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SCSL-04-15-T  
(25202-25216)

25202

**THE SPECIAL COURT FOR SIERRA LEONE**

**BEFORE:**

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

Registrar: Mr. Lovemore Green Munlo, SC

Date filed: 25<sup>th</sup> September 2006

SPECIAL COURT FOR SIERRA LEONE	
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The Prosecutor

-v-

Issa Hassan Sesay  
Morris Kallon  
Augustine Gbao

Case No: SCSL - 04 - 15 - T

**PUBLIC**

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**SKELETON ARGUMENT IN SUPPORT OF ORAL MOTION FOR JUDGMENT  
OF ACQUITTAL PURSUANT TO RULE 98**

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**Office of the Prosecutor**

Christopher Staker  
Peter Harrison  
Shamala Alegandra

**Defence**

Wayne Jordash  
Sareta Ashraph

**Defence Counsel for Kallon; Shekou Touray and Charles Taku  
Defence Counsel for Gbao; Andreas O'Shea and John Cammegh**

1. On 2<sup>nd</sup> August 2006 Trial Chamber I issued its Scheduling Order Concerning Oral Motions for Judgment of Acquittal Pursuant to Rule 98 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone. It was ordered, inter alia, “That each Defence Team shall file by no later than Monday 25<sup>th</sup> of September 2006, at 4.00 pm a Skeletal Argument identifying and notifying in a clear and concise manner the specific issues per each count of the current Indictment, as well as any legal argument, that the Defence intend to raise in their oral submissions. The skeletal Argument shall accordingly indicate the specific evidence considered relevant to each of the said specific issues, as follows:
  - a) In relation to witnesses: the witness pseudonym or public name as well as the date, page and line of the relevant transcripts of his or her testimony;
  - b) In relation to exhibits: the exhibit number and page reference;
  - c) The Skeletal Argument shall also contain a list of authorities that the Defence intend to refer to in their legal arguments, if any”.<sup>1</sup>

**Rule 98: Motion for Judgment of Acquittal**

2. Pursuant to Rule 98 and in compliance with the 2<sup>nd</sup> August 2006 Order the Defence submits that the Trial Chamber should enter a judgment of acquittal on the following counts of the indictment (see paragraphs 7- 49 below).

**Procedure**

3. The Trial Chamber shall conduct an analysis of the sufficiency of the evidence as it relates to each separate paragraph as charged in the various counts of the Indictment. The Defence submit that the Trial Chamber is obliged to conduct the analysis in relation to each Count of the Indictment irrespective of whether the

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<sup>1</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-621, “Scheduling Order Concerning Oral Motions for Judgment of Acquittal Pursuant to Rule 98,” 2 August 2006 (24880-24884), pp. 4, Order 1.

Defence makes submissions. In *Prosecutor v Oric*, Judge Agius, speaking about the amendments to Rule 98 in the ICTY stated that:

the whole procedure is no longer really party-driven. And you will also notice that the new Rule 98*bis* motion does not say that at the close of the Prosecutor's case the Trial Chamber 'may,' but it says 'shall.' ... [I]t has become mandatory now for the Trial Chamber to embark on this Rule 98*bis* acquittal exercise at the end of the Prosecutor's case and need not wait for the Defence to file or to make any application for the acquittal of the client.<sup>2</sup>

### **Applicable Standard Under Rule 98**

4. Trial Chamber I has previously held that the standard it will apply is not whether the evidence is such as "should" support a conviction, but rather, such as "could" support a conviction... it follows that if the evidence available at the close of the case for the Prosecution, is not such as it "could" support a conviction in respect of one or more counts, a Decision of Acquittal should be entered on that or on those counts".<sup>3</sup>
  
5. This skeleton argument contains the limited submissions which the Defence consider appropriate and meritorious at this stage of the proceedings, having regard to the Prosecution's abject failure to provide the specific legal categorisation of a large number of factual allegations. The Defence have attempted to discern the Prosecution's eventual case in relation to these factual allegations. Accordingly the submissions herein are not to be understood as impliedly asserting that the remainder of the Prosecution case could properly sustain any convictions.
  
6. The Defence reserves it right to submit on all issues of law and fact at the close of the Defence case or at any other appropriate time.

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<sup>2</sup> *Prosecutor v. Oric*, IT-03-68-T, Transcript of 4 May 2005, page 7853.

<sup>3</sup> *Prosecutor v. Norman et al.*, SCSL-04-14-473, "Decision on Motions for Judgement of Acquittal Pursuant to Rule 98," 21 October 2005 (14009-14043), pp. 7, para. 35, and pp. 10, para. 51.

### **Counts 3 – 5 Unlawful Killings**

#### **Bo District**

7. The Prosecution have failed to adduce evidence of unlawful killings in Telu and Mamboma.
8. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Extermination as a Crime Against Humanity, Murder as a Crime Against Humanity and Murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, in respect of acts, which took place between about 1 June 1997 and 30 June 1997 in these locations, as alleged in paragraph 46 of the Indictment.

#### **Kono District**

9. The Prosecution have failed to adduce evidence of unlawful killings in Foindu, Willifeh and Biaya.
10. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Extermination as a Crime Against Humanity, Murder as a Crime Against Humanity and Murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, in respect of acts, which took place between about 14 February 1998 and 30 June 1998 in these locations, as alleged in paragraph 48 of the Indictment.

#### **Koinadugu District**

11. The Prosecution have failed to adduce evidence of unlawful killings in Heremakono, Kumalu (or Kamalu), Katombo and Kamadugu.

12. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Extermination as a Crime Against Humanity, Murder as a Crime Against Humanity and Murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, in respect of acts, which took place between about 14 February 1998 and 30 September 1998 in these locations, as alleged in paragraph 50 of the Indictment.

**Port Loko District**

13. The Prosecution have failed to adduce evidence of unlawful killings in Tendakum.
14. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Extermination as a Crime Against Humanity, Murder as a Crime Against Humanity and Murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, in respect of acts, which took place between about February 1999 and April 1999 in this location, as alleged in paragraph 53 of the Indictment.

**Counts 6 – 9: Sexual Violence**

**Kono District**

15. The Prosecution have failed to adduce evidence of sexual violence in Tomendeh, Fokoiya and the AFRC/RUF Camps “Superman camp” and Kissi town camp.
16. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Rape as a Crime Against Humanity, Sexual slavery and any other form of Sexual Violence as a Crime Against Humanity, Other Inhumane acts as a Crime Against Humanity or Outrages upon personal dignity as a Violation of Article 3 Common to the Geneva Conventions and of Additional

Protocol II, in respect of acts, which took place between about 14 February 1998 and 30 June 1998 in these locations, as alleged in paragraph 55 of the Indictment.

**Koinadugu District**

17. The Prosecution have failed to adduce evidence of sexual violence in Heremakono and Fadugu.
  
18. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Rape as a Crime Against Humanity, Sexual slavery and any other form of sexual violence as a Crime Against Humanity, Other Inhumane acts as a Crime Against Humanity or Outrages upon personal dignity as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, in respect of acts, which took place between about 14 February 1998 and 30 September 1998 in these locations, as alleged in paragraph 56 of the Indictment.

**Counts 10 –11: Physical Violence**

**Koinadugu District**

19. The Prosecution have failed to adduce evidence of physical violence in Konkoba (or Kontoba).
  
20. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Violence to Life, health and physical or mental well being of persons, in particular mutilation, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, or the offence of Other Inhumane acts, as a Crime Against Humanity, in respect of acts, which took place between about 14 February 1998 and 30 September 1998 in this location, as alleged in paragraph 64 of the Indictment.

**Bombali District**

21. The Prosecution have failed to adduce evidence of physical violence in Lohondi, Malama and Mamaka.
  
22. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Violence to Life, health and physical or mental well being of persons, in particular mutilation, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, or the offence of Other Inhumane acts, as a Crime Against Humanity, in respect of acts, which took place between about 1 May 1998 and 31 November 1998 in these locations, as alleged in paragraph 65 of the Indictment.

**Freetown and the Western Area**

23. The Prosecution have failed to adduce evidence of physical violence in Wellington.
  
24. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Violence to Life, health and physical or mental well being of persons, in particular mutilation, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, or the offence of Other Inhumane acts, as a Crime Against Humanity, in respect of acts, which took place between about 6 January 1999 and 28 February 1999 in this location, as alleged in paragraph 66 of the Indictment.

**Count 12: Use of Child Soldiers**

25. The Prosecution have failed to adduce evidence that, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. The Prosecution have adduced evidence in relation to Kailahun, Kenema, Kono, Bombali, Koinadugu

and Freetown and the Western Area. The Prosecution have failed to adduce evidence of these alleged acts in Bonthe, Moyamba, Pujehun, Kambia, Bo, Tonkolili or Port Loko.

26. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of using Child Soldiers as an Other Serious Violation of International Humanitarian Law, in respect of acts in these locations, as alleged in paragraph 68 of the Indictment.

### **Count 13: Abductions and Forced Labour**

#### **Kono District**

27. The Prosecution have failed to adduce evidence of Abductions and Forced Labour in Tomendeh.

28. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Enslavement as a Crime Against Humanity, in respect of acts, which took place between about 14 February 1998 and January 2000 in this location, as alleged in paragraph 71 of the Indictment.

#### **Koinadugu District**

29. The Prosecution have failed to adduce evidence of Abductions and Forced Labour in Heremakono, Kumala (or Kamalu) and Kamadugu.

30. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Enslavement as a Crime Against Humanity, in respect of acts, which took place between about 14 February 1998 and 30 September 1998 in these locations, as alleged in paragraph 72 of the Indictment.



**Freetown and the Western Area**

31. The Prosecution have failed to adduce evidence of Abductions and Forced Labour at Peacock Farm.
32. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Enslavement as a Crime Against Humanity, in respect of acts, which took place between about 6 January 1999 and 28 February 1999 in this location, as alleged in paragraph 75 of the Indictment.

**Port Loko District**

33. The Prosecution have failed to adduce evidence of Abductions and Forced Labour at Tendakum and Masiaka.
34. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Enslavement as a Crime Against Humanity, in respect of acts, which took place about the month of February 1999 in these locations, as alleged in paragraph 76 of the Indictment.

**Count 14: Looting and Burning****Bo District**

35. The Prosecution have failed to adduce evidence of Looting and Burning in Telu and Mamboma.
36. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Pillage, as a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, in respect of acts, which took place between about 1 June 1997 and 30 June 1997 in these locations, as alleged in paragraph 78 of the Indictment.

**Koinadugu District**

37. The Prosecution have failed to adduce evidence of Looting and Burning in Heremakono and Kamadugu.
38. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Pillage, as a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, in respect of acts, which took place between about 14 February 1998 and 30 September 1998 in these locations, as alleged in paragraph 79 of the Indictment.

**Kono District**

39. The Prosecution have failed to adduce evidence of Looting and Burning in Foindu and Yardu Sando.
40. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of Pillage, as a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, in respect of acts, which took place between about 14 February 1998 and 30 June 1998 in these locations, as alleged in paragraph 80 of the Indictment.

**Counts 15 – 18: Attacks on UNAMSIL personnel**

41. The Prosecution have failed to adduce evidence that there were any attacks on “humanitarian assistance workers” between about 15 April 2000 and 15 September 2000.
42. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of: Intentionally directing attacks against personnel involved in a humanitarian assistance mission (as opposed to peacekeeping), as an other serious violation of International Humanitarian Law, or the offence of

Murder, as a Crime against Humanity, or the offence of: Violence to life, health and physical or mental well-being of persons, in particular Murder, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II or the offence of abductions and taking as hostage, taking of hostages as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, in respect of acts to or upon “humanitarian assistance workers”, which took place between about 15 April 2000 and 15 September 2000, as alleged in paragraph 83 of the Indictment.

**“Not limited to locations within Bombali, Kailahun, Kambia, Port Loko and Kono Districts”**

43. The Prosecution have failed to adduce evidence that the AFRC/RUF engaged in widespread attacks against UNAMSIL peacekeepers except in Bombali, Kailahun, Kambia and Kono. The Prosecution have failed to adduce evidence that any attacks took place in Port Loko or elsewhere.
  
44. It is submitted that there is no evidence capable of supporting a conviction in respect of the offence of: Intentionally directing attacks against UNAMSIL peacekeepers as an other serious violation of International Humanitarian Law, or the offence of Murder, as a Crime against Humanity, or the offence of: Violence to life, health and physical or mental well-being of persons, in particular Murder, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II or the offence of abductions and taking as hostage, taking of hostages as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, in respect of acts to or upon UNAMSIL peacekeepers, which took place between about 15 April 2000 and 15 September 2000, as alleged in paragraph 83 of the Indictment.

**Count 8 thus is legally impermissible and/or is duplicitous and/or is entirely redundant**

Only “acts of a non-sexual nature” fall within Article 2(i)

45. “The clear legislative intent behind the statutory formula ‘any other form of sexual violence’ in Article 2.g. is the creation of a category of offences of sexual violence of a character that do not amount to any of the earlier enumerated sexual crimes, and that to permit such other forms of sexual violence to be charged as ‘other inhumane acts’ offends against the rule against multiplicity and uncertainty”.<sup>4</sup>

46. It is submitted that, “in light of the separate and distinct residual category of sexual offences under Article 2(g)... Article 2(i)... even if residual, must logically be restrictively interpreted as covering only acts of a non-sexual nature amounting to an affront to human dignity”.<sup>5</sup>

47. It is submitted that the logic of Hon. Justice Julia Sebutinde’s “separate concurring opinion”<sup>6</sup> based on the foregoing majority reasoning of Trial Chamber I is compelling. There can be no doubt that the Prosecution intends that the factual basis of Count 8 contains acts of a sexual nature. This is evidenced in particular by the following:

- (i) The Prosecution claim that “the factual allegations underlying (Count 8) are the same factual allegations...which support the sexual violence charges”;<sup>7</sup> and that forced marriages are “acts of sexual violence”,<sup>8</sup>

<sup>4</sup> *Prosecutor v. Norman et al.*, SCSL-04-14-434, “Reasoned Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence,” 24 May 2005, para. 19(iii)(c).

<sup>5</sup> *Ibid*, para. 19(iii)(b).

<sup>6</sup> *Prosecutor v. Brima et al.*, SCSL-04-16-469, “Decision on Defence Motions for Judgment of Acquittal Pursuant to Rule 98,” 31 March 2006 (17890- 17991) at 17987-17991.

<sup>7</sup> *Prosecutor v. Sesay et al.*, SCSL-04-14-005, “Prosecution Request for Leave to Amend the Indictment,” 9 February 2004 (179-189), at para. 10; and *Prosecutor v. Norman et al.*, SCSL-04-14-020, “Prosecution

- (ii) Trial Chamber I's unequivocal ruling *inter alia* that Count 8 "is as much sexual, indeed a gender offence as those that were included in the initial indictments and that feature in the current consolidated indictment... Forced Marriage is in fact... a "kindred offence to those that exist in the indictment in the view of the commonality of the ingredients needed to prove offences of this nature..."<sup>9</sup> and
- (iii) The evidence of TF1-369 who repeatedly held that being a bush wife involved acts of a sexual nature. For example a "'bush wife'... satisfied [her husband] whenever and however he wanted".<sup>10</sup>

48. The Prosecution case thus intends that Count 8 should incorporate acts of a sexual nature. These acts are alleged to be the underlying basis for the Count. This is legally (and logically) impermissible since only acts of a non-sexual nature may fall within Article 2(i).

49. Count 8 thus is legally impermissible and/or is duplicitous and/or is entirely redundant. In the interests of fairness and judicial economy it ought to be dismissed.

### **Request**

50. The Defence submit that the charges herein discussed ought to be dismissed as lacking sufficient evidence and/or as legally unsustainable.

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Reply to Defence Response to Request for Leave to Amend the Indictment," 24 February 2004, (378-395) at paras. 4 and 11.

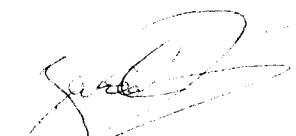
<sup>8</sup> *Prosecutor v. Norman et al.*, SCSL-04-14-005, "Prosecution Request for Leave to Amend the Indictment," 9 February 2004 (102-218), at paras. 5, 11, and 12.

<sup>9</sup> *Prosecutor v. Sesay et al.*, -04-15-108, "Decision on Prosecution Request for Leave to Amend the Indictment," 6 May 2004 (5971-5992), at paras. 50 and 51.

<sup>10</sup> *Prosecutor v. Sesay et al.*, Court Exhibit 138, Expert Report on the Phenomenon of Forced Marriage, at court page 12095, paragraph 3, lines 1-3.

25215

Dated 25<sup>th</sup> September 2006



Wayne Jordash  
Sareta Ashraph

**BOOK OF AUTHORITIES****Decisions and Motions**

*Prosecutor v. Brima et al.*, SCSL-04-16-469, “Decision on Defence Motions for Judgment of Acquittal Pursuant to Rule 98,” 31 March 2006.

*Prosecutor v. Norman et al.*, SCSL-04-14-005, “Prosecution Request for Leave to Amend the Indictment,” 9 February 2004.

*Prosecutor v. Norman et al.*, SCSL-04-14-020, “Prosecution Reply to Defence Response to Request for Leave to Amend the Indictments,” 24 February 2004.

*Prosecutor v. Norman et al.*, SCSL-04-14-434, “Reasoned Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence,” 24 May 2005.

*Prosecutor v. Norman et al.*, SCSL-04-14-473, “Decision on Motions for Judgement of Acquittal Pursuant to Rule 98,” 21 October 2005.

*Prosecutor v. Sesay et al.*, SCSL-04-15-007, “Prosecution Request for Leave to Amend the Indictment,” 9 February 2004.

*Prosecutor v. Sesay et al.*, SCSL-04-15-28, “Prosecution Reply to Defence Response to Request for Leave to Amend the Indictment,” 24 February 2004.

*Prosecutor v. Sesay et al.*, SCSL-04-15-108, “Decision on Prosecution Request for Leave to Amend the Indictment,” 6 May 2004.

**Orders**

*Prosecutor v. Sesay et al.*, SCSL-04-15-621, “Scheduling Order Concerning Oral Motions for Judgement of Acquittal Pursuant to Rule 98,” 2 August 2006.

**Trial Transcripts**

*Prosecutor v. Oric*, IT-03-68-T, Transcript of 4 May 2005.

**Exhibits**

*Prosecutor v. Sesay et al.*, Court Exhibit 138, Expert Report on the Phenomenon of Forced Marriage.