(24087 - 24104)

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

Before: Hon. Justice Bankole Thompson, Presiding
Hon. Justice Benjamin Itoe
Hon. Justice Pierre Boutet

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 11 July 2006

THE PROSECUTOR **Against** **Issa Hassan Sesay**
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

PUBLIC

PROSECUTION POSITION PAPER ON IMPLEMENTING MODALITIES FOR RULE 98

Office of the Prosecutor:
Mr. Christopher Staker
Mr. Peter Harrison
Ms. Wendy van Tongeren

Defense Counsel for Issa Hassan Sesay
Mr. Wayne Jordash
Ms. Sareta Ashraph

Defense Counsel for Morris Kallon
Mr. Shekou Touray
Mr. Charles Taku
Mr. Melron Nicol-Wilson

Defense Counsel for Augustine Gbao
Mr. Andreas O'Shea
Mr. John Cammegh

I. INTRODUCTION

1. At the status conference held on 19 June 2006, the Presiding Judge directed the parties to file written position papers on what should be the implementing modalities of Rule 98 in this case.[1] Pursuant to that direction, the Prosecution files this document. The Prosecution and the Defence have engaged in discussions in respect of this issue. The Prosecution believes that as a result of these discussions, the differences between the parties have narrowed, although some differences remain. The Prosecution understands that the Defence will be filing its own position paper.

II. GENERAL LEGAL SUBMISSIONS

(A) The effect of the recent amendment to Rule 98

2. Rule 98 ("Motion for Judgment of Acquittal"), as recently amended on 13 May 2006, provides that:

> If, after the close of the case for the prosecution, there is no evidence capable of supporting a conviction on one or more counts of the indictment, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgment of acquittal on those counts.

3. The amendment makes Rule 98 substantively similar to Rule 98 *bis* of the ICTY Rules (entitled "Judgement of Acquittal"), which, following its last amendment on 8 December 2004, now provides that:

> At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction.

4. The ICTR Rule 98 *bis*, unlike its counterpart in the ICTY Rules, has not been amended to provide specifically for an oral procedure. Accordingly, while the relevant ICTY precedents are considered below, there are no such precedents in the ICTR.
5. The 8 December 2004 amendment to the ICTY Rule 98 *bis*, to provide for an oral procedure, was designed to speed up proceedings under that Rule. For instance, the Annual Report of the ICTY for 2005 states that:

> One significant internal reform during the reporting period involved the amendment to rule 98 bis, Motion for judgement of acquittal. A motion filed by the defence under this rule at the close of the Prosecution's case generally resulted in a three-month delay in the proceedings. The judges of the Tribunal decided to shorten the time frame by which such motions are heard and a

[1] Transcript, Status Conference, 19 June 2006, pp. 21-25, especially p. 21 (lines 15-22).

> decision rendered, by amending the rule to allow the procedure to be dealt with orally, as is done in many common law jurisdictions. The new rule has been applied in the Oric trial and the expected three-month delay in those proceedings was shortened to one week.[2]
>
> At the 31st session of the [ICTY] plenary, in December 2004, the judges approved amendments to rules 73 (D) and 98 bis. The most important amendment was to rule 98 bis which aimed at speeding up the process by which a Trial Chamber shall enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction at the close of the prosecution's case.[3]

The amendment to Rule 98 of the Special Court Rules, by making the procedure an oral one, can serve the same judicial objective, namely to ensure a fair trial without undue delay.

(B) The procedure followed at the ICTY

6. There have been three decisions rendered by ICTY Trial Chambers under Rule 98 *bis* of the ICTY Rules since its amendment in December 2004.

The Orić case

7. In the *Orić* case, the prosecution ended its case on 31 May 2005.[4] The defence presented its oral Rule 98 *bis* submissions two days later, on 2 June 2005.[5] The following day, on 3 June 2005, the prosecution presented its oral submissions in response, after which the defence immediately presented oral arguments in reply.[6] The Trial Chamber then gave its oral decision five days later, on 8 June 2005.[7] The entire Rule 98 *bis* proceedings (including the Trial Chamber's decision) thus took ***just over a week*** from the end of the prosecution case, in circumstances where the prosecution case had lasted nearly 8 months (from 6 October 2004[8] to 31 May 2005[9]).

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[2] Twelfth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 [covering the period 1 August 2004 to 31 July 2005], para. 7 < http://www.un.org/icty/rappannu-e/2005/index.htm>.
[3] *Ibid.*, para. 29.
[4] *Prosecutor v Orić*, IT-03-68-T, Transcript, 31 May 2005, p. 8815 (lines 19-21), p. 8816 (lines 11-12).
[5] *Prosecutor v Orić*, IT-03-68-T, Transcript, 2 June 2005.
[6] *Prosecutor v Orić*, IT-03-68-T, Transcript, 3 June 2005.
[7] *Prosecutor v Orić*, IT-03-68-T, Transcript, 8 June 2005.
[8] *Prosecutor v Orić*, IT-03-68-T, Transcript, 6 October 2004.
[9] See footnote 4 above and accompanying text.

8. At the oral hearings, the Defence provided a written skeleton argument,[10] which was some three pages long.[11] The oral arguments of the Defence lasted only about 2 hours, which prompted the Presiding Judge to say that "This is precisely what we had in mind when we amended the rule".[12] The prosecution submissions in response and the defence submissions in reply were both given in the course of a single morning session lasting some three hours,[13] in which the prosecution also provided a skeleton argument and a booklet of documents that were to be referred to in the oral submissions.[14]

The Krajišnik case

9. The schedule for the Rule 98 *bis* proceedings in the *Krajišnik* case was established by a scheduling order issued by the Trial Chamber on 26 April 2005,[15] some 3 months before the close of the Prosecution case. Pursuant to that scheduling order, the prosecution ended its case on 22 July 2005.[16] In accordance with that scheduling order, the oral submissions of both parties pursuant to Rule 98 *bis* were then held some 3 and a half weeks later, on 16 August 2005.[17] The entire oral submissions of both parties were heard in one single half-day session.[18] Again, in accordance with the scheduling order, the Trial Chamber then gave its oral decision three days later, on 19 August 2005.[19] The entire Rule 98 *bis* proceedings (including the Trial Chamber's decision) thus took ***just under one month***, in a case where the prosecution case had lasted over 17 months (from 3 February 2004[20] to 22 July 2005[21]). Furthermore, it would seem that the three and a

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[10] *Prosecutor v Orić*, IT-03-68-T, Transcript, 2 June 2005, p. 8821 (lines 11-15).
[11] *Prosecutor v Orić*, IT-03-68-T, Transcript, 2 June 2005, p. 8829 (lines 5-17).
[12] The Presiding Judge said to defence counsel: "Mr. Jones, I must publicly congratulate you on the way in which you made your submissions, which I hope has set an example for -- to other counsel for the future. This is precisely what we had in mind when we amended the rule, and apart from the style in which you delivered your submissions, it's also the concise manner in which you managed to put everything that was relevant to your case in less than two hours. That is admirable and I must publicly congratulate you for that." *Prosecutor v Orić*, IT-03-68-T, Transcript, 3 June 2005, p. 8879 (lines 11-20).
[13] From 09.05 am to 1.50 pm.
[14] *Prosecutor v Orić*, IT-03-68-T, Transcript, 3 June 2005, p. 8879-8880.
[15] *Prosecutor v Krajišnik*, IT-00-39-T -T, "Scheduling Order (Period April 2005 to Delivery of Judgement)", Trial Chamber, 26 April 2005 ("***Krajišnik* Scheduling Order**").
[16] *Ibid.*, Order (a), and see *Prosecutor v Orić*, IT-03-68-T, Transcript, 31 May 2005, p. 8815 (lines 19-21), p. 8816 (lines 11-12).
[17] *Krajišnik* Scheduling Order, Order (b).
[18] See *Prosecutor v Krajišnik*, IT-00-39-T -T, Transcript, 16 August 2005. The session on 16 August 2005 lasted from 10.44 am to 1.36 pm.
[19] *Krajišnik* Scheduling Order, Order (b); *Prosecutor v Krajišnik*, IT-00-39-T -T, Transcript, 19 August 2005.
[20] *Krajišnik* Scheduling Order, first preambular paragraph,

half week delay between the close of the prosecution case and the oral Rule 98 *bis* submissions (as opposed to 2 days in the *Orić* case) was due to an intervening Summer recess.[22] But for the recess, presumably the oral hearings may have been held sooner.

10. Prior to the close of the prosecution case, the Trial Chamber had advised the parties in relation to the procedure to be adopted as follows:

> The Chamber is not expecting, and indeed will not accept, any written submissions on the 98 bis motion. The Defence is simply to notify the Chamber and the Prosecution at the close of the Prosecution's case whether it intends to move for acquittal. This may be done orally, or by e-mail, and no reasons need to be given at that stage. If the Defence notifies the Chamber of its intention to move for acquittal, it will be invited to do so orally on the 16th of August. There will be an opportunity for an oral response from the Prosecution. The Chamber will then decide the matter, again orally, within three days. The new oral format of the 98 bis procedure changes the nature of the preparation required, while not in any way diminishing the Chamber's responsibility to make a considered decision. If the Defence intends to move for acquittal, it should begin already now to develop the points it wishes to make come the 16th of August. There is no reason to wait for the Prosecution's last witness to be heard before such an exercise may start. Indeed, by the time of the last Prosecution witness, the Defence should be aiming to be finalising any 98 bis submissions it intends to make. The same is true also of the Prosecution, which under the new procedure is effectively obliged to anticipate the Defence arguments and respond to them within a very short time frame. In the present case, the Prosecution must be prepared to respond to the Defence on the very same day it hears the Defence's submissions. I think it is clear, therefore, that the amended 98 bis procedure obliges both parties and, for that matter, the Chamber, to think about the midpoint review well in advance of the date of the review.[23]

The Martić case

11. The schedule for the Rule 98 *bis* proceedings in the *Martić* case was originally established by a scheduling order issued by the Trial Chamber on 9 June 2006,[24] during the course of the Prosecution case. Pursuant to that scheduling order, the prosecution was to end its case by the latest on 20 June 2006.[25] The oral submissions of both parties pursuant to Rule 98 *bis* were to be heard on the very next day, 21 June 2006,[26] with the Rule 98 *bis* decision of the Trial Chamber to be given a week later, on 28 June 2006.[27] It

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[21] See footnote 16 above and accompanying text.
[22] *Prosecutor v Krajišnik*, IT-00-39-T -T, Transcript, 16 August 2005, p. 17057 (lines 5-6).
[23] *Prosecutor v Krajišnik*, IT-00-39-T -T, Transcript, 17 May 2005, p. 13088 (line 3) to p. 13089 (line 2).
[24] *Prosecutor v Martić*, IT-95-11-T, "Scheduling Order", Trial Chamber, 9 June 2006.
[25] *Ibid.*, Order no. 1.
[26] *Ibid.*, Order no. 2.
[27] *Ibid.*, Order no. 3.

appears that the Prosecution did complete the presentation of its evidence on time, on 20 June 2006, but that the Rule 98 *bis* oral submissions were delayed until 26 June 2006.[28] The Rule 98 *bis* oral decision was given on 3 July 2006.[29] Thus, on the original schedule, the Rule 98 *bis* proceedings in this case (including the Trial Chamber's decision) would have been completed within 8 days of the conclusion of the prosecution case. Following the rescheduled timetable, the Rule 98 *bis* proceedings (including the Trial Chamber's decision) were ultimately completed within ***13 days*** of the conclusion of the prosecution case.

(C) The burden on the Defence

12. The title of the Rule, "Motion for Judgment of Acquittal", makes clear that the Rule 98 procedure commences upon a party bringing a motion for a judgment of acquittal. That is also consistent with the way the current version of Rule 98 *bis* of the Rules of the ICTY has been applied. In the three ICTY cases referred to above, the defence presented submissions to which the prosecution responded. In the *Krajišnik* case, the Trial Chamber noted that it was for the Defence "to notify the Chamber and the Prosecution ... whether it intends to move for acquittal".[30] In the *Halilović* case, which was another case to which the current version of ICTY Rule 98 *bis* applied, there were no Rule 98 *bis* proceedings, since the defence indicated that it did not intend to present any submission under that rule.[31] The Trial Chamber in the course of proceedings in that case asked the defence whether it intended "to file a ... 98 *bis* motion",[32] and the defence responded that it did not "seek to activate that process"[33] and was "not going to trouble [the Chamber] with such a submission".[34]
13. For Rule 98 to come into play, the Defence must formally move the Trial Chamber under that Rule, and where this occurs, the Defence is therefore the moving party.

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[28] ICTY Weekly Press Briefing, 21 June 2006, fourth paragraph (immediately following the heading "COURT PROCEEDINGS").
[29] ICTY, Overview of Court Proceedings, Update No. 409 - 7 July 2006 < http://www.un.org/icty/latest-e/index.htm >.
[30] *Ibid.*
[31] *Prosecutor v. Halilović*, IT-01-48-T, "Judgement", Trial Chamber, 16 November 2005, Annex 2 ("Procedural History"), para. 20.
[32] *Prosecutor v Halilović*, IT-01-48-T, Transcript, 2 June 2005, p. 53 (lines 19-21).
[33] Ibid., p. 53 (lines 22-23).
[34] *Ibid.*, p. 54 (lines 8-9).

14. It is a general principle that a moving party bears the burden of establishing its entitlement to the relief that it is seeking.[35] This general principle applies also in Rule 98 proceedings,[36] and the Defence therefore bears the burden of establishing that the evidence led by the Prosecution does not meet the Rule 98 standard of sufficiency in respect of one or more counts.
15. In order for the Defence to discharge this burden, it is insufficient for the Defence simply to state, without further precision, that the Prosecution has failed to meet the Rule 98 standard in relation to a count and then leave it to the Prosecution to demonstrate that it has met the standard. The Defence has first to identify the precise areas where the evidence is said to be lacking. The Defence must also identify the specific elements of the crime for which they say the evidence is lacking. Furthermore, the Defence must address the evidence led by the Prosecution that is relevant to the particular elements of the particular counts, and explain why this evidence fails to meet the Rule 98 standard.
16. If the position were otherwise, it would be possible for the Defence to present a Rule 98 motion by stating merely that "The Defence submits that the Prosecution has not met the Rule 98 standard in respect of any of its case", thereby throwing the burden on the Prosecution to demonstrate that it has met the Rule 98 standard, setting out all of its evidence and arguments in respect of all aspects of its case. This would be inconsistent with the purpose of Rule 98. The Rule 98 procedure is not intended to involve a comprehensive analysis of all of the evidence in relation to all aspects of the case at the half-time stage. It is at the *end* of the trial that the Trial Chamber will be called upon to evaluate carefully all of the evidence as a whole, and to determine in respect of each Accused and in respect of each count whether guilt has been established beyond a reasonable doubt. Where there is any doubt as to the sufficiency of the evidence at the Rule 98 stage, the trial should proceed, and the question should be resolved by the Trial Chamber at the end of the trial.[37]

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[35] See, by way of analogy, *Prosecutor v. Tadić*, IT-94-1-A, "Decision on Appellant's Motion for the Extension of the Time-Limit and Admission of Additional Evidence", Appeals Chamber, 15 October 1998, paras. 52, 53; *Prosecutor v. Delić*, IT-96-21-R-R119, "Decision on Motion for Review", Appeals Chamber, 25 April 2002, para. 17.

[36] See *Prosecutor v Bagosora*, ICTR-98-41-T, "Decision on Motions for Judgement of Acquittal", 2 February 2005, footnote 1.

[37] As has been said by a Trial Chamber of the ICTY: "It is worth noting the extent and frequency to which Rule 98 *bis* has come to be relied on in proceedings before the Tribunal, and the prevailing tendency for Rule 98 *bis* motions

17. Similarly, where there is any doubt as to the legal elements of a crime, or any other issue of substantive law, the question should be resolved by the Trial Chamber at the end of the trial, after hearing the final trial submissions of the parties. The Prosecution submits that a Rule 98 Decision is not intended to be a final judgement of the Trial Chamber on issues of law. For purposes of determining whether there is evidence capable of supporting a conviction on a count at the Rule 98 stage, the Trial Chamber is inevitably required to consider the evidence in the light of the legal definition of the crimes in question. However, that does not mean that the Trial Chamber has to make definitive findings of law at the Rule 98 stage. If there are uncertainties as to the applicable law, at the Rule 98 stage the Trial Chamber should determine whether there is evidence on which a Trial Chamber *could* convict on *any* reasonable view of the law. Disputed issues of law fall to be fully argued in the final arguments of the parties at the end of trial, and fall to be decided in the final trial judgement of the Trial Chamber. In this way, the Trial Chamber is able to determine, in light of all of the evidence, what legal issues it is called upon to decide, and can decide those legal issues in the context of the facts of the case. It is normal for a Trial Chamber to decline to take a definitive view of the law at the Rule 98 stage,[38] and Rule 98 proceedings should not normally involve extensive argument on legal issues.
18. The Prosecution acknowledges that it is open to the Trial Chamber to raise issues *proprio motu* at the Rule 98 stage as to the sufficiency of evidence. In such cases, the

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to involve much delay, lengthy submissions, and therefore an extensive analysis of evidentiary issues in decisions. This is in contrast to the position typically found in common law jurisdictions from which the procedure is derived. While Rule 98 *bis* is a safeguard, the object and proper operation of the Rule should not be lost sight of. Its essential function is to bring an end to only those proceedings in respect of a charge for which there is no evidence on which a Chamber could convict, rather than to terminate prematurely cases where the evidence is weak." *Prosecutor v. Hadžihasanović and Kubura,* IT-01-47-T, "Decision on Motions for Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence," 27 September 2004, para. 20.

[38] Compare *Prosecutor v. Delalić et al. (Čelebići case),* IT-96-21-A, "Judgement", Appeals Chamber, 20 February 2001, paras. 573-579, in which the Appeals Chamber rejected an argument that the Trial Chamber had violated the rights of the Accused by refusing to define the legal elements of the defence of diminished responsibility during the course of the trial. The Appeals Chamber said (at para. 577) that "It is, however, no part of a Trial Chamber's obligation to define such issues *in advance*. Its obligation is to rule upon issues at the appropriate time, after all of the relevant material has been placed before it and after hearing the arguments put forward by the parties". In that case, the Accused had sought the Trial Chamber's ruling on this issue of law on 9 June 1998 (see *ibid.*, at footnote 954), which was well after the Trial Chamber's decision on the motions for judgement of acquittal, which was given on 18 March 1998 (as to which, see *Prosecutor v. Delalić et al. (Čelebići case),* IT-96-21-T, "Judgement", Trial Chamber, 16 November 1998, paras. 81-82). The *Čelebići Appeal Judgement* thus makes clear that legal elements of crimes and defences do not have to be decided by the Trial Chamber by the Rule 98 stage, or at any stage prior to the final trial judgement.

Prosecution is entitled to be informed by the Trial Chamber of the specific issues that concern the Trial Chamber, so that the Prosecution can address those specific issues.[39]

III. PROSECUTION POSITION ON THE MODALITIES TO BE APPLIED IN THIS CASE

(A) Scheduling order

19. The Prosecution has advised that it will exercise its best efforts to close the Prosecution case during the eighth trial session, which is scheduled to end on 3 August 2006.[40] The Prosecution submits that a scheduling order should be issued by the Trial Chamber well before the end of the present trial session, as soon as it is clear whether or not it will be possible to finish the Prosecution case this session. The early making of a scheduling order would enable all of the parties to plan in advance.
20. The scheduling order would set out the dates for all of the procedural steps for the Rule 98 proceedings. The Prosecution submits that it would be useful, if possible, for the scheduling order also to indicate the date on which the Rule 98 oral decision will be delivered by the Trial Chamber, as occurred in the ICTY scheduling orders in the *Krajišnik* case[41] and *Martić* case.[42] The scheduling order could also usefully set out the dates for the steps to be taken following any Rule 98 decision of the Trial Chamber, such as the date of the subsequent pre-Defence conference to be held under Rule 73 *ter*, or even the date of commencement of the Defence case. Again, the scheduling orders in the *Krajišnik* case and *Martić* case provide a precedent for this.
21. The Prosecution position is that there is no reason why the Defence case should not be able to commence in January 2007, immediately after the end of the December-January judicial recess, and the Prosecution understands that the Defence agrees with this. The making of a scheduling order before the end of the Prosecution case setting out in advance the dates for the future steps to be followed would assist in preventing time being lost unnecessarily between the close of the Prosecution case and the opening of the

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[39] See *Prosecutor v. Jelisić*, IT-95-10, "Judgement", 5 July 2001, para. 27, where the Appeals Chamber held, *inter alia*, "[t]he fact that a Trial Chamber has a right to decide *proprio motu* entitles it to make a decision whether or not invited to do so by a party; but the fact that it can do so does not relieve it of the normal duty of a judicial body first to hear a party whose rights can be affected by the decision to be made. Failure to hear a party against whom the Trial Chamber is provisionally inclined is not consistent with the requirement to hold a fair trial."
[40] Letter to Trial Chamber II dated 14 June 2006.
[41] See footnote 15 above.
[42] See footnote 18 above.

Defence case. A scheduling order should, of course, be expressed to be subject to adjustment at the discretion of the Trial Chamber or upon a motion by a party showing good cause.

22. It is acknowledged that if the Defence case is to start in January 2007, the Trial Chamber would have to hold certain hearings in the RUF case during the middle of the next CDF trial session, namely the Rule 98 hearings and the Rule 73 *ter* pre-Defence conference. However, such hearings are likely to be brief, and unlikely to disrupt significantly the CDF case.

(B) Notice of intention to bring a Rule 98 motion

23. For the reasons given in paragraphs 12-18 above, the Rule 98 procedure should not come into play unless the Defence expressly move the Trial Chamber under that Rule.
24. At a specified time after the close of the Prosecution case, the Defence should be required to give notice whether they intend to bring an oral motion under Rule 98. The notice should identify the specific issues they intend to raise in their oral submissions, and indicate the specific evidence in the case that they consider is relevant to each of the specified issues. The Defence would then be expected, at the oral hearing, to present arguments on why the evidence indicated in relation to each specified issue is insufficient to meet the Rule 98 standard in relation to that issue.
25. In order to enable the proceedings to be conducted efficiently, the Prosecution submits that the Defence notice should be required to identify the issues with as much precision as possible. Examples of the way in which the issues could be formulated might be, for instance:
    (a) "that there is insufficient evidence that any killings occurred in Place X on Date Y"; or
    (b) "that there is insufficient evidence that the alleged perpetrators of the killings in Place X on Date Y were subordinates of the Accused"; or
    (c) "that there is insufficient evidence that the Accused knew or had reason to know of the alleged killings in Place X on Date Y".

The Prosecution submits that it would be *insufficient* for the Defence notice to state, in a

very general way, for instance, "that there is insufficient evidence that the Accused is criminally responsible for the alleged killings in Place X on Date Y", as this gives no notice to the Prosecution or the Trial Chamber of the precise issues on which the Defence says the evidence is insufficient.

26. For the reasons given in paragraph 17 above, the Rule 98 hearing should not involve extensive legal arguments. However, to the extent that the parties do propose to refer to authorities in their legal arguments, a list of authorities should be filed by the parties at the time of giving the notices referred to above, together with a case book containing copies of those authorities or the relevant portions of those authorities if they are not readily available on the internet.
27. The Prosecution submits that the notice referred to in paragraphs 24-26 above should, when listing the relevant evidence, specify in relation to witnesses the relevant transcript date, page and line and the witness's name or number, and specify in relation to exhibits the relevant exhibit number and page number. Lists of authorities referred to in paragraph 26 above should similarly include the full case citation and relevant paragraph numbers. The provision of these details will ensure that time is not wasted by reading these details into the record during the oral hearing.
28. The notices described in paragraphs 24-27 above are referred to below as the "**Defence Notices**".
29. The Prosecution then submits that it should file a notice shortly before the oral hearing, stating whether it concedes that the Rule 98 standard has not been met in relation to any of the issues specified in the Defence Notices, or in relation to any other issue. This notice should also set out any additional evidence and authorities to which the Prosecution intends to refer in its oral submissions. This notice is referred to below as the "**Prosecution Notice**".
30. Contrary to what the Prosecution understands will be proposed by the Defence, the Prosecution submits that it should not be required to file any notice of concessions or other notice prior to the filing of the Defence notices, in view of the fact that the Defence is the moving party in Rule 98 proceedings.

(C) The hearing

31. Given that there are three accused in this case, it is accepted that the oral hearing can be expected to take longer than in the *Orić* case (two half-day sessions) or the *Krajišnik* case (one half-day session). The Prosecution submits that it would be appropriate to allow the Defence for each Accused a half-day session for oral submissions. A day should then be allowed for the Prosecution response, and a further half-day for Defence replies. Each party should be prepared to present its arguments as soon as the other party has finished, so that if parties use less than their maximum allotted time, the proceedings will conclude more quickly than the maximum allotted 3 days.

(D) Length of time for preparation

32. The Second and Third Accused have indicated that they will require 8 weeks to prepare their submissions.[43]

33. The Prosecution notes that in the CDF and AFRC proceedings, the Defence was given three weeks from the formal closing of the Prosecution case to prepare a written Rule 98 motion, after which the Prosecution was given three weeks to respond.[44] The Prosecution notes also that recent amendment to Rule 98 is intended to make the Rule 98 proceedings *shorter*, and the *Orić* and *Martić* cases referred to above show that Rule 98 proceedings can be undertaken in a matter of days. Furthermore, as the Trial Chamber observed in the *Krajišnik* case, the Defence should already be preparing its submissions.[45] The Prosecution therefore does not concede on the information currently available that the 8 weeks requested by the Defence is justified in the circumstances of this case. For its part, the Prosecution would consider three weeks to be a more realistic maximum period. However, the Prosecution would accept that the period from 4-27 August 2006, which is a period of judicial recess[46] and customary holiday period, could be regarded as time that does not count.

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[43] Transcript, 19 June 2006, p. 25 (lines 10-15).
[44] See *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-419, "Scheduling Order on Filing of Submissions by the Parties Should a Motion for Judgment of Acquittal be Filed by Defence", 2 June 2005; *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-404, "Scheduling Order for Filing a Motion for Judgement of Acquittal", 30 September 2005.
[45] See paragraph 10 above.
[46] 7 August to 18 August 2006.

34. On that basis, the Prosecution understands that the timeframes that it proposes below are broadly similar to the timeframes that are proposed by the Defence.

(E) Proposed schedule

35. The Prosecution notes that the current trial session of the RUF is scheduled to end on 3 August 2006.[47] Thereafter, there will be a judicial recess from 7 August to 18 August 2006.[48] Subsequently, the Trial Chamber is scheduled to sit in a trial session of the CDF case from 13 September 2006 to 7 December 2006,[49] with a prior CDF status conference on 12 September 2006. Thereafter, it is anticipated that there will be a judicial recess until January 2007, following which the Trial Chamber would be able to schedule further hearings in the RUF case.
36. In the event that the Prosecution case does finish at the end of the current trial session, the Prosecution would propose the following schedule:

> **Prosecution case ends:** 3 August
> **Recess and holiday period :** 4-27 August (time does not run)
> **Defence notices:** 18 September (21 days from close of Prosecution case, not counting the time that does not run)
> **Prosecution notice:** 2 October (12 days from Defence Notices, although in reality 14, as the 12th day falls on a Saturday)
> **Hearing:** 4-6 October (commence 2 days after Prosecution Notice)

37. In the event that the Prosecution case does ***not*** finish at the end of the current trial session, the Prosecution considers that the amount of time that would remain for the presentation of the Prosecution case after 3 August would be no more than about five trial days. The Prosecution submits that it would lead to significant unnecessary delays in the case, as well as in the work of the Special Court as a whole, if the Prosecution case did not resume until January 2007. The Prosecution submits that if it does not finish its case this session, the remainder of the Prosecution case should be scheduled to be held prior to the commencement of the next session of the CDF case. One way in which this could

[47] SCSL-04-15-T-517, "Corrigendum to order Detailing Judicial Calendar", 16 March 2006.
[48] SCSL-04-15-T-582, "Order Scheduling Judicial Recess and Authorisation Pursuant to Rule 4", President, 15 June 2006.
[49] SCSL-04-14-T-595, "Order Detailing Judicial Calendar", 11 May 2006.

occur would be for the Trial Chamber to sit in the week of 4-8 September, immediately before the scheduled start of the next CDF session. If this were possible, the Prosecution would propose the following schedule:

Prosecution case ends by: 8 September
Defence Notices: 29 September (21 days from close of Prosecution case)
Prosecution Notice: 10 October (11 days from Defence Notices)
Hearing: 12-13 and 16 October (commence 2 days after Prosecution Notice)

38. If the Trial Chamber is unable to sit in the week of 4-8 September, another possibility would be to postpone the next CDF session by a week, to enable the remainder of the Prosecution case in the RUF trial to be conducted in the week of 11-15 September . If this were possible, the Prosecution would propose the following schedule:

Prosecution case ends by: 15 September
Defence Notices: 6 October (21 days from close of Prosecution case)
Prosecution Notice: 17 October (11 days from Defence Notices)
Hearing: 19-20 and 23 October (commence 2 days after Prosecution Notice)

39. Depending on the amount of time that the Trial Chamber would require to give its oral decision on the Rule 98 Motion, the schedules proposed above would mean that the time between the close of the Prosecution case and the Rule 98 decision could be some 6-7 weeks, as compared with a corresponding period of some 3 months in the CDF case and 4 months in the AFRC case. While this would represent a considerable saving in time, the Prosecution notes that a period of some 6-7 weeks is considerably longer than what now appears to be the norm at the ICTY. For its part, the Prosecution would agree to a more expedited schedule to that set out above.
40. Finally, the Prosecution notes that in the CDF case, the time between the Trial Chamber's Rule 98 decision and the start of the defence case was nearly 3 months (21 October 2005-17 January 2005), and in the AFRC case it was just over 2 months (31 March 2006-5 June 2006). Accordingly, on the schedules proposed above, it would be necessary for the parties to work time-efficiently if the Defence case is to begin in January 2007. As indicated above, a scheduling order of the Trial Chamber setting out in advance the dates of the steps between the close of the Prosecution case and the opening of the Defence

case would promote such time-efficiency by allowing the parties to plan in advance.

Filed in Freetown,
11 July 2006

For the Prosecution,

Christopher Staker
Deputy Prosecutor

Peter Harrison

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