fokoiya, Wonedu, Tombodu or Kissi-town (or Kissi Town), as stated in the Indictment in paragraph 52. Therefore there is no proof that at any of these locations rape as a crime against humanity did occur during the indictment period.

32. Secondly, no evidence was presented that *hundreds* of women and girls were raped at any location in the Kono District, as the evidence only deals with the rape of several women and/or girls in the District.<sup>6</sup>

**(i) Individual criminal responsibility**

33. Thirdly, the Defence submits that no evidence has been adduced throughout the Prosecution case that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of rape as defined by Article 2(g) of the Statute in the Kono District. With respect to both

<sup>6</sup> Witness TF1-198, Transcript 28 June 2005, p.12; Witness TF1-198, Statement 23 September 2003 (Exhibit D7), p.7317; Witness TF1-019, Transcript 30 June 2005, p.90; Witness TF1-217, Transcript 17 October 2005, p.23; Witness TF1-334, Transcript 20 May 2005, p.5; Witness TF1-076, Transcript 27 June 2005, p.106.



**G Port Loko District**

**(i) Individual Criminal Responsibility**

26. No evidence has been adduced that the Accused was in the villages Manaarma, Tendakum and Nonkoba between about February and April 1999, as alleged in the Indictment. Therefore, no allegation of individual criminal responsibility for the count of murder in those places can be upheld. As regards the rest of the district, the Defence submits that, although evidence has been produced that the Accused may have been in Port Loko during the Indictment period, no evidence suggests that the Accused partook in counts 4 and 5 of the Indictment.

**(ii) Superior Responsibility and Joint Criminal Enterprise**

27. No evidence has been adduced indicating that the Accused bore any superior responsibility or was involved in a joint criminal enterprise with regard to counts 4 and 5.

**Conclusion**

28. For these reasons, the Defence respectfully submits that regarding counts 4 and 5 of the Indictment, no evidence has been adduced that the Accused was at all present in Bo, Kenema, and Kailahun Districts. Therefore, no evidence has been submitted with regard to alleged liability under Article 6(1) and (3) of the Statute and joint criminal enterprise as alleged in the Indictment.

29. In **Kono** District, no evidence has been adduced that the Accused would have been present in the villages Foindu, Willifegh, Mortema, Biaya, nor that any murders as a crime against humanity were committed there. In **Koinadugu**, no evidence was adduced that the Accused was present in the villages Heremakono, Kumalu/Kamalu, Katombo and Fadugu. In **Bombali**, no evidence has been adduced by the Prosecution that the Accused was present in the villages Bonyoyo/Bornoya and Mafabu. As regards **Port Loko District**, no evidence has been adduced that the Accused was present in the villages Manaarma, Tendakum and Nonkoba. As regards the other locations in these districts, the Defence submits that, although evidence has been produced that the Accused may have

the committing, planning, instigating, aiding and abetting as well as the ordering of this count of the Indictment no evidence has been presented by the Prosecution.

**B Koinadugu District**

34. During the Prosecution case no evidence was presented that rape as defined by Article 2(g) of the Statute occurred in Heremakono between about 14 February and 30 September 1998, as mentioned in paragraph 53 of the Indictment.

(i) Individual criminal responsibility

35. In addition, the Defence submits that no evidence has been adduced throughout the Prosecution case that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of rape as defined by Article 2(g) of the Statute in Koinadugu District. Throughout the whole Indictment period the evidence submitted by the Prosecution regarding the Koinadugu District does not mention any involvement of the Accused Kanu in rape, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime.

**C Bombali District**

36. During the Prosecution case no evidence was presented that rape as defined by Article 2(g) of the Statute was committed by members of the AFRC/RUF in Mandaha between about 1 May and 31 November 1998 (see paragraph 54 of the Indictment).

(i) Individual criminal responsibility

37. In addition, the Defence submits that no evidence has been adduced throughout the Prosecution case that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of rape as defined by Article 2(g) of the Statute in Bombali District. With respect to both the committing, planning, instigating, aiding and abetting as well as the ordering of this count of the Indictment no evidence has been presented by the Prosecution.

**D Kailahun District**

38. During the Prosecution case no evidence was presented that rape as defined by Article 2(g) of the Statute was committed in the Kailahun District by members of the AFRC/RUF at all times relevant to the Indictment.

**(i) Individual criminal responsibility**

39. In the alternative, the Defence submits that no evidence has been adduced throughout the Prosecution case that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of rape as defined by Article 2(g) of the Statute in Kailahun District. Throughout the whole Indictment period the evidence submitted by the Prosecution regarding this district does not mention any involvement of the Accused Kanu in rape, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime. Moreover, the Prosecution evidence does not even mention the presence of the Accused Kanu in the Kailahun District.

**E Freetown and the Western Area**

40. The Defence submits that no evidence has been adduced throughout the Prosecution case that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of rape as defined by Article 2(g) of the Statute in nor Freetown nor the Western Area. Throughout the whole Indictment period the evidence submitted by the Prosecution regarding this area does not mention any involvement of the Accused Kanu in rape, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime.

**F All Districts mentioned in the Indictment for Count 6****(ii) Superior Responsibility and Joint Criminal Enterprise**

41. No evidence has been brought forward supporting the indicted allegation that the Accused would have born superior responsibility or has been involved in a joint

criminal enterprise to this end, within the meaning of the legal parameters as set out in Part A of this Motion for Acquittal.

**Conclusion**

42. Therefore, no evidence has been brought forward regarding the occurrence of the crime of rape as defined by Article 2(g) of the Statute in AFRC/RUF camps such as “Superman camp” and Kissi-town (or Kissy town) camp, Tomendeh, Fokoiya, Wonedu, Tombodu or Kissi-town (or Kissi Town) (all in Kono District), Heremakono (Koinadugu District), Mandaha (Bombali District), and the whole Kailahun District during the relevant periods of the Indictment.
43. Furthermore, no evidence was presented that *hundreds* of women and girls were raped at any location in the Kono District.
44. In addition, no evidence has been adduced in respect of any form of individual criminal liability of the Accused Kanu as set out in Article 6(1) of the Statute regarding rape in Kono District, Koinadugu District, Bombali District, Freetown and the Western Area, and (in the alternative, see above) Kailahun District. With regard to this last-mentioned District, there is even no evidence that the Accused Kanu was present in the District at any moment in the Indictment period.
45. Additionally, no evidence was presented that support the allegation that the Accused Kanu has superior responsibility or was involved in a Joint Criminal Enterprise regarding Count 6.
46. Conclusively, there is no evidence capable of supporting a conviction on the abovementioned parts of Count 6 of the Indictment. The Defence thus submits that its motion for acquittal should be granted with regard to these parts of this count.

**7.7 Count 7 – Sexual Slavery and Any Other Form of Sexual Violence**

**A Kailahun District**

47. During the Prosecution case no evidence was presented that sexual slavery or any other form of sexual violence as defined by Article 2(g) of the Statute was

committed in the Kailahun District by members of the AFRC/RUF at all times relevant to the Indictment.

48. In the alternative, the Defence submits that no evidence has been adduced throughout the Prosecution case that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of sexual slavery or any other form of sexual violence as set out by article 2(g) of the Statute with respect to Kailahun District. Moreover, the Prosecution evidence does not even mention the presence of the Accused Kanu in the Kailahun District.

**B Freetown and Western Area**

49. No evidence was presented that *hundreds* of women and girls were subjected to sexual slavery throughout the City of Freetown and the Western Area, as the evidence only deals with the abduction and use of several women and/or girls, or the forced “marriages” of these several women and/or girls, in Freetown and the Western Area.<sup>7</sup>

**C Other**

**(i) Individual criminal responsibility**

50. The Defence submits that no evidence has been adduced throughout the Prosecution case that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of sexual slavery or any other form of sexual violence as set out by article 2(g) of the Statute with respect to Kono District, Koinadugu District, Bombali District, and Port Loko District. Throughout the whole Indictment period the evidence submitted by the Prosecution regarding this district does not mention any involvement of the Accused Kanu in sexual slavery in these District, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime, including the abduction of women and/or girls, the use as sex slaves, the

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<sup>7</sup> Witness TF1-085, Transcript 7 April 2005, p.21-41; Witness TF1-334, Transcript 14 June 2005, p.115-120, and Transcript 15 June 2005, p.3-6.

forcing into “marriages” and the forcefully performance of a number of conjugal duties.

(ii) Superior Responsibility and Joint Criminal Enterprise

51. No evidence has been brought forward supporting the indicted allegation that the Accused would have born superior responsibility or has been involved in a joint criminal enterprise to this end.

Conclusion

52. Therefore, no evidence has been adduced in respect of any form individual criminal liability of the Accused Kanu as set out in Article 6(1) of the Statute regarding sexual slavery or any other form of sexual violence in Kono District, Koinadugu District, Bombali District, and Port Loko District.
53. In addition, no evidence was presented with respect to the occurrence of sexual slavery or any other form of sexual violence in Kailahun District, and, in the alternatively, with respect to the individual criminal liability as set out in Article 6(1) of the Statute regarding sexual slavery or any other form of sexual violence; the Prosecution evidence does not even mention the presence of the Accused Kanu in the Kailahun District.
54. Furthermore, no evidence was presented that *hundreds* of women and girls were subjected to sexual slavery throughout the City of Freetown and the Western Area.
55. Additionally, no evidence was presented that supports the allegation that the Accused Kanu has superior responsibility or was involved in a Joint Criminal Enterprise regarding Count 7.
56. Conclusively, there is no evidence capable of supporting a conviction on the abovementioned parts of count 7 of the Indictment. The Defence thus submits that its motion for acquittal should be granted with regard to these parts of the count.

**7.8 Count 8 – Other inhumane act - and Count 9 – Outrages on Personal Dignity**

57. These counts will be assessed by the Defence in the context of sexual violence, as these counts are mentioned in the indictment under the subtitle “sexual violence”.

**A All Districts mentioned in the Indictment for Counts 8 and 9**

**(ii) Superior Responsibility and Joint Criminal Enterprise**

58. Firstly, no evidence has been brought forward supporting the indicted allegation that the Accused would have born superior responsibility or has been involved in a joint criminal enterprise with regard to Counts 8 and 9 of the Indictment (see subtitle above paragraph 51 in the Indictment).

**B Other**

59. Secondly, no evidence has been brought forward regarding the occurrence of the crimes of other inhumane act as defined by Article 2(i) of the Statute and outrages upon personal dignity as defined by Article 3(e) in the context of sexual violence at the following locations mentioned in the Indictment during the relevant periods: AFRC/RUF camps such as “Superman camp” and Kissi-town (or Kissy town) camp, Tomendeh, Fokoiya, Wonedu, Tombodu or Kissi-town (or Kissi Town) (all in Kono District), Heremakono (Koinadugu District), Mandaha (Bombali District), and the whole Kailahun District.

**(i) Individual criminal responsibility**

60. Finally, the Defence submits that no evidence has been adduced throughout the Prosecution case that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crimes of other inhumane act as defined by Article 2(i) of the Statute and outrages upon personal dignity as defined by Article 3(e) with respect to Kono District, Koinadugu District, Bombali District, and (in the alternative, see preceding paragraph) Kailahun District. Throughout the whole Indictment period the evidence submitted by the Prosecution regarding this district does not mention any involvement of the Accused Kanu in the abovementioned crimes in these District,

nor through the committing, planning, instigating, aiding and abetting nor the ordering of these crimes.

**Conclusion**

61. Therefore there is no evidence capable of supporting a conviction on the abovementioned parts of counts 8 and 9 of the Indictment. The Defence thus submits that its motion for acquittal should be granted with regard to these parts of these counts.

**7.9 Count 10 – Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Mutilation - and Count 11 – Other Inhumane Acts**

**A Kono District**

**(i) Individual Criminal Responsibility**

62. No evidence has been presented that the Accused was present in Kaima/Kayima and Wonedu. Regarding other locations, according to the evidence presented, Kanu was present in other locations in Kono District, but was not directly involved in the commission of crimes as alleged under counts 10 and 11 of the Indictment.

**(ii) Superior Responsibility and Joint Criminal Enterprise**

63. No evidence has been adduced that the Accused bore any form of liability concerning counts 10 and 11 in Kono District during the Indictment period.

**B Kenema District**

64. The Indictment with regard to Kenema District specifies that: “AFRC/RUF carried out beatings and ill-treatment of a number of civilians who were in custody.” The Defence respectfully denies that the civilians that were ill-treated – if at all – were in custody. Therefore, only on this argument, the Defence motion for acquittal on this part of the Indictment should be granted.



(i) Individual Criminal Responsibility

65. The evidence does not show that the Accused was present in Kenema District during the Indictment period, and thus any allegation of individual criminal responsibility is not supported by Prosecution evidence.

(ii) Superior Responsibility and Joint Criminal Enterprise

66. No evidence has been adduced that the crimes as set out in counts 10 and 11 have been committed in Kenema town. As regards the rest of Kenema District, there is no evidence which shows that the Accused bore any form of superior liability or was involved in any form of joint criminal enterprise relating to this count of the Indictment.

**C** Koinadugu District

(i) Individual Criminal Responsibility

67. According to the Prosecution evidence, the Accused was not present in Konkoba/Kontoba. He was present in Kabala, and various locations in the district, but no evidence has been adduced with regard to counts 10 and 11 of the Indictment.

(ii) Superior Responsibility and Joint Criminal Enterprise

68. No evidence has been adduced that the Accused bears liability on the basis of Joint Criminal Enterprise or Superior Responsibility concerning counts 10 and 11 in Koinadugu District during the Indictment period.

**D** Bombali District

(i) Individual Criminal Responsibility

69. Prosecution evidence shows that the Accused was not present in Lohondi, Malama and Mamaka during the indicted period. Therefore, the Accused cannot bear individual criminal responsibility for the crimes alleged in those villages. At

Rosos, evidence suggests that the Accused was present,<sup>8</sup> but not that he was involved in any crimes relating to counts 10 and 11.

(ii) Superior Responsibility and Joint Criminal Enterprise

70. No evidence has been adduced supporting the allegation that the Accused was bore superior responsibility or was involved in a joint criminal enterprise relating to the villages mentioned under (i) above.

**E** Port Loko

(i) Individual Criminal Responsibility

71. The Indictment does not specify in which locations it alleges counts 10 and 11 within Port Loko District. The Accused, according to Prosecution evidence, was present at some point in Port Loko, but has not been involved in any of the crimes as alleged under counts 10 and 11, nor does Prosecution evidence support this allegation.

(ii) Superior Responsibility and Joint Criminal Enterprise

72. No evidence has been adduced supporting the allegation that the Accused was bore superior responsibility or was involved in a joint criminal enterprise relating to Port Loko district.

Conclusion

73. For these reasons, as to counts 10 and 11, the Defence holds that no evidence has been adduced that the Accused was at all present in Bo, Kenema, and Kailahun Districts. Therefore, no evidence has been submitted with regard to these areas and the Accused's alleged liability under Article 6(1) and (3) of the Statute and joint criminal enterprise as alleged in the Indictment.

74. In **Kono District**, no evidence has been adduced that the Accused would have been present in the villages Kaima/Kayima and Wonedu, nor that any crimes as alleged in counts 10 and 11 were committed there. In **Koinadugu District**, no

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<sup>8</sup> TF1-334, T 24 May 2005, p. 5.

evidence was adduced that the Accused was present in the village Konkoba/Kontoba. In **Bombali District**, Prosecution evidence shows that the Accused was not present in Lohondi, Malama and Mamaka during the indicted period. As regards the other locations in these districts and Port Loko District, the Defence submits that, although evidence has been produced that the Accused may have been in these districts during the Indictment period, no evidence suggests that the Accused partook in the crimes as alleged in counts 10 and 11 of the Indictment, or bore any other form of liability, to this end.

75. Therefore, the Accused cannot bear any form of liability for the alleged crime of murder as a crime against humanity. Moreover, as regards Kono District, it has not been proved that “several hundreds of civilians were unlawfully killed in various locations in Kono District,” and also for this reason, the Accused cannot bear any form of liability for the Indictment.

#### **7.10 Count 12 – Use of Child Soldiers**

76. For this count the Defence refers to part A of this motion. The few witnesses which were introduced by the Prosecution in order to support the existence of child soldiers within the AFRC, the Defence holds that this evidence does not suggest any evidentiary link to the Accused, at the least with respect to the charge of “routinely conscripting, enlisting or using boys and girls under the age of 15 to participate in active hostilities”. In this regard a clear distinction should be made between said actions on the one hand and alleged training of individuals in locations. In any event, the Prosecution has not introduced evidence as to the former described charge of “routinely conscripting et al.” on part of the Accused Kanu. The word “routinely” forms a integral part of the indictment and no evidence has been adduced for this element on part of Accused Kanu.

**7.11 Count 13 – Enslavement**

**A Kenema District**

**(i) Individual criminal responsibility**

77. The Defence submits that no evidence has been adduced throughout the Prosecution case that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of enslavement as defined by Article 2(c) of the Statute in Kenema District. Throughout the whole Indictment period the evidence submitted by the Prosecution regarding this district does not mention any involvement of the Accused Kanu in enslavement, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime. Moreover, according to the Prosecution evidence the Accused Kanu was not even present in the Kenema District during the whole Indictment period.

**B Kono District**

78. Firstly, the Prosecution did not present any evidence to support the occurrence of domestic labour and mining in Tombodu between 14 February 1998 and January 2000.

79. Secondly, no evidence has been adduced during the Prosecution case that enslavement did happen in Tomendeh or Wonedu between 14 February 1998 and January 2000.

**C Koinadugu District**

80. No evidence has been adduced during the Prosecution case that enslavement occurred in Heremakono or Kamadugu between 14 February and 30 September 1998. In addition, the Prosecution has not brought forward any evidence with regard to abduction in Koinadugu (the town) in this same period.

**D Kailahun District**

**(i) Individual criminal responsibility**

81. No evidence has been brought forward by the Prosecution that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of enslavement as defined by Article 2(c) of the Statute in Kailahun District. Throughout the whole Indictment period the evidence submitted by the Prosecution regarding this district does not mention any involvement of the Accused Kanu in enslavement, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime. Moreover, according to the Prosecution evidence the Accused Kanu was not even present in the Kailahun District during the whole Indictment period.

**E Freetown and the Western Area**

82. The Prosecution has not presented any evidence regarding the abduction of civilians, including a large number of children, and their use as forced labour at Peacock Farm in the Western Area.

**F Port Loko District**

83. No evidence has been brought forward during the Prosecution case with respect to the occurrence of enslavement in Port Loko District in about the month of February 1999.

**(i) Individual criminal responsibility**

84. In the alternative, no evidence was presented by the Prosecution to prove the individual criminal responsibility of the Accused Kanu, as set out in Article 6(1) of the Statute, with respect to the crime of enslavement in the Port Loko District. Throughout the whole Indictment period the evidence submitted by the Prosecution regarding this district does not mention any involvement of the Accused Kanu in enslavement, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime.

**G All Districts mentioned in the Indictment for Count 13**

**(ii) Superior Responsibility and Joint Criminal Enterprise**

85. No evidence has been brought forward supporting the indicted allegation that the Accused would have born superior responsibility or has been involved in a joint criminal enterprise with regard to the crime of enslavement.

**Conclusion**

86. Therefore the Defence submits that no evidence has been presented that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of enslavement in Kenema District, Kailahun District and Port Loko District. Moreover, according to the Prosecution evidence the Accused Kanu was not even present in the Kailahun or Kenema District during the whole Indictment period.

87. In addition, no evidence has been brought forward with respect to Mr. Kanu to support the occurrence of domestic labour and mining in Tombodu, and the enslavement in Tomendeh or Wonedu (all Kono District) during the relevant Indictment periods.

88. Furthermore, no evidence has been adduced during the Prosecution case that enslavement occurred in Heremakono, Kamadugu, or Koinadugu (all Koinadugu District) or the whole Port Loko District, nor is there any evidence regarding the abduction and use of civilians as forced labour at Peacock Farm during the relevant periods.

89. No evidence has been brought forward supporting the indicted allegation that the Accused would have born superior responsibility or has been involved in a joint criminal enterprise with regard to the crime of enslavement.

90. Conclusively, there is no evidence capable of supporting a conviction on the abovementioned parts of counts 13 of the Indictment. The Defence thus submits that its motion for acquittal should be granted with regard to these parts of the count of enslavement.

**7.12 Count 14 – Pillage****A Bo District**

91. No evidence has been brought forward that any looting or burning occurred in Telu, Sembahun and Mamboma between 1 and 30 June 1997. In addition, no evidence was presented that any looting occurred in Tikonko during this same period.

**(i) Individual Criminal Responsibility**

92. No evidence has been brought forward by the Prosecution that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of pillage as defined by Article 3(f) of the Statute in Bo District. Throughout the whole Indictment period the evidence submitted by the Prosecution regarding this district does not mention any involvement of the Accused Kanu in pillage, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime. Moreover, according to the Prosecution evidence the Accused Kanu was not even present in the Bo District during the whole Indictment period.

**B Koinadugu District****(i) Individual criminal responsibility**

93. No evidence has been brought forward by the Prosecution that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of pillage as defined by Article 3(f) of the Statute in Koinadugu District. When reading the time frame of this charge in the Indictment, it can be concluded that no evidence has been submitted by the Prosecution regarding this district which implicates or even mentions the Accused Kanu with respect to pillage, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime.

94. Furthermore, the Prosecution did not introduce any evidence with regard to looting or burning in Heremakono and Kamadugu between 14 February and 30

September 1998. In addition, no evidence was presented that looting occurred in Fadugu during this time period.

**C Kono District**

**(i) Individual criminal responsibility**

95. Firstly, no evidence has been brought forward by the Prosecution that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of pillage as defined by Article 3(f) of the Statute in Kono District. Throughout the whole Indictment period the evidence submitted by the Prosecution regarding this district does not mention any involvement of the Accused Kanu in pillage, nor through the committing, planning, instigating, aiding and abetting nor the ordering of this crime.

96. Secondly, the evidence brought forward by the Prosecution during their case did not include any evidence on looting and burning in Foindu between 14 February and 30 June 1998.

**D Freetown and the Western Area**

97. The Prosecution evidence did not include any evidence with respect to looting in Calaba Town, Fourah Bay, Upgun area, or Pademba Road between 6 January and 28 February 1999.

**E All Districts mentioned in the Indictment for Count 14**

**(ii) Superior Responsibility and Joint Criminal Enterprise**

98. No evidence has been brought forward supporting the indicted allegation that the Accused would have born superior responsibility or has been involved in a joint criminal enterprise with regard to the crime of pillage.

**Conclusion**

99. No evidence has been brought forward during the Prosecution case with respect to the Accused Kanu that any looting or burning occurred in Telu, Sembehun and



Mamboma (all in Bo District), Heremakono and Kamadugu (Koinadugu District), or Foindu (Kono District) during the relevant Indictment period.

100. In addition, no evidence was presented that any looting occurred in Tikonko (Bo District), Fadugu (Koinadugu District) Calaba Town, Fourah Bay, Uppun area, or Pademba Road (all Freetown or the Western Area) during the relevant time period of the Indictment.
101. Furthermore, no evidence has been brought forward by the Prosecution that the Accused Kanu bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of pillage as defined by Article 3(f) of the Statute in Bo District, Koinadugu District, and Kono District.
102. Finally, no evidence has been brought forward supporting the indicted allegation that the Accused would have borne superior responsibility or has been involved in a joint criminal enterprise with regard to the crime of pillage.
103. Therefore there is no evidence capable of supporting a conviction on the abovementioned parts of counts 14 of the Indictment. The Defence thus submits that its motion for acquittal should be granted with regard to these parts of the count of pillage.

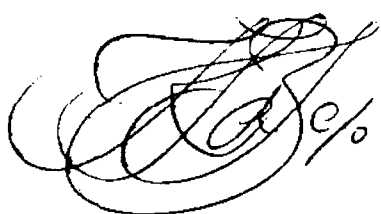
## VIII CONCLUSION

104. On the basis of both the joint legal part and this separate factual part, the Defence **primary** prays the honourable Trial Chamber to enter a judgment of acquittal with regard to the Indictment as a whole, on the basis of the conclusion that the Prosecution has failed to meet the standard of the Accused Mr. Kanu being one who bears the greatest responsibility.
105. Or in the **alternative**, the Defence prays the honourable Trial Chamber to enter a judgment of acquittal on the basis of either the legal arguments set out in the legal part, or the factual arguments set out above.
106. The Defence respectfully suggests that the honourable Trial Chamber, presupposed that it would not dismiss the case already on basis of the legal part,

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render judgements for the three Accused separately, based upon the three individual factual parts filed under Rule 98.

Respectfully submitted,  
This 13<sup>th</sup> day of December 2005

A handwritten signature in black ink, appearing to be 'G.J.A. Knoops', written in a cursive style with a large flourish at the end.

Geert-Jan Alexander Knoops

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**AUTHORITY**

- *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999 (URL: <http://65.18.216.88/ENGLISH/cases/Rutaganda/judgement/index.htm>) – relevant part: para. 82.