

SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo SC

Date: 2nd of August 2006

PROSECUTOR **Against** **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

Public Document

**SCHEDULING ORDER CONCERNING ORAL MOTIONS FOR JUDGMENT OF
ACQUITTAL PURSUANT TO RULE 98**

Office of the Prosecutor:

James C. Johnson
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray
Charles Taku
Melron Nicol-Wilson

Court Appointed Counsel for Augustine

Gbao:

Andreas O'Shea
John Cammegh

TRIAL CHAMBER I ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Justice Bankole Thompson, Presiding Judge, Hon. Justice Pierre Boutet, and Hon. Justice Benjamin Mutanga Itoe;

MINDFUL of the current applicable provisions of Rule 98 of the Rules of Procedure and Evidence (“Rules”) as amended by the Plenary Meeting of Judges of the Special Court on 13 May 2006, reading as follows:

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

MINDFUL of the fact that the new provisions of Rule 98 merely introduced an oral procedure with reference to motions for judgement of acquittal, without modifying the legal standard applicable to these motions, that remains “one that limits and restricts a tribunal only to a determination as to whether the evidence adduced by the Prosecution at the close of its case, is such as is legally capable of supporting a conviction on one or more of the counts in the Indictment”;[\[1\]](#)

NOTING that the said provisions have been modelled on the corresponding current Rule 98*bis* of the ICTY Rules, as last amended on 8 December 2004, reading as follows:

At the close of the Prosecutor’s case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction.

NOTING that, according to the most recent jurisprudence of the ICTY concerning judgments of acquittal, the adoption of an oral procedure was intended, *inter alia*, to expedite the process involving these motions, while not in any way diminishing a Chamber’s responsibility to make a considered decision;[\[2\]](#)

NOTING that at the Status Conference for the RUF held on the 19th of June 2006, the Presiding Judge directed both the Office of the Prosecutor (“Prosecution”) and Defence to file Position Papers on the Implementing Modalities in respect of the amended Rule 98;

HAVING CONSIDERED the “Joint Defence Position Paper on Implementing Rule 98 Modalities, filed jointly by the Defence Team of each Accused on the 11th of July, 2006 (“Defence Joint Position Paper”);

HAVING CONSIDERED the “Prosecution Position Paper on Implementing Modalities for Rule 98”, filed by the Prosecution on the 11th of July, 2006 (“Prosecution Position Paper”);[\[3\]](#)

NOTING that both the Prosecution and Defence submitted that the filing of an advance notice of the specific issues that the Defence intends to address in their oral submissions pursuant to Rule 98 would promote fairness and efficiency of the proceedings under this Rule;[\[4\]](#)

NOTING that in its Joint Position Paper, the Defence submit that the outcome of the Rule 98 proceedings “will have a negligible effect, if any” on the preparation of their case;[\[5\]](#)

NOTING that the Prosecution has closed its case on Wednesday, the 2nd of August 2006;

NOTING that the Special Court will observe a judicial recess from the 7th of August, 2006 until the 18th of August, 2006, inclusive;[\[6\]](#)

CONSIDERING that it is in the interests of justice and in keeping with the conduct of a fair and expeditious trial, for the Chamber in the circumstances of this case to issue a scheduling order for the implementing modalities of an Oral Motion for Judgement of Acquittal at this time;

PURSUANT to Article 17 of the Statute of the Special Court and Rules 26*bis*, 54 and 98 of the Rules;

THE CHAMBER ORDERS

That each Defence Team should notify by no later than Friday, 4th of August, 2006 at 04:00pm this Chamber and the Prosecution whether it intends to apply for an Oral Motion for Acquittal;

And, in the affirmative, **ORDERS AS FOLLOWS:**

1. That each Defence Team shall file by no later than Monday, the 25th of September 2006, at 4:00 pm a Skeletal Argument identifying and notifying in a clear and concise manner the specific issues per each count of the current Indictment, as well as any legal argument, that the Defence intend to raise in their oral submissions. The Skeletal Argument shall accordingly indicate the specific evidence considered relevant to each of the said specific issues, as follows:

- a. In relation to witnesses: the witness pseudonym or public name as well as the date, page and line of the relevant transcripts of his or her testimony;
- b. In relation to exhibits: the exhibit number and page reference;

The Skeletal Argument shall also contain a list of authorities that the Defence intend to refer to in their legal arguments, if any;

2. That the Prosecution shall file by no later than Friday, the 6th of October 2006 at 4:00 pm a Notice indicating whether it concedes that the Prosecution did not meet the standard of Rule 98 in relation to any of the issues raised by the Defence in its Skeletal Arguments, or in relation to any other issue, as well as any evidence or authority that the Prosecution intends to refer to during the oral submission in response to the Defence issues raised in their Skeletal Arguments. The Prosecution Notice shall accordingly indicate the specific evidence considered relevant, as follows:

- a. In relation to witnesses: the witness pseudonym or public name as well as the date, page and line of the relevant transcripts of his or her testimony;
- b. In relation to exhibits: the exhibit number and page reference;

The Prosecution Notice shall also contain a list of authorities that the Prosecution intends to refer to in its legal arguments, if any;

3. Oral submissions of both parties pursuant to Rule 98 of the Rules will be heard between Monday, the 16th of October 2006 and Tuesday, the 17th of October 2006 if necessary. Each Defence Team shall have a maximum of 2 hours to present its oral submissions, while the Prosecution shall have a maximum of 3 hours to present its submissions in response.

Done at Freetown, Sierra Leone, this 2nd day of August 2006

Hon. Justice Benjamin Mutanga
Itoe

Hon. Justice Bankole
Thompson
Presiding Judge
Trial Chamber I

Hon. Justice Pierre Boutet

[Seal of the Special Court for Sierra Leone]

[1] *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, 21 October 2005, para. 34. See also *id.*, para. 37: “to arrive at a determination as to whether the evidence so far adduced by the Prosecution is capable of supporting a conviction or not, we should not, at this stage, delve into examining factors that are considered as the real basis for justifying a finding of ‘proof beyond reasonable doubt’ such as an exhaustive analysis or examination of the quality and reliability of the evidence so far available in the records and even the credibility of the witnesses.”

[2] See *Prosecutor v. Oric*, Case No. IT-03-68-T, Transcripts, 3 June 2005, p. 8879; See *Prosecutor v. Krajisnik*, Case No. IT-00-39-T, Transcripts, 17 May 2005, p. 13088.

[3] See also Corrected Annex to Prosecution Position Paper on Implementing Modalities for Rule 98, 13 July 2006.

[4] See correspondence from the Chief of Prosecution dated the 14th of June, 2006 entitled “RUF Status Conference – Application of Rule 98, as Amended”; Prosecution Position Paper, para. 24. See also Defence Joint Position Paper, para. 25.

[5] Defence Joint Position Paper, paras 11, 28.

[6] Order Scheduling Judicial Recess and Authorization pursuant to Rule 4, 15 June 2006.
