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SCSL-04-15-T
(25397-25424)

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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: 6 October 2006

THE PROSECUTOR

Against

**Issa Hassan Sesay
Morris Kallon
Augustine Gbao**

Case No. SCSL-04-15-T

PUBLIC

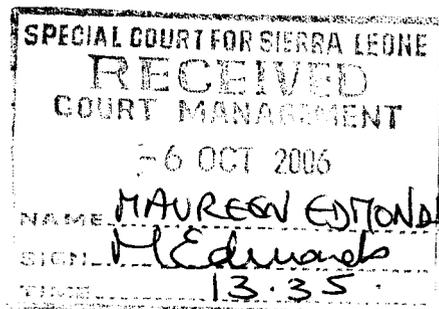
**CONSOLIDATED PROSECUTION SKELETON RESPONSE TO THE RULE 98
MOTIONS BY THE THREE ACCUSED**

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I. Rule 98 Standard

1. This Trial Chamber has already applied Rule 98,¹ and held that at the Rule 98 stage the Prosecution evidence need not: "...attain the threshold of the required 'proof beyond reasonable doubt' but rather, should only be such as is 'capable of supporting a conviction.'"²

II. General Principles of Law

a) Defects to the Indictment

2. Allegations that the Indictment is defective are not matters that fall within Rule 98. Challenges to the Indictment should be made in a preliminary motion under Rule 72.³ The International Criminal Tribunals have repeatedly held that any assertions of defects in the indictment are beyond the scope of Rule 98 *bis* of the Statutes of the ICTY and ICTR.⁴ In *Semanza* the court said that: "[i]t is wholly unacceptable to raise such matters half-way through the trial."⁵

b) Rule 98 Concerned with Counts Not Modes of Liability

3. Some Defence submissions suggest that the Trial Chamber should assess whether certain modes of liability have been proved. Rule 98 makes clear that the Trial Chamber should not entertain such an approach. Rule 98 says that the Trial Chamber is to assess whether there is no evidence capable of supporting a conviction for a count, and if not to

¹ The amendment of 13 May 2006 changed the procedure, submissions and the decision are now given orally, but did not make any substantive changes.

² *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T, "Decision on Motions for Judgment of Acquittal Pursuant to Rule 98" ("*Norman* Rule 98 Decision"), Trial Chamber I, 21 October 2005, para. 35.

³ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T, "Decision on Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal pursuant to Rule 98" ("*Brima* Rule 98 Decision"), Trial Chamber II, 31 March 2006, para. 323.

⁴ *Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali, Sylvain Nsabimana and Alphonse Nteziryayo, Joseph Kanyabashi, Elie Ndayambaje*, ICTR-97-21-T, ICTR-97-29A-T, ICTR-96-15-T, ICTR-96-8-T, ICTR-98-42-T, "Decision on Defence Motions for Acquittal under Rule 98 bis", Trial Chamber, 16 December 2004, paras. 73-74; *Prosecutor v. Ntagerura/Bagambiki/Imanishimwe* ("Cyangu"), ICTR-99-46-T, "Separate and Concurring Decision of Judge Williams on Imanishimwe's Defence Motion for Judgment of Acquittal on Count of Conspiracy to Commit Genocide Pursuant to Rule 98Bis", Trial Chamber, 13 March 2002, para. 6; *Prosecutor v. Kordic & Cerkez*, IT-95-14/2-T, "Decision on Defence Motions for Judgment of Acquittal", Trial Chamber, 6 April 2000, para. 15; *Prosecutor v. Tharcisse Muvunyi*, ICTR-2000-55 A-T, "Decision on Tharcisse Muvunyi's motion for Judgement of Acquittal pursuant to Rule 98 bis", Trial Chamber, 13 October 2005, para. 41.

⁵ *Prosecutor v. Semanza*, ICTR-97-20-T, "Decision on the Defence Motion for a Judgment of Acquittal in Respect of Laurent Semanza After Quashing the Counts Contained in the Third Amended Indictment (Article 98Bis of the Rules of Procedure and Evidence)" and "Decision on the Prosecutor's Urgent Motion for Suspension of Time-Limit for Response to the Defence Motion for a Judgment of Acquittal", Trial Chamber, 27 September 2001 ("*Semanza* Decision on Rule 98bis7D'D"), para. 18.

acquitted on the count. Two recent decisions of the ICTY emphasized this proposition of law. *Martic*, a Rule 98bis oral decision, reviewed the changes in the drafting of ICTY Rule 98bis and held that the Rule “now focuses on counts rather than as before charges”.⁶ Similarly, in *Mrksic* the Trial Chamber held that the amended Rule, “Does not also require evidence capable of establishing each and every allegation or form of liability, that is criminal responsibility pleaded in respect of a count to support a conviction on a count.”⁷ The *Martic* Trial Chamber agreed with the *Mrksic* Trial Chamber that “the Prosecution need only ultimately succeed in proving one of the forms of criminal responsibility it relies on for there to be a conviction on a count”.⁸

4. Trial Chamber I of the Special Court indicated that in a Rule 98 motion the court is not concerned with specific modes of liability for a count:

The Chamber has...reviewed the evidence as it is relevant to the modes of participation of each accused in the alleged crimes, and finds, for the purposes of Rule 98 standard that the Accused participated in each of the crimes charged in Counts 1 to 8 of the Indictment. The Chamber, therefore, is not in a position at this stage to dismiss any of the modes of liability as alleged in the Indictment and accordingly rejects the Defense Motions in this regard.⁹

5. Trial Chamber II stated more directly that:

There is no need, at the Rule 98 stage, to examine whether each paragraph of the Indictment is supported by the Prosecution evidence. Rather, the evidence should be examined in relation to the counts. Rule 98 requires the Trial Chamber to determine only whether “there is no evidence capable of supporting a conviction on one or more counts of the Indictment” and to enter a “judgment of acquittal on those counts.”¹⁰

c) Not Assessing Credibility and Reliability of the Evidence in a Rule 98 Motion

6. In the *Norman* Rule 98 decision it was held that the assessment of the credibility and reliability of the evidence does not arise for determination in a Rule 98 motion.¹¹

7. The Trial Chamber in *Martic* applied the same law, holding that:

The standard to be applied in respect of each count of the indictment is whether the evidence, if believed, that is taken at its highest, could lead a reasonable trier of fact to convict the accused on the respective count. ... This judgement ... does not entail considering the credibility of the Prosecution's witnesses or weighing the evidence. Significantly, the Trial Chamber's assessment does not involve an evaluation of the

⁶ *Prosecutor v Martić*, Transcript, 3 July 2006, p. 5959.

⁷ *Prosecutor v Mrksić*, Transcript (Not official, not corrected), from p. 11325.

⁸ *Prosecutor v Martić*, Transcript, 3 July 2006, p. 5961, quoting from *Mrksić*.

⁹ *Norman* Rule 98 Decision, para. 131. Emphasis added.

¹⁰ *Brima* Rule 98 Decision, para. 12.

¹¹ *Norman* Rule 98 Decision, para. 131.

strength or weakness of contradictory or different evidence before the Trial Chamber.¹²

d) No Distinction Between Internal and International Conflict

8. There is no requirement to plead whether the conflict is international or internal. The Appeals Chamber of the SCSL held that: “Crimes during internal armed conflicts form part of a broader category of crimes during international armed conflict.”¹³ And went on to find that: “In respect of Article 3, the Court need only be satisfied that an armed conflict existed and that the alleged violations were related to the armed conflict.”¹⁴

9. This Trial Chamber arrived at the same conclusion in *Norman*, where it said that: “...it is immaterial whether the conflict is internal or international in nature”.¹⁵ In the present case, the Chamber took judicial notice that the “conflict in Sierra Leone occurred from March 1991 until January 2002”.¹⁶

e) Pleading Categories of Joint Criminal Enterprise

10. Contrary to a defence assertion the Indictment pleads all three categories of JCE. The Indictment states that the alleged crimes: “...including unlawful killings, abductions (...) were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.”¹⁷ The Accused are specifically

¹² *Prosecutor v Martić*, Transcript, 3 July 2006, p. 5960.

¹³ *Prosecutor v. Fofana*, SCSL 14-101, “Decision on Preliminary Motion on Lack of Jurisdiction Materiae: Nature of the Armed Conflict”, 25 May 2004, para. 25; see also Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, p. 47: “War crimes may be perpetrated in the course of either international or internal armed conflicts, that is, civil wars or large-scale and protracted armed clashes breaking out within a sovereign State. [...] Particularly after the ICTY Appeals Chamber decision in *Tadić* (Interlocutory Appeal) of 1995, it is now widely accepted that serious infringements of customary or applicable treaty law on internal armed conflicts must also be regarded as amounting to war crimes proper. As evidence of this new trend, suffice it to mention Article 8(2) (c-f) of the ICC Statute.”

¹⁴ *Prosecutor v. Fofana*, SCSL 14-101, “Decision on Preliminary Motion on Lack of Jurisdiction Materiae: Nature of the Armed Conflict”, 25 May 2004, para. 25.

¹⁵ *Norman* Rule 98 Decision, para. 67. See also *Prosecutor v. Tadić*, T-94-1-AR72, “Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction”, 2 October 1995, Appeals Chamber, para. 137: “under Article 3 [of the Statute of the ICTY], the International Tribunal has jurisdiction over the acts alleged in the indictment, regardless of whether they occurred within an internal or an international armed conflict.” The *Tadić* Appeal Decision was applied in: *Prosecutor v. Furundžija*, “Judgment”, Trial Chamber, 10 December 1998, para. 132; *Prosecutor v. Blaskić*, “Judgment”, 3 March 2000, Trial Chamber, para. 161; *Prosecutor v. Brđjanin*, “Judgment”, Trial Chamber, 1 September 2004, para. 127.

¹⁶ *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-174, “Decision on Prosecution Motion for Judicial Notice and Admission of Evidence”, Annexe 1, 24 June, 2004.

¹⁷ Amended Consolidated Indictment, para. 37.

alleged to have acted pursuant to a basic (*within*) or alternatively extended (*foreseeable*) joint criminal enterprise with respect to the acts charged.

11. The same defence assertion was dismissed by Trial Chamber II of the SCSL in the *Brima et al* Rule 98 motion, where the court found that the three categories of JCE had been specified in the Prosecution's Pre-Trial Brief.¹⁸ The same is true for the Pre-trial Brief in the present case.¹⁹

f) Size and Scope of the JCE

12. The size, scope and duration of the JCE is not an element of the JCE and therefore is irrelevant. On 27 September 2006, the ICTY Trial Chamber dismissed defence arguments in *Krajisnik* that JCE was not an appropriate mode of liability in that case:

The Defence's assertion that JCE is not an appropriate mode of liability in this case, due to the size of the case, its scope, and the fact that the Accused was structurally remote from the commission of the crimes charged in the indictment, is incorrect, as the Appeals Chamber has never suggested that JCE liability can arise only from participation in enterprises of small size or scope. Far from being inappropriate, JCE is well suited to cases such as the present one, in which numerous persons are all said to be concerned with the commission of a large number of crimes.²⁰
[underlining added]

g) Extermination

13. The defence says that there is no evidence of extermination because there is no evidence of mass killing in any geographical location, or the killing of a substantial or significant part of the population. The test established by the Trial Chamber in *Brdjanin* is different. There the court said:

While extermination generally involves a large number of victims, it may be constituted even where the number of victims is limited. Furthermore, the Trial Chamber recalls that element of massiveness of the crime allows for the possibility

¹⁸ *Brima* Rule 98 Decision, paras. 322-323.

¹⁹ Prosecution's Pre-Trial Brief pursuant to Order for Filing Pre-Trial Briefs, 1 March 2004, paras. 209-210.

²⁰ *Prosecutor v. Krajisnik*, IT-00-39-T, "Judgement", 27 September 2006, para. 876. For a similar finding see the ICTR Appeals Chamber decision: *Prosecutor v. Karemera*, "Decision on Jurisdictional Appeals: Joint Criminal Enterprise", ICTR-98-44, 12 April 2006, para. 16: "...though the Tribunal's Appeals Chamber and that of the ICTY have, in several cases dealing with different factual situations, explained the requirements for establishing different types of JCE liability, not once has either Appeals Chamber suggested that JCE liability can arise only from participation in enterprises of limited size or geographical scope. Confirming that there is no geographical limitation on third-category JCE liability, the *Tadić* Judgement cited, as an example of when this type of liability may be imposed, a situation in which murders are committed as a foreseeable but unintended consequence of a JCE that seeks 'to forcibly remove members of one ethnicity from their ... region.' Thus, the ICTY's Appeals Chamber has explicitly contemplated third category JCE liability for crimes stemming from region-wide JCEs."

to establish the evidence of *actus reus* of extermination on an accumulation of separate and unrelated incidents, meaning on an aggregated basis.²¹

14. At a minimum there is evidence before the court of the execution of 101 persons at one location in Kono District,²² and of over 60 persons at one location in Kailahun District.²³ On an aggregate basis the numbers are much larger.

h) Peacekeepers are the Equivalent of Civilians

15. Peacekeepers who are not a party to an armed conflict are equivalent to civilians for the purposes of the law for war crimes and crimes against humanity,²⁴ and the peacekeeping personnel and equipment do not constitute a military objective and attacks on them are unlawful.²⁵

i) Count 8 Is Not Duplicious

16. The defence suggest that Count 8 is duplicitous, or is unknown to international criminal law. Count 8, other inhumane act, charged under Article 2.i of the Statute, appears to be a residual category. Evidence has been lead of 'bush wives'²⁶ and of women and girls captured by combatants and forced to carry out domestic work and other tasks associated with marital relationships, which may include sexual relations.²⁷ Similar evidence was lead in the *Brima* trial, and in dismissing the same argument in the Rule 98 motion, Trial Chamber II said: "We consider that there is evidence which falls within that

²¹ *Prosecutor v. Brdjanin*, IT-99-36, "Judgement", 1 September 2004, para. 391.

²² TF1-015, Transcript, 27.1.05, pp. 109-128.

²³ TF1-045, Transcript, 18.11.05, pp. 40-51.

²⁴ See s. 16 of the United Nations Security Council 'Report of the Secretary-General on the establishment of a Special Court For Sierra Leon,' S/2000/915, 4 October 2000.

16. ... Attacks against peacekeeping personnel, to the extent that they are entitled to protection recognized under international law to civilians in armed conflict, do not represent a new crime. Although established for the first time as an international crime in the Statute of the International Criminal Court, it was not viewed at the time of the adoption of the Rome Statute as adding to the already existing customary international law crime of attacks against civilians and persons hors de combat. Based on the distinction between peacekeepers as civilians and peacekeepers turned combatants, the crime defined in article 4 of the Statute of the Special Court is a specification of a targeted group within the generally protected group of civilians which because of its humanitarian or peacekeeping mission deserves special protection.

²⁵ See UK Ministry of Defence, Manual of the Law of Armed Conflict, OUP, 2004, Chapter 14.

²⁶ TF1-045, Transcript, 21.11.05, pp. 37-38: the witness said it referred to where you took a woman without formalities of marriage and she cooks for you, launders, and has sex with you.

²⁷ TF1-071, Transcript, 19.1.05, p. 37, said that abducted women were taken by the RUF and that some were used for cooking, some for forced marriage, and some claimed to have been raped.

category relating to the abductions of women and girls and forcing them to submit to 'marital' relationships and to perform various conjugal duties."²⁸

III. Modes of Liability

17. The Indictment alleges liability under Article 6(1) and 6(3). Joint criminal enterprise, which is plead in all three of its forms, is a form of liability under Art. 6(1).²⁹ Witnesses TF1-371, TF1-071, TF1-045, TF1-366, TF1-036, TF1-360 and others, all testified of the senior positions held by the accused in the RUF. TF1-371 said that Sesay and Kallon were part of the Supreme Council and that during the AFRC junta decisions were made to force civilians to mine for diamonds so that logistics could be obtained, including weapons.³⁰ Civilians were also forced to farm in order to provide food for the RUF.³¹ Upon the retreat from Freetown the RUF and AFRC decided to go to Kono in order to control diamond mining "because you cannot fight a war without economy."³²

18. By reason of the accused's senior positions in the RUF they had command responsibility over others and effective control. Sesay was the Battlefield Commander and Kallon was the Battle Group Commander, positions subordinate only to Bockarie.³³ Gbao was the Overall Security Commander reporting only to the Battlefield and Battle Group Commanders.³⁴ They were senior commanders who participated in all three forms of JCE. They knew of the use of forced labour, sexual violence, pillaging and of the use of child soldiers since 30 November 1996, and that the JCE "to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone"³⁵ included these and other criminal acts in furtherance of the purpose of the JCE. For example, the execution of 60 persons, investigated and detained by Gbao, in Kailahun town³⁶ is an example of the first form of JCE, as are the acts of Operation Pay Yourself, to which Sesay and Kallon were participants.³⁷ Alternatively, if they do not

²⁸ *Brima* Rule 98 Decision, para. 165.

²⁹ *Prosecutor v. Krajisnik*, IT-0039-T, "Judgement", 27 September 2006, para. 885.

³⁰ TF1-371, Transcript, 20.7.06, pp. 32-40.

³¹ TF1-108, TF1-330, TF1-041.

³² TF1-071, Transcript, 19.1.05, p. 50.

³³ TF1-371, Transcript, 20.7.06, pp. 28-29. There has been other evidence that Superman was the Battle Group Commander and Kallon was an Area Commander in early 1998 (see TF1-361).

³⁴ TF1-371, Transcript, 20.7.06, p. 28-29; TF1-036, Transcript, 27.7.05, p. 36.

³⁵ Amended Consolidated Indictment, para. 36.

³⁶ TF1-045, Transcript, 18.11.05, pp. 40-51.

³⁷ TF1-360, Transcript, 20.7.05, pp. 8-16; TF1-071, Transcript, 19.1.05, pp. 25-37

fall within the first form of JCE, they are examples of crimes which were the foreseeable consequence of the JCE, and fall within the third form of JCE.³⁸ Forced mining and forced farming, forms of enslavement, are examples of the second form of JCE.³⁹

19. The common purpose of the JCE need not have been previously arranged or formulated.⁴⁰ Second, a JCE “may exist even if none or only some of the principal perpetrators are part of it, because, for example, they are not aware of the JCE or its objective and are procured by members of the JCE to commit crimes which further that objective.”⁴¹ It does not matter that the accused is far removed from the scene of the crimes, nor does there need to be an agreement with the actual perpetrators.

IV. Locations Where There Is No Evidence

20. The Accused say that there are locations in the Indictment where no evidence was lead. In the *Norman* Rule 98 decision the Trial Chamber ruled that there was no evidence capable of supporting a conviction at a number of locations.⁴² Trial Chamber II adopted a different procedure where the Prosecution conceded that no evidence had been lead of crimes at certain locations. Trial Chamber II held that it is required to consider counts of the Indictment:

... and to enter a judgement of acquittal, if appropriate, on a count – not on an item of particulars. We do not consider that we are empowered by Rule 98 to break a Count down to its particulars supplied in the Indictment and then to enter a judgement of acquittal in respect of any particular which has not been proved; nor would it be practical to do so. We note the Prosecution concessions with regard to various locations for which no evidence was adduced and, in our view, that is sufficient to cover the situation.⁴³ [underlining in original]

21. For the same reason that a trial chamber should not consider whether there is evidence of the various modes of liability, where more than one mode of liability is plead for a count, nor should acquittals be granted for particular locations where the prosecution agrees no evidence was lead. The prosecution concession is enough. Trial Chamber II observed:

³⁸ *Prosecutor v. Krajisnik*, IT-00-39-T, “Judgement”, 27 September 2006, paras. 876-884.

³⁹ The second form of joint criminal is a “special case of the first form” which has been applied to those who ran concentration camps and similar systems: see . *Krajisnik*, supra, para. 880.

⁴⁰ *Prosecutor v. Tadic*, T-94-1-AR72, “Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction”, 2 October 1995, Appeals Chamber, para. 227.

⁴¹ *Prosecutor v. Krajisnik*, IT-00-39-T, “Judgement”, 27 September 2006, para. 883.

⁴² *Prosecutor v. Norman*, SCSL-04014PT, “Reasoned Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence,” 24 May 2005, see Disposition, paras. 2)1., 2)2, and 2)3.

⁴³ *Brima* Rule 98 Decision, para. 21.

We do not think the Defence can seriously claim that, without a formal judgement of acquittal being entered in respect of the contested locations, it would be put in the position of having to lead evidence to refute the charges when there was no evidence “*that anything did happen there*”. Why would any party to a criminal proceeding think it necessary to lead evidence to refute something that never happened? It goes without saying that the Defence will not be expected to call evidence concerning locations about which no evidence has been given.⁴⁴ [italics in original]

22. The Prosecution agrees that for the following Counts no evidence was lead of crimes at the stated villages or towns, although it was lead at other places in the District:

Counts 3, 4, 5 - Bo District - Telu and Mamboma

- Kono District - Willifeh and Biaya

- Koinadugu District - Heremakono, Kumalu/Kamalu, Katombo and Kamadugu

Counts 6 – 9 - Kono District - Fokoiya

- Koinadugu District – Heremakono

Count 10, 11⁴⁵ - Koinadugu District – Konkoba or Kontoba

- Bombaili District - Lohondi, Malama and Mamaka

Count 13 - Koinadugu District - Heremakono, Kumalu/Kamalu, Katombo and Kamadugu

- Freetown and Western Area – Peacock Farm

- Bombali District – Masiaka

Count 14 -Bo District - Telu and Mamboma

- Koinadugu District - Heremakono and Kamadugu

- Kono District - Foindu and Yardu Sando

V. Locations With Different Spellings

23. Counts 3, 4, 5 and 14 of the Indictment allege crimes that took place at several locations, including Foindu, in Kono District. Counts 3, 4, 5 and 13 allege crimes that took place at Tendakum in Port Loko District. Counts 6, 7, 8, 9 and 13 allege crimes that took place at Tombendeh, Kono District.

24. The transcript of the evidence of TF1-064 spelled the name of the location in question as Foendor. TF1-064 gave evidence of a number of killings at Foendor.⁴⁶ No

⁴⁴ *Brima* Rule 98 Decision, para. 22.

⁴⁵ TF1-331 saw, and was a victim of, acts of physical violence at Wellington.

⁴⁶ Transcript, 19.7.04, pp. 50-51, 56 and 57.

evidence was given of enslavement at this location. The witness was illiterate and was not asked to try to spell the name of the town. Counts 6 to 9 of the Indictment alleges other offences taking place in Kono District, including at Foendor (or Foendu). The Prosecution says that Foindu is an alternative spelling to Foendor or Foendu.

25. Chendakom and Rochendekom are alternative spellings of Tendakum. Witnesses TF1-255,⁴⁷ TF1-345⁴⁸ and TF1-256⁴⁹ each gave evidence of a number of killings at Chendakom. Witnesses TF1-345⁵⁰ and TF1-255⁵¹ gave evidence of enslavement at Chendakom. These witnesses were illiterate and were not asked to spell the name of the town. The Prosecution says that Tendakum is an alternative spelling to Chendakom or Rochendakom.

26. Similarly, Tomendeh is an alternative spelling to Tomandu. Witness TF1-016 gave evidence of Counts 6 to 9 at Tomandu.⁵² Witness TF1-016 gave evidence of enslavement at Tomandu.⁵³ This witness was illiterate and was not asked to spell the name of the town. The Prosecution says that Tomendeh is an alternative spelling to Tomandu.

27. There was a difference in spelling between the Indictment and the transcripts for some locations. Trial Chamber II concluded that striking out the names of the locations where spellings in the transcript were different from those in the Indictment is not an appropriate or desirable remedy:

We are mindful of the fact that due to the variety of vernacular languages and dialects generally spoken in Sierra Leone and particularly by the Prosecution witnesses in this case, the names of some locations were sometimes pronounced and/or spelt differently, depending on the dialect spoken by the witness. At other times, some of the witnesses were illiterate and could not spell the names of certain locations. In the latter case the Trial Chamber often resorted to the phonetic spelling of such a location. In our view, the Defence had ample opportunity to raise any doubts about evidence relating to a given location through cross-examination of the Prosecution witnesses.⁵⁴

⁴⁷ Transcript, 18.7.06, pp. 73-75, 77, 79-82.

⁴⁸ Transcript, 19.7.06, pp. 39-40.

⁴⁹ Exhibit No. 136: Transcript of AFRC Trial, 14.4.05, pp. 70, 79, 81-83.

⁵⁰ Transcript, 19.7.06, pp. 32, 33, 35 and 42.

⁵¹ Transcript, 18.7.06, pp. 82-84.

⁵² Transcript, 21.10.04, pp. 12-13, 14-20

⁵³ Transcript, 21.10.04, pp. 5-8, 13-14.

⁵⁴ *Brima* Rule 98 Decision, para. 25.

VI. Evidence By Count

28. The Kallon motion takes the position that no evidence was lead with respect to any Count. Although the onus is on the party advancing the motion to demonstrate there is no evidence, Kallon has done nothing more than make an empty, unsubstantiated motion. The Kallon motion should be dismissed.

29. The paragraphs that follow are a consolidated response to the assertions made in all three motions. The Prosecution is not required to refer to all of the relevant evidence, that is not the purpose of a Rule 98 motion, nor is the Prosecution able to do so at this point in time. The evidence presented below is “capable of supporting a conviction” for each count against each accused. To assist the Trial Chamber further the Prosecution has listed some of the evidence from each District.

a) Count 1

30. This Trial Chamber has already stated the elements of the crime of terrorism.⁵⁵ The evidence relied on by the Prosecution to prove Counts 1 and 2 relate to some or all of Counts 3 to 14. Evidence in support of Count 1, in addition to that below is from: TF1-074,⁵⁶ TF1-196,⁵⁷ TF1-064,⁵⁸ TF1-217,⁵⁹ TF1-060,⁶⁰ and from operations such as Operation No Living,⁶¹ Operation Pay Yourself,⁶² Operation Spare No Soul.⁶³

b) Count 2

31. This Trial Chamber stated the elements of the crime of collective punishments in *Norman*.⁶⁴ Evidence in support of Court 2, in addition to that below is from the following witnesses: TF1-071,⁶⁵ TF1-361,⁶⁶ TF1-360,⁶⁷ TF1-304,⁶⁸ and TF1-215.⁶⁹

c) Counts 3, 4 and 5

⁵⁵ *Norman* Rule 98 Decision, para. 112.

⁵⁶ TF1-074, Transcript, 12.7.04, pp. 10-15, 18-29.

⁵⁷ TF1-196, Transcript, 13.7.04, pp. 22-28.

⁵⁸ TF1-064, Transcript, 19.7.04, pp. 48-58, 67-68.

⁵⁹ TF1-217, Transcript, 22.7.04, pp. 8-22.

⁶⁰ TF1-060, Transcript, 29.4.05, pp. 48-57, 65-70, 72-75.

⁶¹ TF1-071, Transcript, 21.4.05, pp. 88-91.

⁶² TF1-071, Transcript, 19.1.05, pp. 25-30.

⁶³ TF1-141, Transcript, 13.4.05, pp. 6-11.

⁶⁴ *Norman* Rule 98 Decision, para. 118.

⁶⁵ TF1-071, Transcript, 19.1.05, pp. 1-23.

⁶⁶ TF1-361, Transcript, 12.7.05, pp. 11-14, 118-119.

⁶⁷ TF1-360, Transcript, 20.7.05, pp. 15-16, 55-59.

⁶⁸ TF1-304, Transcript, 12.1.05, pp. 34-41.

⁶⁹ TF1-215, Transcript, 2.8.05, pp. 100.

32. The law regarding extermination, as set out in *Brdjanin*, was cited above (General Principles of Law).⁷⁰ The legal elements of murder as a crime against humanity and of violence to life as a violation of Common Article 3 are not controversial and premeditation is not required.⁷¹

(i) *Bo District*

33. TF1-054 gave evidence of the deaths of a civic leader and another person, and having seen five other corpses at Gerihun.⁷² TF1-004 said that a Kamajor was shot and that he saw more than 10 corpses at Tikonko Junction; at Tikonko Town he saw 10 corpses in a house, in another room a man shot in the head and a child shot in the back, and many other corpses in Tikonko Town.⁷³ TF1-004 collected and buried up to 200 bodies around Tikonko Town.⁷⁴ TF1-008 said that Mosquito's group came to Sembehun and killed a person.⁷⁵

(ii) *Kenema District*

34. Morris Kallon led a mission to Kenema and many civilians were killed and houses burned according to TF1-141.⁷⁶ TF1-060 learned of killings at Panguma, of over 15 people killed at a village near Tongo called Bumpe, and of a man and wife killed at Maadahun; also at Weama the RUF opened fire on people mining and killed three of them.⁷⁷ TF1-125 saw four alleged thieves executed shortly after the coup by a combined team of RUF and SLA.⁷⁸ See also the evidence of TF1-035.⁷⁹

(iii) *Kono District*

35. TF1-015 testified that Colonel Rocky of the RUF shot and killed 101 at Koidu.⁸⁰ TF1-195 said she and five other women were taken by rebels to have sex, and that after

⁷⁰ *Prosecutor v. Brdjanin*, IT-99-36, "Judgement", 1 September 2004, para. 391.

⁷¹ *Prosecutor v. Oric*, IT-03-68-T, Transcript, 8 June 2005, p. 8992.

⁷² TF1-054, Transcript, 30.11.05, pp. 29-36.

⁷³ TF1-004, Transcript, 7.12.05, pp. 70-74; 8.12.05, pp. 3-9.

⁷⁴ TF1-004, Transcript, 8.12.05, pp. 10-14.

⁷⁵ TF1-008, Transcript, 8.12.05, pp. 35-38.

⁷⁶ TF1-141, Transcript, 12.4.05, pp. 58-66.

⁷⁷ TF1-060, Transcript, 29.4.05, pp. 65-69.

⁷⁸ TF1-125, Transcript, 7.7.05, pp. 68-73. See also pp. 84-93 for different unlawful killings.

⁷⁹ TF1-035, Transcript, 5.7.05, pp. 85-88, and pp. 89-96..

⁸⁰ TF1-015, Transcript, 27.1.05, pp. 109-128.

this incident four of the women were dead.⁸¹ See also the evidence of TF1-012,⁸² TF1-366,⁸³ TF1-064,⁸⁴ and TF1-360.

(iv) Kailahun District

36. TF1-141 testified to attacking Daru with the RUF and killing an old man, and seeing other dead civilians.⁸⁵ TF1-168, TF1-045, TF1-113 and others testified of the RUF execution of 65 persons in Kailahun town.⁸⁶

(v) Koinadugu District

37. TF1-212 said that the rebels gave sticks and elephant grass to children and told them to burn houses where people were locked in; the rebels hacked them to death, about 48 villagers were killed.⁸⁷ TF1-215 saw several people killed by the People's Army.⁸⁸

(vi) Bombali District

38. TF1-167 testified that Alex Tamba Brima ordered that Karina must be burned to the ground; more than 100 people were killed in Karina,⁸⁹ and that Gullit sent a team led by RUF Arthur to Mateboi where a lot of civilians were killed.⁹⁰ TF1-196 witnessed rebels kill her husband with a cutlass and saw other civilians being killed at Batmis.⁹¹ TF1-199 said the rebels killed his uncle at Madina Loko.⁹² See also the evidence of TF1-031,⁹³ TF1-360,⁹⁴ and TF1-184.

(vii) Freetown and Western Area

39. TF1-167 testified that he saw more than 30 corpses and State House and several corpses at other locations at or near Freetown.⁹⁵ TF1-235 witnessed the killing of seven

⁸¹ TF1-195, Transcript, 1.2.05, pp. 23-28.

⁸² TF1-012, Transcript, 2.2.05, pp. 5-10.

⁸³ TF1-366, Transcript, 8.11.05, pp. 31-49.

⁸⁴ TF1-064, Transcript, 19.7.05, pp. 49-56.

⁸⁵ TF1-141, Transcript, 12.4.05, pp. 38-46.

⁸⁶ TF1-168, Transcript, 31.3.06; TF1-045, Transcript, 18.11.05, pp. 40-51.

⁸⁷ TF1-212, Transcript, 8.7.05, pp. 110-112.

⁸⁸ TF1-215, Transcript, 2.8.05, pp. 90-103.

⁸⁹ TF1-167, Transcript, 14.10.04, pp. 87-90.

⁹⁰ TF1-167, Transcript, 14.10.04, pp. 91.

⁹¹ TF1-196, Transcript, 13.7.04, pp. 22-31.

⁹² TF1-199, Transcript, 20.4.04, pp. 19-21, 63.

⁹³ TF1-031, Transcript, 17.3.06, pp. 81-84.

⁹⁴ TF1-360, Transcript, 21.7.05, pp. 12-14.

⁹⁵ TF1-167, Transcript, 18.10.04, p. 54, 70-74, 82. See also the extensive evidence of TF1-334.

members of his family.⁹⁶ At Wellington, TF1-331 saw the rebels kill 3 people.⁹⁷ See also the evidence of TF1-029,⁹⁸ TF1-093,⁹⁹ and TF1-097.¹⁰⁰

(viii) *Port Loko District*

40. TF1-253 said that rebels shot and killed two of his brothers; that he was told that the rebels had massacred the people at Taron; a 16 year old boy and another man were shot and killed by the rebels; at Manarma six children were locked in a house by the rebels and burned. After TF1-253 escaped from the rebels the witness saw 73 corpses at Manarma.¹⁰¹ TF1-255 saw 47 people killed at Chendekom, and a person killed near Cheren and four others in a farm hut.¹⁰² TF1-167 testified of the killing of approximately 7 people in each of two houses that were set on fire.¹⁰³

d) *Counts 6, 7, 8 and 9*

41. The elements of the offences in Counts 6 to 9 were stated in *Norman*¹⁰⁴ and *Brima*.¹⁰⁵

(i) *Kono District*

42. TF1-195 said that at Kainako she and five other women were told to undress and the one with the gun had sex with her: she did not refuse because he had a gun, later a second rebel had sex with her and then shoved a stick in her vagina.¹⁰⁶ TF1-218 said the rebels forced a man and his wife to have intercourse and they would kill him if he did not. Then a rebel had sex with the witness in front of others.¹⁰⁷ Women were turned into wives.¹⁰⁸ See also the evidence of TF1-041.

(ii) *Koinadugu District*

43. TF1-212 said the rebels were going to chop her hands off, they did not, but they had sex with her. The rebels then put her and others in a guardroom, the rebels would

⁹⁶ TF1-235, Transcript, 28.11.05, pp. 53-59.

⁹⁷ TF1-331, Transcript, 22.7.04, pp. 45-49.

⁹⁸ TF1-029, Transcript, 28.11.05, pp. 10-14.

⁹⁹ TF1-093, Transcript, 29.11.05, pp. 101-112.

¹⁰⁰ TF1-097, Transcript, 28.11.05, pp. 77-81.

¹⁰¹ TF1-253, Transcript, 28.7.04, pp. 10-31.

¹⁰² TF1-255, Transcript, 18.7.06, pp. 73-75, 79-82, 86-96. See also the evidence of TF1-345, Transcript, 19.7.06, pp. 38-40, 43.

¹⁰³ TF1-167, Transcript, 18.10.04, pp. 81-84.

¹⁰⁴ *Norman* Rule 98 Decision, paras, 55, 56, 58, 68-70, 93, 94

¹⁰⁵ *Brima* Rule 98 Decision, paras. 106-107, 109-110, 115.

¹⁰⁶ TF1-195, Transcript, 1.2.05, pp. 21-26.

¹⁰⁷ TF1-218, Transcript, 1.2.05, pp. 83-86.

¹⁰⁸ TF1-114, Transcript, 28.4.05, pp. 44-47.

sign for civilians which meant the woman belonged to the rebel, if anyone was not signed for then many men would rape the woman.¹⁰⁹ TF1-329 was told by her sister-in-law that the sister-in-law had been raped by rebels at Fadugu.¹¹⁰

(iii) Bombali District

44. Raping by the RUF and AFRC took place at Makeni.¹¹¹ TF1-196 was raped by a rebel and the rebels talking about the gang rape of a woman by 10 rebels.¹¹² Commanders would take girls and say they are going to be his wife, and the witness saw his commander take a girl for sex; the same witness was forced to commit rape by his commander.¹¹³ TF1-174 spoke to many young girls who had been forced to go with the RUF and who had sex with combatants.¹¹⁴

(iv) Kailahun District

45. When a village was captured commanders took women from their husbands and took her as his wife.¹¹⁵ TF1-314 was forced to have sex with a combatant, and there were many abducted civilians who became the wife of rebels; these girls would cook, launder and when night falls have sex; Sesay, Kallon and Gbao knew about it.¹¹⁶ See also the evidence of TF1-045, TF1-367 and TF1-369.

(v) Freetown and Western Area

46. TF1-029 was captured by RUF/SLA in Wellington, she was raped 10 times. The SLA/RUF group raped thousands of women.¹¹⁷ TF1-081 learned, as part of a research project, that of 1,168 young women treated in a health program, the vast majority of them were abducted during the January 1999 attack on Freetown and they were married in the bush.¹¹⁸ TF1-334 saw abductions and raping taking place in Freetown.¹¹⁹

(vi) Port Loko District

¹⁰⁹ TF1-212, Transcript, 8.7.05, pp. 101-105.

¹¹⁰ TF1-329, Transcript, 2.8.05, pp. 42-43.

¹¹¹ TF1-360, Transcript, 19.7.05, pp. 10-12.

¹¹² TF1-196, Transcript, 13.7.04, pp. 22-31.

¹¹³ TF1-199, Transcript, 20.7.04, pp. 24, 29-31.

¹¹⁴ TF1-174, Transcript, 21.3.06, pp. 32-37.

¹¹⁵ TF1-114, Transcript, 28.4.05, pp. 64-65.

¹¹⁶ TF1-314, Transcript, 2.11.05, pp. 36-43.

¹¹⁷ TF1-029, Transcript, 28.11.05, pp. 7-13.

¹¹⁸ TF1-081, Transcript, 4.7.05, pp. 4, 9-12, 18-20.

¹¹⁹ TF1-334, Exhibit No.:119, AFRC Transcript, 14.6.05, pp. 25-27.

47. TF1-256 saw soldiers raping people's wives and children; he was told by a woman that a combatant had raped her repeatedly and three other women told him they had been captured and raped.¹²⁰ Two of the daughters of TF1-255 who had been captured and held for a month said that the soldiers had been their husbands and they had sex with them and cooked for them.¹²¹ TF1-345 said that the women she was captured with were forced to have sex with the rebels.¹²²

e) Counts 10 and 11

48. The elements of Counts 10 and 11 were stated in *Norman*.¹²³

(i) Kono District

49. TF1-195 testified that the rebels cut off the hands of five men, told the women to clap for them and laugh,¹²⁴ and said that a rebel pushed a stick into her vagina.¹²⁵ As TF1-218 was running away from rebels after being raped she was shot in the hand.¹²⁶ TF1-212 saw the rebels cut off the hands of three people.¹²⁷ TF1-272 testified a large group, 58, of amputees that came to Connaught Hospital were from Sewafe/Koidu; the witness' report says that Connaught received 115 patients, most severely mutilated between 6 April and 4 May 1998.¹²⁸ On Kallon's order hands were cut off.¹²⁹

(ii) Kenema District

50. Sesay ordered one of his bodyguards to assault TF1-129, later fired a gun between his legs, later Sesay ordered 6 rebels to beat another person.¹³⁰ TF1-129 was forced into the boot of a vehicle, beaten on the head by kicks, held in a dungeon, beaten with a gun and a bottle was broken on his face. He witnessed the beating and torture of others.¹³¹ TF1-125 testified of six persons being arrested in Kenema by the RUF as suspected Kamajors and being assaulted and injured.¹³²

¹²⁰ TF1-256, Transcript, 14.4.05, pp. 97-99

¹²¹ TF1-255, Transcript, 18.7.06, pp. 86-95.

¹²² TF1-345, Transcript, 19.7.06, pp. 32-33.

¹²³ *Norman* Rule 98 Decision, paras. 55, 56, 58, 68-70, 93-95

¹²⁴ TF1-195, Transcript, 1.2.05, pp. 21-23.

¹²⁵ TF1-195, Transcript, 1.2.05, pp. 24-28.

¹²⁶ TF1-218, Transcript, 1.2.05, pp. 86-91.

¹²⁷ TF1-212, Transcript, 8.7.05, pp. 96-98.

¹²⁸ TF1-272, Transcript, 5.7.05, pp. 55-58, 21-25; see also Exhibit 30.

¹²⁹ TF1-360, Transcript, 17.7.05, pp. 55-59.

¹³⁰ TF1-129, Transcript, 10.5.05, pp. 57-63.

¹³¹ TF1-129, Transcript, 10.5.05, pp. 57-77.

¹³² TF1-125, Transcript, 12.5.05, pp. 106-110, 130-136.

(iii) Koinadugu District

51. Rebels tried to stab TF1-172 then later hit him in the face with a gun butt and knocked out a tooth.¹³³ Later this witness had his hand chopped off by rebels, saw his child's hand chopped off, and the hands of three others; after the hands were chopped off the rebels said the victims should go to the elders; the rebels told the witness to laugh and cocked a gun at him when he did not, then they told him to take a letter to ECOMOG at Alikalia.¹³⁴ TF1-272 reported that amputee victims arrived from around Yifin and Alikalia following 2 May 1998; one patient was given a letter by the attackers to give to President Kabbah; patients also came from Fadugu, Kabala and north of Makeni.¹³⁵ In early May 1998, 7 to 9 children below 15 years from Fadugu were admitted at Connaught.¹³⁶ See also the evidence of TF1-212¹³⁷ and TF1-215.¹³⁸

(iv) Bombali District

52. At Batmis the hands of TF1-196 were chopped off.¹³⁹ TF1-028 saw two men asked if they wanted "long or short sleeve" and saw amputations of the two men.¹⁴⁰ TF1-179 saw his uncle's and brother-in-law's hands cut off, the rebels and junta mutilated his father, and TF1-179's hand was chopped off.¹⁴¹

(v) Freetown and Western Area

53. At Wellington, TF1-331 witnessed a rebel cut the hand of a child about 6, and then her hand was cut off, and she was kicked, beaten and robbed.¹⁴² TF1-104 said that he and other hospital staff were beaten with a stick and rope by the SLA and RUF for keeping ECOMOG and Kamajors at the hospital.¹⁴³ TF1-093 saw more than 100 civilians' hands being chopped off.¹⁴⁴

(vi) Port Loko District

¹³³ TF1-172, Transcript, 17.5.05, pp. 8-11.

¹³⁴ TF1-172, Transcript, 17.5.05, pp. 12-17, 25-26.

¹³⁵ TF1-272, Transcript, 5.7.05, pp. 31-34, 55.

¹³⁶ TF1-272, Transcript, 5.7.05, pp. 56-58.

¹³⁷ TF1-212, Transcript, 8.7.05, pp. 105-110.

¹³⁸ TF1-215, Transcript, 2.8.05, pp. 70-77, 90-100.

¹³⁹ TF1-196, Transcript, 13.7.04, pp. 23-25.

¹⁴⁰ TF1-028, Transcript, 20.3.06, pp. 21-23.

¹⁴¹ TF1-179, Transcript, 4.4.06, pp. 38-41.

¹⁴² TF1-331, Transcript, 22.7.04, pp. 46-48.

¹⁴³ TF1-104, Transcript, 30.6.05, pp. 8-14, 22-23, 41.

¹⁴⁴ TF1-093, Transcript, 29.11.05, pp. 103-111.

54. The witness was put in a box and released on Superman's order, then he was flogged and made to fetch and boil water for a combatant for seven days.¹⁴⁵ TF1-255 was flogged, struck with a stick and with the muzzle of a gun by a soldier.¹⁴⁶ TF1-253 was struck and had cinders pressed on his body, he saw the rebels chop off the hands of two ladies.¹⁴⁷ TF1-345 was beaten with a stick by a rebel for not going with him into the bush the night before.¹⁴⁸

f) Count 12

55. The elements of Count 12 were described in *Norman*.¹⁴⁹

56. TF1-263 was 14 when he was captured and sent for training by the RUF; there were 10 others of his age group at the training camp in Kailahun and if you refused to go for training you would be killed.¹⁵⁰ TF1-141 said that he was 14 years old in 2000 and that he was captured by the RUF in Koidu in 1998, he was an SBU; SBU's went on food-finding missions, served as security, and sometimes went to the battlefield.¹⁵¹ TF1-362 testified that the SBU had children from 8 to 15 years old,¹⁵² and at Bunumbu they were 9 to 14.¹⁵³ There were SBU's at Bunumbu for training, 45% were under 15.¹⁵⁴ Sesay, Kallon and Gbao all had SBU's in Buedu.¹⁵⁵ See also the evidence of TF1-060,¹⁵⁶ TF1-035,¹⁵⁷ TF1-122,¹⁵⁸ TF1-129,¹⁵⁹ and TF1-296.

g) Count 13

57. The elements of Count 13 were set out in *Norman*¹⁶⁰ and *Brima*.¹⁶¹

(i) Kenema District

¹⁴⁵ TF1-256, Exhibit No. 136, AFRC Transcript, 14.4.05, pp. 99-107.

¹⁴⁶ TF1-255, Transcript, 18.7.06, pp. 86-95.

¹⁴⁷ TF1-253, Transcript, 28.7.04, pp. 12-19, 27.

¹⁴⁸ TF1-345, Transcript, 19.7.06, pp. 36-37.

¹⁴⁹ *Norman* Rule 98 Decision, paras. 68-70, 124; applied in *Brima* Rule 98 Decision, para. 194.

¹⁵⁰ TF1-263, Transcript, 6.4.05, pp. 25-26, 27-35. TF1-314 testified that she was a soldier under 15, and that Sesay, Kallon and Gbao had SBU's and SGU's (2.11.05, pp. 30-36).

¹⁵¹ TF1-141, Transcript, 11.4.05, pp. 78-83, 90-95, 12.4.05, pp. 35-46. See also TF1-362, Transcript, 21.4.05, pp. 26-28.

¹⁵² TF1-362, Transcript, 20.4.05, pp. 22-26, 30

¹⁵³ TF1-362, Transcript, 21.4.05, pp. 43-48.

¹⁵⁴ TF1-114, Transcript, 21.4.05, pp. 67.

¹⁵⁵ TF1-036, Transcript, 28.7.05, pp. 15-18.

¹⁵⁶ TF1-060, Transcript, 29.4.05, pp. 70-74. See also the evidence of TF1-196.

¹⁵⁷ TF1-035, Transcript, 5.7.05, pp. 83-84.

¹⁵⁸ TF1-212, Transcript, 8.7.05, pp. 112-113.

¹⁵⁹ TF1-129, Transcript, 10.5.05, pp. 63-66.

¹⁶⁰ *Norman* Rule 98 Decision, paras. 55, 56, 58.

¹⁶¹ *Brima* Rule 98 Decision, paras. 214.

58. The RUF forced hundreds of people to mine at Tongo, every morning the RUF and SLA raided villages to get civilians.¹⁶² Civilians were forced to mine at Cyborg like slaves; they would get 100 strong men and force them to mine at gunpoint.¹⁶³ TF1-122 spoke to lots of men who had been captured and forced to mine at Tongo Field.¹⁶⁴

(ii) Kono District

59. TF1-263 said that civilians who had been caught and abducted were living at Kissi Town, and that someone with a gun was with them so that they could not run away.¹⁶⁵ Men were used to carry loads.¹⁶⁶ There were captured civilians at Superman Ground who did cooking and were making love with the combatants.¹⁶⁷ TF1-071 testified of several mining sites where civilians were forced to mine for the RUF.¹⁶⁸ See also the evidence of TF1-041, TF1-366 and TF1-367.

(iii) Koinadugu District

60. TF1-212 testified that her sister was captured by the rebels and that about 120 children were taken away.¹⁶⁹ TF1-361 saw civilians captured at Koinadugu to do household chores, and said that a lot of civilians were captured in Kabala.¹⁷⁰ TF1-215 was forced to carry loads and other civilians were captured to carry loads.¹⁷¹

(iv) Bombali District

61. School children were abducted at Makeni by RUF and AFRC.¹⁷² TF1-360 said civilians were captured to carry loads as they traveled to Rosos.¹⁷³ TF1-343 testified that the rebels captured civilians.¹⁷⁴ TF1-159 was captured with other civilians and was made to pound rice.¹⁷⁵ TF1-196 was captured and forced to pound rice and millet and other captured civilians were forced to carry loads.¹⁷⁶

¹⁶² TF1-060, Transcript, 29.4.05, pp. 69-70.

¹⁶³ TF1-035, Transcript, 5.7.05, pp. 81-83.

¹⁶⁴ TF1-122, Transcript, 8.7.05, pp. 54-58.

¹⁶⁵ TF1-263, Transcript, 6.4.05, pp. 11-17.

¹⁶⁶ TF1-114, Transcript, 28.4.05, pp. 44-47.

¹⁶⁷ TF1-361, Transcript, 12.7.05, pp. 18-20.

¹⁶⁸ TF1-071, Transcript, 21.1.05, pp. 108-120.

¹⁶⁹ TF1-212, Transcript, 8.7.05, pp. 105-113.

¹⁷⁰ TF1-361, Transcript, 12.7.05, pp. 51-53, 64-67.

¹⁷¹ TF1-215, Transcript, 2.8.05, pp. 70-72.

¹⁷² TF1-360, Transcript, 19.7.05, pp. 12.

¹⁷³ TF1-360, Transcript, 21.7.05, pp. 12-14.

¹⁷⁴ TF1-343, Transcript, 17.3.06, pp. 65-67.

¹⁷⁵ TF1-159, Transcript, 5.4.06, pp. 4-13.

¹⁷⁶ TF1-196, Transcript, 13.7.04, pp. 23-26.

(v) Kailahun District

62. Civilians were not paid to work on farms, between 100 and 500 civilians were being used as slaves.¹⁷⁷ When TF1-141 went to Kailahun he saw an RUF government farm where the civilians were doing all of the work; combatants told them to do as they were told and at times beat the civilians.¹⁷⁸ TF1-362 said that the AFRC/RUF captured men, small boys and girls and women.¹⁷⁹ TF1-108, TF1-113 and TF1-330 gave extensive evidence of civilians being forced to work on farms and carry loads for the RUF.

(vi) Freetown and Western Area

63. During the withdrawal from Freetown in January 1999 civilians were abducted.¹⁸⁰ The RUF/Junta threatened and forced civilians to bury corpses.¹⁸¹ When the Upgun area was lost to ECOMOG in January 1999 abductions started, TF1-334 saw abductions of civilians, especially young girls; these civilians carried loads when the troops started to retreat and helped in the cooking.¹⁸²

(vii) Port Loko District

64. TF1-256 and another captured civilian were forced to build houses for the soldiers.¹⁸³ The witness was forced to build 50 huts for the soldiers, and to carry rice to Lunsar; at Lunsar he was made to fetch and pound rice.¹⁸⁴ TF1-345 said that she and others were forced to pound rice for the rebels.¹⁸⁵

h) Count 14 – Looting and Burning

65. The elements of Count 14 were described in *Norman*¹⁸⁶ and *Brima*.¹⁸⁷

(i) Bo District

66. TF1-054 saw properties go missing after rooms were searched by soldiers; shops were broken into and looted in Bo town and surrounding villages, and houses were

¹⁷⁷ TF1-114, Transcript, 28.4.05, pp. 60-62.

¹⁷⁸ TF1-141, Transcript, 12.4.05, pp. 13-19.

¹⁷⁹ TF1-362, Transcript, 20.4.05, pp. 38-42.

¹⁸⁰ TF1-167, Transcript, 18.10.04, pp. 63-65.

¹⁸¹ TF1-104, Transcript, 30.6.05, pp. 17, 64, 72-77.

¹⁸² TF1-334, Transcript, 14.6.05, pp. 62-65, 118-120.

¹⁸³ TF1-256, Exhibit No.: 136 AFRC Transcript, 14.4.05, pp. 68-70.

¹⁸⁴ TF1-255, Transcript, 18.7.06, pp. 82-84, 97-108.

¹⁸⁵ TF1-345, Transcript, 19.7.06, pp. 32.

¹⁸⁶ *Norman* Rule 98 Decision, paras. 68-70, 102

¹⁸⁷ *Brima* Rule 98 Decision, paras. 240.

burned in surrounding areas.¹⁸⁸ Houses were burned in Tikonko and properties the junta soldiers did not want were spread on the street; the witness saw soldiers with two bags of personal things and his house was looted; up to 500 houses were burned in Tikonko.¹⁸⁹ Mosquito and his group took money from the Section Chief's house at Sembehun, and they set fire to more than 30 houses.¹⁹⁰

(ii) Koinadugu District

67. TF1-172 said the rebels came to Seraduya ate some sheep and goats and burned down a section of town of about 40 houses; rebels took 250 Sierra Leonean pounds from him.¹⁹¹ TF1-212 was told that the rebels had burned down Dankawalie, and later their belongings at Koinadugu were taken.¹⁹² TF1-212 said that all of Koinadugu village except for the mosque was burned by the rebels.¹⁹³ Witness TF1-361 saw looting at Koinadugu and said there was burning of properties at Kabala.¹⁹⁴ Houses were burned in Koinadugu.¹⁹⁵ TF1-329 saw rebels appropriate money and jewelry.¹⁹⁶

(iii) Kono District

68. TF1-218 saw houses that were burnt.¹⁹⁷ Mosquito gave the order to burn houses at Tombodu according to TF1-012.¹⁹⁸ The rebels took all of the property in the house near Koidu where TF1-263 was staying.¹⁹⁹ TF1-141 testified that Morris Kallon led the attack to take the money from the bank in Koidu and the money was taken to Guinea Highway by the RUF.²⁰⁰ Gbao took medicines from a combatant at Baoma and said it was government property.²⁰¹ Kallon and his men burned the houses in Koidu.²⁰²

(iv) Bombali District

¹⁸⁸ TF1-054, Transcript, 16.11.05, pp. 16-19.

¹⁸⁹ TF1-004, Transcript, 7.12.05, pp. 65, 75-76; 8.12.05, pp. 2-7, 13.

¹⁹⁰ TF1-008, Transcript, 8.12.05, pp. 35-37.

¹⁹¹ TF1-172, Transcript, 17.5.05, pp. 4-8, pp. 10-12.

¹⁹² TF1-212, Transcript, 8.7.05, pp. 98-101. The rebels were the RUF and AFRC junta (p. 99).

¹⁹³ TF1-212, Transcript, 8.7.05, 111-112

¹⁹⁴ TF1-361, Transcript, 12.7.05, pp. 50-55.

¹⁹⁵ TF1-361, Transcript, 12.7.05, pp. 73-74.

¹⁹⁶ TF1-329, Transcript, 2.8.05, pp. 9-13.

¹⁹⁷ TF1-218, Transcript, 1.2.05, pp. 89-91.

¹⁹⁸ TF1-012, Transcript, 2.2.05, pp. 11-17.

¹⁹⁹ TF1-263, Transcript, 6.4.05, pp. 5-9.

²⁰⁰ TF1-141, Transcript, 11.4.05, 95-102.

²⁰¹ TF1-114, Transcript, 28.4.05, pp. 48-50.

²⁰² TF1-361, Transcript, 12.7.05, pp. 8-12.

69. Looting of civilian properties and vehicles took place at Makeni.²⁰³ A school and houses were burned at Pendembu, and a solar plate was taken near Karina.²⁰⁴ Rebels took money from the civilians and looted the houses for food and clothes.²⁰⁵ The soldiers came to Karina and took people's property and burned houses.²⁰⁶ TF1-041 said that Operation Pay Yourself happened at Makeni, there was heavy looting by the AFRC and RUF.²⁰⁷ See also the evidence of TF1-071, TF1-367, TF1-366, TF1-371 and TF1-041.

(v) Freetown and Western Area

70. TF1-334 testified that there was heavy looting at Waterloo.²⁰⁸ An order to burn houses was given and houses and shops were burned in Freetown and the highway to Waterloo.²⁰⁹ TF1-023 said Wellington had a fearful atmosphere because the place was burning and soldiers were shooting.²¹⁰ TF1-022 said that RUF members robbed him.²¹¹ TF1-169 testified that 55 government quarters were burned in Freetown and other buildings were burned by the rebels.²¹²

i) Counts 15 to 18

71. Major Jaganathan,²¹³ Lt. Col. Mendy²¹⁴ were Military Observers, and Lt. Col. Kasoma²¹⁵ and Brigadier General Ngondi²¹⁶ were peacekeepers; all gave evidence of attacks on UN peacekeeping personnel, their capture, and the death of such members. Witnesses TF1-362 was told by Sesay that the UNAMSIL captives should be undressed and kept as enemies; Sesay took their passports, pounds Sterling and other things and he said they should be under strict detainment, kept undressed, and should not be given sufficient food.²¹⁷ TF1-366 described the RUF attack on the UN peacekeeping

²⁰³ TF1-360, Transcript, 19.7.05, pp. 9-11.
²⁰⁴ TF1-360, Transcript, 21.7.05, pp. 15-18.
²⁰⁵ TF1-199, Transcript, 20.7.04, pp. 20-25.
²⁰⁶ TF1-028, Transcript, 20.3.06, pp. 109-119, 11-20.
²⁰⁷ TF1-041, Transcript, 10.7.06, pp. 38-41.
²⁰⁸ TF1-334, Exhibit No.:119 AFRC Transcript, 13.6.05, pp. 90.
²⁰⁹ TF1-167, Transcript, 18.10.04, pp. 66-72.
²¹⁰ TF1-023, Exhibit No.:59a, AFRC Transcript, 9.3.05, pp. 28-30.
²¹¹ TF1-022, Transcript, 29.11.05, pp. 28-30.
²¹² TF1-169, Exhibit No. 61, AFRC Transcript, 6.7.05, pp. 19-21, 68-70, 92.
²¹³ Transcript 20 and 21 June 2006.
²¹⁴ Transcript 26-29 June, 2006.
²¹⁵ Transcript 22 and 23 March, 2006.
²¹⁶ Transcript 28-31 March, 2006.
²¹⁷ TF1-362, Transcript, 21.4.05, pp. 29-36.

personnel,²¹⁸ and witnesses TF1-360,²¹⁹ TF1-071²²⁰ (who refers to peacekeeping personnel being abducted at or near Lunsar, Port Loko District) and TF1-041,²²¹ and other witnesses also gave evidence on the attacks.

VII. Conclusion

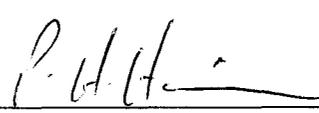
72. The Prosecution says that the motions should be dismissed.

Filed in Freetown, 6 October 2006

For the Prosecution,



Jim Johnson



Pete Harrison

²¹⁸ TF1-366, Transcript, 10.11.05, 35-46
²¹⁹ TF1-360, Transcript, 22.7.05, pp. 2-11
²²⁰ TF1-071. Transcript, 24.1.05, pp. 2-13
²²¹ TF1-041, Transcript, 10.7.06, pp. 67-72

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<http://www.un.org/icty/kordic/trialc/decision-e/00406DC512861.htm>

Prosecutor v. Krajisnik, IT-00-39-T, “Judgement”, 27 September 2006 ;
<http://www.un.org/icty/krajisnik/trialc/judgement/kra-jud060927e.pdf>

Prosecutor v Martić, IT-95-11, Transcript, 3 July 2006, pp. 5959, 5961;
<http://www.un.org/icty/transe11/060703IT.htm>

Prosecutor v Mrksić, IT-95-13/1, Transcript (Not official, not corrected), from p. 11325; Not yet available on the internet.

Prosecutor v. Tharcisse Muvunyi, ICTR-2000-55 A-T, “Decision on Tharcisse Muvunyi’s motion for Judgment of Acquittal pursuant to Rule 98 bis”, Trial Chamber, 13 October 2005; <http://69.94.11.53/default.htm>

Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali, Sylvain Nsabimana and Alphonse Nteziryayo, Joseph Kanyabashi, Elie Ndayambaje, ICTR-97-21-T, ICTR-97-29A-T, ICTR-96-15-T, ICTR-96-8-T, ICTR-98-42-T, “Decision on Defence Motions for Acquittal under Rule 98 bis”, Trial Chamber, 16 December 2004; <http://69.94.11.53/default.htm>

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C. Trial Exhibits

Exhibit Nos. 8 (and the UNAMSIL maps of which the Trial Chamber took judicial notice), 25, 30, 36, 38, 39, 40, 59a, 61, 86, 119, 126, 127, 136, 138

25422

14

Application of the Law of Armed Conflict During Peace Support Operations

The Legal Framework for Peace Support Operation Forces	14.1
Peace Support Operation Forces Which Become Party to an Armed Conflict	14.3
Peace Support Operation Forces Which have not Become Party to an Armed Conflict	14.9
Protection Accorded to PSO Forces by the Law of Armed Conflict	14.12
Enforcement of the Law of Armed Conflict by PSO Forces	14.16

THE LEGAL FRAMEWORK FOR PEACE SUPPORT OPERATION FORCES

Peace support operations ('PSOs') are subject to a number of different legal regimes, amongst others those derived from: **14.1**

- a. the United Nations Charter;
- b. the decisions of the United Nations Security Council establishing the operation and defining the mandate of the PSO force;
- c. the agreements between the United Nations and the host state or states on the territory of which the PSO is to be conducted and between the United Nations and the states which have agreed to contribute units to the PSO force;
- d. the United Nations Convention on the Safety of United Nations and Associated Personnel 1994 (UN Safety Convention); and
- e. the Convention on Privileges and Immunities of the United Nations 1946.

In addition, the law of the host state or states will generally be applicable, although the agreements between those states and the United Nations will usually specify the extent to which the PSO force and its members are immune from the jurisdiction of host state courts. United Kingdom forces taking part in PSOs are also subject to the relevant rules of United Kingdom law.

The present chapter, however, is concerned only with the application of the law of armed conflict during PSOs. Guidance on the application of other **14.2**

25423

rules of national and international law will be given in each operation. Reference may also be made to JWP 3-50 *Peace Support Operations*.

PEACE SUPPORT OPERATION FORCES WHICH BECOME PARTY TO AN ARMED CONFLICT

- 14.3 The extent to which PSO forces are subject to the law of armed conflict depends upon whether they are party to an armed conflict with the armed forces of a state or an entity which, for these purposes, is treated as a state.¹ Although the United Nations (and regional organizations) are not states and are not parties to the various treaties on the law of armed conflict, states providing contingents to PSOs remain bound by the treaties to which they are parties.²
- 14.4 Where PSO forces become party to an armed conflict with such forces, then both sides are required to observe the law of armed conflict in its entirety.³ In those circumstances, recourse must be had to the whole of this Manual.
- 14.5 A PSO force can become party to an armed conflict, and thus subject to the law of armed conflict:
 - a. where it was mandated from the outset to engage in hostilities with opposing armed forces as part of its mission (which will be the case, for example, with certain types of enforcement action under Chapter VII of the United Nations Charter); and
 - b. where its personnel, though not originally charged with such a task, become involved in hostilities as combatants (whether as a result of their own initiative or because they are attacked by other forces) to such a degree that an armed conflict comes into being between the PSO force

¹ For example, during the 1950-53 Korean conflict, United Nations forces were instructed to comply with the provisions of the Geneva Conventions 1949 notwithstanding that North Korea was not, at that time, recognized as a state by the United Nations or by any of the states contributing to the United Nations forces in Korea.

² In this context, note the provisions of Common Art 1 of the Geneva Conventions, which requires states parties 'to respect and to ensure respect for the present Convention in all circumstances' and Art 1(1) of Additional Protocol I, which is in the same terms.

³ The applicability of the law of armed conflict in such circumstances was recognized in the Korean conflict. It is assumed by Art 2(2) of the UN Safety Convention, which refers to 'an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies'. The applicability of the law of armed conflict is not, however, confined to enforcement actions; as explained in para 14.5, a United Nations peacekeeping force may become party to an armed conflict even though that was not its original mandate. It is the fact of being a party to an international armed conflict, not the nature of the original mandate or the provisions under which the force was established, which is

and the opposing forces. The latter situation may arise in any type of PSO.⁴

On the other hand, a PSO force which does not itself take an active part in hostilities does not become subject to the law of armed conflict simply because it is operating in territory in which an armed conflict is taking place between other parties. That will be the case, for example, where a force with a mandate to observe a cease-fire finds that the cease-fire breaks down and there is a recurrence of fighting between the parties in which the PSO force takes no direct part. 14.6

It is not always easy to determine whether a PSO force has become a party to an armed conflict or to fix the precise moment at which that event has occurred. Legal advice and guidance from higher military and political levels should be sought if it appears possible that the threshold of armed conflict has been, or is about to be, crossed. 14.7

Responsibility for ensuring compliance with the law of armed conflict by the members of a PSO force is divided between the national authorities of each contingent and the United Nations or other international organization under whose auspices the operation is conducted. The United Nations (or other international organization) will usually issue rules of engagement which will require compliance with the law of armed conflict and its commanders will issue their orders accordingly. However, the model agreement between the United Nations and contributor states requires the contributor state to ensure that the contingent which it contributes complies with the law of armed conflict. Since only states possess a criminal jurisdiction, violations of the law of armed conflict can usually be punished only by national courts and disciplinary authorities. A member of a contingent in a PSO force who violates the law of armed conflict will, therefore, normally stand trial before the courts of his own state, although if the violation amounts to a grave breach of the Geneva Conventions or Additional Protocol I, any national court will possess jurisdiction.⁵ 14.8

PEACE SUPPORT OPERATION FORCES WHICH HAVE NOT BECOME PARTY TO AN ARMED CONFLICT

A PSO force which has not become a party to an armed conflict is not subject to the law of armed conflict as such. That will be so even though there may be incidents in which acts of violence are directed against the force and 14.9

⁴ The various categories into which legal and military writers tend to divide PSOs are not, therefore, decisive in determining whether the law of armed conflict is applicable, since any force is capable of becoming involved as a party in an armed conflict, although such a consequence is obviously more likely in some operations than in others.

⁵ For further information about enforcement of the law of armed conflict, see Ch 16, especially Part C.

25424.

members of the force take action in self-defence, so long as the threshold of armed conflict is not crossed. It follows that, below that threshold, members of a PSO force may be involved in fighting without being subject to the law of armed conflict.

- 14.10 Nevertheless, such fighting does not take place in a legal vacuum. Quite apart from the fact that it is governed by national law and the relevant provisions of the rules of engagement, the principles and spirit of the law of armed conflict remain relevant.
- 14.11 In the case of United Nations PSOs, that has been formally recognized by the Bulletin on the Observance by United Nations Forces of International Humanitarian Law issued by the United Nations Secretary-General on 6 August 1999.⁶ The bulletin, with which all members of United Nations forces are required to comply, applies 'to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement'.⁷ The bulletin sets out a non-exhaustive list of fundamental principles with which any recourse to force by members of a United Nations force must comply.⁸
 - 14.11.1 The bulletin has been the subject of criticism by the United Nations Committee on Peacekeeping. In its report of March 2000, it stressed that the bulletin ought accurately to reflect the terms of international humanitarian law. It requested the Secretary-General to undertake further consultations to this end.

PROTECTION ACCORDED TO PSO FORCES BY THE LAW OF ARMED CONFLICT

- 14.12 Since members of PSO forces may frequently find themselves caught up in an armed conflict to which the PSO force is not a party, the law of armed conflict affords them certain protections.
- 14.13 The parties to an armed conflict are prohibited to make use of the emblem of the United Nations except as authorized by the United Nations.⁹ In addition, it is prohibited to kill, injure, or capture an adversary by feigning protected status by the use of signs, emblems, or uniforms of the United Nations and to do so constitutes the war crime of perfidy.¹⁰

⁶ A Roberts and R Guelff, *Documents on the Law of War* (3rd edn 2000) (Roberts and Guelff, *Documents*) 725.

⁷ Section 1(1).

⁸ Section 2 makes clear that the bulletin does not set out an exhaustive list and does not replace the provisions of national laws by which military personnel remain bound throughout the operation.

⁹ Additional Protocol I 1977 (AP I), Art 38(2); Rome Statute 1998, Art 8(2)(b)(vii).

¹⁰ AP I, Arts 37(1)(d) and 85(3)(f). The provision was not intended to apply where members of United Nations armed forces intervene as combatants in an armed conflict. See Y Sandoz,

Insofar as a party to an armed conflict is not subject to a more extensive prohibition or restriction on the use of landmines,¹¹ the Mines Protocol to CCW requires it to take certain steps to protect United Nations forces from mines and booby-traps.¹² 14.14

More generally, where a United Nations force or other PSO force is not engaged as a party to an armed conflict, its personnel and equipment would not constitute a military objective¹³ and attacks on them will therefore be unlawful.¹⁴ While it falls outside the scope of the present Manual, the United Nations Convention on the Safety of United Nations and Associated Personnel 1994 outlaws a series of actions against United Nations personnel and national personnel associated with certain types of United Nations operation and requires all states party to the Convention to extradite or prosecute those accused of such crimes. 14.15

ENFORCEMENT OF THE LAW OF ARMED CONFLICT BY PSO FORCES

In some circumstances, members of a PSO force may be expressly or impliedly charged with certain responsibilities for ensuring the compliance of others with the law of armed conflict. For example, they may have a responsibility to intervene so far as feasible to prevent the commission of grave breaches or other war crimes or to arrest persons indicted for such offences.¹⁵ In addition, there is a duty on states party to Additional Protocol I to co-operate with the United Nations in response to serious violations of the law of armed conflict.¹⁶ 14.16

C Swinarski, and B Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987) para 1509.

¹¹ See para 6.13.

¹² Protocol II, Art 8 and Amended Protocol II, Art 12(2), see Roberts and Guelff, *Documents*, 531, 545. ¹³ See para 5.4.

¹⁴ See the decision of the International Criminal Tribunal for the Former Yugoslavia in *Prosecutor v Karadžić and Mladić*, 108 ILR 85. See also Rome Statute, Art 8(2)(b)(iii), (e)(iii).

¹⁵ For example, members of the Stabilization Force (SFOR) deployed in Bosnia and Herzegovina under the terms of the Dayton Agreement 1995 have arrested a number of persons indicted by the International Criminal Tribunal for the Former Yugoslavia.

¹⁶ AP I, Art 89.