

**PROSECUTOR****V.****ISSA SESAY, MORRIS KALLON AND AUGUSTINE GBAO****ORAL DECISION ON RUF MOTIONS FOR JUDGMENT  
OF ACQUITTAL PURSUANT TO RULE 98****I. Brief Procedural History**

1. The trial of the case entitled *Prosecutor v. Issa Sesay, Morris Kallon and Augustine Gbao*, SCSL-05-14-T, commenced on the 5th of July 2004. The Corrected Amended Consolidated Indictment (hereinafter referred to as the “Indictment”) charges each of the Accused in this case with 18 counts of Crimes against Humanity, Violations of Common Article 3 to the Geneva Conventions and of Additional Protocol II and Other Serious Violations of International Humanitarian Law. The Prosecution closed its case on the 2nd of August, 2006, after 182 days of trial. The Prosecution called a total of 85 witnesses to testify, in addition to one witness called at the behest of the Defence. 190 exhibits have been tendered so far in evidence.

2. On the 4th of August 2006, each of the Defence teams indicated its intention to move the Court for a Judgement of Acquittal pursuant to Rule 98. In order to promote fairness and efficiency of the proceedings under the amended version of this Rule, and pursuant to the “Scheduling Order Concerning Oral Motions for Acquittal” issued on the 2nd of August 2006, both the Defence and the Prosecution filed advance written notices of the specific issues in respect of each count of the existing Indictment, as well as various legal arguments to be advanced in support of their respective positions as regards the Rule 98 Motions. Oral arguments were subsequently heard in open court on the 16th of October 2006.

**II. Brief Overview of Parties’ Main Submissions**

3. In both written and oral submissions, Counsel for the First Accused raised the issue of the lack or insufficiency of the evidence under Rule 98 in relation to certain geographical locations pleaded in various counts of the Indictment. Counsel stated that, following discussions with the Prosecution, the Prosecution did concede the lack or insufficiency of evidence regarding several of the aforementioned pleaded locations.

4. In both written and oral submissions, Counsel for the Second Accused submitted that certain pieces of evidence adduced by the Prosecution fall outside the timeframes set in the Indictment and others do not sufficiently specify the time periods of the events, simply referring to “mango season” or “rainy season” in order to indicate various time

periods of the year and that the Prosecution should have called expert testimony with respect to these time frames. Counsel also argued that issues of individual responsibility and modes of liability could go to the evaluation of whether the evidentiary standard set out in Rule 98 has been met or not.

5. In both written and oral submissions, both Counsel for First Accused and for Second Accused submitted that Count 8 of the Indictment, namely Forced Marriage, Other Inhumane Acts, as a Crime against Humanity, is impermissible, duplicitous or irrelevant.

6. In both written and oral submissions Counsel for the Third Accused submitted that the general evaluation of the various modes of liability should be addressed, not at this stage, but at the end of the trial. However, Counsel submitted that certain relevance should be given at this stage to the modes of liability where it is submitted that the evidence reflecting that mode of liability is either missing or insufficient.

7. With reference to Counts 10-11, Physical Violence, Counsel argued that there is no evidence of the physical presence or direct influence of the Third Accused in the locations pleaded in the Indictment as primarily relevant for these counts and, therefore, that the Third Accused could not be said to be criminally liable with reference to these counts because of the insufficiency of the evidence. With reference to Count 3, namely, *Extermination*, he further submitted that the elements of this crime require proof of massiveness and that there is no evidence of that. With reference to Count 14, namely *Pillage*, Counsel said he accepted the elements of this crime as formulated by the ICC, with the exception of the element of “association with an armed conflict” and submits that this should be restricted to the “the context of an armed conflict”.

8. In its written and oral submissions, the Prosecution conceded that there is insufficient evidence to sustain a conviction with reference to certain locations pleaded in the Indictment. However, Counsel for the Prosecution submitted that each of the Defence motions should be dismissed in that the evidence presented during the Prosecution case is sufficient to meet the standards of Rule 98 for each and all of the counts in the Indictment. Specifically, the Prosecution submitted that the evaluation of the sufficiency of the evidence should take into account factors such as the allegations of a joint criminal enterprise and the seniority of the accused, as well as the widespread nature of the crimes committed over the territory of Sierra Leone.

### **III. Findings and Decision**

#### ***(A) Introduction***

9. With this brief procedural history of the case and an overview of the respective Parties’ main Submissions on the Rule 98 Motions, we would now proceed to determine the issues and legal arguments raised by the Parties. It is a unanimous Decision of the Bench, having regard to the evidence so far adduced and available and the law applicable to various issues so raised in the process of a Rule 98 adjudication.

10. Rule 98 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, as amended by the Plenary Meeting of the Judges on the 13th day of May 2006, reads 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.

11. In the considered view of the Chamber, Rule 98, as amended, according to its plain and ordinary meaning, merely introduces an oral procedure for the expeditious disposition of Motions for Judgement of Acquittal. It does not, we emphasise, modify the legal standard applicable to Motions of this type. In effect, there is no substantive change to the Rule.

1. **Applicable Legal Standard**

12. Consistent with this view as to the legal effect of the recent amendment to Rule 98, the Chamber reiterates that, as a matter of law, the applicable legal standard under Rule 98 for determining the merits or otherwise of a Motion for Judgement of Acquittal is, as we stated in our Decision on Motions for Judgement of Acquittal Pursuant to Rule 98, dated the 21st day of October 2005 in the case of *Prosecutor v. Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa* (hereinafter referred to as “our CDF Rule 98 Decision”), “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.” Accordingly we hold, as we did then, that the Rule does “not envisage a judicial pronouncement on the guilt or innocence of the Accused at this stage.” It is also worth reiterating, as we held in that decision, that “the standard is not whether the evidence is such as ‘should’ support a conviction, but rather, such as ‘could’ support a conviction.”

13. For an avoidance of doubt, we take the opportunity of re-stating what we said in our aforementioned CDF Decision, where Counsel for the Third Accused in that case submitted that the standard of proof to be met by the Prosecution for the purpose of Rule 98 was that canvassed in the *Jelusic* case referred to in the *Strugar* case, that is, one of “proof beyond reasonable doubt”. We dismissed that submission and held that it was our “opinion that the proof beyond reasonable doubt standard should only be addressed at a later stage of the proceedings.”

14. We had this to say in this regard:

We say this because we are of the opinion, and do take the view, that in our quest at this stage 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. (See paras 36 and 37)

15. It is significant to note, especially for the purposes of the record, that the Parties herein, that is the Prosecution and the Defence, concede that the applicable legal standard under Rule 98 is as articulated by this Chamber in its CDF Rule 98 Decision. The Chamber, however, recalls that Counsel for the Third Accused did urge the Bench to adopt of what he characterised as “a commonsense approach” in applying the said standard.

16. Reinforced as we are in our view as to the applicable legal standard we have placed on Rule 98, we emphasise in this Oral Decision what we had stated in our seminal Decision on this issue in the following terms:

the key feature of the test is conceptually grounded on the idea of a judicial assessment of the capability of the evidence to support a conviction which would of course eventually entail a concise evaluation of the counts in the indictment with a view to ascertaining whether there is patently no evidence in respect of any of them upon which a reasonable tribunal of fact would convict the Accused. (para. 50)

## 2. **General Findings on Defence Submissions**

17. In the light of the foregoing exposition of the law as to the applicable Rule 98 legal standard, we now proceed to examine the Counts and the issues raised by the Defence to support their respective Motions for Judgement of Acquittal vis-à-vis the submissions of the Prosecution.

18. With regard to Count 8, the Chamber recalls that Counsel for the First Accused submitted that Count 8 of the Indictment is “legally impermissible and/or is duplicitous and/or is entirely redundant”. Counsel for the Second Accused took much the same position as regards this Count. In the Chamber’s considered opinion, this submission clearly goes to the root of the form of the Indictment. It cannot, therefore, be examined at this stage as to its merits by reason of the provisions of Rule 72(B)(ii) of the Rules of Procedure and Evidence. We do so hold. This is, of course, without prejudice to the right of the Defence to raise such issues in their final closing arguments.

19. Counsel for the Second Accused submitted that the time frames pleaded in the Indictment form the basis of the Court’s jurisdiction over the Accused persons, and that consequently, any evidence adduced outside those time frames, “goes to no issue” as he characterised it. Counsel cited the evidence of TF1-371 (24th of July 2006, at page 5 lines 16 – 23 of the Transcript) regarding the time frames within which crimes allegedly took place in Tombodu, reference being only to the “rainy season”, the evidence of TF1-360 (20th of July 2005 at page 58 lines 12-14 of the Transcript) again, allegedly, planning the commission of crimes during the “rainy season” in the Kono District, and that of TF1-263 alluding to events in Kono taking place in the “Mango season”. He contended that the Prosecution has “impermissibly departed” from the Indictment and adduced evidence outside the time frames specified in the Indictment.

20. The Chamber opines that it is not quite clear whether Counsel’s contention as to the alleged discrepancies between time frames pleaded in the Indictment and timeframes as testified to, goes to the question of jurisdiction or that of lack of or sufficiency of evidence. If it is the former, it is our view that the Defence is precluded from raising this issue at this stage by reason of Rule 72(B)(i). If, however, it is the latter, which is the view taken by the Chamber, the said submission will be addressed as to its merits or otherwise under the rubric of sufficiency or insufficiency of evidence for each and every Count.

21. Counsel for the Second Accused also submitted that the issue of individual criminal responsibility is implicated in the evaluation of the sufficiency or lack of evidence thereof for the purposes of a Rule 98 Motion. We reiterate our opinion here that the Rule 98 legal scenario requires the Chamber merely to determine whether there is

sufficient evidence capable of sustaining a conviction on one or more counts in the Indictment.

22. In his submissions to the Court, Counsel for the Third Accused also advanced some arguments regarding the modes of liability charged in the Indictment. Specifically, Counsel contended that certain relevance should be given at this stage to the modes of liability when it is submitted that the evidence is missing or insufficient. As regards this submission, it is sufficient merely to reiterate our declared position on this issue in our CDF Rule 98 Decision for the purposes of the Rule 98 judicial determination. It is that: [...] as a matter of law, that Article 6(1) of the Statute of the Special Court does not, in its proscriptive reach, limit criminal liability to only those persons who plan, instigate, order, physically commit a crime or otherwise, aid and abet in its planning, preparation or execution. Its proscriptive ambit extends beyond that to prohibit the commission of offences through a joint criminal enterprise, in pursuit of the common plan to commit crimes punishable under the Statute. Furthermore, Article 6(3) of the Statute holds superiors criminally responsible for the offences committed by their subordinates, where a superior has knowledge or reason to know that subordinate(s) are about to or have committed an offence and that superior fails to take the necessary and reasonable measures to prevent or to punish the perpetrators thereafter. (see para. 130)

23. In the light of the above, we find no reason to depart from our stand “that a determination of the Accused’s liability depends, to a degree on the issues of fact and weight to be attached to the evidence, which require an assessment of the credibility and reliability of that evidence. These issues, however, do not arise for determination, at this stage.” (para. 131)

24. The Chamber has, however, reviewed the evidence led by the Prosecution as it is relevant to the modes of participation of each Accused in the alleged crimes, in particular the evidence of the positions of seniority that the Accused held within the RUF. We find, for the purposes of the Rule 98 standard, that there is evidence, if believed, to support that each of the Accused participated in each of the crimes charged in Counts 1 to 18 of the Indictment.

### 3. **Different Spellings of Names of Towns**

25. The Prosecution indicated that there are alternative or different spellings between the Indictment and the transcripts for certain towns’ names and, specifically, submitted that Foindu is an alternative spelling to Foendor and Foendu, Tendakum is an alternative spelling to Chendakom and Rochendakom and, finally, that Tomendeh is an alternative spelling to Tomandu. Defence for Sesay accepted these alternative spellings, while the other Defence teams did not make any comments in this regard. Alternative spellings are also contained in the Indictment for certain other towns’ names. The Chamber is cognizant of the fact that the spellings of a town’s name could differ depending on a number of circumstances, such as the witness area of provenience, the pronunciation or the subsequent interpretation in court, and therefore accepts the aforementioned alternative spellings. In addition, the Chambers is also cognizant that the towns of Tombodu and Wondedu, in Kono District, are also erroneously or alternatively referred to in certain transcripts of this Trial as, respectively, Tombudu and Wendedu or Wondidu.

### 4. **Charges as laid in the Counts**

26. The Chamber notes that the Indictment charges the Accused persons in Counts 1 and 2 with the crimes of ***Terrorising the civilian population and Collective punishments*** as Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(d) and Article 3(b) respectively of the Statute of the Court.

27. They are also charged in Counts 3, 4, and 5 with ***Extermination***, as a Crime Against Humanity; ***Murder***, as a Crime Against Humanity; and ***Violence to life, health and physical or mental well-being of persons, in particular murder***, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 2(b), Article 2(a), and Article 3(a) respectively of the Statute of the Court.

28. The Accused are, likewise, charged in Counts 6, 7, 8, and 9 with ***Sexual violence*** in the form of ***Rape***, as a Crime Against Humanity; ***Sexual Slavery and any other form of sexual violence***, as a Crime Against Humanity; ***Other inhumane acts***, as a Crime Against Humanity; and ***Outrages upon personal dignity***, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 6(3), Article 2(g), Article 2(i), and Article 3(e) respectively of the Statute of the Court.

29. They are further charged in Counts 10 and 11 with ***Violence to life, health and physical and mental well-being of persons, in particular mutilation***, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, and ***Other inhumane acts***, as a Crime Against Humanity, punishable under Article 3(a) and Article 2(i) respectively of the Statute of the Court.

30. They are also in Count 12, charged with ***Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities***, as another Serious Violation of International Humanitarian Law, punishable under Article 4(c) of the Statute of the Court.

31. Under Count 13, the Accused are charged with ***Enslavement***, as a Crime Against Humanity, punishable under Article 2(c) of the Statute of the Court.

32. Count 14 charges the Accused with ***Pillage***, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute of the Court.

33. Counts 15, 16, 17, and 18 charge the Accused with ***Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission***, as another Serious Violation of International Humanitarian Law; with Unlawful killings, in the form of ***Murder***, as a Crime Against Humanity; ***Violence to life, health and physical or mental well-being of persons, in particular murder***, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II; and ***Abductions and holding as hostage, taking of hostages***, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 4(b), Article 2(a), Article 3(a), and Article 3(c) respectively of the Statute of the Court.

### ***(B) Examination of the Merits of Each Motion***

34. The Chamber notes that Counts 1 and 2 are not the subject of any submissions by any of the Defence Teams for the Accused persons. They will, therefore, not feature directly in this Decision.

35. The Chamber further notes that the Third Accused has not moved the Chamber for a Judgement of Acquittal in respect of Counts 12, 13, 15, 16, 17, and 18. They will, therefore, not feature directly in relation to the said Accused in this Decision for the purposes of liability on the Count system as reflected in the Indictment.

36. The Chamber will presently proceed to its deliberation of the merits of each Motion for Judgement of Acquittal in respect of each of the other Counts in so far as they are relevant to each of the Accused for the purposes of a Rule 98 determination, guided by the applicable legal standard as enunciated.

37. But, first it is important, as a preliminary matter, to set out briefly the specific constitutive elements of each crime as charged in the Counts in the Indictment, except Counts 1 and 2 which, as we have already noted, are not the subject of the instant Motions.

#### 1. **Common Elements of the Offences**

38. For the sake of simplicity, we will set out here the common elements for all of the types of offences contained in the Indictment. These common elements must be understood to form a part of the elements of the crimes that will be discussed individually below.

##### a. Crimes against Humanity

39. Suffice it to say, that, as a matter of law, the common elements for Crimes Against Humanity include the following:

- (i) there must be an attack;
- (ii) the attack must be widespread or systematic;
- (iii) the attack must be directed against any civilian population;
- (iv) the acts of the accused must be part of the attack;
  - (v) the accused knew or had reason to know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population.

In so far as the interpretation of these ingredients is concerned, we fully adopt our reasoning at paragraphs 56 – 59 of our CDF Rule 98 Decision as to (a) what constitutes “an attack”, (b) what constitutes “widespread” and “systematic”, (c) what is meant by “directed against any civilian population”, and (d) what is meant by and what constitutes, “civilian population”.

The Indictment contains the following allegations of Crimes Against Humanity against the Accused: Count 3 – Extermination, Count 4 and Count 16 – Murder, Count 6 – Rape, Count 7 – Sexual Slavery and other forms of sexual violence, Count 8 and Count 11 – Other Inhuman Acts and Count 13 – Enslavement.

##### b. Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

42. The common elements of war crimes that are Serious Violations of Common Article 3 of the Geneva Conventions and of Additional Protocol II are the following:

- (i) an armed conflict existed at the time of the alleged violation of Common Article 3 or Additional Protocol II;

- (ii) there existed a nexus between the alleged violation and the armed conflict;
- (iii) the victim was a person taking no direct part in the hostilities at the time of the alleged violation.

It is noteworthy, that the application of Article 3 of the Court's Statute under which the said offences are punishable requires, as we said in our previous Rule 98 Decision, "that the alleged acts of the Accused should have been committed in the course of an armed conflict", and that "it is immaterial whether the conflict is internal or international in nature" (para 68). It is sufficient to state that this proposition finds endorsement from the Decision of the Appeals Chamber in *Prosecution v Fofana*, Decision on Preliminary Motion on Lack of Jurisdiction *Materiae: Nature of Armed Conflict*, 25 May 2004, para. 25) where it was held that "the distinction is no longer of great relevance in relation to the crimes articulated in Article 3 of the Statute as these crimes are prohibited in all conflicts."

The Indictment contains the following allegations of war crimes that are Serious Violations of Common Article 3 of the Geneva Conventions and of Additional Protocol II: Count 5 and Count 17 – Murder, Count 9 – Outrages Upon Personal Dignity, Count 10 – Mutilation, Count 14 – Pillage and Count 18 – Hostage-Taking.

vvvv. Other Serious Violations of International Humanitarian Law

45. This Court also has jurisdiction over another category of offences in accordance with Article 4 of the Statute. The common elements for these offences are as follows:
- (i) an armed conflict existed at the time of the alleged violation;
  - (ii) there existed a nexus between the alleged violation and the armed conflict.

The Indictment contains the following allegations of Other Serious Violations of International Humanitarian Law: Count 12 – Conscripting, enlistment or use of child soldiers, and Count 15 – Intentionally directing attacks against peacekeeping missions.

**Counts 3, 4, and 5: Extermination; Murder; and Violence to life, health and physical or mental well-being of persons, in particular Murder.**

a. Law Applicable to Counts 3, 4, and 5

47. First, we shall deal with Counts 3, 4, and 5. Count 3 charges the Accused with the crime of **Extermination** as a Crime Against Humanity, punishable under Article 2(b) of the Statute. Count 4 also charges the Accused with **Murder** as a Crime Against Humanity. Count 5 charges the Accused with **Violence to life, health and physical or mental well-being of persons, in particular murder**, contrary to Article 3 Common to the Geneva Conventions and of Additional Protocol II.

48. For **Extermination**, as a Crime Against Humanity, we adopt the Rome Statute's definition that "**extermination**" includes "the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population." We, accordingly, hold that in addition to the common elements listed above, its specific relevant constitutive elements are:

- (i) the accused killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population;
- (ii) the conduct constituted, or took place as part of a mass killing of members of a civilian population;
- (iii) the accused intended to either kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death

As to the crime of *Murder*, we reiterate that to prove murder as a Crime Against Humanity, the Prosecution must establish the death of the victim or victims, “resulting from an act or omission of the Accused committed with the intent either to kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.”

In other words, the elements of the offence of murder as a Crime Against Humanity include the common elements listed above and:

- (i) the death of one or more persons;
- (ii) the death of the person was caused by an act or omission of the accused;
- (iii) the accused intended to either kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.

As far as the offence of *Violence to life, health and physical or mental well-being of persons, in particular murder*, contrary to Article 3 Common to the Geneva Conventions and of Additional Protocol II is concerned, suffice it to say here that the definition of murder, as a Crime Against Humanity, is legally no different from that of murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II. Thus, in addition to common elements of the Common Article 3 offences listed above, the elements of the offence include:

- (i) the death of one or more persons;
- (ii) the person was not taking a direct part in the hostilities at the time of his or her death;
- (iii) the death of the person was caused by an act or omission of the accused;
- (iv) the accused intended to either kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death;
- (v) the accused knew or had reasons to know that the person was not taking a direct part in the hostilities.

b. Significant Findings on Counts 3, 4, and 5

52. The Prosecution concedes that no evidence was adduced with respect to the following locations pleaded in the Indictment:

Bo District: **Telu and Mamboma;**

Kono District: **Willifeh and Biaya;**

Koinadugu District: **Heremakono, Kumalu (or Kamalu), Katombo, Kamadugu, Kurubonla and Kabala.**

The Trial Chamber has reviewed the evidence and finds accordingly.

53. The Chamber, on the other hand, finds that there is evidence which, if believed, is capable of supporting a conviction for the following locations pleaded in the Indictment:

Bo District: **Tikonko**, where, for example, TF1-004 testified about 200 civilians being killed, **Sembahun** where TF1-008 testified about RUF shooting around and 2 civilians being shot, at least one of whom is killed, and, finally, **Gerihun**, where TF1-054 testified about the Paramount Chief being shot and stabbed to death and seeing 6 dead bodies.

Kenema District: **Kenema Town**, where, for example, TF1-071, TF1-125 and TF1-122 testified about the death of BS Massaquoi and others upon accusations by Sam Bockarie of collaborating with the Kamajors.

In addition, the Chamber also relies on the evidence of, for example, TF1-141 and TF1-035.

Kono District: **Koidu Town**, where, for example, TF1-015 testified about surviving the killing of 101 people and about seeing other 50 dead bodies in the street; TF1-141 and TF1-366 testified about the “Operation No Living Thing” in December 1998. **Tombodu**, where witness George Johnson aka Junior Lion, TF1-012, TF1-071, TF1-141, TF1-366 and TF1-371 testified about several people being killed by Savage; **Foindu (or Foendor or Foendu)** where TF1-064 testified about the entire village being killed and, in particular, children being decapitated; **Mortema:** TF1-071 saw corpses mostly in burnt villages in Kono District. Mortema was one of the villages that was burnt down. TF1-329 saw people brought into Kenema Hospital and saw people from Mortema who had been shot in the foot or the mouth after a rebel attack.

In addition, the Chamber also relies on the evidence of, for example, TF1-071, TF1-078 and TF1-366.

Kailahun District: Kailahun Town, where, for example, TF1-168, TF1-045, TF1-113 and TF1-366 testified about the killing of about 65 suspected Kamajors.

In addition, the Chamber also relies on the evidence of, for example, of TF1-371 who testified about the killing of Fonti Kanu by Accused Sesay in Pendembu and TF1-141, who testified about stabbing and killing an old man with another SBU during an attack in Daru.

Koinadugu District: **Koinadugu**, where, for example, TF1-212 testified about 48 civilians being killed; This witness also testified that her son was killed by a rebel, and that Superman’s men killed civilians during an in-fight with SAJ Musa; **Fadugu**, where TF1-329 testified of being shot in the leg and others being killed.

Bombali District: **Bonyoyo (or Bornoya)**, where, for example, TF1-156 testified about 20 people being killed with a machete; **Karina**, where witness George Johnson aka Junior Lion and TF1-031 testified about the killing of many civilians; **Mafabu**, where TF1-159 testified that civilians were hacked or shot to death; **Mateboi**, where witness George Johnson testified about lots of civilians being killed; **Gbendembu or Gbendubu or Pendembu**, where TF1-360 testified that over 20 civilians were killed as revenge for one Father Mario allegedly hiring Kamajors, while TF1-174 testified about killing and amputations.

In addition, the Chamber also relies on the evidence of, for example, TF1-028, TF1-031, and TF1-361.

Freetown and Western Area: **Kissy**, where, for example, TF1-334 testified about the killing of 5 nuns at Kissy Mental Hospital; TF1-021 testified about the killing of 71 civilians in a Mosque, TF1-101 testified about various civilians being killed for refusing to have their hands amputated at a roadblock; **Wellington**, where TF1-331 testified about rebels killing her husband, a young child and her sister; and TF1-235 testified about the killing of his family. **Calaba Town**: where TF1-029 testified about rebels coming from Wellington and killing people.

In addition, the Chamber also relies on the evidence of, for example, of TF1-093, who testified about killing of civilians in Freetown in January 1999.

Port Loko District: **Manaarma**, where, for example, TF1-253 testified about the killing of 73 people burnt alive in a house; **Tendakum (or Chendekum or Rochendekom)**, where TF1-255 testified about the killing of 47 people; **Nonkoba**: where TF1-345 testified about the killing of 40 civilians being killed with sticks and machetes and TF1-256 testified about seeing dead bodies.

54. The Chamber is therefore satisfied that there is evidence capable of supporting a conviction on the following counts contained in the Indictment:

**COUNT 3:** Extermination, a CRIME AGAINST HUMANITY, punishable under Article 2.b of the Statute;

**COUNT 4:** Murder, a CRIME AGAINST HUMANITY, punishable under Article 2.a of the Statute;

**COUNT 5:** Violence to life, health and physical or mental well-being of persons, in particular murder, a VIOLATION OF COMMON ARTICLE 3 TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under article 3.a of the Statute.

3. **Counts 6, 7, 8, and 9: Rape; Sexual Slavery and any other form of Sexual Violence; Other Inhumane Act; and Outrages upon Personal Dignity**

a. The Law Applicable to Counts 6, 7, 8, and 9

55. With reference to Counts 6, 7, 8, and 9, these relate generally to *Sexual violence*. Specifically, to *Rape* in Count 6, *Sexual Slavery and any other form of sexual violence* in Count 7, to *Other inhumane acts* in Count 8, and *Outrages upon personal dignity* in Count 9. Counts 6, 7, and 8 charge those crimes as Crimes Against Humanity, and Count 9 charges *Outrages upon personal dignity* as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

56. With specific reference to *Rape* as a Crime Against Humanity, we hold that in addition to the common elements for such crimes, its constitutive elements are as follows:

- (i) that the accused invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the accused with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body;
- (ii) that the invasion was committed 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 another person or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent;
- (iii) the accused intended to effect the sexual penetration or acted in the reasonable knowledge that this was likely to occur;
- (iv) the accused knew or had reason to know that the victim did not consent.

Guided by the Rome Statute, we hold, in respect of Count 7, that in addition to the common elements for a crime against humanity, the relevant constitutive elements of *sexual slavery* are:

- (i) that the accused exercised any or all 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;
- (ii) the accused caused such person or persons to engage in one or more acts of a sexual nature;
- (iii) the accused intended to exercise the act of sexual slavery or acted in the reasonable knowledge that this was likely to occur.

Further guided by the Rome Statute, we hold, in respect of the second part of Count 7, that the relevant constitutive elements of *any other form of sexual violence* as a crime against humanity are the common elements previously described and:

- (i) the accused 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 person's incapacity to give genuine consent;
- (ii) the conduct was of similar seriousness to the other acts enumerated in Article 2g. of the Statute;

- (iii) the accused intended to commit the act of sexual violence or acted in the reasonable knowledge that this was likely to occur.

Consistent with our CDF Rule 98 Decision, we hold that to sustain a conviction for ***Inhumane Acts*** as a crime against humanity, as charged in Count 8, the Prosecution must prove, in addition to the common elements:

- (i) the occurrence of an act or omission of similar seriousness to the other acts enumerated in Article 2 of the Statute;
- (ii) the act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity;
- (iii) the accused, at the time of the act or omission, had the intention to commit the inhumane act or acted in the reasonable knowledge that this was likely to occur.

Furthermore, in respect of Count 9 which charges the Accused with the offence of ***outrages upon personal dignity***, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, The Chamber adopts the following relevant elements for this crime in addition to those listed above as common elements:

- (i) that the accused humiliated, degraded or otherwise violated the dignity of one or more persons;
- (ii) that the severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity;
- (iii) the accused intended to humiliate, degrade or otherwise violate the dignity of the person or acted in the reasonable knowledge that this was likely to occur;
- (iv) the accused knew or had reason to know that the person was not taking a direct part in the hostilities.

b. Significant Findings on Counts 6, 7, 8, and 9

61. The Prosecution concedes that no evidence was adduced with respect to the following locations pleaded in the Indictment:

Kono District: **Fokoiya, Tomendeh (or Tomandu) and Superman Camp;**

Koinadugu District: **Heremakono, Fadugu and Kabala;**

The Trial Chamber has reviewed the evidence and finds accordingly.

62. The Chamber, on the other hand, finds that there is evidence which, if believed, is capable of supporting a conviction for the following locations pleaded in the Indictment:

Kono District: **Koidu**, where, for example, TF1-141 testified that women were abducted and made to cook and become wives of combatants; **Tombodu**, where TF1-064 testified that she was married to an old man in Tombodu but managed to escape before he had sex with her. **Kissi Town or Kissi-Town Camp**, where TF1-016 testified that she was forced to marry a man and lived with him for 1 month, while also her daughter was forced to marry another man. **Foendor**

(or **Foendu**), where TF1-064 testified that she was raped by a Temne man who was forced to do so by Tamba Joe who also took the witness' sister-in-law into a house to have sex.

In addition, the Chamber also relies on the evidence of, for example, TF1-071 and TF1-305.

Koinadugu District: **Koinadudgu**, where TF1-212 testified about a 12 year old girl being raped, while her and other young girls were taken to Koinadugu where they were put in room and could be signed out by rebels. If not signed out, they would be raped by others.

In addition, the Chamber also relies on the evidence of, for example, TF1-213 who testified of about 25 girls being captured in Lengekoro and about being raped while hiding in the bush.

Bombali District: **Mandaha** where, for example, TF1-031 testified that her 10 year old daughter was raped by rebels and that younger girls were taken away by rebels at night and she could hear them screaming. **Rosos (or Rosors or Rossos)**, where, for example, Witness George Johnson aka Junior Lion testified that on their way from Mansofinia to Camp Rosos, over 100 girls were forced into marriage.

In addition, the Chamber also relies on the evidence of, for example, TF1-334 who testified about raping of women in Karina, while over 35 women were captured and given to the rebels as wives and TF1-196, who testified about being raped while in the bush near Malama.

Kailahun District, where, for example, witness Dennis Koker testified that rebels would capture women from various villages in the District. In addition, TF1-108 testified that one of his 4 wives died after being raped; TF1-113 testified about being arrested, stripped naked in front of other people and beaten upon order to Accused Gbao in Kailahun Town. TF1-371 testified that women were abducted in RUF captured areas after attacks since the time before the merger with the AFRC. Some of these women had not other choice than to become the wives of commanders.

Freetown and the Western Area, where, for example, TF1-022 testified about 2 young girls brought by the RUF to their commander for forced marriage; TF1-023 testified of being forced to marry AFRC Rambo in Calaba Town; TF1-029 testified of being abducted from Wellington and raped in Calaba Town and Benguema; TF1-081 testified about the majority of a group of 1168 women having been abducted from Freetown; and, finally, TF1-334 testified about abductions and raping in Freetown.

Port Loko District: where, for example, TF1-256 testified about 4 women been raped in **Rochendekom (or Tendakum)**; TF1-255 testified about her two daughters being abducted and forced to have sex and cook for rebels for a month.

63. The Chamber is therefore satisfied that there is evidence capable of supporting a conviction on the following counts contained in the Indictment:

**COUNT 6:** Rape, a CRIME AGAINST HUMANITY, punishable under Article 2.g of the Statute;

**COUNT 7:** Sexual Slavery and any other form of sexual violence, a CRIME AGAINST HUMANITY, punishable under Article 2.g

**COUNT 8:** Other inhumane act, a CRIME AGAINST HUMANITY, punishable under Article 2.i of the Statute

**COUNT 9:** Outrages upon personal dignity, a VIOLATION OF COMMON ARTICLE 3 TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under article 3.e of the Statute.

4. **Counts 10 and 11: Violence to life, health and physical or mental well-being of person, in particular Mutilation; and Other Inhumane Act**

a. The Law Applicable to Counts 10 and 11

64. Counts 10 and 11 of the Indictment refer to physical violence, including mutilation. Count 10, violence to life, health and physical or mental well-being of persons, in particular *mutilation*, contrary to Article 3 Common to the Geneva Conventions and Additional Protocol II contains the following elements in addition to the common elements already described:

- (i) the accused person subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage;
- (ii) the conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned or carried out on such person, or person's interests
- (iii) the accused intended to subject the person or persons to mutilation or acted in the reasonable knowledge that this was likely to occur
- (iv) the accused knew or had reason to know that the person was not taking a direct part in the hostilities

Count 11 of the Indictment contains the offence of *Other Inhuman Acts*. The elements of this crime have already been defined above under Count 8 and will not be repeated here.

b. Significant Findings on Counts 10 and 11

66. The Prosecution concedes that no evidence was adduced with respect to the following locations pleaded in the Indictment:

Koinadugu District: **Konkoba or Kontoba;**

Bombali District: **Lohondi, Malama and Mamaka.**

The Trial Chamber has reviewed the evidence and finds accordingly.

67. The Chamber, on the other hand, finds that there is evidence which, if believed, is capable of supporting a conviction for the following locations pleaded in the Indictment:

Kono District: **Tombodu**, where, for example, witness George Johnson aka Junior Lion testified about civilians being flogged over 200 times for refusing to follow orders. **Kaima (or Kayima)**, where TF1-074 testified about 18 people having RUF/AFRC carved into them. **Wonedu**, where TF1-015 testified about being threatened with a gun and then beaten with a board until he lost all of his teeth.

In addition, the Chamber also relies on the evidence of, for example, TF1-272 who testified about having received at a hospital 58 amputees from Sewafe/Koidu area and TF1-078, who testified about being beaten by the rebels with his wife and 4 others while hiding in the bush along the Moinde River.

Kenema District: **Kenema Town**, where TF1-071, TF1-125, TF1-122 and TF1-129 testified about Sam Bockarie interrogating and beating BS Massaquoi and others; TF1-122 also testified about being arrested and beaten with a belt when he tried to stop a woman from being hassled; TF1-129 testified that he was beaten.

Koindugu District: **Kabala**, where, for example, TF1-272 testified about amputee patients coming from Kabala and elsewhere in District; TF1-117 testified that he and others under the command of SAJ Musa amputated the hands of civilians in Kabala.

In addition, the Chamber also relies on the evidence of, for example, TF1-215 who testified about amputations taking place in Yiffin, Kromata, Badela and Kondembaia.

Bombali District: **Rosos**, where, for example, TF1-343 testified that he saw 5 people amputated.

In addition, the Chamber also relies on the evidence of, for example, TF1-031, who testified about 3 men being amputated in Mayaya village.

Freetown and the Western Area: Kissy, where, for example, TF1-093 testified that amputations were undertaken in Calaba Town and Kissy. In particular, this witness testified that in Kissy, during the retreat, Five-Five gave the order to amputate 200 civilians and send them into Freetown; Also, TF1-022 testified about being amputated with others. **Wellington**: where, for example, TF1-331 testified about being amputated and then hit with a bottle on her way to the hospital and about a 6 year-old girl being cut in half. **Calaba Town**, where, for example, TF1-093 testified that amputations were undertaken in there and in Kissy.

Port Loko District, where, for example, TF1-255 testified about being hit with a gun and others being hit or cut. TF1-253 testifies about being struck, having cinders pressed on his body and saw two women amputated in **Manaarma**. TF1-256 testified about civilians wounded after capture in **Rochendekom (or Tendakum)**. This witness also testified about another civilian being beaten by the soldiers all night.

68. The Chamber is therefore satisfied that there is evidence capable of supporting a conviction on the following counts contained in the Indictment:

**COUNT 10:** Violence to life, health and physical or mental well-being of persons, in particular mutilation, a VIOLATION OF COMMON ARTICLE 3 TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under article 3.a of the Statute;

**COUNT 11:** Other inhumane acts, a CRIME AGAINST HUMANITY, punishable under Article 2.i of the Statute.

5. **Count 12: Conscripting or Enlisting Children under the Age of 15 Years into Armed Forces or Groups, or Using Them to Participate Actively in Hostilities**

a. The Law Applicable to Counts 12

69. Count 12 charges the accused with the use of child soldiers, other serious violations of international humanitarian law. In addition to the common elements listed above, the specific elements of this offence are as follows:

- (i) the accused conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities;
- (ii) such person or persons were under the age of 15 years;
- (iii) the accused knew or had reason to know that such person or persons were under the age of 15 years;
- (iv) the accused intended to conscript or enlist or use child soldiers or acted in the reasonable knowledge that this was likely to occur.

b. Significant Findings on Count 12

70. The Prosecution concedes that no evidence was adduced with respect to Bonthe, Moyamba, Pujehun, Bo and Tonkolili Districts and not throughout the Republic of Sierra Leone. The Trial Chamber has reviewed the evidence and finds accordingly.

71. The Chamber, on the other hand, finds that there is evidence which, if believed, is capable of supporting a conviction for other Districts in Sierra Leone. The Chamber relies on the evidence of, for example, TF1-141, TF1-314 and TF1-199 who were abducted and trained within Small Boys or Girls Units, TF1-174 who testified about child soldiers in Makeni, Porto Loko and Lunsar areas, as well as TF1-371, TF1-366, TF1-362, TF1-361, TF1-113, TF1-334, TF1-122, TF1-255, TF1-045 and TF1-296 who also testified about children being abducted, trained and participating into attacks in Bombali, Kenema, Kono, Kailahun, Freetown and the Western Area, Kambia, Koinadugu and Port Loko Districts and were assigned to commanders such as Accused Sesay, Kallon and Gbao.

72. The Chamber is therefore satisfied that there is evidence capable of supporting a conviction on the following count contained in the Indictment:

With respect to Bombali, Kenema, Kono, Kailahun, Freetown, Kambia, Koinadugu and Port Loko and not throughout the Republic of Sierra Leone: COUNT 12: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an OTHER VIOLATION OF INTERNATIONAL HUMANITARIAN LAW, punishable under Article 4.c of the Statute.

6. **Count 13: Enslavement**

a. The Law Applicable to Count 13

73. As regards *enslavement*, the subject matter of the allegations in Count 13, guided by the Rome Statute, the Chamber holds that to sustain conviction for this offence, the Prosecution must prove the common elements of a crime against humanity and the following specific elements:

- o (i) the accused exercised any or all of the powers attaching to the right of ownership over a person, such as by purchasing, selling, lending or bartering such person or persons, or by imposing on them a similar deprivation of liberty;
- o (ii) the accused intended to exercise the act of enslavement or acted in the reasonable knowledge that this was likely to occur.

b. Significant Findings on Count 13

74. The Prosecution concedes that no evidence was adduced with respect to the following locations pleaded in the Indictment:

Koinadugu District: Heremakono, Kumala (or Kamalu) and Kamadugu.

Freetown and Western Area: Peacock Farm.

Port Loko District: Masiaka.

The Trial Chamber has reviewed the evidence and finds accordingly.

75. The Chamber, on the other hand, finds that there is evidence which, if believed, is capable of supporting a conviction for the following locations pleaded in the Indictment:

Kenema District: Cyborg Pit in Tongo Field, where, for example, TF1-060 testified that the RUF forced hundreds of people to mine at Tongo; TF1-035 testified that civilians were forced to mine at Cyborg like slaves. TF1-122 testified about speaking to lots of men who had been forced to mine at Tongo Field.

In addition, the Chamber also relies on the evidence of, for example, TF1-371, who testified about force mining going on in the District during and after the junta period, in order to generate revenue. Also, TF1-041 testified about forced mining going on in Tongo.

Kono District: AFRC/RUF Camps: where, for example, TF1-071 testified that there were civilians in many camps in Kono District who were fed but not paid and were forced to work. In particular, this witness testified that there were 500 civilians in Meiyor and in Wonedu. **Tombodu**, where, for example, TF1-012 testified about being forced, together with other civilians, to carry loads or search for food. This witness also testified about the Accused Sesay announcing that the civilians are going to mine for the government, the RUF. **Koidu**, where, for example, witness Dennis Koker testified that Junta forces abducted civilians and forced them to do labour; TF1-071 testified that civilians were mining for the RUF; and TF1-077 testified that 50 civilians were abducted from Koidu and forced to carry looted property to Tombodu. **Wonedu**, where, for example, TF1-071 testified that there were 500 civilians doing forced work in the camp. **Tomendeh or Tomandu**, where, for example, TF1-016 testified about being capture with 13 others in Tomandu and locked in a house before being made to carry loads and taken to KissiTown.

Koinadugu District: Kabala, where, for example, TF1-361 testified that a lot of civilians were captured and handed to the G5 in Kabala, while TF1-184 testified that he saw captured civilians carrying bags and ammunitions. **Koinadugu**, where, for example, TF1-361 testified that civilians were trained in Koinadugu in order to attack Kabala. **Fadugu**, where, for example, TF1-199 testified that after they left his village, they journeyed for three days and nights through villages. The rebels burned houses, looted property and captured people. They passed through Karina, Fadugu.

Bombali District: where, for example, TF1-159 and TF1-196 testified about being captured and forced to pound rice; TF1-343 testified that the rebels captured him and other civilians and TF1-360 testified that young men were captured in Pendembu.

Kailahun District: where, for example, witness Dennis Koker testified that between 100-500 civilians were forced to farm without pay; TF1-141 saw RUF government farms in Benduma and Buedu where civilians were doing all the work; and TF1-108, TF1-113 and TF1-330 testified about large numbers of civilians being forced to farm and carry loads.

Freetown and Western Area: **Kissy**, where, for example, TF1-022 testified that he and others were made to come with the rebels or be shot; TF1-334 testified that Gullit declared that it was time to make a hasty withdrawal and that the burnings and abductions should start again and subsequently, as they began to withdraw towards Kissy Mental Home, civilians were captured and houses burnt. **Calaba Town**, where, for example, TF1-023 testified that he was captured and told that the civilians were to be used a human shield.

In addition, the Chamber also relies on the evidence of, for example, TF1-362 who testified that civilians were captured during the Junta pull out from Freetown and on the route to Kailahun and TF1-334, who testified about 300 civilian being abducted in Freetown and used to carry loads, while women were taken as wives and children trained.

Port Loko District: **Port Loko**, where, for example, TF1-253 was captured outside of PortLoko and made to bring the rebels to Port Loko for their attack on ECOMOG. He is able to escape before arriving. **Lunsar**, where, for example, TF1-255 was made to go and fetch rice for the RUF in Lunsar. **Tendakum (or Chendekum)**, where, for example, TF1-255 testified that rebels forced him and his brother to fetch rice and build shelters; **Nonkoba**, where, for example, TF1-345 testified that she and other civilians were captured and made to pound rice and cook.

76. The Chamber is therefore satisfied that there is evidence capable of supporting a conviction on the following count contained in the Indictment:

**COUNT 13**: Enslavement, a CRIME AGAINST HUMANITY, punishable under Article 2.c of the Statute.

7. **Count 14: Pillage**

a. The Law Applicable to Count 14

77. With respect to the war crime of *pillage*, the subject matter of Count 14 of the Indictment, it is the Chamber's considered view that to succeed on this charge, the Prosecution must prove the following elements in addition to those previously described:

- o (i) that the accused unlawfully appropriated the property;
- o (ii) that the owner of the property was a person not taking a direct part in the hostilities;
- o (iii) that the appropriation was without the consent of the owner;
- o (iv) that the accused intended to unlawfully appropriate the property;

- (v) that the accused knew or had reason to know that the owner was a person not taking a direct part in the hostilities.
  - b. Significant findings on Count 14
78. The Prosecution concedes that no evidence was adduced with respect to the following locations pleaded in the Indictment:

Bo District: **Telu** and **Mamboma**.

Koinadugu District: **Heremakono** and **Kamadugu**

Kono District: **Foindu** and **Yardu Sando**.

The Trial Chamber has reviewed the evidence and finds accordingly.

79. The Chamber, on the other hand, finds that there is evidence which, if believed, is capable of supporting a conviction for the following locations pleaded in the Indictment:

Bo District: **Sembehun**, where, for example, TF1-008 testified about Sam Bockarie taking 800,000 leones from the section chief and an RUF group shooting a man who refused to hand over a tape. **Tikonko**, where, for example, TF1-004 testified that his house was broken into and all his belongings taken away or scattered.

In addition, the Chamber also relies on the evidence of, for example, TF1-054, who testified about shops being looted in Bo and the surrounding areas.

Koinadugu District: **Kabala**, where, for example, TF1-184 testified about captured civilians carrying bags and ammunitions. **Fadugu**, where, for example, TF1-199 testified that after they left his village, they journeyed for three days and nights through villages. The rebels burned houses, looted property and captured people. They passed through Karina, Fadugu; and TF1-329 testified that a rebel stole money and other things from a house in Fadugu.

In addition, the Chamber also relies on the evidence of, for example, TF1-172 who testifies about the rebels looting his animals and money in Seraduya.

Kono District: **Tombodu**, where, for example, TF1-012 testified that 35 houses were burned and describes the rebels going through civilians' pockets and taking their wallets.

In addition, the Chamber also relies on the evidence of, for example, TF1-141 who testified of travelling in a convoy to in Bauma, in Kailahun District, with civilians carrying the loads with

government properties, such as the money taken from a bank, households, shoes, rice and many other things looted from Koidu Town. TF1-371, TF1-366 and TF1-141 testified about the looting of a Bank in Koidu town, and TF1-141 and TF1-366 stated that the operation was lead by Accused Kallon. TF1-041, TF1-366 and TF1-361 testified about Accused Kallon ordering Koidu to be burned down due to the ECOMOG advancing. TF1-366 testified that he went to a village called Gandorhun Gbane. Where he saw about 10 houses burned and several civilians and Kamajors killed. The entire village was looted.

Bombali District: **Karina**, where, for example, TF1-028 testified that soldiers came to Karina and took people's property. **Mateboi**, where, for example, TF1-343 testified that the rebels attacked Mateboi.

In addition, the Chamber also relies on the evidence of, for example, TF1-174, TF1-361, TF1-366 who testified about widespread looting during "operation pay yourself" in Makeni.

Freetown and the Western Area: **Kissy**, where, for example, witness George Johnson aka Junior Lion testified that they burned Kissy Police Barracks and took a Hilux jeep; TF1-022 testified that RUF fighters demanded money from civilians and he had his money and his watch taken. **Wellington**, where, for example, TF1-029, TF1-331 and TF1-334 testified that Wellington was attacked. In addition, TF1-235 testified that he was robbed at gunpoint by a soldier and had his house burglarized by rebels. **CalabaTown**, where, for example, TF1-093 and TF1-334 testify about the rebels attacking the town; **Fourah Bay**, where, for example, TF1-334 testified about attacks and killings; witness George Johnson aka JuniorLion testified that houses were attacked during the withdrawal from Freetown. **Uppun**, where, for example, TF1-093 testified that houses were attacked; **StateHouse**, where, for example, TF1-334 testified about looting of offices. **Pademba Road**, where, for example, still TF1-334 testified that all weapons and ammunition were taken from the Prison after prisoners were released.

In addition, the Chamber also relies on the evidence of, for example, TF1-366 who testified that looting and burning was going on in Waterloo and about an order that all the looting in Freetown during the invasion in January 1999 was to be considered as government properties for the movement and should be taken to Kailahun by Accused Sesay.

80. The Chamber is therefore satisfied that there is evidence capable of supporting a conviction on the following count contained in the Indictment:

**COUNT 14:** Pillage, a VIOLATION OF COMMON ARTICLE 3 TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under article 3.f of the Statute.

**8. Counts 15, 16, 17, and 18: Intentionally Directing Attacks against Personnel Involved in a Humanitarian Assistance or Peacekeeping Mission; Murder; Violence to life, health and physical or mental well-being of person, in particular Murder; and Taking of Hostages**

a. The Law Applicable to Counts 15, 16, 17, and 18

81. It may be recalled that Count 15 charges the Accused with *intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission*, as another Serious Violation of International Humanitarian Law, punishable under Article 4(b) of the Statute of the Court.

82. Guided by the Rome Statute, the Chamber holds that, in addition to the common elements previously described, the following elements are essential to the proof of the offences charged in the aforementioned Count 15:

- o (i) that the accused directed an attack;
- o (ii) that the object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations;
- o (iii) that the accused intended such personnel, installations, material, units or vehicles so involved to be the object of the attack;
- o (iv) that such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict;
- o (v) that the accused knew or had reason to know that the personnel, installations, material, units or vehicles were protected.

As regards Count 16 which charges the Accused with *Unlawful killings*, particularly *Murder*, as a Crime Against Humanity, we are guided by the same applicable legal principles as expounded earlier in the Decision in relation to Count 4.

With reference to Count 17 which charges the Accused with *Violence to life, health and physical or mental well-being of persons, in particular murder*, as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, what we stated earlier by way of applicable legal principles in relation to Count 5, apply with equal force to Count 17.

As to Count 18 which charges the Accused for the *abductions and holding as hostage and taking hostages* as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II punishable under Article 3(c) of the Statute of the Court, relying on the Rome Statute, we adopt the following, for the purposes of the instant Rule 98 Motions, as the essential elements of these offences:

- o (i) that the accused seized, detained, or otherwise held hostage one or more persons;
- o (ii) that the accused threatened to kill, injure or continue to detain such person or persons;
- o (iii) that the accused intended to compel a state, or an international organisation, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons;
- o (iv) that the accused knew or had reason to know that the person or persons were not taking a direct part in the hostilities.

b. Significant Findings on Counts 15, 16, 17, and 18

86. The Prosecution concedes that no evidence was adduced with respect to “humanitarian assistance workers”. The Trial Chamber has reviewed the evidence finds accordingly.

87. In addition, the Prosecution also concedes that, with the exception of Bombali, Kailahun, Port Loko, Kono and Tonkolili Districts, no evidence has been adduced in any other locations within the territory of the Republic of Sierra Leone. However, the Prosecution also concedes that no evidence has been adduced for Kailahun District with regards to Counts 15, 16 and 17 and that no evidence has been adduced for Kono District with regards to Counts 15 and 16. The Trial Chamber has reviewed the evidence and finds accordingly.

88. The Chamber finds that there is evidence which, if believed, is capable of supporting a conviction for the following districts:

Bombali, Tonkolili and Port Loko Districts: where, for example, TF1-314 testified that Accused Kallon and Gbao ordered the attacks on UNAMSIL peacekeepers. Later, captured peacekeepers were taken to Kono. TF1-041 testified about Accused Gbao’s involvement in Makeni. TF1-366 and Witness Ngondi states that Accused Sesay, Kallon and Gbao were attacking the peacekeepers. TF1-253 testified about an attack on the Malians peacekeepers at a secondary school in Port Loko and saw a lot of corpses. Also, witness Kasoma testified of being ambushed by Accused Kallon near Lunsar, on his way to Makeni with about 100 other Zambian Peacekeepers under his command. Later, after being taken to Makeni, Accused Sesay ordered the witness and his men to be moved to Kono.

Kono District: where, for example, TF1-304 testified about peacekeepers captured by the RUF in Makeni being taken to Tombudu and staying there for over a month. TF1-071 testified that he saw about 300 abducted peacekeepers in Koidu and Yengema. These peacekeepers were captured in Magburaka and Lunsar by Accused Kallon and Gbao. Witness Kasoma testified that he was taken from Makeni to Yengema, where he stayed with Kenian peacekeepers in the house of a commander for 23 days.

Kailahun District: where, for example, Witness Kasoma testified that he was taken to Kailahun from Yengema, where he met another group of about 50-60 Zambian peacekeepers. Witness Janagathan testified about being abducted with others in Bombali District and then taken to Small Sefadu, where he was kept for 18 days and then taken to Kailahun.

89. The Chamber is therefore satisfied that there is evidence which, if believed, is capable of supporting a conviction on the following counts contained in the Indictment:

With respect to Bombali, Tonkolili and Port Loko Districts and not throughout the Republic of Sierra Leone: **COUNT 15:** Intentionally directing attacks against personnel involved in a

humanitarian assistance or peacekeeping mission, an OTHER VIOLATION OF INTERNATIONAL HUMANITARIAN LAW, punishable under Article 4.b of the Statute.

With respect to Bombali, Tonkolili and Port Loko Districts and not throughout the Republic of Sierra Leone: COUNT 16: Unlawful killings, Murder a CRIME AGAINST HUMANITY, punishable under Article 2.a of the Statute;

With respect to Bombali, Tonkolili, Port Loko and Kono Districts and not throughout the Republic of Sierra Leone: COUNT 17: Violence to life, health and physical or mental well-being of persons, in particular murder, a VIOLATION OF COMMON ARTICLE 3 TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under article 3.a of the Statute;

With respect to Bombali, Tonkolili, Port Loko Kono and Kailahun Districts and not throughout the Republic of Sierra Leone: COUNT 18: Abductions and holding as hostage, taking of hostages, a VIOLATION OF COMMON ARTICLE 3 TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under article 3.c of the Statute.

#### IV. DISPOSITION

**BASED ON THE SEVERAL CONSIDERATIONS IN THIS ORAL DECISION, THE CHAMBER,** pursuant to Rule 98 as amended:

1. **FINDS NO MERIT IN THE MOTIONS** of each Accused, namely, Issa Hassan Sesay, Morris Kallon and Augustine Gbao in respect of any count or counts in the Indictment and accordingly **DISMISSES** the said Motions.
2. **NOTWITHSTANDING** the aforesaid main finding, The Chamber further **FINDS** in respect of particular allegations embodied within paragraphs in the counts of the Indictment as follows:

(1). No evidence was adduced by the Prosecution against the Accused Persons in respect of the offences of *Extermination*, charged in Count 3 as a Crime Against Humanity punishable under Article 2.b of the Statute, *Murder*, charged in Count 4 as a Crime Against Humanity punishable under Article 2.a of the Statute, *Violence to life, health and physical or mental well-being of persons, in particular murder*, charged in Count 5 as a Violation of Common Article 3 to the Geneva Conventions and of Additional Protocol II punishable under Article 3(a) of the Statute in respect of the following areas:

- (i) *Telu*, as alleged in paragraph 46 of the Indictment;
- (ii) *Mamboma*, as alleged in paragraph 46 of the Indictment;
- (iii) *Willefeh*, as alleged in paragraph 48 of the Indictment;

- (iv) *Biaya*, as alleged in paragraph 48 of the Indictment;
- (v) *Heremakono*, as alleged in paragraph 50 of the Indictment;
- (vi) *Kumalu* or *Kamalu*, as alleged in paragraph 50 of the Indictment;
- (vii) *Katombo*, as alleged in paragraph 50 of the Indictment;
- (viii) *Kamadugu*, as alleged in paragraph 50 of the Indictment;
- (ix) *Kabala*, as alleged in paragraph 50 of the Indictment;
- (x) *Kurunbola*, as alleged in paragraph 50 of the Indictment.

(2) No evidence was adduced by the Prosecution against the Accused Persons in respect of the offences of *Rape*, charged in Count 6, as a Crime against Humanity punishable under Article 2.g of the Statute, *Sexual Slavery and Any Other Form of Sexual Violence*, charged in Count 7 as a Crime against Humanity punishable under Article 2.g of the Statute, *Other Inhumane Act*, charged in Count 8 as a Crime against Humanity punishable under Article 2.i of the Statute, and *Outrages upon Personal Dignity*, charged in Count 9 as a Violation of Common Article 3 to the Geneva Conventions and of Additional Protocol II punishable under Article 3.e of the Statute in respect of the following areas:

- (i) *Fokoiya* as alleged in paragraph 55 of the Indictment;
- (ii) *Superman Camp* as alleged in paragraph 55 of the Indictment;
- (iii) *Tomandu* or *Tomendeh* as alleged in paragraph 55 of the Indictment.
- (iv) *Kabala* as alleged in paragraph 56 of the Indictment;
- (v) *Fadugu* as alleged in paragraph 56 of the Indictment;
- (vi) *Heremakono* as alleged in paragraph 56 of the Indictment.

(3) No evidence was adduced by the Prosecution against the Accused Persons in respect of the offences of *Violence to Life, health and physical or mental well-being of persons, in particular Mutilation*, charged in Count 10 as Violation of Common Article 3 Common to the Geneva Conventions and of Additional Protocol II punishable under Article 3.a of the Statute and *Other Inhumane Acts*, charged in Count 11 as a Crime against Humanity, punishable under Article 2.i of the Statute in respect of the following areas:

- (i) *Konkoba* or *Kontoba* as alleged in paragraph 64 of the Indictment;
- (ii) *Lohondi* as alleged in paragraph 65 of the Indictment;
- (iii) *Malama* as alleged in paragraph 65 of the Indictment;
- (iv) *Mamaka* as alleged in paragraph 65 of the Indictment.

(4) That there is no evidence adduced by the Prosecution against the Accused Persons in respect of the offences of *Conscripting, or enlisting of children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities*, charged in Count 12 as another Serious Violation of International Humanitarian Law, punishable under Article 4.c of the Statute in respect of the following Districts of the Republic of Sierra Leone:

- (i) *Bonthe District*;
- (ii) *Moyamba District*;
- (iii) *Pujehun District*;
- (iv) *Bo District*;
- (v) *Tonkolili District*.

(5) No evidence was adduced by the Prosecution against the Accused Persons in respect of the

offence of **Enslavement**, charged in Count 13 as a Crime against Humanity, punishable under Article 2(c) of the Statute in respect of the following areas:

- (i) **Heremakono** as alleged in paragraph 72 of the Indictment;
- (ii) **Kamala** or **Kamalu** as alleged in paragraph 72 of the Indictment;
- (iii) **Kamadugu** as alleged in paragraph 72 of the Indictment;
- (iv) **Peacock Farm** as alleged in paragraph 75 of the Indictment;
- (v) **Masiaka** as alleged in paragraph 76 of the Indictment.

(6) No evidence was adduced by the Prosecution against the Accused Persons in respect of the offence of **Pillage** charged in Count 14 as a Violation of Common Article 3 to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.f of the Statute in respect of the following areas:

- (i) **Telu** as alleged in paragraph 78 of the Indictment;
- (ii) **Mamboma** as alleged in paragraph 78 of the Indictment;
- (iii) **Heremakono** as alleged in paragraph 78 of the Indictment;
- (iv) **Kamadugu** as alleged in paragraph 79 of the Indictment;
- (v) **Foindu** as alleged in paragraph 80 of the Indictment;
- (vi) **Yardu Sando** as alleged in paragraph 80 of the Indictment.

(7) No evidence was adduced by the Prosecution against the Accused Persons in support of the separate and distinct offence of **Intentionally directing attacks against personnel involved in a humanitarian assistance mission** charged in Count 15 as another Serious Violation of International Humanitarian Law punishable under Article 4.b. of the Statute.

(8) No evidence was adduced by the Prosecution against the Accused Persons in respect of the offences of **Intentionally directing attacks against personnel involved in a peacekeeping mission** charged in Count 15 as another Serious Violation of International Humanitarian Law punishable under Article 4.b. of the Statute, **Murder** charged in Count 16 as a Crime against Humanity punishable under Article 2.a of the Statute, **Violence to Life, health and physical or mental well-being of persons, in particular murder** charged in Count 17 as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II punishable under Article 3.a of the Statute, and **Taking of Hostages** charged in Count 18 as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II punishable under Article 3.c of the Statute, for the whole of the Republic of Sierra Leone, except for the following Districts:

- (i) **Bombali District;**
- (ii) **Tonkolili District;**
- (iii) **Port Loko District;**
- (iv) **Kono District, only with regards to Counts 17 and 18, for which there is evidence that, if believed, is capable of supporting a conviction;**
- (v) **Kailahun District, only with regards to Count 18, for which there is evidence that, if believed, is capable of supporting a conviction;**

**ACCORDINGLY STATES** that the all of the aforementioned locations should be deemed irrelevant for the purposes of the Defence case.

We wish to clearly indicate here that our finding that there is evidence capable of sustaining a conviction on all the Counts, subject to our further finding that no evidence or insufficient evidence has been adduced by the Prosecution to sustain its case in respect of certain localities, is not limited to nor is it only based on the testimony of those witnesses whose evidence we have specifically highlighted in our Decision in respect of incidents and events referred to in our factual findings but also, to the testimony of other Prosecution witnesses which relates thereto as regards those same or other locations that feature in the Indictment.

**CONSEQUENTLY**, in the light of our main finding **DISMISSING** each Motion for Judgement of Acquittal, and pursuant to Rule 85 of the Rules, each Accused Person is hereby put to his election to call evidence, if he so desires.