

**The Legal Definition of the Crime of ‘Rape’:**

236. Count 6 alleges “rape” as a form of “sexual violence” and another crime against humanity punishable under Article 2.g of the Statute. In its Rule 98 Decision, the Court adopted the definition of “rape” given by the ICTY Appeal Chamber in the *Prosecution v. Kunarac et al*<sup>483</sup> and noted the elements of the offence as follows: firstly, that “*the actus reus of the crime of rape in international law is constituted by the sexual penetration, however slight: a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim*”. For this purposes, the Court stated that consent [must be] given voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances. Secondly, the Court defined the *mens rea* of the crime of “rape” as the “*intention to effect [the above mentioned] sexual penetration, and the knowledge that it occurs without the consent of the victim*”. (Emphasis added). Additionally, the Court indicated that “[f]orce or threat of force provides clear evidence of non-consent, but force is not an element per se of rape”<sup>484</sup>. As a crime against humanity, the rape must be committed as part of a “widespread or systematic attack against any civilian population”<sup>485</sup>.

**COUNT 7:**

**e. The Crimes of Sexual Slavery and Any Other Form of Sexual Violence  
(Two Forms of Sexual Violence): A Crime Against Humanity:**

**i. The Legal Definition of the Crime of ‘Sexual Slavery’:**

237. Count 7 alleges the double crimes of: i) “sexual slavery” (a form of “sexual violence”) and ii) “any other form of sexual violence” as crimes against humanity punishable under Article 2.g of the Statute. In its Rule 98 Decision, the Court

<sup>483</sup> ICTY IT-96-23-A Judgment, Appeals Chamber, 15 June 2002, [*Kunarac Appeals Chamber Judgment*], para. 127; see also paras. 106-8 of the Court’s Rule 98 Decision.

<sup>484</sup> *Id.*, para. 107 of the Court’s Rule 98 Decision, quoting *Kunarac’s Appeals Chamber Judgment*, *supra*.

<sup>485</sup> *Id.*, para. 108.

indicated that in order to, firstly, prove the crime of “sexual slavery” as alleged, the Prosecution should lead evidence to prove the elements of the offence within the meaning of Article 2.g of the Statute as follows: firstly, that “the perpetrator exercised any or all of the powers attaching to *the right of ownership over one or more persons, such as by purchasing, selling, lending, or bartering such a person or persons, or by imposing on them a similar deprivation of liberty*”; secondly, that “*the perpetrator caused such person or persons to engage in one or more acts of a sexual nature*”; thirdly, that “the conduct was committed as *part of a widespread or systematic attack directed against a civilian population*”; and fourthly, that “*the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population*.”<sup>486</sup> (Emphasis added).

ii. **The Legal Definition of the Crime of ‘Any Other Form of Sexual Violence’:**

238. Additionally, the Court stated the elements of “any other form of sexual violence” as a crime against humanity punishable under Article 2.g of the Statute as follows: firstly, that “*the perpetrator committed an act of a sexual nature against one or more persons or caused such persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person or persons’ incapacity to give genuine consent*”; secondly, that “such conduct was of a gravity comparable to the acts referred to in Article 2.g of the Statute”; thirdly, that “*the perpetrator was aware of the factual circumstances that established the gravity of the conduct*”; fourthly, that “the conduct was committed as *part of a widespread or systematic attack directed against any civilian population*”; and finally, that “*the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against any civilian population*”.<sup>487</sup> (Emphasis added). More significantly, the Court noted the conclusion reached by the

<sup>486</sup> See para. 109 of the Court’s Rule 98 Decision.

<sup>487</sup> Id., para. 110.

ICTY Trial Chamber in *Prosecutor v. Kvočka*<sup>488</sup> that: “sexual violence is broader than rape and includes such crimes as sexual slavery or molestation (...) sexual mutilation, forced marriage, and forced abortion...”.<sup>489</sup>

239. However, before delving into the evidential value of the foregoing offences vis-à-vis the Indictment, the Defence for the Second Accused re-states its objection to the defective form of this Count in the Indictment. The Defence submits that the present Count as charged is duplex, defective, difficult to understand and violates the rule against duplicity, and thus should be wholesomely dismissed for the said reasons<sup>490</sup>.

240. Notwithstanding the above objection, the Defence for the Second Accused alternatively submits that even in its current defective form, Count 7 as charged lacks evidential merit and should be discountenanced by the Court. The factual analysis below, done on an event-to-event basis, shall illustrate this demerit.

## **COUNT 8:**

### **f. The Crime of Other Inhumane Act**

#### **(A Form of Sexual Violence): A Crime Against Humanity:**

#### **The Legal Definition of the Crime of ‘Other Inhumane Act’:**

241. Count 8 alleges the crime of “other inhumane act” as another form of “sexual violence” and a crime against humanity punishable under Article 2.i of the Statute. In its Rule 98 Decision, the Court chose to deal with the legal definition or requirements of this Count by post-reference to Count 11<sup>491</sup>. The Defence for the Second Accused submits that this attempt further reinforces its prior objection in this Final Trial Brief that Count 8, like Count 7, is redundant, defective and violates the rule against

<sup>488</sup> ICTY IT-98-30/I-T, Trial Chamber Judgment, para. 180.

<sup>489</sup> *Id.*, para. 111.

<sup>490</sup> For detailed analysis of this objection, see paras. 94-96 of this Final Trial Brief.

<sup>491</sup> See para. 112 of the Court’s Rule 98 Decision, *supra*.

multiplicity of count charges based on the same legal requirements and evidence.<sup>492</sup>

The Defence re-states its said objection and prays that this Count (Count 8) be dismissed for being legally defective in form.

**242.** Alternatively, the Defence for the Second Accused submits that even if the Court were to uphold the current Count in its present form, the Count, as demonstrated below, lacks evidential merit and cannot be factually sustained. In fact, only one unknown or unstated “other inhumane *act*” is charged. Unlike Count 11, which is in the plural (...acts), Count 8 is in the singular (...act).

**243.** Thus, for the purposes of evidence, the Court’s definition of “other inhumane act(s)” in Count 11 is to the effect that the Prosecution should lead evidence to prove the elements of the offence within the meaning of Article 2.i of the Statute as follows: firstly, that “*the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act*”; secondly, that “the act was of a gravity similar to the acts referred to in Article 2.a to h. of the Statute”; thirdly, that “the perpetrator was aware of the factual circumstances that established the character or gravity of the act”; fourthly, that “the act was committed as part of a widespread or systematic attack directed against a civilian population”; and finally, that “the perpetrator knew or had reason to know that his acts or omissions constituted part of a widespread or systematic attack directed against a civilian population”.<sup>493</sup> (Emphasis added). The Court noted that the phrase “other inhumane acts” operates at international humanitarian law as “a residual category of crimes against humanity”<sup>494</sup>. It operates to include that which was not expressed.

**244.** The analysis below, done on an event-to-event basis, amply demonstrates that Count 8 lacks evidential merit and should not be sustained even from a factual notion.

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<sup>492</sup> See paras. 97 to 99 of this Final Trial Brief.

<sup>493</sup> Id., para. 174 of the Court’s Rule 98 Decision, *supra*.

<sup>494</sup> Id. para. 173.

**COUNT 9:****g. The Crime of Outrage upon Personal Dignity****(A Form of Sexual Violence): A Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II:****The Legal Definition of the Crime of ‘Outrage(s) upon Personal Dignity’:**

245. Count 9 alleges the crime of “outrages upon personal dignity”, a form of “sexual violence” and a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.e of the Statute. In its Rule 98 Decision, the Court indicated that in order prove the crime of “outrages upon personal dignity” as alleged, the Prosecution should lead evidence to prove the elements of the offence within the meaning of Article 3.e of the Statute as follows: firstly, that “*the constitutive elements of violations of Article 3 common to the Geneva Conventions and of Additional Protocol II*” are present in the prohibited conduct; secondly, that “*the accused caused an outrage upon the personal dignity of the victim*”; thirdly, that “*the humiliation and degradation was so serious as to be generally considered an outrage upon personal dignity*”; fourthly, that “*the accused intentionally committed or participated in an act or omission which would be generally considered to cause serious humiliation, degradation or otherwise to be a serious attack on human dignity*”; and finally, that “the accused knew that the act or omission could have such an effect”.<sup>495</sup> (Emphasis added). “Rape” and “any form of indecent assault” are, as provided in Article 3.e of the Statute, some of the particular examples of “outrage upon personal dignity”.

**Factual Analysis to Disprove Counts 6, 7, 8 and 9 above of the Indictment:**

246. In order to substantiate the foregoing Count charges, namely Counts 6 to 9, the Prosecution alleges that the Second Accused, by his “acts” or “omissions”, is individually criminally liable for the crimes alleged in paragraphs 51 to 57 of the Indictment, pursuant to Article 6.1 and Article 6.3 of the Statute of the Court. The said allegations concern six set of occurrences at locations in the Republic of Sierra

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<sup>495</sup> See para. 115 of the Court’s Rule 98 Decision.

Leone, including the Districts of Kono, Koinadugu, Bombali, Kailahun, Freetown and the Western Area, and Port Loko. The crimes are said to have *inter alia* occurred ‘at all times relevant to the Indictment’, including the periods between “14 February 1998 and 30 June 1998”, “14 February 1998 and 30 September 1998”, “1 May 1998 and 31 (*sic*) November 1998”, “6 January 1999 and 28 February 1999”, and between “February 1999 and April 1999”. The Indictment alleges that members of AFRC/RUF, including the Second Accused, committed “widespread sexual violence” against “civilian women and girls” and that the said sexual violence included ‘brutal rapes’ and ‘forced marriages’. The factual analysis below takes each alleged event, within the confines of a stated location, on its merits vis-à-vis the available evidence.

**Crime-Based Factual Analysis of Evidence on Counts 6 to 9 of the Indictment:**

**Kono District:**

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”.

**Witnesses For The Prosecution**

247. Prosecution Witness TFI-334 alleged that Superman and Bazy planned the operations in Kono.<sup>496</sup> TFI-334 testified that JPK had given order that Koidu Town should be a no-go area for civilians. From that day together with the RUF they went to those villages and captured civilians, especially strong men and young women. The women, especially the beautiful ones, were under the full control of the commanders and they became their wives. They were cooking food for us. The women that were unmarried and they were captives, they used them sexually.<sup>497</sup>

<sup>496</sup> Transcript 19 May 2005 page 4

<sup>497</sup> Transcript 20 May 2005 page 5-7

248. The Prosecution alleged that the Second Accused Ibrahim Bazy Kamara as a commander in Kono is criminally responsible for the crimes sexual violence as set out in the indictment.
249. Witness TFI-334 testified that Superman was in complete control of the radio communication set and the SLA had no control over the set.<sup>498</sup> Superman was also in charge of distributing the ammunition.<sup>499</sup> Superman was the most senior in Kono, and when Morris Kallon came, he was the most senior. Superman was immediately subordinate to him. Morris Kallon was an advisor.<sup>500</sup> Morris Kallon told the SLAs in Kono that they should not muster and they had no right to call themselves SLA or AFRC in Kono, because he only knew of one faction and that is the RUF faction.<sup>501</sup> The first time he heard Mosquito call, said both the RUF and the SLA should go and clear Koidu Geiya. TFI-334 testified that the commanders during the Koidu Geiya attack were, Superman, Rambo and operation commander A. Second Communication Mosquito called through his call sign, and ordered that Kono should be a stronghold of the junta forces, both the RUF and SLA, who should put down Sewafe.<sup>502</sup> Witness TFI-167 testified that in the absence of JPK in Kono, they were under the RUF and took instructions from Superman, who took instructions from Mosquito.<sup>503</sup>
250. Prosecution witnesses themselves adduced evidence that after the ECOMOG invasion of Freetown the AFRC ceased to exist. In Kono Prosecution Witness TFI-334 testified that Morris Kallon told the SLAs in Kono that they should not muster and they had no right to call themselves SLA in Kono, and neither AFRC, because he only knew of one faction and that is the RUF faction.<sup>504</sup>

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<sup>498</sup> Witness TFI-334 Transcript 18 May 2005 page 24

<sup>499</sup> Witness TFI-334 Transcript 20 May 2005 page 48-50

<sup>500</sup> Witness TFI-334 Transcript 19 May 2005 page 7

<sup>501</sup> Witness TFI-334 Transcript 19 May 2005 page 10

<sup>502</sup> Witness TFI-334 Transcript 18 May 2005 page 33-34

<sup>503</sup> Witness TFI-167 Transcript 19 September 2005 page 60

<sup>504</sup> Witness TFI-334 Transcript 19 May 2005 page 10

### Witnesses For The Second Accused's Defence

251. Defence witness DBK-129 testified that there were RUF fighters in Kono and Superman was the overall commander and Peleto his second in command in Kono. During that time the RUF that had the overall commander over Kono. Witness DBK-126 testified that the SLAs with Johnny Paul Koroma, were under the RUF.<sup>505</sup> Witness DBK-126 testified that he did not see Ibrahim Bazy Kamara, the second accused, in Kono, during that time.<sup>506</sup>
252. Witness DBK-113 testified that he did not or hear about Ibrahim Bazy Kamara being present at Koidu Town.<sup>507</sup> The Overall commander in Kono in charge of the RUF fighting forces in Koidu Town, at the time was Superman.<sup>508</sup> This Savage was Superman's task force officer.<sup>509</sup> Witness DAB-018 testified that he did not hear or see Ibrahim Bazy Kamara in Kono.<sup>510</sup>

### Findings Of The Second's Accused's Defence

253. The Prosecution failed to adduce evidence that as commander in Kono Ibrahim Bazy Kamara had command and control over the people who committed the alleged acts of sexual violence .The mere fact that it is alleged that Ibrahim Kamara was in Kono and was a commander does not make him criminally responsible for sexual violence if he never exercised effective control over his subordinates and know or had reason to know that they committed acts of sexual violence. Prosecution witnesses TFI-334, TF-167 and TFI-033 mention that the Second Accused was a commander in Kono<sup>511</sup> but adduce evidence to the fact that Superman, Morris Kallon and Mosquita had effective command and control over Kono.

<sup>505</sup> Transcript, 09 October 2006 page 69- 71

<sup>506</sup> Transcript, 09 October 2006 page 71

<sup>507</sup> Transcript, 13 October 2006 page 48

<sup>508</sup> Transcript, 13 October 2006 page 66

<sup>509</sup> Transcript, 13 October 2006 page 16

<sup>510</sup> Transcript, 07 septembre 2006 page 44

<sup>511</sup> Witness TFI-334 TT 18 May 2005 page 2; Witness TFI-167 TT 15 September 2005 page 38; Witness TFI-033 TT, 11 July 2005 page 11-12



254. The Defence submits that there is no evidence, however, that the Accused was present during the committing of acts of sexual violence nor that he gave instructions for the acts of sexual violence to be committed to be committed. Prosecution failed to prove beyond a reasonable doubt that the Accused either planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these acts of sexual violence.

255. Defence submits that Prosecution witnesses TFI-334 and 167 testimonies of implicating Ibrahim Bazy Kamara as being present in Kono as a commander is a desperate attempt to implicate the Second Accused in the atrocities in Kono in return for favors from the Prosecution. Witness TFI-033 testimony is full of inconsistencies and contradictory to other prosecution witnesses. The testimonies of Prosecution Witnesses TFI\_334, TFI-167 and TFI-033 and are unreliable and cannot be relied upon to convict the Second Accused for sexual violence in Kono.

#### **Koinadugu District:**

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”.

#### **Witnesses For The Prosecution**

256. Witness TFI-153 testified that in Yifin he saw soldiers arrive the soldiers told him that they had come with one commander who was Bazy.<sup>512</sup> One evening a woman came to the chief’s barri with her 3 children saying that the soldiers who had come had raped all her girl children. The chief wanted to talk to the commander.<sup>513</sup> He never saw Bazy trying to stop the assaults on women in Yifin.<sup>514</sup> Witness TEI-153

<sup>512</sup> Transcript, 23 September 2005 page 82 Cross-examination

<sup>513</sup> Transcript, 22 September 2005 page 33

<sup>514</sup> Transcript, 22 September 2005 page 36

testimony is full of inconsistency, contradictory with his prior statement and with other prosecution witnesses and stands uncorroborated.

257. Prosecution Witness TFI-209 testified that in Kabala she was raped by 2 persons. Witness TFI-209 testified that the two persons who raped her were under the leadership of Superman and SAJ Musa.<sup>515</sup> Witness TFI-133 testified that commanders in Woronbiai, where Cobra, Colonel Tee (SLA), Pa Mani (SLA), and Rambo. Pa Mani (SLA), an Rambo. Woronbiai's overall commanders.<sup>516</sup> Witness TFI-133 testified that she was made to have sex with Mohamed the killer who had a gun with him. TFI-133's rival was made to have sex with RPG another rebel.<sup>517</sup> Women were made to have sex with rebels who captured them even before they got to town. Upon arrival women were given to other persons and would have to have sex with them as well.<sup>518</sup>

#### Witness For The Defence

258. Defence Witness DAB-086, DAB-087 and DAB-090 testified that the ECOMOG troops were based in Yiffin before the rebels came.<sup>519</sup> The leader of the group that attack Yiffin was High Firing and he he came with Ngawuja and Sheku and the stayed in Yiffin.<sup>520</sup> Defence Witness DAB-086 and DAB-090 testified that the heard that a woman was raped and that the rebel who rape the woman was beated to death.<sup>521</sup>

259. DAB-090 testified that he did not see Ibrahim Bazy Kamara and did not hear his name mention.<sup>522</sup> DAB-086 testified that he did not hear the name Ibrahim Bazy Kamara as being one of the rebels in Yiffin. He did not hear the name Ibrahim Bazy

<sup>515</sup> Transcript 7 July 2005 page 31-33

<sup>516</sup> Transcript 7 July 2005 page 87-88, 102

<sup>517</sup> Transcript 7 July 2005 page 85-86 and 114 Cross-examination

<sup>518</sup> Transcript 7 July 2005 page 98-99, 101 and 114 Cross-examination

<sup>519</sup> Witness DAB-086 TT 25 July 2006 page 11; Witness DAB-090 TT 24 July 2006 page 75 ; Witness DAB-087 TT 25 July 2006 page 43

<sup>520</sup> Witness DAB-086 TT 25 July 2006 page 17-18; Witness DAB-090 TT 24 July 2006 page 79-80 ; Witness DAB-087 TT 25 July 2006 page 54

<sup>521</sup> Witness DAB-086 TT 25 July 2006 page 23; Witness DAB-090 TT 24 July 2006 page 109

<sup>522</sup> Witness DAB-090 TT 24 July 2006 page 106 and 112

Kamara as being one of the people responsible for the overthrow of the Kabbah government.<sup>523</sup> DAB-087 testified that he did not hear the name Bazy as having been with High Firing and his men in Yifin at the time.<sup>524</sup>

260. The Kamara Defence submits that the evidence of Prosecution Witness TFI-153 is unreliable and cannot reasonably support any allegation charged in the indictment.

261. DBK-037 testified that he never saw Ibrahim Bazy Kamara at Mongor and Kurubonla.<sup>525</sup> Witness DBK-012 testified that he did not see second accused present at the time he met SAJ Musa at Kurubonla.<sup>526</sup>

#### Findings Of The Second Accused Defence

262. The Kamara Defence submits that the evidence of Prosecution Witness TFI-153 is unreliable and cannot reasonably support any allegation charged in the indictment.

263. 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 TFI-153 made reference to alleged subordinates of the second Accused participating in sexual violence against girls at Yifin in Koinadugu District.<sup>527</sup> Aside from the fact that the said witness admitted the second Accused's presence at Yifin 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 Yifin was both contradicted by the witness himself in cross-examination and uncorroborated as

<sup>523</sup> Witness DAB-086 TT 25 July 2006 page 22 and 35

<sup>524</sup> Witness DAB-087 TT 25 July 2006 page 56

<sup>525</sup> Transcript 03 October 2006 page 93 and 95

<sup>526</sup> Transcript 05 October 2006 page 103

<sup>527</sup> Reference by TFI-153 to the second Accused being, for example, in Yifin 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.

well.<sup>528</sup> 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.

264. The Prosecution failed to show that the Second Accused knew or had reason to know that sexual violence was committed in Koinadugu. Further the Prosecution failed to adduce evidence to show that Ibrahim Bazy Kamara shared a common plan with others who committed the sexual violence .

### **Bombali District**

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”.

### **Witnesses For The Prosecution**

265. Prosecution Witness TFI-334 alleged that in Karina he saw soldiers raping young women. Woyoh was taking care of these 35 women, stripped them naked. Later, the fighters objected. Immediately, the other women removed their own clothes (“lappas”) and gave them to the naked women.<sup>529</sup> The Prosecution averred that the Second Accused was present as a commander<sup>530</sup> when the crime was committed and so should have know or had reason to know that sexual violence was being committed by the soldiers.
266. The Prosecution witness gave conflicting testimonies of what happen in Karina and the evidence of the Prosecution was not corroborated.

<sup>528</sup> See Court Transcripts of 22 Sept. 2005 at pp. 32-36 and 23 Sept. 2005 at pp. 82-83.

<sup>529</sup> Witness TFI-334 TT 23May 2005 page 71

<sup>530</sup> Witness TFI-334 TT 23May 2005 page 59-60; Witness TFI-167 TT 15 September 2005 page 58-59

### Witnesses For The Second Accused's Defence

267. Defense Witness DBK-094 he did not see any one from Karina who had been amputated or raped on the day of the attack.<sup>531</sup> Defense Witness DBK-089 testified that the rebels did not stay long in town. They said they have taken their girl and boys children but did not say that any one was raped in Karina.<sup>532</sup> The Prosecution failed to adduce evidence that the Second Accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of sexual violence in Bombali district.

### Findings Of The Second Defendant's Defence

268. 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.

269. The Bazy Defence submits that Ibrahim Bazy Kamara was at no time relevant to the indictment present in Karina. DBK-113 that during this period at Karina, he did not see or hear about Ibrahim Bazy Kamara being at Karina and he did not see or hear that Ibrahim Bazy Kamara gave orders to burn houses or to burn civilian in houses at Karina.<sup>533</sup> Witness DBK-094 testified that he heard the name Ibrahim Bazy Kamara over the radio when witnesses were talking about him in the Court. DBK-094 testified apart from the radio, he never heard the name anywhere.<sup>534</sup>

<sup>531</sup> Witness DBK-094 TT 11 July 2006, page 40

<sup>532</sup> Witness DBK-094 TT 14 July 2006, page 22

<sup>533</sup> Transcript 13 October 2006 page 48-49

<sup>534</sup> 11 July 2006, page 101-102

**Kailahun District:**

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”.

**Witnesses For The Prosecution**

270. 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.

**Witnesses For The Second Accused’s Defence**

271. DAB-142 testified that Mosquito was the head in Kailahun area.<sup>535</sup> Other rebels were MP commander Tom Sandy and RUF, Senkuleh one of the commanders and Augustine Gbao. During that period, apart from those commanders **DAB-142** did not hear, the name of Ibrahim Bazy Kamara as being one of the commanders of the Rebels.<sup>536</sup>

**Findings Of The Second Accused’s Defence**

272. 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

<sup>535</sup> Witness DAB-142 19 September 2006 page 6

<sup>536</sup> Witness DAB-142 19 September 2006 page 8-10

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.

273. The Prosecutor only pleaded a joint criminal enterprise between the AFRC and the RUF. Yet the evidence presented in the case thus far fails to prove the existence of such a union. The Prosecutor has failed to prove that the AFRC and the RUF were united by a “common plan, design, or purpose” during all times relevant to the Indictment and that such confederacy was undertaken for criminal purposes.

274. The Prosecution failed averred that the Second Accused was present and thus planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of sexual violence in Kalihun district. The Accused was not personally present and the Prosecution has not established that the Accused ever gave orders to commit these acts. Furthermore, it is not possible on this evidence and in the circumstances to infer that the Accused knew or had reason to know that acts of sexual violence were being committed. The Prosecution failed to establish beyond a reasonable doubt that the Accused knew or had reason to know sexual violence was committed in Kailahun District.

#### **Freetown and the Western Area:**

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”.

### Witnesses For The Prosecution

275. Witness TFI-334 testified that the commanders were brought women. The most beautiful ones for Bazy, Gullit and Five-Five at State House.<sup>537</sup> Most of the commanders who had women were senior commanders. Like Gullit had a young girl, Five-Five also had a woman, Bazy had a woman, and even Operation A had his own woman. Gullit's girl was very young..<sup>538</sup> Bazy was with a young girl at the State House, another girl than the TFI-334's cousin.<sup>539</sup>

### Witnesses For The Second Accused 'S Defence

276. Witness DBK-012 testified that at State House, during the invasion, he did not see or hear of women being brought to State House and raped. At State House, no beautiful young girls were brought to the three accused for purposes of sex. DBK-012 further stated that the Accused<sup>540</sup> Women were not raped by the soldiers as they advanced to Freetown. SAJ Musa was against all that and if anybody did that they were going to be executed, Their target was the ECOMOG, no burning, no raping.<sup>541</sup> Witness DBK-129 testified that During military training they were know that it's wrong to rape civilians.<sup>542</sup>

### Findings Of The Second Accused's Defence

277. 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

<sup>537</sup> Transcript 14 June 2005 page 26

<sup>538</sup> Transcript 15 June 2005 page 3

<sup>539</sup> Transcript 22 June 2005 page 6 Cross-examination

<sup>540</sup> Witness DBK-012 Transcript, 09 October 2006 page 46 ; Transcript, 18 October 2006 page 59

<sup>541</sup> Witness DBK-012 Transcript, 06 October 2006 page 27 ; Transcript, 18 October 2006 page 72

<sup>542</sup> Transcript, 18 October 2006 page 3 ; Witness DBK-037 Transcript, 05 October 2006 page 20-21



TFI-334 alluding to the second Accused having affair an with “a young girl” at State House in Freetown<sup>543</sup> 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.

278. The Kamara Defence submits that Ibrahim Bazy Kamara was not present in Freetown during the period relevant to the indictment.

Port Loko District:

Paragraph 57 of the Indictment alleges that about the month of Febuary 1999, AFRC/RUF fled from Freetown to various locations in the Port Lokko District. Between February 1999 and April 1999 members of the AFRC/ RUF raped an unknown 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 thw AFRC/RUF. The “wives” were forced to perform a number of conjugal duties under coercion by their “husbands”

#### **Witnesses For The Prosecution**

279. Prosecution Witness TFI-334 alleged that Bazzy raped his cousin.<sup>544</sup> Witness TFI-334 testified that he received a call that his cousin wanted to see him. TFI-334 went to Bazzy’s place where he met her, crying. Bazzy came and ordered that she be beaten<sup>545</sup> Bazzy ordered his CSO to beat her; she was beaten and placed in the box.<sup>546</sup> In cross-examination the TFI-334 could not sustain the consistency in his narrative about his cousin’s alleged rape.<sup>547</sup>

<sup>543</sup> See Court Transcript, 22 June 2005 at pp. 6 and 10.

<sup>544</sup> Transcript 15 June 2005 page 49-50 Exhibit P21

<sup>545</sup> Transcript 15 June 2005 page 53

<sup>546</sup> Transcript 22 June 2005 page 21 Cross-examination

<sup>547</sup> Id., at pp. 20-27.

### **Witnesses For The Second Accused's Defence**

280. Defence Witnesses DBK-012, DBK-037 and DBK-129 testified that the name West Side was given by Junior Lion.<sup>548</sup> Witness DBK-129 testified that he did not see or hear about Ibrahim Bazy Kamara being at the West Side.<sup>549</sup> Witness DBK-012 testified that he did not see second accused at the West Side and he never get to hear that the second accused was present at the West Side.<sup>550</sup> Witness DBK-037 testified that Ibrahim Bazy Kamara was not the overall commander at West Side.<sup>551</sup>

### **Findings Of The Second Accused's Defence**

281. 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.

### **Concluding Submission on Counts 6 to 9 of the Indictment:**

282. By virtue of the foregoing evidence available to the Court and the totality of the arguments presented in this Closing Brief, the Defence for the Second Accused submits that the Second Accused is not individually criminally responsible (whether by his act or omission or through the conduct of other individual(s) or through a joint enterprise), and *a fortiori* does not bear the greatest responsibility, for the respective crimes of "rape", "sexual slavery" and "any other form of sexual violence", "other inhumane act", or any "outrage upon personal dignity" alleged in the Indictment.

### **COUNT 10:**

<sup>548</sup> Witness DBK-012, TT, 06 October 2006 page 44; Witness DBK-037, TT 04 October 2006 page 51 Cross-examination; Witness DBK-129 TT, 09 October 2006 page 94-95

<sup>549</sup> Transcript, 09 October 2006 page 94-95

<sup>550</sup> Transcript, 06 October 2006 page 49

<sup>551</sup> Transcript, 05 October 2006 page 17 Cross-examination

**h. Violence to Life, Health and Physical or Mental Well-being of Persons, in Particular Mutilation (A Form of Physical Violence): A Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II:**

**The Legal Definition of the Crime of ‘Violence to Life etc. (“Mutilations”):**

283. Count 10 alleges the crime of “violence to life, health and physical or mental well-being of persons, in particular *mutilation*”, a form of “physical violence” and a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.a of the Statute. In its Rule 98 Decision, the Court noted that in order prove the crime of “mutilation” as alleged, the Prosecution should lead evidence to prove the elements of the offence within the meaning of Article 3.a of the Statute as follows: firstly, that “*the perpetrator subjected the victim to mutilation, in particular by permanently disfiguring the victim, or by permanently disabling or removing an organ or appendage of the victim*”; secondly, that “*the perpetrator’s conduct caused death or seriously endangered the physical or mental health of the victim*”; thirdly, that “*the perpetrator’s conduct was neither justified by the medical, dental or hospital treatment of the victim, nor carried out in the victim’s interest*”; fourthly, that “*the victim was a person protected under one or more of the Geneva Conventions of 1949 or was not taking an active part in the hostilities at the of the alleged violation*”; fifthly, that “*the violation took place in the context of and was associated with an armed conflict*”; and finally, that “*the perpetrator was aware of the factual circumstances that established the protected status of the victim*”.<sup>552</sup> (Emphasis added).

**COUNT 11:**

**i. The Crime of “Other Inhumane Acts”  
(A Form of Physical Violence): A Crime Against Humanity:**

**The Legal Definition of the Crime of “Other Inhumane Acts”:**

<sup>552</sup> See para. 172 of the Court’s Rule 98 Decision.

284. The offence of “other inhumane acts” as a crime against humanity punishable under Article 2.i of the Statute has already been extensively discussed herein under Count 8 of the Indictment, save within the context of a different evidence/factual situation. Thus, for the purposes of the legal definition or requirements of this crime, the Defence for the Second Accused refers the Court to paragraph 121 of this Final Trial Brief. The analysis below is to illustrate that the evidence available to the Court does not substantiate that the Second Accused is individually criminally responsible for the offence of “other inhumane acts” as alleged in Count 11 of the Indictment. Unlike Count 8, Count 11 like Count 10 defines “other inhumane acts” as a form of “physical violence” alleged to have been carried out in various locations in Sierra Leone, including the Districts of Kono, Kenema, Koinadugu, Bombali, Freetown and the Western Area, and Port Loko.

285. The analysis below, done on an event-to-event basis, shows that both Counts 10 and 11 lack evidential merit against the Second Accused and should be dismissed.

**Factual Analysis to Disprove Counts 10 and 11 above of the Indictment:**

286. In order to prove the foregoing Counts, the Prosecution again alleges that the Second Accused, by his “acts” or “omissions”, is individually criminally liable for the crimes alleged in paragraphs 58 to 64 of the Indictment, pursuant to Article 6.1 and Article 6.3 of the Statute. The said allegations involves six set of events at locations in Sierra Leone, including the Districts of Kono, Kenema, Koinadugu, Bombali, Freetown and the Western Area, and Port Loko. The crimes are said to have *inter alia* occurred at various periods between 25 May, 1997 and April 1999, including in particular the periods between “14 February 1998 and 30 June 1998”, “25 May 1997 and 19 February 1998”, “14 February 1998 and 30 September 1998”, “1 May 1998 and 31 (*sic*) November 1998”, “6 January 1999 and 28 February 1999”, and between “February 1999 and April 1999”. The Indictment alleges that members of AFRC/RUF, including the Second Accused, committed “widespread physical violence, including mutilations, against civilians”. The mutilations and other inhumane acts were mostly in the alleged forms of limb-cutting and carving of

“AFRC” and “RUF” on the bodies of civilians. Physical violence also included “beatings and ill-treatment”.

**ii. Crime-Based Factual Analysis of Evidence on Counts 10 to 11 of the Indictment:**

**Kono District:**

Paragraph 59 of the Indictment alleges 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”

**Witnesses For The Prosecution**

- 287.** Witness TFI-167 testified that in Tombodu he saw Savage order his boys to flog some seven civilians publicly. Savage was a lieutenant at that time, appointed by Superman.<sup>553</sup> Savage had enough weapons to defend himself and his men, that was the reason why nobody dared to tell Savage what to do. Savage would not listen to anyone except Johnny Paul Koroma. In his earlier statement TFI-167 stated that Gullit and Five-Five had to stop Savage.<sup>554</sup>
- 288.** Witness TFI-074 testified that he has AFRC and RUF engraved on his chest. Some persons were only engraved once.<sup>555</sup> The commanders TFI-074 saw were Captain Barry, Captain Ibrahim Ticker, Captain SK, all RUF men.<sup>556</sup>
- 289.** Witness TFI- 072 testifies that in Tombodu Mr. Savage cut off his right hand with a cutlass.<sup>557</sup> Witness TFI-216 testified that in Tombodu Alhaji ordered Rambo to cut off the hands of 5 people.<sup>558</sup> TFI-216 was picked first. They cut their hands with a cutlass.<sup>559</sup>

<sup>553</sup> Transcript 15 September 2005 page 46; Transcript 19 September 2005 page 45-46

<sup>554</sup> Transcript 19 September 2005 page 47-49

<sup>555</sup> Transcript 5 July 2005 page 16-17, Exhibit P.27

<sup>556</sup> Transcript 5 July 2005 pages 29-30 cross-examination

<sup>557</sup> Transcript 1 July 2005, page 16-17

<sup>558</sup> Transcript, 27 June 2005 pages 93

<sup>559</sup> Transcript, 27 June 2005 pages 94 For the record: W’s both hands are amputated.]

290. Witness TFI-217 testified that in Penduma, junta started cutting the limbs of the men in TFI-217's group.<sup>560</sup> Staff Alhaji amputated TFI-217 arm. TFI-217's hand was chopped off after 11 attempts.<sup>561</sup> Witness TFI-217 testified that apart from Staff, the other commanders he met were; Sam Bockarie, Captain Bai Bureh, Komba Gbundema and Lieutenant Jalloh all RUF men.<sup>562</sup> Sam Bockarie was RUF's leader in Kono.<sup>563</sup>

#### **Witnesses For The Second Accused's Defence**

291. Witness DAB-126 testified that in 1998 he were RUF rebels in Kayima and the commander in charge Colonel Oldshaw an RUF.<sup>564</sup> During the time he was in Kayima, DAB-126 did not hear that Ibrahim Bazy Kamara was present in Kono.<sup>565</sup>

292. Witness DAB-095 testified that the commander in Kono after the intervention was Denis Mingo, who was called Superman.<sup>566</sup> DAB-095 did not see or hear about Ibrahim Bazy Kamara being one of the commanders in Koidu.<sup>567</sup>

#### **Findings Of The Second Accused's Defence**

293. The Prosecution has fail to adduce evidence that the Second Accused committed by his act or omission physical violence in Kono. As the Prosecution Witness best put it RUF was in command and had effective control of the entire Kono district and Sam Bockarie was the overall commander. The Prosecution has failed to show that Bazy Kamara ordered, knew or had reason to know that persons under his command committed these acts. Prosecution witness TFI-167 clearly indicated that Savage took orders from nobody except Johnny Paul Koroma. The Prosecution failed to averred evidence that during the period relevant to the indictment the second accused shared a common plan with members of the RUF. One point which the prosecution clearly

<sup>560</sup> Transcript 17 October 2005 page 22

<sup>561</sup> Transcript 17 October 2005 page 22 and 24-25

<sup>562</sup> Transcript 17 October 2005 page 33-34 and 36 Cross-examination

<sup>563</sup> Transcript 17 October 2005 page 51, Cross-examination

<sup>564</sup> Transcript 15 September 2006 page 7

<sup>565</sup> Transcript 15 September 2006 page 22

<sup>566</sup> Transcript 21 September 2006 page 34

<sup>567</sup> Transcript 21 September 2006 page 37

brought out was the SLA and RUF at fighting.<sup>568</sup> Ibrahim Bazy Kamara was not at any time relevant to the indictment present in Kono.

#### **Kenema District,**

Paragraph 60 of the Indictment alleges 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”;

#### **Findings Of The Second Accused’s Defence**

294. The Second Accused was not present in Kenema at all time relevant to the indictment. The Prosecution failed to show that the Second accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of unlawfully killing of civilians in Kenema. The prosecution did not adduce any evidence to show that the Second Accused ordered, knew or had reason to know that people under his command committed physical violence.

295. The prosecution witnesses confirm that Kenema was under the command and control of the RUF and Sam Bockarie was the over all commander.<sup>569</sup> The SLAs were subjected to the command and control of the RUF in Kenema.<sup>570</sup>

296. The Defence submits that the Second Accused cannot reasonably be convicted for crimes in Kenema.

#### **Koinadugu District,**

paragraph 61 of the Indictment alleges 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”

<sup>568</sup> Transcript 19 September 2005 page 60

<sup>569</sup> Transcript Friday, 24 June 2005, pages 92 Cross-examination; Transcript, 27 June 2005 pages 13-14

<sup>570</sup> Transcript of 25 September 2006, page 44

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### **Findings Of The Second Accused's Defence**

297. No evidence was led by the Prosecution to demonstrate that the Second Accused directly or indirectly by his acts or omissions committed crimes physical violence in the Koinadugu district. The Prosecution failed to adduce any evidence that the Second Accused knew or had reasons to know that crimes were being committed in Koinadugu. The Defence has led sufficient evidence to show that the Second Accused was at all times relevant to the Indictment not in the Koinadugu district.

#### **Bombali District,**

Paragraph 62 of the Indictment alleges 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”

#### **Witnesses For The Prosecution**

298. Prosecution Witness TFI-334 testified that Gullit ordered that amputations should take place at Gbomsabma in the presence of Bazy.<sup>571</sup> Witness TFI-157 testified that he saw rebels chop off a person's hand at Mayogbo.<sup>572</sup> Witness TFI-033 testified that Bonoya and Karina suffered the worst atrocities ever meted out on civilians. About 500 civilians were killed, 300 amputated, over 200 women raped.<sup>573</sup> The evidence of Prosecution Witnesses TFI-334, TFI-157 and TFI-033 as is inconsistent, exaggerated, biased and littered with contradictions.

#### **Witnesses For The Second Accused's Defence**

299. Defence Witness DBK-094 testified that he did not see any one from Karina who had been amputated.<sup>574</sup> Witness DBK-094 testified that the names he heard of as responsible for the attack Karina on May 8, 1998, were Jabbie and Adama Cut

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<sup>571</sup> Transcript 24 May 2005 page 9-10

<sup>572</sup> Transcript, 22 July 2005 page 71-72

<sup>573</sup> Transcript, 11 July 2005 page 19

<sup>574</sup> 11 July 2006, page 40



Hand.<sup>575</sup> DBK-113 testified that during this period at Karina, he did not see or hear about the Second Accused being at Karina nor he did not see or hear that Ibrahim Bazy Kamara give orders to burn houses or to burn civilian in houses at Karina.<sup>576</sup>

### **Findings Of The Second Accused's Defence**

300. The Second Accused was not present in Mayogbo, Karina, Bonoya and Gbomsabma. The Prosecution failed to prove that the Second Accused had command and control over those that committed the alleged crimes or that he participated in a common plan to commit the crime. The Defence submits that based on the prosecutions evidence the Second Accused cannot reasonable be convicted on anyof these counts in the Indictments

### **Freetown and Western Area,**

Paragraph 63 of the Indictment alleges 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”

### **Findings Of The Second Accused's Defence**

301. The Prosecution failed to show that the Second accused took part in, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of physical violence in Freetown. Defence Witness DBK-037 and DAB-033 testified that FAT was the overall commander for the movement to the city.<sup>577</sup> Defence Witness DBK-131 stated that he did not see Ibrahim Bazy Kamara in Freetown.<sup>578</sup> DAB-033 testified that in Brima Bazy Kamara, the Second Accused, did not come to Freetown Freetown on 6 January 1999.<sup>579</sup> The Defence

<sup>575</sup> 11 July 2006, page 73

<sup>576</sup> Transcript 13 October 2006 page 48-49

<sup>577</sup> Witness DBK-037 TT 04 October 2006 page 9; Witness DAB-033 TT 25 September 2006 page 67

<sup>578</sup> Transcript, 26 October 2006 page 52 Cross-examination

<sup>579</sup> Transcript, 25 September 2006 page 107

submits that the Second Accused Ibrahim Bazy Kamara was not in Freetown at any point relevant to the indictment.

### **Port Loko District**

Paragraph 64 of the Indictment alleges 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 limbs”

### **Witnesses For The Prosecution**

302. Prosecution Witness TFI-167 alleged that in a village, he saw a lot of dead bodies, some with amputated legs and arms. Prosecution Witness TFI-167 testified that whilst he was resting in the village where the fat woman was killed he saw a lot of dead bodies, some with amputated legs and arms.<sup>580</sup> Witness TFI-167 testified that Sheriff complaint to him that Cyborg had amputated those people and when they got back to west Side TFI-167 complaint to Bazy who neglected to report.<sup>581</sup> Prosecution Witness TFI-253 testified that the commanders he saw were Colonel Sesay and Johnson.<sup>582</sup> Confirming Defence Witnesses DBK-037, DBK-129, DBK-012 and DBK-113 all testified that FAT was the overall commander, and TFI-167 was his second in commander.<sup>583</sup>

### **Witnesses For The Second Accused's Defence**

303. Defence Witness DBK-129 testified that he did not see or hear about Ibrahim Bazy Kamara being at the West Side.<sup>584</sup> Witness DBK-012 testified that he did not see second accused at the West Side and he never get to hear that the second accused

<sup>580</sup> Transcript 16 September 2005 page 75-76

<sup>581</sup> Transcript 16 September 2005 page 78-79

<sup>582</sup> Transcript 15 April 2005 pages 81-83

<sup>583</sup> Witness DBK-037 TT, 04 October 2006 page 18; Witness DBK-129, TT, 09 October 2006 page 84; Witness DBK-012, TT, 06 October 2006 page 46-47; Witness DBK-113 TT13 October 2006 page 52

<sup>584</sup> Transcript, 09 October 2006 page 94-95

was present at the West Side.<sup>585</sup> Witness DBK-037 testified that Ibrahim Bazy Kamara was not the overall commander at West Side.<sup>586</sup>

**Findings Of The Second Accused's Defence**

304. Prosecution Witness TFI-167 is biased and has no credibility and cannot support a conviction on any of the counts alleged in the Indictment.

**Concluding Submission on Counts 10 and 11 of the Indictment:**

305. By virtue of the foregoing evidence available to the Court and the totality of the arguments presented in this Closing Brief, the Defence for the Second Accused again submits that the Second Accused is not individually criminally responsible (whether by his act or omission or through the conduct of other individual(s) or through a joint enterprise), and *a fortiori* does not bear the greatest responsibility, for any physical violence, including mutilations and/or other inhumane acts alleged in the Indictment.

**COUNT 12:**

- j. **The Crime of Conscripting or Enlisting Children Under 15 Years into Armed Forces or Groups, or Using Them to Participate Actively in Hostilities**  
**(The Use of Child Soldiers):**  
**An Other Serious Violation of International Humanitarian Law:**

**The Legal Definition of "Conscripting or Enlisting Children Under 15 Years into Armed Forces or Groups, or Using Them to Participate Actively in Hostilities":**

306. Count 12 alleges the crime of "conscripting or enlisting children under 15 years into armed forces or groups, or using them to participate actively in hostilities", an other serious violation of international humanitarian law, punishable under Article 4.c of the Statute. In its Rule 98 Decision, the Court noted that in order prove the aforesaid crime as alleged in the Indictment, the Prosecution should lead evidence to

<sup>585</sup> Transcript, 06 October 2006 page 49

<sup>586</sup> Transcript, 05 October 2006 page 17 Cross-examination

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prove the elements of the offence within the meaning of Article 4.c of the Statute as follows: firstly, that “*the perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities*”; secondly, that “*such persons were under the age of 15 years*”; thirdly, that “*the perpetrator knew or should have known that such person or persons were under the age of 15 years*”; fourthly, that “*the conduct took place in the context of and was associated with an armed conflict*”; and finally, that “*the perpetrator was aware of the factual circumstances that established the existence of an armed conflict*”.<sup>587</sup> (Emphasis added).

**Factual Analysis to Disprove Counts 12 above of the Indictment:**

307. In order to prove the foregoing Count, the Prosecution again alleges that the Second Accused, by his “acts” or “omissions”, is individually criminally liable for the crimes alleged in paragraph 65 of the Indictment, pursuant to Article 6.1 and Article 6.3 of the Statute. The Count particularly alleges that “*at all times relevant to [the] Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities*”. It alleges further that the said children were firstly “*abducted*”, and then “*trained in various AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters*”. (Emphasis added).

308. The analysis below, again done on an event-to-event basis, demonstrates that Count 12 lacks evidential merit against the Second Accused and should be dismissed.

**Crime-Based Factual Analysis of Evidence on the “Use of Child Soldiers” at All Times relevant to [the] Indictment & throughout the Republic of Sierra Leone:**

309. The analysis below, done on a general basis, demonstrates that Count 12 lacks evidential merit against the Second Accused and should be dismissed.

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<sup>587</sup> See para. 194 of the Court’s Rule 98 Decision.

### **Witnesses For The Prosecution**

310. In leading evidence to prove Count 12 above, the Prosecution called a number of factual<sup>588</sup> and expert witnesses<sup>589</sup> 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 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.

### **Findings Of The Second Accused’s Defence**

311. 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.

312. The Report by Mr. Gbla<sup>590</sup> on The use of child soldiers in the Sierra Leone conflict was tendered by the Defence without objection nor cross-examination.<sup>591</sup> The specific objectives of the analysis was to prove the following viewpoints: The

<sup>588</sup> See for example Court Transcripts for TF1-157 dated 22 July 2005, TF1-158 dated 26 July 2005

<sup>589</sup> See Court Transcripts for TF1-296 dated 4 October 2005 as well the Expert Report tendered as Exhibit

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<sup>590</sup> Defence Exhibits D37

<sup>591</sup>

prevalence of the use of child soldiers during the Sierra Leonean conflict and the parties involved; the methods of recruitment; The role of the Sierra Leone government in recruiting child soldiers and its subsequent consequences on the composition of the AFRC government; the Sierra Leone's commitment to international and regional treaties and other instruments and on the protection of the rights of children and their domestic implementation.

**313.** The report examined child childhood as seen in the African context;

The traditional African setting offers a different conception of childhood as chronological age as an indicator for the termination of childhood is an arbitrary concept. In this sense, the ending of childhood has little to do with achieving a particular age and more to do with physical capacity to perform acts reserved for adults. Marriage and the establishment of a new homestead are traditionally two prime indications of an adult male. As such, childhood refers more to a position in a societal hierarchy than to biological age and in order to become an adult it is necessary to ascend this hierarchy.<sup>592</sup>

**314.** And who is considered a child under the Sierra Leonean Law

The issue of defining who is a child in the Sierra Leone jurisdiction also varies according to context. The voting age under the 1991 Constitution (Act No 6 of 1991) is 18 years although persons who are 17 years and half can be lawfully recruited into the national army (Sierra Leone Military Forces Act No 34 of 1961). The Prevention of Cruelty to Children Act 1960 (Laws of Sierra Leone, Vol.1, Chapter 31 at section 2, defines child as some one who is sixteen years or younger. This lack of a consistent age limit for childhood affects the level of protection due to adolescent combatants and other younger persons.<sup>593</sup>

**315.** The following conclusions were drawn from the report;

**316.** One of its major findings is that all the warring factions including the pro-government forces recruited child soldiers through various recruitment methods

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<sup>592</sup> N. Argenti, 2002, *Youth in Africa: A major resource for change*, in A. de Waal and N. Argenti, (eds.) *Young Africa: Realising the rights of children and youth*, World Press Inc, Trenton NJ, and Asmara, 2002, p.125 cited in Afua Twum-Danso, 2003, *ibid*

<sup>593</sup> Mohamed Pa- Momoh Fofanah, *Juvenile Justice and Children in Armed Conflict: Facing the Fact and Forging the Future Via The Sierra Leone Test*, A Paper submitted in partial fulfilment of the Degree of Master of Laws at Harvard Law School, USA p.15

including voluntary and forced .The study however acknowledges that forced recruitment was most common with the RUF faction.

317. The study also confirms that the role of the Sierra Leone government in recruiting child soldiers especially during the war in an attempt to bolster government forces to face the rebels sidestepped recruitment procedures and undermined efficient training and this in a way influenced the composition of the SLA faction that withdrew into the jungle
318. The study also reveals that prior to the on-going British-led military training programme, there was very little serious and consistent efforts to infuse child rights issues in the training of the security forces in the country especially the military.
319. It is also a major findings of the study that although the Sierra Leone government has endeavoured over the years to put in place national legislations and to sign and ratify various international legal instruments bordering on the prevention of child soldiers recruitment into the military and by other armed groups, a lot still needs to be done in their implementation. Some of the national laws pertaining to the prevention of the recruitment of children into armed factions and the military are archaic, outdated and not in tune with international legal instruments like the UNCRC.
320. The study also shows that a number of civilians including children that followed the AFRC members after they were ousted from power in February were mostly family members and other associates that were afraid of reprisals.
321. The Defence submits that the report confirms the evidence led by the Defence witnesses that after the ECOMOG invasion the AFRC members left Freetown with their family members and other associates.

322. The Prosecution failed to adduce evidence that the Second Accused had the necessary intent to enlist, knew or should have known that such person or persons were under the age of 15 years were enlisted.

**Concluding Submission on Count 12 of the Indictment:**

323. By virtue of the foregoing evidence available to the Court and the totality of the arguments presented in this Closing Brief, the Defence for the Second Accused again submits that the Second Accused is not individually criminally responsible (whether by his act or omission or through the conduct of other individual(s) or through a joint enterprise), and *a fortiori* does not bear the greatest responsibility, for the criminal conduct of “conscripting or enlisting children under 15 years into armed forces or groups, or using them to participate actively in hostilities”, as alleged in Count 12.

**COUNT 13:**

**k. The Crime of Enslavement (A Form of Abduction and Forced Labour):**

**A Crime Against Humanity:**

**The Legal Definition of the Crime of “Enslavement”:**

324. Count 13 alleges “enslavement”, another crime against humanity punishable under Article 2.c of the Statute. The said enslavement, according to the Indictment, took forms of “abduction and forced labour”. Like the crimes outlined above, the Court, in its Rule 98 Decision, noted that in order to prove the crime of “enslavement” as alleged, the Prosecution should lead evidence to prove the elements of the offence as follows: firstly, that “*the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty*”; secondly, that “*the conduct was committed as part of a widespread or systematic attack directed against a civilian population*”; and thirdly, that “*the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian*”



population”.<sup>594</sup> (Emphasis added). The Court adopted the International Criminal Court’s Preparatory Commission’s Elements of Crimes, designed to assist judges in their interpretation and application of subject matter articles of the Rome Statute, in order to set forth the foregoing elements of the crime.<sup>595</sup> These elements, the Court held, “incorporates the definition [of the crime of enslavement] given in the ICTY case of *Prosecution v. Kunarac*<sup>596</sup> with the common elements of crimes against humanity”<sup>597</sup>. Thus, for *Kunarac*, the *actus reus* of the crime of enslavement comprises “the exercise of any or all of the powers attaching to the right of ownership over a person” and the *mens rea* comprises “the intentional exercise of such powers”<sup>598</sup>.

**Factual Analysis to Disprove Count 13 above of the Indictment:**

325. In order to substantiate the foregoing Count charge, the Prosecution alleges that the Second Accused, by his “acts” or “omissions”, is individually criminally liable for the crimes alleged in paragraphs 66 to 73 of the Indictment, pursuant to Article 6.1 and Article 6.3 of the Statute of the Court. The said allegations touch and concern seven set of occurrences at various locations in Sierra Leone, including the Districts of Kenema, Kono, Koinadugu, Bombali, Kailahun, Freetown and the Western Area, and Port Loko. The crimes are said to have been perpetrated “at all times relevant to [the] Indictment”, including the periods between “1 August 1997 and 31 January 1998”, “14 February 1998 to January 2000”, “14 February 1998 and 30 September 1998”, “1 May 1998 and 31 (*sic*) November 1998”, and “6 January 1999 and 28 February 1999” in which it is alleged that members of AFRC/RUF, including the Second Accused, “engaged in widespread and large scale abductions of civilians and use of civilians as forced labour”.

<sup>594</sup> See para. 214 of the Court’s Rule 98 Decision, *supra*.

<sup>595</sup> *Id.*, citing, Rodney Dixon and Karim Khan, *Archbold International Criminal Courts Practice, Procedure & Evidence* (London: Sweet and Maxwell, 2003), para. A3-011 etc.

<sup>596</sup> ICTY IT-96-23-T & IT-96-23/I-T, Judgment, at paras. 540-42 [hereinafter called “*Kunarac Judgment*”].

<sup>597</sup> Para. 215 of the Court’s Rule 98 Decision, *supra*.

<sup>598</sup> See the *Kunarac Judgment*, at para. 540 *supra*.

326. The Indictment further defines “forced labour” as including “domestic labour and use as diamond miners”. The factual analysis below takes each alleged event, within the confines of a stated location, on its merits vis-à-vis the evidence before the Court.

ii. **Crime-Based Factual Analysis of Evidence on the Crime of “Enslavement”:**

**Witnesses For The Prosecution**

327. 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, 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

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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”.

#### **Findings Of The Second Accused’s Defence**

**328.** 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 TF1-045<sup>599</sup> 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.

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<sup>599</sup> See Court Transcript of TF1-045 on 21 July 2005 and Transcript of TF1-062 on 27 June 2005, p. 53-55.

**Concluding Submission on Count 13 of the Indictment:**

329. By virtue of the foregoing evidence available to the Court and the totality of the arguments proffered in this Closing Brief, the Defence for the Second Accused submits that the Second Accused is not individually criminally responsible (whether by his act or omission or through the conduct of other individual(s) or through a joint enterprise), and *a fortiori* does not bear the greatest responsibility, for the crime of enslavement in any of its forms alleged in the Indictment.

**COUNT 14:**

**I. The Crime of Pillage (A Form of Looting and “Burning”):**

**A Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II:**

**The Legal Definition of the Crime of “Pillage”:**

330. Count 14 alleges “pillage”, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II and punishable under Article 3.f of the Statute. The said “pillage”, according to the Indictment, took forms of “looting and burning”. Like the crimes outlined above and as noted in paragraph 98 of this Closing Brief, the Court, in its Rule 98 Decision, noted that in order to prove the crime of “pillage” within the meaning of Article 3.f of the Statute, the Prosecution should lead evidence to prove the elements of the offence as follows: firstly, that “*the perpetrator appropriated property*”; secondly, that “*the appropriation was without the consent of the owner*”; and thirdly, that “*the perpetrator intended to deprive the owner of the property*”.<sup>600</sup> (Emphasis added). The Court indicated that, in line with the ICTY case of *Prosecution v. Delalic et al (the Celebici case)*,<sup>601</sup> the perpetrator’s intention to

<sup>600</sup> See para. 243 of the Court’s Rule 98 Decision, *supra*.

<sup>601</sup> *Delalic* Trial Chamber Judgment, para. 590, *supra* at note 72.

deprive the owner of property need not be for “private or personal use” as that will unduly restrict the definition of the offence of pillage<sup>602</sup>.

**Factual Analysis to Disprove Count 14 above of the Indictment:**

331. In order to substantiate the above Count, the Prosecution alleges that the Second Accused, by his “acts” or “omissions”, is individually criminally liable for the crimes alleged in paragraphs 74 to 79 of the Indictment, pursuant to Article 6.1 and Article 6.3 of the Statute of the Court. The said allegations concern five set of occurrences at various locations in Sierra Leone, including the Districts of Bo, Koinadugu, Kono, Bombali, and Freetown and the Western Area. The crimes are said to have been perpetrated “at all times relevant to [the] Indictment”, including the periods between “1 June 1997 and 30 June 1997”, “14 February 1998 and 30 September 1998”, “14 February 1998 and 30 June 1998”, “1 March 1998 and 31 (*sic*) November 1998”, and “6 January 1999 and 28 February 1999” in which it is alleged that members of AFRC/RUF, including the Second Accused, “engaged in widespread and unlawful taking and destruction by burning [and looting] of civilian property”.
332. The Defence for the Second Accused re-submits that the elements of the offence of “pillage” do not envisage and are not meant to include “burning”. Whilst the element of ‘deprivation of the owner of his property without his consent’ may be akin to both pillage and burning, the element of ‘appropriation by the taker of the property of the owner’ does not avail in the offence of burning, much as it does in pillage. In this regard, the factual analysis below shall analyze each alleged event within the confines of a stated location and in particular the allegation of pillage, which includes looting. This exercise shall be conducted vis-a-vis the evidence before the Court.

ii. **Crime-Based Factual Analysis of Evidence on the Crime of “Pillage”:**

**COUNT 14: LOOTING AND BURNING**

<sup>602</sup> Para. 242 of the Court’s Rule 98 Decision, *supra*.

**Crime-Based Factual Analysis of Evidence on the Crime of "Pillage":**

**Bo District**

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, Sembahun, Mamboma and Tikonko"

**Witnesses For The Prosecution**

333. Prosecution Witness TFI-004 alleged that soldiers came and attacked Tikonko and during that attack houses in the village were burnt.<sup>603</sup> RUF soldiers spent about two years at Tikonko before the coup and he was certain that Babbu Paddy and the others were RUF, who attacked Tikonko after the coup.<sup>604</sup> The Prosecution did not lead any evidence to show that the Second Accused was in Tikonko at any time relevant to the Indictment. AF Kamara was the Secretary of State for the southern region and A Boiesie Palmer who was the brigade commander in Bo,<sup>605</sup> No evidence was led to show that the second Accused knew or had reason to know that burning was being committed in Bo.

**Witnesses For The Defence**

334. The Second Accused relies on the evidence of Defence Witness DBK 137 in respect of the allegations in this Count.

**Findings Of The Second Accused's Defence**

335. The Prosecution failed to adduce evidence that the Second Accused had command over the Secretary of State for the southern region, brigade commander and the people who carried out the burning. Prosecution Witness TFI-334 stated that AF Kamara was supervised by the deputy-chairman, SAJ Musa<sup>606</sup> and Colonel Boiesie Palmer was under the direct command of the chief of army staff.<sup>607</sup> The Defence submits that the evidence of TFI-004 does not support the allegation of facts charged in the Indictment.

<sup>603</sup> Witness TFI-004, TT 23 June 2005 page 16 and 28

<sup>604</sup> Witness TFI-004, TT 23 June 2005 page 129 and 130

<sup>605</sup> Witness TFI-054, TT 19 April 2005 page 78 and 107; Witness TFI-053, TT 18 April 2005 page 107; TT 19 April 2005, pages 20, 21

<sup>606</sup> Witness TFI-334 TT 17 May 2005 pages 17-18

<sup>607</sup> Witness TFI-334 TT 17 May 2005 pages 21

### **Koinadugu District,**

Paragraph 76 of the Indictment alleges 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

### **Witnesses For The Prosecution**

**336.** Prosecution Witness TFI-199 testified that in Fadugu the rebels attacked the town and in the centre of town rebels burnt houses and abducted civilians.<sup>608</sup> The AFRC and RUF rebels attacked Kabala in an attempt to take it from government and ECOMOG. Rebels looted and burnt houses.<sup>609</sup> Witness TFI-133 testified that Kumala was burnt down.<sup>610</sup>

**337.** TFI-153 saw when these soldiers looted a handicapped person’s shop, called Stevo. They said it was operation Pay Yourself.<sup>611</sup> TFI-153 had 10,000 Leones, the soldier took 8,000 and gave 2,000. TFI-153 give him his watch.<sup>612</sup>

### **Witnesses For The Defence**

**338.** Several Defence witnesses testified that the ECOMOG attacked and bombed Kabala and Mongo Bendugu killing civilians.<sup>613</sup> Witness DAB 077 testified that the ECOMOG forces attacked Fadugu killing people.<sup>614</sup> The ECOMOG were in Fadugu from March to September 1998<sup>615</sup> and during this period they killed civilians.<sup>616</sup>

### **Findings Of The Second Accused’s Defence**

<sup>608</sup> Transcript 7 July 2005 page 77-80

<sup>609</sup> Transcript 6 October 2005 pages 86-88

<sup>610</sup> Transcript 7 July 2005 page 81

<sup>611</sup> Transcript, 22 September 2005 page 33

<sup>612</sup> Transcript, 22 September 2005 page 34-35

<sup>613</sup> DBK-012, Transcript 05 October 2006 page 92, 94-95 ; DBK-037 Transcript 03 October 2006 page 87 and 94

<sup>614</sup> Transcript, 19 July 2006 page 56, 60

<sup>615</sup> Transcript, 19 July 2006 page 63

<sup>616</sup> Transcript, 19 July 2006 page 69,73-74 and 100 Cross-examination

339. The Defence submits that the crimes committed in Koinadugu district was done by the ECOMOG forces who attacked several areas in the Koinadugu district. The Second Accused was never present during these attacks. The Defences submits that the evidence stated by TFI-199 and TFI-133 on the fact has no credibility and cannot be relied upon to convict the Second Accused on any count of the Indictment.

#### **Kono District**

Paragraph 77 of the Indictment alleges 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”

#### **Witnesses For The Prosecution**

340. Witness TFI-074 stated that the AFRC and RFU soldiers attacked and looted Dandadu<sup>617</sup> TFI-074 testified that he remained 3 years with captors (1998 – 2002) during that period the commanders were Komba Gbundema, Captain Barry, Captain Ibrahim Ticker and Captain SK all RUF.<sup>618</sup>
341. Witness TFI-217 testified that in Koidu Town in 1998 Junta/rebels looted the town.<sup>619</sup> TFI-217 saw Lieutenant T a Junta and his boys burn houses.<sup>620</sup> Witness TFI-217 testified that Akim Sesay led troops to capture Koidu Town..<sup>621</sup> TFI-334 testified that Masingbi Road completely burnt down, and Bazy monitored the burning of that place.<sup>622</sup> In cross-examination TFI-334 stated that He came and met Bazy and TFI-167 burning the Masingbi Road and he did not take part in the burning of Masingbi Road, Bazy did.<sup>623</sup> TFI-334 stated that in Kono Bazy gave

<sup>617</sup> Transcript 5 July 2005 page 12

<sup>618</sup> Transcript 5 July 2005 pages 29-30 cross-examination

<sup>619</sup> Transcript 17 October 2005 pages 4-5

<sup>620</sup> Transcript 17 October 2005 page 9

<sup>621</sup> Transcript 17 October 2005 page 8

<sup>622</sup> Transcript 19 May 2005 page 10

<sup>623</sup> Transcript 21 June 2005 page 6- 7 Cross-examination



order that houses at Masingbi Road should be burnt because he said that enemies could use those houses to attack us.<sup>624</sup>

342. TFI-334 stated that “Raising someone” means to take away something completely from someone. There was a group called Wild Dogs operating under Junior Johnson, which was engaged in raising. Bazy was in charge of this group. When Junior Johnson gets something that he has raised, he would report<sup>625</sup>

#### **Witnesses For The Defence**

343. DBK-129 left Kono because the command, was under the RUF.<sup>626</sup> Witness DBK-129 testified that he did not see Ibrahim Bazy Kamara, the second accused, in Kono, during that time. It was the RUF was burning houses in Kono. Superman gave the ordered because he was the commander. They set fire on the houses by Five-Five<sup>627</sup>
344. Witness DBK-113 testified that he did not or hear about Ibrahim Bazy Kamara being present at Koidu Town.<sup>628</sup> The Overall commander in Kono in charge of the RUF fighting forces in Koidu Town, at the time was Superman and he ordered that houses should be burnt.<sup>629</sup>
345. Witness DAB-027 testified that the RUF attacked Koidu Town and they burnt the houses.<sup>630</sup> He stated that it was the RUF SBU at Koidu Town that burnt houses. Witness DAB-027 testified that he did not or hear about Ibrahim Bazy Kamara being present in Kono.<sup>631</sup>

<sup>624</sup> Transcript 20 May 2005 page 7

<sup>625</sup> Transcript 20 May 2005 page 32-33

<sup>626</sup> Transcript, 09 October 2006 page 73

<sup>627</sup> Transcript, 09 October 2006 page 71

<sup>628</sup> Transcript, 13 October 2006 page 48

<sup>629</sup> Transcript, 13 October 2006 page 66

<sup>630</sup> Transcript, 05 September 2006 page 9

<sup>631</sup> Transcript, 05 September 2006 page 12

346. While in Kono DAB-018 received orders from Akim.<sup>632</sup> The overall boss was Mosquito.<sup>633</sup> The Alpha Jets bombed in Koidu Town.<sup>634</sup> Witness DAB-018 testified that he did not hear or see Ibrahim Bazy Kamara in Kono.<sup>635</sup>

347. Witness DAB-095 testified that the commander in Kono after the intervention was Denis Mingo, who was called Superman. Superman, gave orders to his men to burn houses in Koidu.<sup>636</sup> DAB-095 did not see or hear about Ibrahim Bazy Kamara being one of the commanders in Koidu.<sup>637</sup> Witness DAB-095 testified that he did not see or hear about any Ibrahim Bazy Kamara ordering the burning of houses in Koidu Town. Witness DAB-095 testified that he did not see or hear about any Ibrahim Bazy Kamara ordering soldiers to loot in Koidu Town. Did not see or hear about any Ibrahim Bazy Kamara ordering soldiers or rebels to mine for diamonds in Koidu Town. .<sup>638</sup>

#### **Findings Of The Second Accused' S Defence**

348. Only Prosecution Witness TFI-334 alleged that the Second Accused carried out burning in Kono. The evidence was uncorroborated. The Defence submits that it has led sufficient evidence to show that the Second Accused was never in Kono at any time relevant to the Indictment.

#### **Bombali District,**

Paragraph 78 of the Indictment alleges 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”;

#### **Witnesses For The Prosecution**

<sup>632</sup> Transcript, 07 September 2006 page 14-15

<sup>633</sup> Transcript, 07 September 2006 page 16

<sup>634</sup> Transcript, 07 September 2006 page 19

<sup>635</sup> Transcript, 07 September 2006 page 44

<sup>636</sup> Transcript 21 September 2006 page 34

<sup>637</sup> Transcript 21 September 2006 page 37

<sup>638</sup> Transcript 21 September 2006 page 37

349. Witness TFI-334 alleged that in Karina, Bazzy's CSO set a house ablaze with 5 girls in it, while the main door was closed by Bazzy. They stood there until the house burnt to ashes.<sup>639</sup> Witness TFI-167 stated he was with Bazzy when Eddie Williams aka Maf. went into the house, wrapped people in carpets of the house and set the house on fire. He drew fuel from the Mercedes Benz.<sup>640</sup> Prosecution Witness TFI-334 and TFI-167 both gave a contradiction stories and it was inconsistent with that of Prosecution Witness TFI-055 who is a factual witness from Karina. Witness TFI-055 was in Karina at the time of the attack, does not mention that anybody was burnt in a house in Karina.<sup>641</sup> and that some people told TFI-055 that Jabbie was the one who attacked Karina.<sup>642</sup>

#### **Witnesses For The Second Accused's Defence**

350. Defence Witness DBK-094 testified that the names he heard that attacked Karina on May 8, 1998, were Jabbie and Adama Cut Hand.<sup>643</sup> Witness DBK-094 testified that he heard the name Ibrahim Bazzy Kamara over the radio when witnesses were talking about him in the Court. DBK-094 testified apart from the radio, he never heard the name anywhere.<sup>644</sup>

351. Defence Witness DBK-113 testified that the troop s that got to Karina was led by FAT, Colonel Eddie and Junior Lion. Junior Lion said that Karina was Tejan Kabba's village, so it should be burnt down.<sup>645</sup> DBK-113 that during this period at Karina, he did not see or hear about Ibrahim Bazzy Kamara being at Karina and he did not see or hear that Ibrahim Bazzy Kamara gave orders to burn houses or to burn civilian in houses at Karina.<sup>646</sup>

#### **The Findings Of The Second Accused's Defence**

<sup>639</sup> Transcript 23 May 2005 page 66-67

<sup>640</sup> Transcript 15 September 2005 page 54-55

<sup>641</sup> Transcript, 12 July 2005 page 138

<sup>642</sup> Transcript, 12 July 2005 page 142

<sup>643</sup> 11 July 2006, page 73

<sup>644</sup> 11 July 2006, page 101-102

<sup>645</sup> Transcript 13 October2006 page 21

<sup>646</sup> Transcript 13 October2006 page 48-49

352. The Defence submits that the evidence of TFI-334 and TFI-167 contradictory and inconsistent, thus should not be relied upon to convict Ibrahim Kamara on any count of the Indictment.

**Freetown and the Western Area,**

paragraph 79 of the Indictment alleges 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, Ugun, State House and Pademba Road areas of the city”.

**Witnesses For The Prosecution**

353. Witness TFI-334 testified that there was looting at State House.<sup>647</sup> Witness TFI-334 testified that around the mental home area Gullit order that they should set ablaze the vehicles and Bazy was present.<sup>648</sup> Witness TFI-046 alleged it was Bazy order the burning of vehicles around the mental home area.<sup>649</sup> At Waterloo, Bazy said the houses within the highway at Waterloo should be set on fire.<sup>650</sup> Prior statement TFI-334 stated that it was Gullit who made the order to burn down the villages in the Waterloo axis. TFI-334 insists it was Bazy who gave the order.<sup>651</sup> Witness TFI-167 testified that they burnt houses at random. The burning went on throughout the whole eastern part of Freetown.<sup>652</sup>

**Findings Of The Second Accused’ Defence**

354. The Defence submits that the evidence of TFI-334, TFI-167 and TFI-046 are in consistent, flawed and based on their hole evidence is far from being true. The

<sup>647</sup> Transcript 14 June 2005 page 26

<sup>648</sup> Transcript 14 June 2005 page 83

<sup>649</sup> Transcript 10 October 2005 page 24

<sup>650</sup> Transcript 15 June 2005 page 11

<sup>651</sup> Transcript 22 June 2005 page 33 Cross-examination

<sup>652</sup> Transcript 16 September 2005 page 56

Defence submits that the Second Accused was not present in Freetown at the relevant period of the Indictment.

**Concluding Submission on Count 14 of the Indictment:**

355. By virtue of the foregoing evidence available to the Court and the totality of the arguments proffered in this Closing Brief, the Defence for the Second Accused submits that the Second Accused is not individually criminally responsible (whether by his act or omission or through the conduct of other individual(s) or through a joint enterprise), and *a fortiori* does not bear the greatest responsibility, for the crime of pillage in any of its forms alleged in the Indictment.

**COUNT 1:**

**m. The Crime of Acts of Terrorism (Terrorizing the Civilian Population):  
A Violation of Article 3 Common to the Geneva Conventions and of Additional  
Protocol II:**

**The Legal Definition of “Acts of Terrorism”:**

356. Count 1 of the Indictment alleges “acts of terrorism” as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II and punishable under Article 2.d of the Statute. In its Rule 98 Decision, the Court stated that in order to prove the aforesaid crime as alleged in the Indictment, the Prosecution should lead evidence to prove the elements of the offence as contained in “the elements constitutive of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II” as well as within the meaning of Article 3.d of the Statute as follows: firstly, that “*acts or threats of violence were directed against protected persons or their property*”; secondly, that “*the offender willfully made protected persons or their property the object of those acts and threats of violence*”; and thirdly,

that “*the acts or threats of violence were committed with the primary purpose of spreading terror among protected persons*”.<sup>653</sup> (Emphasis added).

## COUNT 2:

### n. The Crime of Collective Punishments:

#### A Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II:

##### The Legal Definition of “Collective Punishments”:

357. Count 2 of the Indictment alleges “Collective Punishments” as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II and punishable under Article 3.b of the Statute. In its Rule 98 Decision, the Court stated that in order to prove the aforesaid crime as alleged in the Indictment, the Prosecution should lead evidence to prove the elements of the offence within the meaning of Article 3.b of the Statute as follows: firstly, that “*the constitutive elements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II*” existed at the time of the offence; secondly, that “*a punishment [was] imposed upon protected persons for acts that they have not committed*”; and thirdly, that there existed at the material time “*the intent, on the part of the offender, to punish the protected persons or group of protected persons for acts which form the subject of the punishment*”.<sup>654</sup> (Emphasis added).

##### Factual Analysis to Disprove Counts 1 and 2 above of the Indictment:

358. In order to prove the foregoing Counts, the Prosecution again alleges that the Second Accused is, by his “acts” or “omissions”, individually criminally liable for the crimes alleged in paragraph 41 of the Indictment, pursuant to Article 6.1 and Article 6.3 of the Statute. The Counts particularly allege that the Second Accused committed

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<sup>653</sup> See para. 49 of the Court’s Rule 98 Decision. The Court adopted the definition of “acts of terrorism” formulated by Trial Chamber I in *Prosecutor v. Norman et al*, SCSL-2004-14-T-473, Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, 21 October 2005, at para. 112.

<sup>654</sup> See para. 62 of the Court’s Rule 98 Decision. The Court again adopted the definition of “collective punishments” formulated by Trial Chamber I in *Prosecutor v. Norman et al*, Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, *supra* at para. 118.

the said ‘acts of terrorism’ and ‘collective punishments’ 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*”. (Emphasis added). As noted earlier in this Final Trial Brief, proof of these offences is firstly, dependent upon proof of the crimes set forth in paragraphs 42 to 79 as charged in Counts 3 to 14 of the Indictment, followed by proof of the elements of the offences themselves, namely, ‘acts of terrorism’ and ‘collective punishments’ as set out above.

359. The analysis below, again done on an event-to-event basis, amply illustrates that both Counts 1 and 2 above lack evidential merit against the Second Accused and should be dismissed.

**Crime-Based Factual Analysis of Evidence on Counts 1 and 2 at  
All Times relevant to the Indictment & Throughout the Republic of Sierra Leone:**

360. In Counts 1 and 2, the Prosecution alleges that, Brima Bazzy Kamara at all times relevant to the Indictment, committed the crimes alleged in counts 3 through 14 as part of a campaign to terrorise the civilian population of the Republic of Sierra Leone and did terrorize that population.<sup>655</sup>

361. The Defence submits that with regards to Count 1, the Prosecution has failed to adduce evidence with regards to the specific elements of the crime. That the Second Accused directly or indirectly ; a) acts or threats of violence directed against protected persons or their property; b) willfully made protected persons or their property the object of those acts and threats of violence. c) the acts or threats of

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<sup>655</sup> Indictment para 41

violence were committed with the primary purpose of spreading terror among protected persons.<sup>656</sup>

362. In Count 2 the Prosecution failed to prove that the Second Accused directly or indirectly; a) punishment imposed upon protected persons for acts that they have not committed and b) The intent, on the part of the offender, to punish the protected persons or group of protected persons for acts which form the subject of the punishments.<sup>657</sup>

363. The Prosecution failed to prove that the Second Accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of such acts of terrorism and collective Punishments.

364. The Prosecution has not established that the Accused ever gave an order that “acts or threats of violence” or “punishment” should be committed against the civilian population. Furthermore, it is not possible on the evidence in Counts 3 through 14 and in the circumstances to infer that the Accused knew or had reason to know that these acts of terrorism and collective punishment were being committed, therefore the Prosecution failed to establish beyond a reasonable doubt that the Accused knew or had reason to know about these crimes.

**Concluding Submission on Counts 1 and 2 of the Indictment:**

365. By virtue of the foregoing evidence available to the Court and the totality of the arguments presented in this Final Trial Brief, the Defence for the Second Accused again submits that the Second Accused is not individually criminally responsible (whether by his act or omission or through the conduct of other individual(s) or through a joint enterprise), and *a fortiori* does not bear the greatest responsibility, for

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<sup>656</sup> *Prosecutor v. Norman et al.*, Case No. SCSL-2004-14-T-473, Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, 21 October 2005, para. 111, referring to the ICRC Commentary on the Additional Protocols, at 1375.

<sup>657</sup> *Prosecutor v. Norman et al.*, Case No. SCSL-2004-14-T-473, Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, 21 October 2005, para. 118.



any acts of terrorism and/or collective punishments against the civilian population of Sierra Leone as alleged in the Indictment.

**PART D: BURDEN OF PROOF AND RELIEF SOUGHT FROM THE COURT:**

**a. The Burden and Standard of Proof in International Criminal Trials:**

366. The Trial Chamber in the ICTY case of *Prosecutor v. Delalic et al*, laid out the general principle of the *Burden of Proof* at International Criminal Trials as follows:

“It is a fundamental requirement of any judicial system that the person who has invoked its jurisdiction and desires the tribunal or court to take action on his behalf must prove his case to its satisfaction. As a matter of common sense, therefore, the legal burden of proving all facts essential to their claims normally rests upon the plaintiff in a civil suit or the prosecutor in criminal proceedings.”<sup>658</sup> (Emphasis added).

367. Also, the Trial Chamber, in the *Delalic* Judgment above, noted that the *Standard of Proof* that the Prosecution is mandated to meet in order to discharge the Burden of Proof in International Criminal Trials is “to prove the case alleged against the accused beyond a reasonable doubt. At the conclusion of the case the accused is entitled to the benefit of the doubt as to whether the offence has been proved”.<sup>659</sup> (Emphasis added).

368. Regarding the onus placed on the accused in responding to charges against him, the said Trial Chamber held that “the accused is only required to lead such evidence as would, if believed and uncontradicted, induce a reasonable doubt as to whether his version might not be true, rather than that of the Prosecution. Thus the evidence which he [the accused] brings should be enough to suggest a reasonable

<sup>658</sup> *Delalic* Trial Chamber Judgment, para. 599, *supra* at note 72.

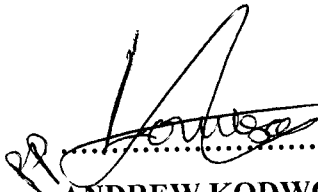
<sup>659</sup> *Id.*, para. 601.

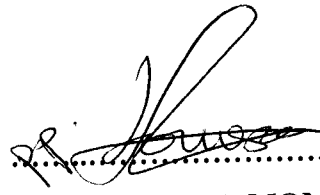
possibility”.<sup>660</sup> In other words, “the accused is required to prove any issues which he might raise on the balance of probabilities”<sup>661</sup>. The Defence for the Second Accused therefore submits that in view of the totality of evidence led by both the Prosecution and Defence and the arguments proffered in this Final Trial Brief by Counsel for the Second Accused, the Prosecution has failed on all Counts to prove its case *beyond reasonable doubt* against the Second Accused.

**b. Concluding Prayer or Relief Sought:**

369. For the reasons above stated, the Defence for the Second Accused prays that the Court acquits and discharges the Second Accused of all the Count Charges preferred against him in the current Indictment before the Court.

**This Final Trial Brief or Closing Arguments for the Second Accused, Mr. Ibrahim Bazy Kamara, is filed this 1<sup>st</sup> day of December 2006 by Counsel for the said Accused assisted by their Legal Assistant, Ms. Louisa Songwe:**

  
 .....  
**ANDREW KODWO DANIELS:**  
**LEAD COUNSEL,**  
**KAMARA DEFENCE TEAM.**

  
 .....  
**MOHAMED PA-MOMO FOFANAH:**  
**CO-COUNSEL,**  
**KAMARA DEFENCE TEAM.**

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<sup>660</sup> Id., para. 603.

<sup>661</sup> Id.

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