

(14868 - 14872)



SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER I

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

Interim Registrar: Mr. Lovemore Munlo SC

Date: 3rd of February, 2006

PROSECUTOR Against SAM HINGA NORMAN
 MOININA FOFANA
 ALLIEU KONDEWA
 (Case No.SCSL-04-14-T)

DECISION ON 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:

Luc Côté
 James Johnson
 Kevin Tavener

Court Appointed Counsel for Sam Hinga Norman:

Dr. Bu-Buakei Jabbi
 John Wesley Hall, Jr.
 Alusine Sani Sesay

Court Appointed Counsel for Moinina Fofana:

Victor Koppe
 Arrow Bockarie
 Michiel Pestman

Court Appointed Counsel for Allieu Kondewa:

Charles Margai
 Yada Williams
 Ansu Lansana

NEIL GIBSON
 Nelson
 10:45

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

MINFDUL OF The Chamber’s “Decision on Motions for Judgment of Acquittal Pursuant to Rule 98” (“Decision”), delivered by The Chamber on the 21st of October, 2005;

SEIZED OF the “Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98” (“Motion”), filed by Court Appointed Counsel for the First and Second Accused on the 31st of October, 2005;

CONSIDERING the “Prosecution Response to Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98” (“Response”), filed by the Prosecution on the 4th of November, 2005;

CONSIDERING the “Joint Reply of the First and Second Accused to the Prosecution Response to Joint Motion for the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98”, filed by Court Appointed Counsel for the First and Second Accused on the 9th of November, 2005;

ISSUES THE FOLLOWING DECISION:

1. In the Disposition of its Decision The Chamber ruled as follows in respect of sub-paragraph 25(g) of the Indictment¹:

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;

2. Court Appointed Counsel for the First and Second Accused request clarification from The Chamber as to the correct interpretation to be given to sub-paragraph 25(g) of the Indictment, in light of The Chamber’s Decision quoted above and to determine whether sub-paragraph 25(g) of the Indictment is still in effect and consequently whether or not the Defence needs to address “Operation Black December” in the presentation of their case.

3. The Prosecution opposes the Motion on the grounds that there is no need to clarify the Decision since the Disposition of The Chamber’s Decision “relates only to the specific locations mentioned, and does not cover all killings or other unlawful acts committed ‘as part of Operation Black December in the southern and eastern Provinces of Sierra Leone’”.²

4. The Prosecution argues that sub-paragraph 25(g) of the Indictment, as it now reads and considered along with sub-paragraph 24(f) of the Indictment and the types of responsibility alleged in

¹ Consolidated Indictment, approved on the 5th of February, 2004.

² Response, para. 10.

the Indictment as a whole, "is sufficiently clear and precise for the preparation of the Defence case."³ The Prosecution further submits that "'Operation Black December' and individual criminal responsibility [...] for the crimes charged in the Indictment that may flow from that Operation, clearly remain part of the Indictment". "The only exceptions are unlawful killings in the specific locations mentioned in the Disposition".⁴ It also submits that "[a]n accused is entitled to such particulars in an Indictment as are necessary to prepare his defence" and that "in determining the required specificity, the proximity of the accused to the acts alleged is an important factor".⁵ In addition, the Prosecution submit that "Operation Black December" covers the existing charges under Count 6-7 of the Indictment.

5. The Chamber draws attention to the fact that when applying the Rule 98 standard to the charges against the Accused, as set forth in the Indictment, it reviewed only the precise allegations against each Accused, and excluded from consideration, broad phrases such as, "and surrounding areas", in relation to the pleading of areas where such crimes were allegedly committed.⁶

6. The Chamber notes that references to the "Operation Black December" appear in the following paragraphs of the Indictment:

sub-paragraph 24(f), which reads:

In an operation called "Black December", the CDF blocked all major highways and roads leading to and from major towns mainly in the southern and eastern Provinces. As a result of these actions, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants.

sub-paragraph 25 (g), which states:

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 at Gumahun, Gerihun, Jembah and the Bo-Matotoka Highway.

and by incorporation of Counts 1 through 5, paragraph 28, which states:

At all times relevant to this Indictment, the CDF, largely Kamajors, committed the crimes set forth in paragraphs 22 through 27 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The CDF, largely Kamajors, also committed the crimes to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.

³ *Ibid.*, para. 13.

⁴ *Ibid.*, para. 14.

⁵ *Ibid.*, para. 11.

⁶ The Chamber on the 27th of November, 2003, delivered a Decision on the Motion filed by the Third Accused, Kondewa, alleging defects in the form of the Indictment [*Prosecutor v. Allieu Kondewa*, Case No. SCSL-03-12-PT, "Preliminary Motion Based on Defects on the Indictment against Allieu Kondewa", dated the 7th of November, 2003]. In this Decision, The Chamber ordered the Prosecution to elect either to delete in every count and wherever they appear in the Indictment the phrases "but not limited to those events", and "including but not limited to", or provide in a Bill of Particulars specific additional events alleged against the Accused in each count. Additionally, the Trial Chamber ordered that the Amended Indictment or Bill of Particulars be filed within seven days of the date of service of its decision and be served on the Accused according to Rule 52 of the Rules [*Prosecutor v. Allieu Kondewa*, Case No. SCSL-03-12-PT, "Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment", dated the 27th of November, 2003, para. 11; Annexure, paras (ii), (iii)].

7. In its Decision, The Chamber ruled decisively that there is no evidence capable of supporting a conviction against the Accused in respect of unlawful killings committed as part of "Operation Black December" in the four specified geographic locations listed in sub-paragraph 25(g) of the Indictment, because no evidence was adduced to sustain those allegations as contained in the Indictment. This ruling of The Chamber effectively strikes out sub-paragraph 25(g) of the Indictment. The Chamber in this regard recalls its oral ruling to this effect made during court proceeding on the 26th of January, 2006.⁷

8. The Chamber recalls that the Indictment was particularised by the Prosecution to include specific geographic locations within southern and eastern Provinces of Sierra Leone in which the alleged unlawful killings were committed as part of "Operation Black December".⁸ We therefore consider that the Prosecution is now estopped from expanding these particulars to include all other unspecified geographic locations on the major highways in the southern and eastern Provinces of Sierra Leone, as the Indictment in this respect is unspecific and vague.

9. It is The Chamber's view that paragraphs 22 through 24 of the Indictment, as they were drafted and submitted by the Prosecution, consist of general allegations for the charges, which are then further specified in detail in the subsequent paragraphs 25 through 29 of the Indictment. General allegations contained in sub-paragraph 24(f) of the Indictment are further specified in sub-paragraph 25(g) of the Indictment and they would stand only if the specific allegations contained in sub-paragraph 25(g) were sustained. Therefore, following The Chamber's Decision on striking out sub-paragraph 25(g) of the Indictment for want of evidence capable of sustaining a conviction, sub-paragraph 24(f) of the Indictment cannot stand alone as it is consequently logically excluded from the Indictment.

10. The Chamber further notes that paragraph 28 of the Indictment, which is said to incorporate specific crimes charged under counts 1 through 5 as part of the campaign of terrorizing of "civilian population" and punishment of "civilian population", in view of The Chamber's decision in respect of paragraph 25(g), is of no effect in relation to acts listed under sub-paragraph 25(g) of the Indictment as the latter is struck out from the Indictment for want of evidence capable of sustaining a conviction.

11. The Chamber is therefore of the opinion that the argument by the Prosecution that sub-paragraph 25(g) of the Indictment is still in existence, except for the specific locations mentioned in the Disposition, is clearly not in accord with The Chamber's Decision.

FOR THE REASONS SPECIFIED ABOVE and PURSUANT to Rule 98 of the Rules of Procedure and Evidence of the Special Court,

THE CHAMBER RE-AFFIRMS

- a) that sub-paragraph 25(g) of the Indictment is no longer operative by reason of The Chamber's finding that "there is no evidence capable of supporting a conviction against the Accused in respect of the offence of Murder as a Crime Against Humanity and Murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, as alleged in the Indictment, and that such acts took place between about 1 November 1997 and about 1

⁷ Transcript of the 26th of January, 2006, pp. 62-63.

⁸ Cf. e.g. Para. 25 (g) of the Kondewa Initial Indictment of 26 June 2003 and para. 25 (g) of the Consolidated Indictment.

February 1998 in road ambushes at Gumahun, Gerihun and the Bo-Matotoka Highway as part of the Black December Operation”;⁹ and

- b) that where other paragraphs of the Indictment refer to the acts outlined in sub-paragraph 25(g) of the Indictment as a basis for other crimes or counts of the Indictment, the pleading of sub-paragraph 25(g) in relation to such crimes or counts shall, likewise, be no longer operative in respect of such crimes or counts.

Done in Freetown, Sierra Leone, this 3rd day of February, 2006

[Handwritten signature: Benjamin Mutanga Itoe]
[Handwritten signature: Pierre Boutet]
[Handwritten signature: Bankole Thompson]

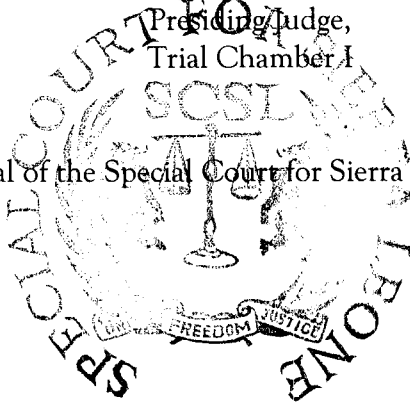
Hon. Justice Benjamin Mutanga Itoe

Hon. Justice Pierre Boutet

Hon. Justice Bankole Thompson

Presiding Judge,
Trial Chamber I

[Seal of the Special Court for Sierra Leone]



⁹ Decision, para. 91.