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SCSL-04-16-T
(16987-17018)

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Date Filed: 12 December 2005

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU**

.....
**DEFENCE MOTION FOR JUDGEMENT OF ACQUITTAL OF THE
SECOND ACCUSED -
BRIMA BAZZY KAMARA**
.....

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

Office of the Prosecutor:

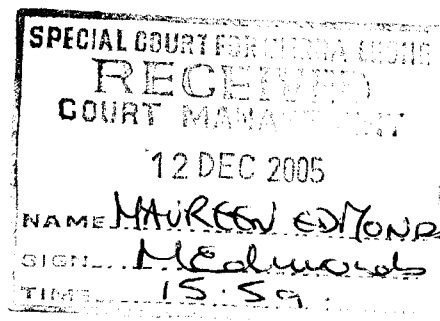
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For Alex Tamba Brima: Kojo Graham and Glenna Thompson

For Santigie Borbor Kanu: Geert Jan Knoops, Carry Knoops and A.E Manly-Spain



A. INTRODUCTION:

1. Pursuant to an Order of Trial Chamber II entitled “Scheduling Order on Filing of a Motion for Judgment of Acquittal” made and filed on 30 September 2005¹, the said Trial Chamber, relying respectively on Rules 26*bis*, 54 and 98 of the Rules of Procedure and Evidence of the Special Court (herein after called “the Rules”), ruled *inter alia* that: “Any Motion for a Judgment of Acquittal shall be filed by the Defence in writing within three weeks from the date that the Prosecution case closes”. It further stated that “the length of any Joint Defence Motion relating to legal issues shall not exceed thirty (30) pages in length”, whilst “the length of any additional submissions on facts on behalf of each individual Accused shall not exceed thirty (30) pages in length” as well.
2. The Defence Team for Mr. Brima Bazzy Kamara (herein called “the second Accused”) presents its “additional submissions on facts” on behalf of the Accused in support of and to strengthen the Joint Defence submissions on legal issues for a Judgment of Acquittal (herein called “Joint Defence legal submissions”), which is to be contemporaneously filed herewith on behalf of all three Accused in the trial.
3. After leading a number of witnesses since the start of the trial, the Prosecution closed its case on 21 November 2005, necessitating the filing of this motion pursuant to Rule 98 of the Rules, which 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 enter a judgment of acquittal on those counts”.
4. The second Accused submits that the evidence led by the Prosecution against him, both in depth and volume, succeeds in laying sufficient basis for Rule 98 to be invoked and the stipulated count charges against him dismissed for want of capability to support a conviction. The legal grounds for conviction or acquittal are already contained in the Joint Defence legal submissions aforementioned; the submissions herein are therefore confined to an analysis of the evidence led by the Prosecution to show that it lacks merit and falls short of sustaining a conviction as per the Rules.

¹ See page 1 of the Order.

B. THE INDICTMENT AGAINST THE SECOND ACCUSED:

5. The second Accused is charged with 14 Counts under various heads of the Further Amended Consolidated Indictment², which includes terrorizing the civilian population and collective punishments (counts 1 and 2), unlawful killings (counts 3 to 5), sexual violence (counts 6 to 9), physical violence (counts 10 to 11); use of child soldiers (count 12); abductions and forced labour (count 13); and looting and burning (count 14).
6. In preferring the said charges against the second Accused, the Prosecution in its Pre-Trial Brief, indicated that, as part of its Basic Factual Allegations against the second Accused, it will lead “evidence to show that members of the AFRC/RUF subordinate to and/or acting in concert with [the Accused] carried out attacks in [the various districts outlined in the Indictment] as part of a campaign to terrorize the civilian population for failing to support the AFRC/RUF or for allegedly supporting the Kabbah government or pro-government forces”³. The second Accused reiterates that the evidence adduced in the course of prosecution does not meet the standard set out in the said Pre-Trial Brief.

C. THE FACTUAL ALLEGATIONS IN THE INDICTMENT:

I. COUNTS 1 AND 2 (TERRORIZING THE CIVILIAN POPULATION AND COLLECTIVE PUNISHMENTS):

7. Count 1 of the Indictment charges the second Accused with the crime of Acts of Terrorism, a violation of Article 3 common to the Geneva Conventions⁴ and of Additional Protocol II⁵ punishable under Article 3.d. of the Statute of the Court. Similarly, Count 2 of the Indictment charges the second Accused with the crime of Collective Punishments, which violates Article 3 common to the Geneva Conventions and of Additional Protocol II aforesaid, and which are punishable under Article 3(b) of the Statute of the Court.

² Alex Tamba Brima et al, SCSL-2004-16-T, filed on 18 February 2005.

³ Prosecution Supplemental Pre-Trial Brief filed pursuant to Order to the Prosecution to File a Supplemental Pre-Trial Brief of 1 April 2004, dated 21 April 2004.

⁴ See Geneva Conventions I, II, III and IV, collectively called ‘Geneva Conventions of 12 August 1949’.

⁵ Relating to the Protection of Victims of Non-International Conflicts, adopted on June 8, 1977.

8. In particular, the Prosecution alleges that the second Accused committed the foregoing crimes as “part of a campaign to terrorize the civilian population of the Republic of Sierra Leone” as well as “to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with the government, or for failing to provide sufficient support to the AFRC/RUF”. The Indictment thus holds that by his “acts” or “omissions”, the second Accused, together with or among other Accused persons, is “individually and criminally responsible” for all the crimes alleged in the Indictment⁶, including the two Count charges above, pursuant to Article 6.1 and/or Article 6.3 of the Statute of the Court.

Summarized Legal Requirements of the Crimes Alleged in Counts 1 and 2 above:

9. In accordance with and/or further to the Joint Defence legal submissions mentioned herein, the second Accused avers that in order to prove Acts of Terrorism, the Prosecution should lead evidence to substantiate the elements of the crime, to wit, that (a) the accused or his subordinate directed acts or threats of violence against the civilian population or individual civilians not taking direct part in hostilities, causing death or serious injury to body or health within the civilian population; (b) the accused willfully made the civilian population or individual civilians not taking part in hostilities the object of those acts; (c) the acts were committed with the primary purpose of spreading terror among the civilian population.⁷ Additionally, it is noted that the Indictment defines “civilian” or “civilian population” as “persons who took no active part in the hostilities or who were no longer taking an active part in the hostilities” referred to therein⁸.
10. Similarly, the second Accused submits that in order to prove the crime of Collective Punishments as alleged, the Prosecution should lead evidence to substantiate the elements of the crime, namely, that (a) the accused or his subordinate inflicted punishment on a group of persons in the form of severe physical or mental pain or suffering or destroys property as a reprisal or deterrent; and (b) the said act was intentional.

⁶ As set forth in paragraphs 41 to 79.

⁷ See Prosecutor -v- Galic, IT-98-29-T, Judgment and Opinion, December 5, 2003 (Galic Trial Judgment, December 5, 2003, para. 133)

⁸ Para. 20 of the Further Amended Consolidated Indictment, SCSL-2004-16-PT, filed on 18 February 2005.

11. Insufficiency of Evidence to Support Charges Alleged in Counts 1 and 2 above:

In leading evidence to prove Counts 1 and 2 above and, *a fortiori*, the entire Indictment, the Prosecution called a total of 59 witnesses, including witnesses of fact and experts. The second Accused firstly submits that in respect of Counts 1 and 2 in particular and the Indictment in general, sufficient evidence capable of sustaining a conviction against him was not led or provided by the Prosecution to the Trial Chamber. The generality of the evidence against the second Accused in this regard is to the effect that he allegedly did the following: i) served in the AFRC as Supreme Council member and as Principal Liaison Officer 3 (PLO 3) and ii) was a senior member of the purported AFRC/RUF command structure. It, however, falls short of showing that the second Accused, through his direct conduct or omission, terrorized and/or collectively punished the civilian population or individual civilians of the Republic of Sierra Leone. Similarly, it is submitted that no evidence capable of supporting a conviction was led to show that persons under the Accused's command, authority or direction, if any, took part in the incidents as alleged, nor was any evidence of probative value equally led to show or prove that the second Accused participated in a joint criminal enterprise with any person or group of persons in all of the above locations.

12. Secondly, the second Accused avers that by using the same insufficient facts or evidence above to hold him criminally and individually responsible for the alleged conduct attributed to him, as well as for the alleged acts of his subordinates and/or purported AFRC/RUF alliance in this regard, the Prosecution has made it impossible for him to understand the nature and cause of the specific charges brought against him. Essentially, the Prosecution has, contrary to the ICTR decision in the *Prosecution –vs- Joseph Kanyabashi*,⁹ used the same facts to “simultaneously give rise to the two types of responsibility provided for under the Statute”, to wit, responsibility for the accused's direct acts and/or responsibility for his omissions¹⁰.

⁹ *Prosecutor –vs- Joseph Kanyabashi*, ICTR-96-15-1, Trial Chamber II “Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (Rule 72 (B)ii of the Rules of Procedure and Evidence)”, 31 May 2000, paras. 5.8 to 5.11. See also Kamara – Defence Pre-Trial Brief, SCSL-2004-16-PT, filed 21 Feb. 2005.

¹⁰ Pursuant to Article 6.1 and/or Article 6.3 of the Statute of the Court.

II. COUNTS 3, 4 AND 5 (UNLAWFUL KILLINGS):

13. Count 3 of the Indictment charges the second Accused with the offence of “extermination” as a crime against humanity, punishable under Article 2(b) of the Statute of the Court.
14. In addition, or in the alternative to Count 3 above, Count 4 of the Indictment charges the second Accused with the offence of murder as a crime against humanity, punishable under Article 2 (a) of the Statute of the Court.
15. Additionally or in the alternative, Count 5 charges the second Accused with 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 punishable under Article 3 (a) of the Statute.
16. In order to substantiate the foregoing Count charges, the Prosecution alleges that the second Accused, by his “acts” or “omissions”, is individually and criminally responsible for the crimes alleged in paragraphs 42 to 50 of the Indictment, pursuant to Article 6.1 and/or Article 6.3 of the Statute of the Court. The said allegations touch and concern eight set of occurrences at various locations in the Republic of Sierra Leone between the period of 25 May 1997 to April 1999 in which it is alleged that members of AFRC/RUF, including the second Accused, unlawfully killed an unknown number of civilians.

Summarized Legal Requirements of the Crimes Alleged in Counts 3, 4 and 5 above:

17. In accordance with and/or further to the Joint Defence legal submissions mentioned herein, the second Accused submits that in order to prove the offence of “extermination” as alleged, the Prosecution should lead evidence to substantiate the elements of the crime as follows: that (a) the accused or his subordinate participated, through an act or omission or any cumulative acts or omissions, in the killing of certain named or described persons, including by inflicting conditions of life calculated to cause the destruction of part of a population; and (b) the act or omission or cumulative acts or omissions were unlawful and intentional, reckless or were as a result of gross negligence. Though extermination is a form of killing accomplished through either direct or indirect means, it should be directed against a group of

individuals and requires an element of mass destruction or murder on a large scale.¹¹ The Accused must be aware that his act(s) or omissions are part of “a mass killing event”, which has “close proximity in time and place”.¹² The requisite *mens rea* in this regard is knowledge that an act or omission is directed against certain groups of individuals and causes mass destruction, or forms part of an event that causes mass destruction, or that the act or omission alleged is done with “recklessness or gross negligence” which causes mass destruction to a certain group of individuals under Article 2 (b) of the Statute.¹³

18. Similarly, the second Accused submits that in order to prove the offence of “murder” as a crime against humanity, the Prosecution should lead evidence to substantiate the elements of the offence as follows: that (a) the accused committed an act or omission with respect to the victim that precipitated the following results: i) the victim is dead and ii) the death resulted from an unlawful act or omission of the accused or a subordinate; and that (b) at the time of the killing, the accused or a subordinate had the intention to kill or inflict grievous bodily harm or inflicted grievous bodily harm on the victim having known that such bodily harm is likely to cause the victim’s death or is reckless as to whether or not death ensues.¹⁴

19. Furthermore, the second Accused submits that in order to prove the offence of “violence to life, health and physical or mental well-being of persons, in particular murder” aforesaid, the Prosecution should lead evidence to substantiate the elements of the offence as follows: that (a) the accused or a subordinate killed one or more persons; and (b) the act or omission was intended to kill or to cause such bodily harm as might result in death. Essentially, it must be established that the accused had the intent to kill or to inflict serious bodily injury in reckless disregard of human life.¹⁵

20. Insufficiency of Evidence to Support Charges Alleged in Counts 3, 4 and 5 above:

In leading evidence to prove Counts 3, 4 and 5 above, the Prosecution called the under-mentioned witnesses to support or substantiate its allegations in the eight locations below:

¹¹ See Prosecutor -vs- Kayishema and Ruzindana, ICTR-95-1-T, Trial Judgment, 21 May 1999, para. 146.

¹² *Id.*, para. 147.

¹³ *Id.*, para. 146.

¹⁴ See Prosecutor -vs- Akayesu, ICTR-95-1-T, Trial Judgment, Sept. 2, 1998, paras. 589 and 590.

¹⁵ See Archbold International Criminal Courts: Practice Procedure and Evidence, 2003, p. 167, para. 7-50c.

i. Bo District:

20.1: Paragraph 43 of the Indictment alleges that “between about 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembehun, Gerihun and Mamboma, unlawfully killing an unknown number of civilians”.

20.2: In order to prove the unlawful killings alleged in Bo District under Counts 3, 4 and 5 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the Counts above: TF1 004, 053 and 054.

20.3: The Prosecution did not lead any evidence to show that the second Accused was in Bo throughout the period relevant to the Indictment. TFI-004 in both examination in chief and cross-examination admitted to armed Kamajors being present at Tikonko in the Bo District. In particular, he recognized the armed men who killed Kamajors and civilians in Tikonko in May/June 1997 as belonging to the RUF forces.¹⁶ Further, TF1-053 and 054 mentioned “soldiers” alleged to be responsible for the death of a certain Paramount Chief in Gerihun, Bo District¹⁷, together with other persons who were also allegedly killed. None of the said soldiers had any command relationship, direct or indirect, with the second Accused. Similarly, the second Accused submits that no evidence was led hereunder to show that persons under his command, authority or direction, if any, took part in the incidents alleged.

ii. Kenema District:

20.4: Paragraph 44 of the Indictment alleges that “between about 25th May 1997 and about 19 February 1998, in locations including Kenema town, members of AFRC/RUF unlawfully killed an unknown number of civilians”.

20.5: In order to prove the unlawful killings alleged in Kenema District under Counts 3, 4 and 5 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the Counts above: TF1-062, TF1-045 and TF1-122.

¹⁶ See Prosecutor -vs- Alex Tamba Brima et al, SCSL-2004-16-T, Court Transcript, 23 June 2005, p. 129-130.

¹⁷ Id., Court Transcript, 19 April 2005, p. 92.

20.6: The Prosecution did not lead any evidence to show that the second Accused was in Kenema throughout the period relevant to the Indictment. Also, TFI-062 in both examination in chief and cross-examination alluded to Sam Bockarie, alias Mosquito, being in overall command and control of the Eastern Province of Sierra Leone, including Kenema District.¹⁸ Similarly, TF1-122 corroborates and reinforces that Sam Bockarie, alias Mosquito, was in overall command and control of Kenema District. In particular, he testified that it was under Bockarie's command and direct participation that B.S. Massaquoi and other identified persons lost their lives.¹⁹ More significantly, TF1-045, an RUF ex-combatant, testified that Bockarie was both in overall command of the Eastern Province aforesaid, including Kenema as well as ordered the commission of the crimes alleged under these Counts in Kenema.²⁰ Also, the second Accused submits that no evidence was led in Kenema District to show that persons under his command, authority or direction, if any, took part in the incidents alleged.

iii. Kono District:

20.7: Paragraph 45 of the Indictment alleges that "about mid February 1998, AFRC/RUF fleeing Freetown arrived in Kono District"; and that "between about 14 February 1998 and 30 June 1998, members of AFRC/RUF unlawfully killed several hundred civilians in various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema, and Biaya".

20.8: In order to prove the unlawful killings alleged in Kono District under Counts 3, 4 and 5 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the above Counts: TF1-019, TF1-033, TF1-072, TF1-074, TF1-076, TF1-167, TF1-198, TF1-206, TF1-216, TF1-217 and TF1-334.

20.9: Although the second Accused was mentioned as being allegedly present in Kono District during the period above stated, the evidence led by the Prosecution falls short of indicating that he was directly or otherwise involved in the commission of the crimes stated hereunder. In particular, whilst TF1-019, TF1-072, TF1-074, TF1-076, TF1-198, TF1-206, TF1-216 and

¹⁸ Id., Court Transcript, 27 June 2005, see for example cross-examination of witness at p. 53.

¹⁹ See Court Transcript, 24 June 2005.

²⁰ See Court Transcript, 21 July 2005 especially at p.53, and 22 July 2005 especially at pp. 13-14.

TF1-217 do not mention the second Accused in their testimonies at all, the witnesses who mentioned him, including TF1-033, TF1-167 and TF1-334, either failed to show that he directly or indirectly participated in committing the crimes specified above, or failed to corroborate themselves on the particular unlawful actions attributed to the second Accused under the Count charges herein, in order to prove the necessary elements of the offence. Similarly, the second Accused submits that evidence capable of supporting a conviction was not led in Kono District to show that persons under his command, authority or direction, if any, took part in the incidents as alleged by the Prosecution.

iv. Kailahun District:

20.10: Paragraph 46 of the Indictment alleges that “between about 14 February 1998 and 30 June, 1998 in locations including Kailahun town, members of AFRC/RUF unlawfully killed an unknown number of civilians”.

20.11: In order to prove the unlawful killings alleged in Kailahun District under Counts 3, 4 and 5 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the above Counts: TF1-045, TF1-113, TF1-114.

20.12: The Prosecution did not lead any evidence to show that the second Accused was in Kailahun throughout the period relevant to the Indictment. Besides, all the witnesses above made clear indications that the entire Kailahun District was an RUF stronghold and was, at all times relevant to the Indictment, under the command and control of various RUF Commanders, including Sam Bockarie, alias Mosquito, Issa Sesay, Morris Kallon and Manawai, to name a few. As already noted, TF1-045, an RUF ex-combatant, especially testified that Bockarie was in overall command of the Eastern Province, including Kailahun District, assisted by Issa Sesay and other named commanders. Furthermore, the second Accused submits that no evidence was led in Kenema District to show that persons under his command, authority or direction, if any, took part in the incidents alleged hereunder.

v. Koinadugu District:

20.13: Paragraph 47 of the Indictment alleges that “between about 14 February 1998 and 30 September 1998, in several locations including Heremakono, Kabala, Kumalu (or Kamalu), Kurubonla, Katombo, Koinadugu, Fadugu and Kamadugu, members of the AFRC/RUF unlawfully killed an unknown number of civilians”.

20.14: In order to prove the unlawful killings alleged in Koinadugu District under Counts 3, 4 and 5 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the above Counts: TF1-033, TF1-094, TF1-133, TF1-147, TF1-153, TF1- 167, TF1-184, TF1-209, TF1-310 and TF1-334.

20.15: Although the second Accused was mentioned as being allegedly present in Koinadugu District, in particular Kabala Town, during the period above stated, the evidence led by the Prosecution falls short of indicating that he was directly or otherwise involved in the commission of the crimes stated hereunder. In particular, whilst TF1-094, TF1-133, TF1-147, TF1-209 and TF1-310 do not mention the second Accused in their testimonies at all, the witnesses who mentioned him, including TF1-033, TF1-153, TF1- 167, TF1-184 and TF1-334, made no reference to him participating in, or directing any other person, to commit the offences alleged hereunder in any part of Koinadugu District.²¹ Similarly, the second Accused submits that evidence capable of supporting a conviction was not led in Koinadugu District to show that persons under his command, authority or direction, if any, took part in the incidents as alleged by the Prosecution.

vi. Bombali District:

20.16: Paragraph 48 of the Indictment alleges that “between about 1 May 1998 and 30 November 1998 in several locations in Bombali District, including Bonyoyo(or Bornoya), Karina, Mafabu, Mateboi, and Gbendembu (or Gbendubu of Pendembu), members of the AFRC/RUF unlawfully killed an unknown number of civilians”.

²¹ Reference by TF1-153 to the second Accused being, for example, in Yiffin with his subordinates is easily rendered doubtful under cross-examination when the witness denied seeing him there: see Court Transcript of 23 Sept. 2005, pp. 82 to 83.

20.17: In order to prove the unlawful killings alleged in Bombali District under Counts 3, 4 and 5 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the Counts above: TF1-033, TF1-055, TF1-153, TF1-157, TF1-158, TF1-167, TF1-179, TF1-180, TF1-184, TF1-199, TF1-267 and TF1-334.

20.18: Although the second Accused was mentioned as being allegedly present in various parts of Bombali District, including Rosos, Makeni and Karina during the period above stated, the evidence led by the Prosecution falls short of indicating that he was directly or otherwise involved in the commission of the crimes stated hereunder. In particular, whilst TF1-055, TF1-157, TF1-158, TF1-179, TF1-180, TF1-199 and TF1-267 did not mention the second Accused in their testimonies at all, the witnesses who mentioned him, including TF1-033, TF1-153, TF1-167, TF1-184 and TF1-334, either failed to show that he directly or indirectly participated in committing the crimes specified above, or failed to corroborate themselves on the particular unlawful actions attributed to the second Accused under the Count charges herein, in order to prove the necessary elements of the offence. In particular, the testimonies of unlawful killings respectively alleged in Karina by TF1-334 and TF1-167 in 1998 were both contradictory and failed to corroborate one another. TF1-334 does not, for example, recall the presence of TF1-167 at the scene, though the latter emphasized his presence but without equally acknowledging the presence of the former.²² The second Accused also submits that evidence capable of supporting a conviction was not led in Bombali District to show that persons under his command, authority or direction, if any, took part in the incidents alleged by the Prosecution under these Counts.

vii. Freetown and the Western Area:

20.19: Paragraph 49 of the Indictment alleges that “between 6 January 1999 and 28 February 1999, AFRC/RUF conducted armed attacks throughout the city of Freetown and the Western Area. These attacks included large scale unlawful killings of civilian men, women and children at locations throughout the city and the Western Area, including Kissy, Wellington, and Calaba Town”.

²² See Court Transcripts of 23 May 2005 at pp. 65-66, 21 June 2005 at pp. 56-60, and of 15 Sept. 2005 at pp. 54-56 respectively.

20.20: In order to prove the unlawful killings alleged in Freetown and the Western Area under Counts 3, 4 and 5 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the Counts: TF1-021, TF1-023, TF1-024, TF1-045, TF1-083, TF1-084, TF1-085, TF1-098, TF1-104, TF1-153, TF1-167, TF1-169, TF1-184, TF1-227, TF1-277, TF1-278, TF1-334 and Mr. Gibril Massaquoi.

20.21: Again, though the second Accused was mentioned as being allegedly present in various parts of Freetown and the Western Area, including, Hastings, Waterloo and Benguema during the period above stated, the evidence led by the Prosecution fails to indicate that he was directly or otherwise involved in the commission of the crimes stated hereunder. In particular, whilst TF1-021, TF1-024, TF1-083, TF1-084, TF1-085, TF1-098, TF1-104, TF1-169, TF1-277 and TF1-278 did not mention the second Accused in their testimonies at all, the witnesses who mentioned him, including TF1-023, TF1-045, TF1-153, TF1-167, TF1-184, TF1-227, TF1-334 and Mr. Gibril Massaquoi, either failed to show that he directly or indirectly participated in committing the crimes specified above, or failed to corroborate themselves on the particular unlawful actions attributed to the second Accused under the Count charges herein, in order to prove the requisite elements of the offence. It is submitted that evidence capable of supporting a conviction against the second Accused was not led in Freetown and the Western Area to show that persons under his command, authority or direction, if any, took part in the incidents alleged by the Prosecution.

viii. Port Loko District:

20.22: Paragraph 50 of the Indictment alleges that “about the month of February of 1999, members of the AFRC/RUF fled Freetown to various locations in the Port Loko District. Between about February 1999 and April 1999, members of AFRC/RUF unlawfully killed an unknown number of civilians in various locations in Port Loko, including Manaarma, Tendakum and Nonkoba”.

20.23: In order to prove the unlawful killings alleged in Port Loko District under Counts 3, 4 and 5 above, the following witnesses called by the Prosecution are accordingly identified as

relevant and pertinent to the Counts above: TF1-023, TF1-033, TF1-153, TF1-167, TF1-184, TF1-227, TF1-253, TF1-256, TF1-282, TF1-320, TF1-334 and Mr. Gibril Massaquoi.

20.24: Further, though the second Accused was mentioned as being allegedly present in various parts of Port Loko District, including Mile 38, Masiaka, Magbeni and Gberibana during the period above stated, the evidence led by the Prosecution fails to indicate that he was directly or otherwise involved in the commission of the crimes stated hereunder. In particular, whilst TF1-021, TF1-024, TF1-083, TF1-084, TF1-085, TF1-098, TF1-104, TF1-169, TF1-277 and TF1-278 did not at all mention the second Accused in their testimonies, the witnesses who mentioned him, including TF1-023, TF1-045, TF1-153, TF1-167, TF1-184, TF1-227, TF1-334 and Mr. Gibril Massaquoi, either failed to show that the second Accused directly or indirectly participated in committing the crimes specified above, or failed to corroborate themselves on the particular unlawful actions complained of against him under the Count charges herein, in order to prove the requisite elements of the offence. The allegation by TF1-023 in her testimony-in-chief that she heard the second Accused, for example, order certain unlawful killings at Mile 38 in 1998 whilst on retreat from Freetown, went virtually uncorroborated and therefore stands in isolation.²³ The second Accused also submits that evidence capable of supporting a conviction was not led in Port Loko District to show that persons under his command, authority or direction, if any, took part in the incidents alleged by the Prosecution under these Counts, nor was any evidence of probative value equally led to show or prove that the second Accused participated in a joint criminal enterprise with any person or group of persons in all of the above locations.

III. COUNTS 6, 7, 8 AND 9 (SEXUAL VIOLENCE):

21. Count 6 of the Indictment charges the second Accused with the offence of “rape” as a crime against humanity, punishable under Article 2(g) of the Statute of the Court.
22. In addition to Count 6 above, Count 7 of the Indictment charges the second Accused with the offence of “sexual slavery and any other form of sexual violence” as a crime against humanity, punishable under Article 2 (g) of the Statute of the Court.

²³ See Court Transcript, 10 March 2005 at p. 36.

23. Furthermore, Count 8 of the Indictment charges the second Accused with the offence of “other inhumane act” as a crime against humanity, punishable under Article 2 (i) of the Statute of the Court.
24. Additionally or in the alternative, Count 9 of the Indictment charges the second Accused with the offence of “outrages upon personal dignity”, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 (e) of the Statute.
25. In order to substantiate the foregoing Count charges, the Prosecution alleges that the second Accused, by his “acts” or “omissions”, is individually and criminally responsible for the crimes alleged in paragraphs 51 to 57 of the Indictment, pursuant to Article 6.1 and/or Article 6.3 of the Statute of the Court. The said allegations touch and concern six set of occurrences at various locations in the Republic of Sierra Leone alleged to have *inter alia* occurred ‘at all times relevant to the Indictment’, in which it is alleged that members of AFRC/RUF, including the second Accused, committed “widespread sexual violence” against “civilian women and girls”. The said widespread sexual violence includes ‘brutal rapes’ and ‘forced marriages’.

Summarized Legal Requirements of the Crimes Alleged in Counts 6, 7, 8, and 9 above:

26. In accordance with and/or further to the Joint Defence legal submissions aforementioned, the second Accused submits that in order to prove the offence of “rape” as alleged, the Prosecution should lead evidence to substantiate the elements of the crime as follows: that: (a) the accused, himself or through official tolerance of sexual violence, knowingly caused the sexual penetration, however slight, (i) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (ii) of the mouth of the victim by the penis of the perpetrator; (b) the sexual penetration was inflicted by coercion or force or threat of force against the victim or a third person; and (c) the sexual penetration was committed with intent and knowledge that it occurs without the victim’s consent.²⁴

²⁴ See Prosecution’s Pre-Trial Brief filed pursuant to Order for filing Pre-Trial Briefs of 13 February, 2004, filed on 05 March 2004, at para. 144.

27. Similarly, the second Accused submits that in order to prove “sexual slavery and any other form of sexual violence” as a crime against humanity, the Prosecution should lead evidence to prove the elements of the offence as follows: that “(a) the accused or his subordinates exercised all or any of the powers attaching to the right of ownership over one or more persons, such as by purchasing selling, lending or battering such a person or persons, or by imposing on them a similar deprivation of liberty; and (b) the accused or his subordinates caused such person or persons to engage in one or more acts of a sexual nature”.²⁵
28. Furthermore, the second Accused submits that in order to prove the offence of “other inhumane acts” as a crime against humanity, the Prosecution should lead evidence to substantiate the elements of the offence as follows: that “(a) the accused or a subordinate inflicted, through an act or omission or any series of acts or omissions, serious mental or physical suffering or injury, or a serious attack on human dignity; and (b) the accused or a subordinate intended to inflict such suffering or to attack human dignity”.²⁶
29. By similar stretch, the second Accused submits that in order to prove the offence of “outrages upon personal dignity” as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, the Prosecution should lead evidence to substantiate the elements of the offence as follows: that “(a) The accused or his subordinate by act or omission caused serious abuse upon the physical and/or moral integrity of the victim, inflicted by either acts or omissions, that is degrading, humiliating and/or otherwise violates the victim’s dignity; (b) the severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity; and (c) that the acts or omissions were committed willfully”.²⁷
30. Insufficiency of Evidence to Support Charges Alleged in Counts 6, 7, 8 and 9 above:
In leading evidence to prove Counts 3, 4 and 5 above, the Prosecution called the under-mentioned witnesses to support or substantiate its allegations in the eight locations below:

²⁵ Id., at para. 147.

²⁶ See Prosecution’s Pre-Trial Brief, 05 March 2004, *supra*, at para. 152.

²⁷ Id. at para. 173.

i. Kono District:

30.1: Paragraph 52 of the Indictment alleges that “between about 14 February 1998 and 30 June 1998, members of AFRC/RUC raped hundreds of women and girls at various locations throughout the District, including Koidu, Tombodu, Kissi-town (or Kissi Town), Foendor (or Foendu), Tomendeh, Fokoiya, Wonedu and AFRC/RUF camps such as “Superman camp” and Kissi-town (or Kissi town) camp”. It is further alleged that an unknown number of women and girls were abducted from various locations within the District and used as sex slaves and/or forced into “marriages” and/or subjected to other forms of sexual violence.” The said “wives,” it is also alleged, were forced to perform a number of conjugal duties under coercion by their “husbands”.

30.2: In order to prove the sexual violence alleged in Kono District under Counts 6, 7, 8 and 9 above, the following witnesses called by the Prosecution are identified as relevant and pertinent to the above Counts: TF1-019, TF1-033, TF1-072, TF1-076, TF1-167, TF1-198, TF1-206, TF1-217 and TF1-334.

30.3: Although the second Accused was mentioned as being allegedly present in Kono District during the period above stated, the evidence led by the Prosecution failed to show that he was directly, or through any form of command responsibility, involved in the commission of any form of sexual violence alleged. In particular, whilst TF1-019, TF1-072, TF1-076, TF1-198, TF1-206 and TF1-217 do not mention the second Accused in their testimonies at all, the witnesses who mentioned him, including TF1-033, TF1-167 and TF1-334, either failed to show that he directly or indirectly participated in committing the crimes specified above, or failed to corroborate themselves on the particular charges of sexual violence against the second Accused, in order to prove the necessary elements of the offence. Similarly, the second Accused submits that evidence was not led in Kono District to show that persons under his command or direction, if any, took part in the incidents as alleged.

ii. Koinadugu District:

30.4: Paragraph 53 of the Indictment alleges that “between about 14 February 1998 and 30 September 1998, members of AFRC/RUC raped an unknown number of women and girls in locations in Koinadugu District, such as Kabala, Koinadugu, Heremakono and Fadugu. In addition, unknown number of women and girls were abducted and used as sex slaves and/or forced into “marriages” and/or subjected to other forms of sexual violence”. The said “wives”, it is further alleged, were forced to perform a number of conjugal duties under coercion by their “husbands”.

30.5: In order to prove the sexual violence alleged in Koinadugu District under Counts 6, 7, 8 and 9 above, the following witnesses called by the Prosecution are identified as relevant and pertinent to the Counts herein: TF1-033, TF1-094, TF1-133, TF1-153 and TF1-209.

30.6: Although the second Accused was mentioned as being allegedly present in Koinadugu District, in particular Kabala Town, during the period above stated, the evidence led by the Prosecution falls short of indicating that he was directly or otherwise involved in the commission of the crimes stated hereunder. In particular, among all the witnesses listed above and who testified about sexual violence, only TF1-153 made reference to alleged subordinates of the second Accused participating in sexual violence against girls at Yiffin in Koinadugu District.²⁸ Aside from the fact that the said witness admitted the second Accused’s presence at Yiffin to be the product of hearsay, the issue of whether the second Accused, directly or indirectly, exercised any form of command and control over the armed men at Yiffin was both contradicted by the witness himself in cross-examination and uncorroborated as well.²⁹ Similarly, the second Accused submits that no evidence capable of supporting a conviction was led in Koinadugu District to show that persons under his command or direction, if any, took part in the incidents as alleged by the Prosecution.

iii. Bombali District:

²⁸ Reference by TF1-153 to the second Accused being, for example, in Yiffin with his subordinates is easily rendered doubtful under cross-examination when the witness denied seeing him there: see Court Transcript of 23 Sept. 2005, pp. 82 to 83.

²⁹ See Court Transcripts of 22 Sept. 2005 at pp. 32-36 and 23 Sept. 2005 at pp. 82-83.

30.7: Paragraph 54 of the Indictment alleges that “between about 1 May 1998 and 31 November 1998, members of AFRC/RUC raped an unknown number of women and girls in locations in Bombali District, including Mandaha and Rosos (or Rosors of Rossos). In addition, an unknown number of abducted women and girls were used as sex slaves and/or forced into “marriages” and/or subjected to other forms of sexual violence”. The said “wives”, it is further alleged, were forced to perform a number of conjugal duties under coercion by their “husbands”.

30.8: In order to prove the sexual violence alleged in Bombali District under Counts 6, 7, 8 and 9 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the Counts above: TF1-033, TF1-055, TF1-158, TF1-167, TF1-184, TF1-199, TF1-267 and TF1-334.

30.9: Although the second Accused was mentioned as being allegedly present in certain parts of Bombali District, including Rosos, Makeni and Karina during the period above stated, none of the witnesses above alluded to the second Accused to have directly or indirectly committed the crimes specified above. The second Accused also submits that no evidence capable of supporting a conviction was led about events in Bombali District to show that persons under his command, authority or direction, if any, took part in the incidents alleged by the Prosecution under these Counts. It is thus averred that the Prosecution failed to prove the necessary elements of the offence herein by way of evidence, factual or legal.

iv. Kailahun District:

30.10: Paragraph 55 of the Indictment alleges that “at all times relevant to [the] Indictment, an unknown number of women and girls in various locations in the District were subjected to sexual violence”. It is also alleged that “many of [the said] victims were captured in other areas of the Republic of Sierra Leone, brought to AFRC/RUF camps in the District, and used as sex slaves and/or forced into “marriages” and/or subjected to other forms of sexual violence”. The said “wives”, it is further alleged, were forced to perform a number of conjugal duties under coercion by their “husbands”.

30.11: In order to prove the sexual violence alleged in Kailahun District under Counts 6, 7, 8 and 9 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the above Counts: TF1-045, TF1-113, TF1-114.

30.12: The Prosecution did not lead any evidence to show that the second Accused was in Kailahun throughout the period relevant to the Indictment. Besides, all the witnesses above made clear indications that the entire Kailahun District was an RUF stronghold and was, at all times relevant to the Indictment, under the command and control of various RUF Commanders, including Sam Bockarie, alias Mosquito. Most significantly, no evidence was led to show or prove that the second Accused and/or persons under his command, authority and/control were at any time involved, directly or otherwise, in activities or the perpetration of the alleged crimes herein at any part of Kailahun District.

v. Freetown and the Western Area:

30.13: Paragraph 56 of the Indictment alleges that “between about 6 January 1999 and 28 February 1999, members of AFRC/RUF raped hundreds of women and girls throughout the city of Freetown and the Western Area, and abducted hundreds of women and girls and used as sex slaves and/or forced into “marriages” and/or subjected to other forms of sexual violence”. The said “wives”, it is further alleged, were forced to perform a number of conjugal duties under coercion by their “husbands”.

30.14: In order to prove the sexual violence alleged in Freetown and the Western Area under Counts 6, 7, 8 and 9 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the Counts: TF1-021, TF1-023, TF1-024, TF1-045, TF1-083, TF1-084, TF1-085, TF1-098, TF1-104, TF1-153, TF1-167, TF1-169, TF1-184, TF1-227, TF1-277, TF1-278, TF1-334 and Mr. Gibril Massaquoi.

30.15: Again, though the second Accused was mentioned as being allegedly present in various parts of Freetown and the Western Area, including, Hastings, Four Mile and Benguema during the period above stated, the evidence led by the Prosecution fail to show that the second Accused was directly or otherwise involved in the commission of the crimes stated hereunder. In particular, little or no evidence was led to substantiate that i) the second

Accused, who was and is in fact lawfully married, had extra-marital affairs in Freetown and the rest of the Western Area, and ii) that he engaged in any form of sexual violence against civilians or other persons. Efforts by TF1-334 alluding to the second Accused having affair an with “a young girl” at State House in Freetown³⁰ during the period of the Counts hereunder were weak, uncorroborated and inadequate to sustain the crimes herein. Equally, it is submitted that evidence capable of supporting a conviction against the second Accused was not led in Freetown and the Western Area to establish that persons under his direct command, authority or control, if any, took part in the incidents alleged by the Prosecution.

vi. Port Loko District:

30.16: Paragraph 57 of the Indictment alleges that “about the month of February 1999, AFRC/RUF fled from Freetown to various locations in the Pork Loko District”. It is also alleged that “between February 1999 and April 1999, members of AFRC/RUF raped an unknown number of women and girls in various locations in the District. In addition, an unknown number of women and girls in various locations in the District were used as sex slaves and/or forced into “marriages” and/or subjected to other forms of sexual violence by members of AFRC/RUF”. The said “wives”, it is further alleged, were forced to perform a number of conjugal duties under coercion by their “husbands”.

30.17: In order to prove the sexual violence alleged in Port Loko District under Counts 6, 7, 8 and 9 above, the following witnesses called by the Prosecution are accordingly identified as relevant and pertinent to the Counts above: TF1-023, TF1-033, TF1-153, TF1-167, TF1-184, TF1-227, TF1-253, TF1-256, TF1-282, TF1-320, TF1-334 and Mr. Gibril Massaquoi.

30.18: Further, though the second Accused was mentioned as being allegedly present in various parts of Port Loko District, including Mile 38, Masiaka, Magbeni and Gberibana during the period above stated, the evidence led by the Prosecution fail to show that he was directly or otherwise involved in the commission of offences of sexual violence as stated hereunder. Again, efforts by TF1-334 to show and substantiate that the second Accused

³⁰ See Court Transcript, 22 June 2005 at pp. 6 and 10.

“raped” his cousin at Gberibana in the Port Loko District in 1998³¹, in addition to allegedly having a “school girl” with him there³², were weak, isolated, uncorroborated and tainted with ill-motive. The witness admitted knowing the second Accused’s wife and noted that she was with him during the AFRC period, including the period allegedly spent at Gberibana.³³ Besides, the witness could not sustain with consistency his narrative about his cousin’s alleged rape under cross-examination.³⁴ The second Accused also submits that evidence capable of supporting a conviction was generally not led in Port Loko District to show that persons allegedly under his command, authority or direction, if any, took part in the incidents alleged by the Prosecution under these Counts, nor was any evidence of probative value equally led to show or prove that the second Accused participated in a joint criminal enterprise with any person or group of persons in all of the above locations.

IV. COUNTS 10 AND 11 (PHYSICAL VIOLENCE):

31. Count 10 of the Indictment charges the second Accused with 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, punishable under Article 3.a. of the Statute of the Court.
32. In addition, or in the alternative, to Count 10 above, Count 11 of the Indictment charges the second Accused with the offence of “other inhumane acts”, being a crime against humanity and punishable under Article 2.i. of the Statute of the Court.
33. In order to substantiate the foregoing Count charges, the Prosecution alleges that the second Accused, by his “acts” or “omissions”, is individually and criminally responsible for the crimes alleged in paragraphs 58 to 64 of the Indictment, pursuant to Article 6.1 and/or Article 6.3 of the Statute of the Court. The said allegations also touch and concern six set of occurrences at various locations in Sierra Leone alleged to have occurred between 14 February 1998 and February 1999, in which AFRC/RUF combatants were alleged to have committed “widespread physical violence, including mutilations, against civilians”.

³¹ See Court Transcript, 15 June 2005 at pp. 50-55

³² Court Transcript, 22 June 2005 at p. 10.

³³ Id., at p.7

³⁴ Id., at pp. 20-27.

Summarized Legal Requirements of the Crimes Alleged in Counts 10 and 11 above:

34. In accordance with and/or further to the Joint Defence legal submissions aforementioned, the second Accused submits that in order to prove the offence “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 as alleged, the Prosecution should lead evidence to substantiate the elements of the crime as follows: that “(a) the accused or a subordinate, by act or omission, caused serious mental or physical suffering or injury or constitutes a serious attack on the victim’s human dignity; (b) the suffering or injury seriously disfigured the victim’s body, seriously incapacitated or removed the victim’s limb, appendage or organ or permanently disfigured the person or persons; (c) the condition was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such a person or person’s interest; (d) the act or omission was intentional”.³⁵
35. Similarly, the second Accused submits that in order to prove “other inhumane acts”, being a crime against humanity and punishable under Article 2.i. of the Statute of the Court, the Prosecution should lead evidence to substantiate the elements of the offence as already contained in paragraph 28 of this Motion.

36. Allegations of Facts Contained in Counts 10 and 11 above:

In leading evidence to prove Counts 10 and 11 the Prosecution called a number of witnesses to support or substantiate its allegations in the six locations below: i) Kono District, where it is alleged in paragraph 59 of the Indictment that “between about 14 February 1998 and 30 June, 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombodu, Kaima (or Kayima) and Wonedu. The mutilations include cutting off limbs and carving “AFRC” and “RUF” on the bodies of the civilians”; ii) Kenema District, wherein it is alleged in paragraph 60 of the Indictment that “between about 25 May 1997 and about 19 February 1998, in locations in Kenema District, including Kenema town, members of AFRC/RUF carried out beatings and ill-treatment of a number of civilians who were in custody”; iii) Koinadugu District, in which location it is alleged in paragraph 61 of

³⁵ Prosecution’s Pre-Trial Brief, 05 March 2004, supra, at para. 164.

the Indictment that “between about 14 February 1998 and 30 September 1998, members of the AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Kabala and Konkoba (or Kontoba). The mutilations include cutting off limbs and carving “AFRC” on the chests and foreheads of the civilians”; iv) Bombali District, in which it is also alleged in paragraph 62 of the Indictment that “between about 1 May 1998 and 31 November 1998 members of the AFRC/RUF mutilated an unknown number of civilians in various locations in Bombali District, including Lohondi, Malama, Mamaka, Rosos(or Rossos or Rosors). The mutilations include cutting off limbs”; v) Freetown and Western Area, wherein it is further alleged in paragraph 63 of the Indictment that “between 6 January 1999 and 28 February 1999, members of the AFRC/RUF mutilated an unknown number of civilian men, women and children in various areas of Freetown and the Western Area, including Kissy, Wellington and Calaba Town. The mutilations included cutting off limbs”; and vi) Port Loko District, where it is alleged in paragraph 64 of the Indictment that “about the month of February 1999, the AFRC/RUF fled from Freetown to various locations in the Port Loko District. Between February 1999 and April 1999, members of the AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including cutting of f limbs”.

Insufficiency of Evidence to Support Charges Alleged in Counts 10 and 11 above:

37. Although the second Accused was mentioned as being allegedly present in Koinadugu District in particular Kabala Town, Bombali, Port Loko and Kono Districts respectively as well as Freetown and the Western Area during the period above stated, the evidence led by the Prosecution falls short of indicating that the Accused was directly or otherwise involved in the commission of the crimes stated above. Essentially, the Prosecution made no reference to the second Accused participating in, or directing any person, to commit the offences alleged in the above locations.³⁶ Similarly, it is submitted that no evidence capable of supporting a conviction was led to show that persons under the Accused’s command, authority or direction, if any, took part in the incidents as alleged, nor was any evidence of probative

³⁶ See pra. 20 of this Motion

value equally led to show or prove that the second Accused participated in a joint criminal enterprise with any person or group of persons in all of the above locations. In Kono District, for example, the majority of the witnesses led testified that Dennis Mingo, alias Superman, was at all times material to the Indictment, the overall commander of all armed men at Kono³⁷. Similarly, individual commanders stationed at the alleged crime scenes in Kono District, such as “Colonel Savage”³⁸ and “Staff Alhaji”³⁹ operated as superior commanders unto themselves, commanding armed men alone and respectively acting as their ultimate superiors. In the case of Kenema District in particular, the second Accused avers that the Prosecution did not lead any evidence to show that the second Accused and/or persons under his command and control were in Kenema throughout the period relevant to the Indictment. TFI-062 in both examination in chief and cross-examination, for example, stated that Sam Bockarie, alias Mosquito, was, at all material times to the Indictment, in overall command and control of the Eastern Province of Sierra Leone, including Kenema District.⁴⁰ TF1-122 also corroborates that Sam Bockarie, alias Mosquito, was in overall command and control of Kenema District. In particular, he testified that it was under Bockarie’s commandship and direct participation that Kpaka, Quee and other identified persons were injured.⁴¹

V. COUNT 12 (USE OF CHILD SOLDIERS):

38. Count 12 of the Indictment charges the second Accused with the offence of “conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities” as an other serious violation of international humanitarian law punishable under Article 4.c of the Statute”.
39. In order to substantiate the foregoing Count charge, the Prosecution alleges that the second Accused, by his “acts” or “omissions”, is individually and criminally responsible for the

³⁷ See Court Transcript, 15 Sept. 2005 at pp. 38 and 39: TF1-167 inter alia stated that Superman only reported to Sam Bockarie; see also Court Transcripts of TF1-334 on 18 May 2005 at p. 24, and of 17 June 2005 at p. 123; as well as Court Transcript of TF1-045 on 21 July 2005

³⁸ See Court Transcript of TF1-072, 01/07/05 at pp. 14 to 20.

³⁹ See Court Transcript of TF1-216, 27/06/05 at pp. 91 to 94; as well as Transcript of TF1-206, 28/06/05, pp. 90-91 and 109 respectively.

⁴⁰ Id., Court Transcript, 27 June 2005, see for example cross-examination of witness at p. 53.

⁴¹ See Court Transcript, 24 June 2005, at pp. 37 and 38.

crime alleged in paragraph 65 of the Indictment, pursuant to Article 6.1 and/or Article 6.3 of the Statute of the Court. The said charge particularly alleges that “at all times relevant to the [the] Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under 15 to participate in active hostilities”. It alleges further that the said children were trained in various AFRC/RUF camps and then used as fighters throughout the country during the period of the Indictment.

Summarized Legal Requirements of the Crime Alleged in Count 12 above:

40. In accordance with and/or further to the Joint Defence legal submissions aforementioned, the second Accused submits that in order to prove the offence of “conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities” as “a serious violation of international humanitarian law punishable under Article 4.c of the Statute”, the Prosecution should lead required evidence to prove the following elements: that (a) the accused conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities; (b) such person or persons were under the age of 15 years; (c) the accused knew or should have known that such person or persons were under the age of 15 years; (d) the conduct took place in the context of and was associated with an armed conflict not of an international character; and (e) the accused was aware of the factual circumstances that established the existence of an armed conflict”.⁴² Another limb of the crime as charged, and which also demands legal proof, is the use of children under 15 “to participate actively in hostilities”.

Allegations of Facts Contained in Count 12 above:

41. In leading evidence to prove Count 12 above, the Prosecution called a number of factual⁴³ and expert witnesses⁴⁴ to testify about the widespread and routine conscription, enlistment, or use of affected children to participate actively in hostilities through armed groups or forces. A crucial element for which there was mounting, and often insurmountable, difficulties in appreciating the proofs of evidence had to do with “age verification” and the requirement of “knowledge by the Accused that the child was under the stipulated age”. The second

⁴² See Prosecution’s Pre-Trial Brief, 05 March 2004, *supra*, at para. 181.

⁴³ See for example Court Transcripts for TF1-157 dated 22 July 2005, TF1-158 dated 26 July 2005

⁴⁴ See Court Transcripts for TF1-296 dated 4 October 2005 as well the Expert Report tendered as Exhibit 32.

Accused submits that apart from the fact that none of the child witnesses herein as well as expert made no reference to him in terms of the alleged offence, no other witness of fact was led to prove the alleged offence against him through out Sierra Leone.

Insufficiency of Evidence to Support Charge Alleged in Count 12 above:

42. Thus, apart from submitting that no evidence capable of supporting a conviction for the alleged crime herein was led by the Prosecution, the second Accused avers that, neither by his act or omission or through the conduct of persons purportedly acting under him, was he involved in conscripting, enlisting, or using children under 15 years to participate actively in hostilities through any armed group or force at all times relevant to the Indictment. Similarly, it is submitted that no evidence capable of supporting a conviction was led to show that persons under the Accused's command, authority or direction, if any, took part in the incidents as alleged, nor was any evidence of probative value equally led to show or prove that the second Accused participated in a joint criminal enterprise with any person or group of persons in all of the above locations regarding the offence alleged herein.

VI. COUNT 13 ABDUCTIONS AND FORCED LABOUR:

43. Count 13 of the Indictment charges the second Accused with the offence of "enslavement", as a crime against humanity, punishable under Article 2.c. of the Statute of the Court. It is alleged that 'at all times relevant to the Indictment' including the period: August 1, 1997 to February 28, 1999, the AFRC/RUF engaged in "widespread and large scale abductions of civilians" and used them as "forced labour", which includes domestic labour and use of civilians as diamond miners.
44. In order to substantiate the foregoing Count charge, the Prosecution alleges that the second Accused, by his "acts" or "omissions", is individually and criminally responsible for the crime alleged in paragraphs 66 to 73 of the Indictment, pursuant to Article 6.1 and/or Article 6.3 of the Statute of the Court. The said allegations also touch and concern seven set of occurrences at various locations in the Republic of Sierra Leone.

Summarized Legal Requirements of the Crimes Alleged in Count 13 above:

45. In accordance with and/or further to the Joint Defence legal submissions aforementioned, the second Accused submits that in order to prove the offence of “enslavement” as a crime against humanity, the Prosecution should lead evidence to substantiate the following elements: that (a) the Accused or his subordinate exercised, through acts or omissions, any or all of the powers attaching to the right of ownership over one or more persons....; and (b) the accused knowingly and intentionally participated in such acts or omissions that demonstrated the exercise of rights attaching to ownership of one or more persons.” The key feature of the offence, it is noted, is that the person enslaving the individual treats that individual as his own property.⁴⁵

Allegations of Facts Contained in Count 13 above:

46. In leading evidence to prove Count 13 above, the Prosecution called an appreciable number of witnesses to support or substantiate its allegations in the seven locations below: i) Kenema District, wherein it is alleged at paragraph 67 of the Indictment that “between about 1 August 1997 and about 31 January 1998, AFRC/RUF forced an unknown number of civilians living in the District to mine for diamonds at Cyborg Pit in Tongo Field”; ii) Kono District, wherein it is also alleged at paragraph 68 of the Indictment that “between about 14 February 1998 to 2000, AFRC/RUF forces abducted hundreds of civilian men, women and children, and took them to various locations outside the District, or to locations within the District such as AFRC/RUF camps, Tombodu, Koidu, Wonedu, Tomendeh”. It is further alleged that at these locations “the civilians were used as forced labour, including domestic labour, and as diamond miners in the Tombodu area”; iii) Koinadugu District, where it is further alleged at paragraph 69 of the Indictment that “between about 14 February 1998 and 30 September 1998, at various locations including Heremakono, Kabala, Kumala (or Kamalu), Koinadugu, Kamadugu and Fadugu, members of the AFRC/RUF abducted an unknown number of men, women and children and used them as forced labour”; iv) Bombali District, in which it is alleged at paragraph 70 of the Indictment that “between about 1 May 31 November 1998, in Bombali District members of the AFR/RUF abducted an unknown number of civilians and used them as forced labour”; v) Kailahun District, wherein it is also alleged at paragraph 71 of the Indictment that “at all times relevant to [the] Indictment, captured civilian men,

⁴⁵ Id., at paras. 141 and 142.

women and children were brought to various locations within the District and used as forced labour”; vi) Freetown and Western Area, in which location it is alleged at paragraph 72 of the Indictment that “between about 6 January 1999 and 28 February 1999, in particular as the AFRC/RUF were being driven out of Freetown and the Western Area, members of the AFRC/RUF abducted hundreds of civilians, including a large number of children, from various areas in Freetown and the Western Area, including Peacock Farm, Kissy, and Calaba Town”. These abducted civilians were, allegedly, used as “forced labour”; and vii) Port Loko District, where wherein it is also alleged at paragraph 73 of the Indictment that “about the month of February 1999, the AFRC/RUF fled from Freetown to various locations in Port Loko District. Members of the AFRC/RUF used civilians, including those that had been abducted from Freetown and the Western Area, as forced labour in various locations throughout Port Loko District, including Port Loko, Lunsar and Masiaka”. It is further alleged that “AFRC/RUF forces also abducted and used as forced labour civilians from various locations in the Port Loko District, including Tendakum and Nonkoba”.

Insufficiency of Evidence to Support Charge Alleged in Count 13 above:

47. In proving the offence of “enslavement” as alleged in Count 13 above, the Prosecution firstly, fails to lead any direct or indirect evidence against the second Accused in both Kenema and Kailahun Districts. As already noted in submissions under the previous Counts hereto, the second Accused was never present in the said Districts during the period alleged in the indictment. Over and above that witnesses of the Prosecution, including TF1-045⁴⁶ and Mr. Gibril Massaquoi, testified to the effect that the RUF, headed by Sam Bockarie, alias Mosquito, together with other RUF commanders were, during the said period, in absolute command and control of the entire Eastern Province, including Kenema, Kono and Kailahun Districts respectively. Also, although the second Accused was mentioned as being allegedly present in Koinadugu District in particular Kabala Town, Bombali, Port Loko and Kono Districts respectively as well as Freetown and the Western Area during the period above stated, the evidence led by the Prosecution falls short of indicating that the Accused was directly or otherwise involved in the commission of the crimes stated above.

⁴⁶ See Court Transcript of TF1-045 on 21 July 2005 and Transcript of TF1-062 on 27 June 2005, p. 53-55.

VII. COUNT 14 (LOOTING AND BURNING):

- 48. Count 14 of the Indictment charges the second Accused with the offence of “pillage” as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.f of the Statute of the Court. It alleges that ‘at all times relevant to the Indictment’, the AFRC/RUF engaged in “widespread unlawful taking and destruction by burning of civilian property”.
- 49. In order to substantiate the foregoing Count charge, the Prosecution alleges that the second Accused, by his “acts” or “omissions”, is individually and criminally responsible for the crime alleged in paragraphs 74 to 79 of the Indictment, pursuant to Article 6.1 and/or Article 6.3 of the Statute of the Court. The said allegations also touch and concern five set of occurrences at various locations in the Republic of Sierra Leone alleged to have taken place between 1 June 1997 to 28 February 1999.

Summarized Legal Requirements of the Crimes Alleged in Count 14 above:

50. In accordance and/or further to the Joint Defence legal submissions aforementioned, the second Accused submits that in order to prove the offence “pillage” as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, the Prosecution should lead evidence to substantiate the elements of the crime as follows: that “(a) the perpetrator appropriated private or public property; (b) the perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use; and (c) the appropriation was without the consent of the owner.”⁴⁷

Allegations of Facts Contained in Count 14 above:

51. In leading evidence to prove Count 14 above, the Prosecution called a host of witnesses to support or substantiate its allegations in the five locations below: i) Bo District, wherein it is alleged at paragraph 75 of the Indictment that “between 1 June 1997 and 30 June 1997, AFRC/RUF forces looted and burned an unknown number of civilian houses in Telu,

⁴⁷ Prosecutor –v- Sam Hinga Norman et al, Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, dated 21 October 2005.

Sembehun, Mamboma and Tikonko”; ii) Koinadugu District, in which it is further alleged at paragraph 76 of the Indictment that “between about 14 February 1998 and 30 September 1998, AFRC/RUF forces engaged in widespread looting and burning of civilian homes in various locations in the District, including Heremakono, Kabala, Kamadugu and Fadugu”; iii) Kono District, where it is also alleged at paragraph 77 of the Indictment that “between about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including Tombodu, Foindu and Yardu Sando, where virtually every home in the village was looted and burned”; iv) Bombali District, in which location it is additionally alleged at paragraph 78 of the Indictment that “between about 1 May 1998 and 31 November 1998 members of the AFRC/RUF mutilated an unknown number of civilians in various locations in Bombali District, including Lohondi, Malama, Mamaka, Rosos(or Rossos or Rosors). The mutilations included cutting off limbs”; and v) Freetown and the Western Area, wherein it is alleged at paragraph 79 of the Indictment that “between about 6 January 1999 and 28 February 1999, AFRC/RUF forces engaged in widespread looting and burning throughout Freetown and the Western Area”. It alleges further that “the majority of houses that were destroyed were in the areas of Kissy, Wellington, and Calaba Town” and other locations including the Fourah Bay, Uppun, State House and Pademba Road areas of the city”.

Insufficiency of Evidence to Support Charge Alleged in Count 14 above:

52. In proof of insufficient evidence under this Count, the second Accused repeats paragraphs 20, 37 and 47 of this Motion.

D. CONCLUSION:

50. In conclusion, it is submitted that no evidence capable of supporting a conviction was led to show that persons under the Accused’s command, authority or direction, if any, took part in the incidents as alleged, nor was any evidence of probative value equally led to show or prove that the second Accused participated in a joint criminal enterprise with any person or group of persons in all of the above locations. Where the second Accused is allegedly reported to have participated in any of the offences alleged, he is reported to have done so as

a passive recipient of command and control from superior officers like Dennis Mingo, alias Superman in Kono District, S.A.J Musa in Bombali and Koinadugu Districts among others.

51. In view of the above submissions, the second Accused respectfully prays that the case against Ibrahim Bazy Kamara be dismissed in its entirety.


Respectfully Submitted,



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ANDREW KODWO DANIELS

LEAD COUNSEL



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MOHAMED P. FOFANAH

CO-COUNSEL