

**SPECIAL COURT FOR SIERRA LEONE
Freetown – Sierra Leone**

Trial Chamber 1

Before: Justice Pierre Boutet, Presiding
Justice Bankole Thompson
Justice Benjamin Mutanga Itoe

Interim Registrar: Mr. Lovemore Munlo

Date: 27 October 2005

**THE PROSECUTOR Against Sam Hinga Norman
Moinina Fofana
Allieu Kondewa**

Case No. SCSL-04-14-T

**Joint Motion of the First and Second Accused to Clarify the Decision on Motions for
Judgment of Acquittal pursuant to Rule 98**

Office of the Prosecutor

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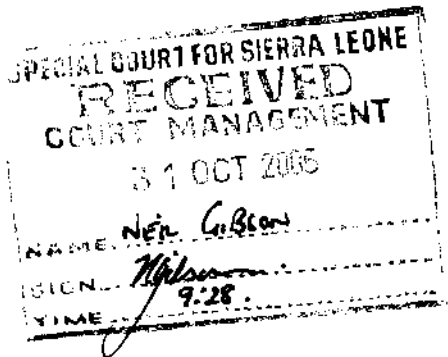
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I. Introduction

1. On 21 October 2005, the Defence Teams for the First and Second Accused, Samuel Hinga Norman and Moinina Fofana (the "Defence") wrote to the Hon. Justices of Trial Chamber I requesting clarification of its Decision on Motions For Judgment of Acquittal Pursuant to Rule 98 and Separate and Concurring Opinion Of Hon. Justice Bankole Thompson" (the "Decision")¹. On 26 October 2005, the Defence was informed by the Legal Officer for Trial Chamber I that the appropriate forum for a request for interpretation of decisions would be to file a formal Motion for Clarification.
2. As a result, the Defence hereby submit this motion to request clarification from the Trial Chamber of its Decision.

III. Background

3. In the "Disposition" section of the Decision the Chamber stated the following:
....
 - 2) Notwithstanding the above finding, the Chamber further finds in respect of particular allegations contained in each count of the Indictment as follows:
 1. That there is no evidence capable of supporting a conviction against the Accused Persons in respect of the offence of Murder as a Crime Against Humanity, punishable under Article 2(a) of the Statute and Murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute in respect of the following areas:
...
 - (x) Jembeh, as charged in paragraph 25(g) of the Indictment;
 - (xi) Gumahun, as charged in paragraph 25(g) of the Indictment;
 - (xii) Gerihun, as charged in paragraph 25(g) of the Indictment;
 - (xiii) Bo-Matotoka Highway, as charged in paragraph 25(g) of the Indictment;
4. As a result of the Decision, Paragraph 25(g) of the Indictment now contains no geographical locations. Given this, it is the interpretation of the Defence that in effect

¹ Prosecutor v. Norman et al, Decision on Motions For Judgment of Acquittal Pursuant to Rule 98 and Separate and Concurring Opinion Of Hon. Justice Bankole Thompson, Document Number, 21 October 2005, Court Document # SCSJ.-04-14-473.

Paragraph 25(g) has been dropped from the indictment and that the Defence, in presentation of its case, does not need to address “Operation Black December”.

5. As we are in the midst of preparing the presentation of our defence, the Defence brings this motion to request clarification from the Trial Chamber as to the correct interpretation to be given to Paragraph 25(g) of the Indictment in light of the Trial Chamber’s Decision.

II. Submissions

6. The Defence has reached its interpretation of the Decision on the basis that an indictment must make clear the capacity in which it is alleged the accused committed the offences and the material facts by which this will be established. As the ICTY has stated:

6...The indictment must also leave no doubt as to what the accused is alleged to have done at a *particular venue* on a particular date during a particular time period, with whom, to whom, or to what purpose...²

7. The geographic locations where crimes are alleged to have been committed are fundamental elements to be included in the indictment. At a minimum, an indictment must provide information as to the *place* and time of the alleged offences, the identity of the victims and co-perpetrators and the means by which the crimes were perpetrated.³
8. As a result of the Decision, paragraph 25(g) of the Indictment now reads as follows:

“g) between about 1 November 1997 and about 1 February 1998, as part of Operation Black December in the Southern and Eastern Provinces of Sierra Leone, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants in road ambushes”

² *Prosecutor v. Kunarac and Kovac*, IT-96-23&23/1, Decision on the Form of the Indictment, 4 November 1999, paragraph 6 (emphasis added).

³ *Prosecutor v. Dosen and Kolundzija*, IT-95-8, Decision on Preliminary Motions, 10 February 2000, paragraph 8 (emphasis added); and see: *Prosecutor v. Krnojelac*, (IT-97-25) Decision on Defence Preliminary Motion on the Form of the Indictment, February 24, 1999, para 12 following *Prosecutor v. Blaskic*, (IT-95-14) Decision on Defence Motion to Dismiss the Indictment Based Upon Defects in the Form thereof, April 4 1997, para 20.

9. By removing the geographical locations, paragraph 25 (g) is now lacking the precision necessary for the Accused to prepare their defences effectively and efficiently. Precision is key. As the ICTR has stated:

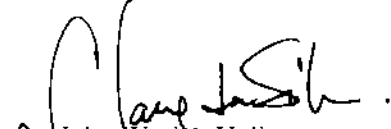
The Trial Chamber has read the concise statement of facts in this indictment. We underscore the need to have the precise statement of facts correspond to and explain the specific charges. The Prosecutor should also ensure that the facts used as a basis for the charges are clear enough so that the accused will not have to refer to the witness statements.


As a general rule, indictments are expected to be drafted in a precise manner. In the instant case, the accused is entitled to further information so that he can prepare his defence effectively and efficiently...⁴

IV. Conclusion

10. On this basis, the Defence respectfully requests clarification from Trial Chamber I to determine whether Paragraph 25 (g) of the Indictment is still in effect.

Submitted, 28 October 2005


John Wesley Hall
Court Appointed Counsel for the First Accused


Victor Koppe
Court Appointed Counsel for the Second Accused

⁴ *Prosecutor v Sylvain Nsabimana*, Case No. ICTR-97-29A-T, Decision on the Defence Motion for the Amendment of the indictment, Withdrawal of Certain Charges and Protective Measures For Witnesses, 9 July 1998.

List of Authorities

1. Prosecutor v. Norman et al, Decision on Motions For Judgment of Acquittal Pursuant to Rule 98 and Separate and Concurring Opinion Of Hon. Justice Bankole Thompson, Document Number, 21 October 2005, Court Document # SCSL-04-14-473
2. Prosecutor v. Kunarac and Kovac, IT-96-23&23/1, Decision on the Form of the Indictment, 4 November 1999.
3. Prosecutor v. Dosen and Kolundzija, IT-95-8, Decision on Preliminary Motions, 10 February 2000.
4. Prosecutor v Krnojelac, (IT-97-25) Decision on Defence Preliminary Motion on the Form of the Indictment, February 24, 1999
5. Prosecutor v. Blaskic, (IT-95-14) Decision on Defence Motion to Dismiss the Indictment Based Upon Defects in the Form thereof, April 4 1997
6. Prosecutor v Sylvain Nsabimana, Case No. ICTR-97-29A-T, Decision on the Defence Motion for the Amendment of the Indictment, Withdrawal of Certain Charges and Protective Measures For Witnesses, 9 July 1998