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SCSL-04-15-T

(25380 - 25394)

25380

CASE No.SCSL-2004-15-T

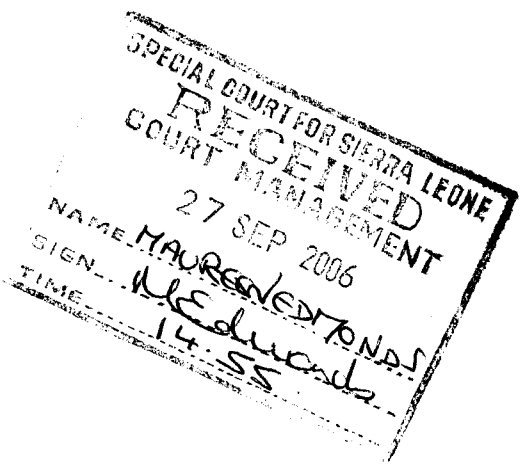
SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER 1

Before:

Hon Justice Bankole Thompson, Presiding Judge

Hon Justice Pierre Boutet

Hon Justice Benjamin Mutanga Itoe



Registrar:

Mr. Lovemore G. Munlo SC

Date:

27 September 2006

PROSECUTOR **Against** **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO

REVISED SKELETON MOTION FOR JUDGMENT OF ACQUITTAL OF THE SECOND ACCUSED MORRIS KALLON

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I. INTRODUCTION

1. The Defence for Morris Kallon respectfully notes the Order Concerning "Skeleton Motion for Judgment of Acquittal of the Second Accused Morris Kallon" served 26 September 2006[1] and apologises to the Honourable Trial Chamber for any inconvenience caused. The Defence for Morris Kallon submits this Revised Skeleton Motion in compliance with the said Order.

2. In this Revised Skeleton Motion, the Defence for Morris Kallon will present general legal arguments relating to the applicable standard for Rule 98, legal arguments concerning joint criminal enterprise liability and concerns as to insufficient evidence as to time frames, as well as arguments relating to specific counts in the Indictment where evidence is absent or insufficient.

II. GENERAL LEGAL ARGUMENTS

Applicable Standard for Rule 98

3. Rule 98 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone[2] states as follows:

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

4. The Special Court for Sierra Leone, in the case of *The Prosecutor v. Norman et al.*,[3] referred to the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (ICTY) which state that *"the Trial Chamber should order the entry of judgment of acquittal, if it finds that the evidence is insufficient to sustain a conviction on that or those charges".*[4] The Special Court Trial Chamber held that *"insufficiency of evidence to sustain a conviction as provided for in the ICTY Rules is not different from there being 'no evidence capable of supporting a conviction' as provided for in the Rules of the Special Court for Sierra Leone".*[5]

5. The Honorable Judge Bankole Thompson in the above case held: *"Insufficiency of evidence to sustain a conviction prescribed by Rule 98bis of the Rules of Procedure and Evidence of the ICTR and that of Special Court for Sierra Leone*

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[1] *The Prosecutor v. Sesay et al.*, SCSL-04-15-621, Order Concerning "Skeleton Motion for Judgment of Acquittal of the Second Accused Morris Kallon", 26 September 2006.
[2] Special Court for Sierra Leone Rules of Procedure and Evidence (amended 13 May 2006).
[3] *The Prosecutor v. Sam Hinga Norman, Monina Fofana and Allieu Kondewa*, SCSL-04-14, Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, 21 October 2005.
[4] Ibid., para. 47 (citing Rule 98*bis* of the ICTY Rules adopted on 19 November 1994).
[5] Ibid., para. 47.

'no evidence capable of supporting the conviction' are not different in the context".[6] The Defence for Morris Kallon shall therefore make reference to the case law of the ICTY and ICTR in support of this Motion.

6. The Trial Chamber of the ICTY held in the case of *The Prosecutor v. Slobodan Milosevic ("Milosevic")*, that the degree of proof necessary in a Rule 98*bis* Motion is whether the evidence is insufficient to sustain a conviction and "whether there is evidence (if accepted) upon which a tribunal of fact *could* be satisfied beyond a reasonable doubt of the guilt of the accused on the particular charge in question...". Thus the test is not whether the trier of fact would in fact arrive at a conviction beyond a reasonable doubt on the Prosecution evidence if accepted, but whether it could; or to put it as the Appeals Chamber later did, in the same case, a Trial Chamber should only uphold a Rule 98*bis* Motion if it is "entitled to conclude that no reasonable trier of fact could find the evidence sufficient to sustain a conviction beyond reasonable doubt".[7]

7. In the *Milosevic* case, the Trial Chamber laid down six bases on which the application could be considered:

> *"(1) Where there is no evidence to sustain a charge, the Motion is to be allowed. Although Rule 98 bis speaks of the sufficiency of evidence to sustain a conviction on a charge, the Trial Chamber has, in accordance with the practice of the Tribunal, considered the sufficiency of the evidence as it pertains to elements of a charge, whether set out in separate paragraphs or schedule items;*
>
> *(2) Where there is some evidence, but it is such that, taken at its highest, a Trial Chamber could not convict on it, the Motion is to be allowed. This will be the case even if the weakness in the evidence derives from the weight to be attached to it, for example, the credibility of a witness. This is in accordance with the exception to the general principle in common law jurisdictions that issues of credibility and reliability must be left to the jury as the tribunal of fact;*
>
> *(3) Where there is some evidence, but it is such that its strength or weakness depends on the view taken of a witness's credibility and reliability, and on one possible view of the facts a Trial Chamber could convict on it, the Motion will not be allowed. This accords with the general principle in common law jurisdictions that a judge must not allow a submission of no case to answer because he considers the prosecution's evidence to be unreliable, since by doing that he would usurp the function of the jury as the tribunal of fact;*

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[6] Ibid., *supra* note 3, Separate and Concurring Opinion by Judge Bankole Thompson, para. 11.

[7] *The Prosecutor v. Slobodan Milosevic*, ICTY, No. IT-02-54-T, Decision on Motion for Judgment of Acquittal, 16 June 2004, para 9. (See also, *The Prosecutor v. Jelisic*, ICTY, No. IT-96-21-A, Judgment, 5 July 2001, para. 37 and *The Prosecutor v. Delalic et al.*, ICTY, No. IT-96-21-T, Judgment, 20 February 2001, para. 434).

(4) The determination whether there is evidence on which a tribunal could convict should be made on the basis of the evidence as a whole;

(5) Whether evidence could lawfully support a conviction must obviously depend on the applicable law of the Tribunal and the facts of each case. The common law cannot be relied on to rule evidence as incapable of supporting a conviction if on the basis of Tribunal jurisprudence the evidence is to be considered as having that capacity. Thus hearsay evidence, generally inadmissible in common law jurisdictions, is, pursuant to Rule 89(c), admissible, the principal factor determining admissibility being the reliability of the evidence. Once admitted, it is for a Trial Chamber to determine the weight to be attached to hearsay evidence;

(6) In view of the peculiarly common law origin of Rule 98bis, and the well known difficulties to which its application has given rise in the work of the Tribunal, the Trial Chamber considers it important to stress the point made both in Prosecutor v. Kordic *and* Prosecutor v. Jelisic *that a ruling that there is sufficient evidence to sustain a conviction on a particular charge does not necessarily mean that the Trial Chamber will, at the end of the case, return a conviction on that charge; that is so because the standard for determining sufficiency is not evidence on which a tribunal should convict, but evidence on which it could convict. Thus if, following a ruling that there is sufficient evidence to sustain a conviction on a particular charge, the Accused calls no evidence, it is perfectly possible for the Trial Chamber to acquit the Accused of that charge if, at the end of the case, it is not satisfied of his guilt beyond reasonable doubt;*

(7) When, in reviewing the evidence, the Trial Chamber makes a finding that there is sufficient evidence that is to be taken to mean that there is evidence on which a Trial Chamber could be satisfied beyond reasonable doubt of the guilt of the accused."[8]

8. These criteria are in accordance with the exception to the general principle in common law jurisdictions that issues of credibility must be left to the jury as the trier of fact. In the case of *The Prosecutor v. Laurent Semanza*, the Trial Chamber held that "all that is the required of the Prosecution is to establish a *prima facie* case against the Accused''.[9]

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[8] *The Prosecutor v. Slobodan Milosevic*, ICTY, No. IT-02-54-T, Decision on Motion for Judgment of Acquittal, 16 June 2004, para. 13 (footnotes omitted).

[9] *The Prosecutor v. Laurent Semanza*, ICTR, No. 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, 27 September 2001, para. 15.

9. The Defence for Morris Kallon submits that the evidence must be such that a reasonable trier of fact *could* convict, not that it *would* or *should* convict. In the case of *The Prosecutor v. Kordic and Cerke,* it was held that if this standard *"is not met by any evidence, there must be some evidence which could properly lead to a conviction"*.[10] The attention of the Trial Chamber is also drawn to the case of *The Prosecutor v. Bagosora et al.,* where it was emphasised that *"in determining whether there is such evidence, the Trial Chamber must assess whether the Prosecution evidence is actually probative of the elements of crimes charged in the indictment"*.[11]

10. The above decision is consistent with the decision of the Trial Chamber in the case of *The Prosecutor v. Nahimana et al.* In fact, a 98*bis* Motion may succeed where the Prosecutor did not present sufficient evidence to support all essential elements of a count, *"if on the basis of evidence adduced by the Prosecution, an ingredient required as matter of law to constitute the crime is missing, that evidence would also be insufficient to sustain a conviction"*.[12]

Joint Criminal Enterprise

The Applicable Law

11. Paragraphs 36 and 37 of the Indictment[13] allege that the RUF (including Issa Sesay, Morris Kallon, and Augustine Gbao) and the AFRC shared a common plan, purpose or design (joint criminal enterprise) to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone. The Prosecution claims that the crimes alleged in the Indictment were either actions taken within the joint criminal enterprise ("JCE") or were a reasonably foreseeable consequence of the joint criminal enterprise.

12. When a number of persons are involved in a common plan aimed at the commission of a crime, they can be convicted of participation in a joint criminal enterprise in relation to that crime.[14] A JCE requires that the parties to an

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[10] *The Prosecutor v. Kordic and Cerkez*, ICTY, No. IT-95-14/2-T, Decisions on Defence Motions for Judgment of Acquittal, 6 April 2000, para. 26.
[11] *The Prosecutor v. Bagosora et al.*, ICTR, No. ICTR-98-41-T, Decision on Motions on Judgment of Acquittal, 2 February 2005, para. 10.
[12] *The Prosecutor v. Nahimana et al.*, ICTR, No. ICTR-99-52-T, Reasons for Oral Decision of September 17, 2002 on the Motions for Acquittal, Rule 98*bis* of the Rules of Procedure and Evidence, 25 September 2002, para. 19.
[13] *The Prosecutor v. Sesay et al.*, SCSL-04-15-T, Corrected Amended Consolidated Indictment, 2 August 2006.
[14] *The Prosecutor v. Fatmir Llimaj, Haradin Bala, Isak Musliu*, ICTY, IT-03-66, Judgment, November 30, 2005, para. 510.

agreement took action in furtherance of that agreement.[15] The accused does not have to commit the specific crime, but rather may act to assist in, or contribute to, the execution of the joint criminal enterprise.[16] The degree of participation required must be "significant", such as to render the enterprise "efficient or effective".[17]

13. Three types of JCE are identified by customary international law and implicitly by the Statute of the ICTY and the ICTR.[18] They all require, as to the *actus reus*, a plurality of persons, the existence of a common plan, design or purpose, which amounts to or involves the commission of a crime provided for in the Statute, and participation of the accused in the common design.[19]

14. In the first type of JCE, in order to hold the accused criminally responsible for the crimes charged in the Indictment, the Prosecution must, *inter alia*, establish that between the person physically committing a crime and the accused, there was an understanding or an agreement to commit that particular crime.[20]

15. In the second type of JCE, the so-called concentration camp cases or systemic JCE, the accused has the knowledge of a system of repression, the accused participates in the enforcement of the repression, and the accused has the intent to further the ill-treatment of those subject to the repression. In such cases, the requisite intent may also be able to be inferred from proved knowledge of the crimes being perpetrated in the place of repression and by the accused's continued participation in the functioning of the place, as well as from the position of authority held by an accused in the place.[21]

16. The third type of JCE concerns cases in which one of the participants commits a crime outside the common design. The *mens rea* in such cases is twofold. First, the accused must have the intention to take part in and contribute to the common criminal purpose. Second, in order to be held responsible for crimes which were not part of the common criminal purpose, but which were nevertheless a natural and foreseeable consequence of it, the accused must also know that such a crime might be perpetrated by a member of the group, and must willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise.

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[15] *The Prosecutor v. Milan Milutinovic, Nikola Sainovic and Dragoljub Ojdanic*, ICTY, No. IT-99-37-AR72, Decision on Ojdanic's Motion Challenging Jurisdiction - Joint Criminal Enterprise, 21 May 2003, para. 23.
[16] *The Prosecutor v. Dusko Tadic*, ICTY, No. IT-94-1-A, Judgment, 15 July 1999, para. 227.
[17] *The Prosecutor v. Mirsolav Kvocka,* ICTY, No. IT-98-30/1-T, Judgment, 2 November 2001, paras. 309 and 311.
[18] *The Prosecutor v. Dusko Tadic*, ICTY, No. IT-94-1-A, Judgment, 15 July 1999, paras. 195-196.
[19] *The Prosecutor v. Dusko Tadic*, ICTY, No. IT-94-1-A, Judgment, 15 July 1999, para. 227.
[20] *The Prosecutor v. Brdjanin*, ICTY, No. IT-99-36-T, Judgment, 1 September 2004, para. 344.
[21] *The Prosecutor v. Fatmr Limaj, Haradin Bala, and Isak Musliu*, ICTY, No. IT-03-66-T, Judgment, 30 November 2005, para. 511.

The presence of the participant in the JCE at the time the crime is committed by the principal offender is not required.[22]

Application to the Present Case

17. Given the case law above, it is submitted that the Accused, Morris Kallon, should not be held responsible for any crimes which it is alleged he committed as part of a joint criminal enterprise per paragraphs 36 to 38 of the Indictment. This is for the following reasons:

(1) The Prosecution has not sufficiently identified which type of JCE with which the Accused is charged. Prosecution has an obligation not merely to outline the facts it proposes to establish in evidence, but also to indicate, in conceptual terms, the nature of the case against Morris Kallon. This must be done at an early stage. This is for the benefit of both the judge and counsel for the accused[23] and is in the interests of justice.

(2) The Indictment attempts to establish a joint criminal enterprise based on events that occurred during the conflict which were not of a criminal nature. The Prosecution alleges that the common purpose of the JCE was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas.[24] However this is not a legally or factually sufficient basis upon which to establish criminal responsibility because the Prosecution has failed to show that this common purpose is in and of itself criminal. It is not a crime to gain and exercise political power and control over a territory, thus it cannot form the basis of a joint criminal enterprise.

(3) The evidence does not show that any of the crimes charged in the Indictment were physically perpetrated by any of the accused. The Indictment does not allege, nor has it been otherwise established, that these persons charged in the Indictment carried out the *actus reus* of any of the charges in the Indictment. Thus the accused cannot on their own comprise a group for JCE purposes.[25]

The Appeals Chamber in *The Prosecutor v. Tadic* has stated at least seven times that the physical perpetrator must be a member of the JCE.[26] In *The Prosecutor v. Furundzija*, the physical perpetrator was Furundzija's partner in the interrogation of the witness.[27] In *The Prosecutor v. Krstic*, the physical perpetrators were the soldiers in the Drina Corps which General Krstic commanded,[28] and in *The Prosecutor v. Blagojevic* the officers of the Army and members of the military

[22] *Ibid.*
[23] *R v. Tangye* (1997) 92 A Crim R 345.
[24] Indictment, para. 36-37.
[25] *The Prosecutor v. Brdjanin*, ICTY, No. IT-99-36-T, Judgment, 1 September 2004, para. 344.
[26] *The Prosecutor v. Tadic*, ICTY, No. IT-94-1-A, Judgment, 15 July 1999.
[27] *The Prosecutor v. Furundzija*, ICTY, No. IT-95-17/1-A, Judgment, 21 July 2000, para. 115.
[28] *The Prosecutor v. Krstic*, ICTY, No. IT-98-33-T, Judgment, 2 August 2001, para. 610 (listing the Drina Corps as members of the JCE).

police.[29] In *The Prosecutor v. Vasilijevic*, the physical perpetrators were the accused's companions in the shooting of seven men on the banks of the Drina River.[30] In *The Prosecutor v. Simic*, the physical perpetrators were the police, paramilitaries, and 17th Tactical Group of the Army, all of whom were included as members of the JCE.[31] As insufficient evidence has been adduced to prove that Morris Kallon physically committed any of the alleged crimes, joint criminal enterprise liability cannot be attached to him.

(4) Thus, the *actus reus* of the crimes were perpetrated, if at all, by other members of the RUF or the AFRC. The Defence for Morris Kallon submits that there was no understanding or agreement between Morris Kallon and any of the actual physical perpetrators of crimes allegedly committed by the RUF and the AFRC. Indeed in *The Prosecutor v. Brdjanin*, the Trial Chamber held that:

> *"for the purposes of establishing individual criminal responsibility pursuant to the theory of JCE it is not sufficient to prove an understanding or an agreement to commit a crime between the Accused and a person in charge or in control of a military or paramilitary unit committing a crime."*

(5) The Trial Chamber continued:

> *"The Accused can only be held criminally responsible under the mode of liability of JCE if the Prosecution establishes beyond reasonable doubt that he had an understanding or entered into an agreement with the Relevant Physical Perpetrators to commit the particular crime eventually perpetrated or if the crime perpetrated by the Relevant Physical Perpetrators is a natural and foreseeable consequence of the crime agreed upon by the Accused and the Relevant Physical Perpetrators."*[32]

(6) The Defence for Morris Kallon submits that the definition of the JCE alleged by the Prosecution is too broad. Tribunals have historically taken the view that JCE should be restricted in scope. The Trial Chamber in *Brdjanin* held that:

> *"although JCE is applicable in relation to cases involving ethnic cleansing, as the* Tadic Appeal Judgment *recognizes, it appears that, in providing for a definition of JCE, the Appeals Chamber had in mind a somewhat smaller enterprise than the one that is invoked in the present case. An examination of the cases tried before this Tribunal where JCE has been applied confirms this view."*[33]

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[29] *The Prosecutor v. Blagojevic & Jokic*, ICTY, No. IT-02-60-T, Judgment, 17 January 2005, para. 709.
[30] *The Prosecutor v. Vasilijevic*, ICTY, No. IT-98-32-T, Judgment, 29 November 2002, para. 210 ("if the agreed crime is committed by one or other of the participants in a joint criminal enterprise such as has already been discussed, all of the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission").
[31] *The Prosecutor v. Simic et al*, ICTY, No. IT-95-9-T, Judgment, 17 October 2003, para. 984.
[32] *The Prosecutor v. Brdjanin*, ICTY, No. IT-99-36-T, Judgment, 1 September 2004, para. 347.
[33] *Ibid.*, at para. 355.

18. Therefore, it is submitted that the Prosecution has failed to adduce sufficient evidence of a JCE either between the AFRC and the RUF or within the RUF itself. Thus Morris Kallon should not be ascribed responsibility for crimes allegedly committed as a result of this alleged joint criminal enterprise.

Insufficient Evidence as to Time Frames

19. Several of the witnesses gave testimony in which they attempted to describe the time frame of when an event occurred in terms of the season or another natural phenomenon. For example, some witnesses described events as taking place "when the mangoes were ripe" or "during the dry season," etc. Such descriptions lack sufficient clarity to situate the event as within the time period stipulated in the Indictment. It was incumbent on the Prosecution to produce expert evidence on this crucial issue to enable the Court to ascertain which time during the year such events would normally occur in a specific crime base in Sierra Leone, as well as to ascertain whether the event occurred during the time period relevant to the Indictment. The Prosecution failed to do this.[34] Consequently, it is submitted that the Accused, Morris Kallon, should be acquitted for all crime bases in relation to all counts where this applies.

III. ARGUMENTS RELATING TO SPECIFIC COUNTS IN THE INDICTMENT

Counts 3 – 5: Unlawful Killings

20. During the time frame stipulated in the Indictment, the Prosecution has failed to produce any evidence that Morris Kallon planned, instigated, ordered or committed (according to paragraph 38 of the Indictment) murder as a crime against humanity or a war crime in any of the following locations:

Kenema District
Kailahun District
Koinadugu District[35]
Bombali District
Freetown and the Western Area[36]
Port Loko

[34] See for example, TF1-371 (21-21 July 2006 and 28 July – 02 Aug 2006) (witness was unable to establish which time frame the alleged events in Tombodu, Kono District took place).
[35] See for example Witness TF1-167 (14 – 20 October 2004).
[36] See for example Witnesses TF1-167 (14 – 20 October 2004), TF1-334 (5 – 10 July 2006) and Court Exhibit 10, Chart of Newton Command Structure.

21. As far as Bo District is concerned, the Prosecution has failed to adduce evidence of unlawful killings in Telu, Tikonko[37] and Mamboma by Morris Kallon. The evidence the Prosecution has adduced in Sembehun[38] and Gerihun, as referred to in paragraph 46 of the Indictment, is insufficient to support a conviction.

22. In relation to Kono District, it is submitted that there is insufficient evidence capable of supporting a conviction as alleged under paragraph 48 of the Indictment.[39]

Counts 6 – 9: Sexual Violence

23. During the time frame stipulated in the Indictment, the Prosecution has failed to produce any evidence that Morris Kallon planned, instigated, ordered or committed (according to paragraph 38 of the Indictment) any of the crimes under counts 6 to 9 of the Indictment in any of the following locations:

    Koinadugu District
    Bombali District
    Kailahun
    Freetown and the Western Area[40]
    Port Loko

24. In relation to Tomendeh, Fokoiya, the AFRC/ RUF Camps, "Superman camp" and Kissi town camp in Kono District, the Prosecution has failed to adduce evidence of sexual violence. It is further submitted that there is insufficient evidence capable of sustaining a conviction in the remaining areas of Kono District as alleged under paragraph 55 of the Indictment.

Forced Marriage

25. It is submitted that there is no crime of forced marriage under customary international law and thus the Court should dismiss all related counts. The evidence elicited from TF1-369[41] is insufficient to establish the existence of this alleged crime.

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[37] See for example TF1-004 (7 - 8 December 2005, especially 7 December 2005, page 65) and TF1-008 (8 December 2005).
[38] See for example TF1-008 (8 December 2005).
39 See for example Witnesses TF1-078 (27 October 2004), TF1-071 (18 – 27 January 2005) and TF1-361 (11 – 19 July 2005).
[40] See for example Witnesses TF1-167 (14 – 20 October 2004), TF1-334 (5 – 10 July 2006) and Court Exhibit 10, Chart of Newton Command Structure.
[41] TF1-369 (25 – 27 July 2006).

Counts 10 - 11: Physical Violence

26. During the time frame stipulated in the Indictment, the Prosecution has failed to produce any evidence that Morris Kallon planned, instigated, ordered or committed (according to paragraph 38 of the Indictment) any of the crimes under counts 10 to 11 of the Indictment in any of the following locations:

    Kenema District
    Koinadugu District
    Bombali District
    Freetown and the Western Area[42]
    Port Loko

27. It is further submitted that there is insufficient evidence capable of sustaining a conviction in Kono District as alleged under paragraph 62 of the Indictment.

Count 12: Use of Child Soldiers

28. During the time frame stipulated in the Indictment, the Prosecution has failed to adduce evidence to prove paragraph 68 in the Indictment. The evidence is insufficient to show that boys and girls under the age of 15 were conscripted and enlisted for participation in active hostilities in the following locations:

    Kailahun
    Kenema
    Kono
    Bombali
    Koinadugu
    Freetown and the Western Area[43]

29. The Prosecution has failed to adduce evidence of these alleged acts in the following locations:

    Bonthe
    Moyamba
    Pujehun
    Kambia
    Bo
    Tonkolili
    Port Loko

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[42] See for example Witnesses TF1-167 (14 – 20 October 2004), TF1-334 (5 – 10 July 2006) and Court Exhibit 10, Chart of Newton Command Structure.
[43] Ibid.

Count 13: Forced Labour and Abductions

30. During the time frame stipulated in the Indictment, the Prosecution has failed to adduce evidence of forced labour and abductions in the following locations:

    Kenema District
    Koinadugu District
    Bombali District
    Freetown and the Western Area[44]
    Port Loko District

31. It is further submitted that there is insufficient evidence capable of sustaining a conviction in Kono District and Kailahun District as alleged under paragraphs 71 and74 of the Indictment respectively.

Count 14: Looting and Burning

32. During the time frame stipulated in the Indictment, the Prosecution has failed to adduce evidence of looting and burning in the following locations:

    Bo District
    Koinadugu District
    Bombali District
    Freetown and the Western Area[45]

33. It is further submitted that there is insufficient evidence capable of sustaining a conviction in Kono District as alleged under paragraph 80 of the Indictment.

Counts 15 – 18: Attacks on UNAMSIL Personnel

34. Although the Indictment alleges that Morris Kallon engaged in widespread attacks against "humanitarian assistance workers" between 15 April 2000 and about 15 September 2000, the Prosecution has failed to adduce any evidence in support of this count for any location within Sierra Leone.

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[44] Ibid.

[45] See for example Witnesses TF1-167 (14 – 20 October 2004), TF1-334 (5 – 10 July 2006) and Court Exhibit 10, Chart of Newton Command Structure.

35. Insufficient evidence has been led to prove that Morris Kallon planned, instigated, ordered or committed (according to paragraph 38 of the Indictment) attacks on UNAMSIL peace keepers in the following locations:

    Bombali District
    Kailahun District
    Kambia District
    Port Loko
    Kono District

IV. APPLICATION

36. It is submitted that Morris Kallon should be acquitted of the above mentioned charges due to the complete absence of evidence and the lack of sufficient evidence presented by Prosecution relating to the specific counts in the Indictment as highlighted above. Furthermore, because the Prosecution has adduced insufficient evidence as to the existence of a joint criminal enterprise Morris Kallon should be acquitted of all crimes allegedly committed under that basis of criminal liability.

Dated 27 September 2006

Melron Nicol-Wilson

Sabrina Mahtani

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The Prosecutor v. Slobodan Milosevic, ICTY, No. IT-02-54-T, Decision on Motion for Judgment of Acquittal, 16 June 2004.

The Prosecutor v. Tadic, ICTY, No. IT-94-1-A, Judgment, 15 July 1999.

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Orders

The Prosecutor v. Sesay et al., SCSL-04-15-621, Order Concerning "Skeleton Motion for Judgment of Acquittal of the Second Accused Morris Kallon", 26 September 2006.

Indictments

The Prosecutor v. Sesay et al., SCSL-04-15-T, Corrected Amended Consolidated Indictment, 2 August 2006.

Exhibits

The Prosecutor v. Sesay et al., SCSL-04-15-T, Court Exhibit 10, Chart of Newton Command Structure.