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Case No. 001/18-07-2008/ECCC/OCIJ

ANNEX A

AUTHORITY 59

(628.)

SCSL-04-16-T
(23025-23678)

23025

SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Julia Sebutinde, Presiding Judge
Justice Richard Lussick
Justice Teresa Doherty

Registrar: Herman von Hebel

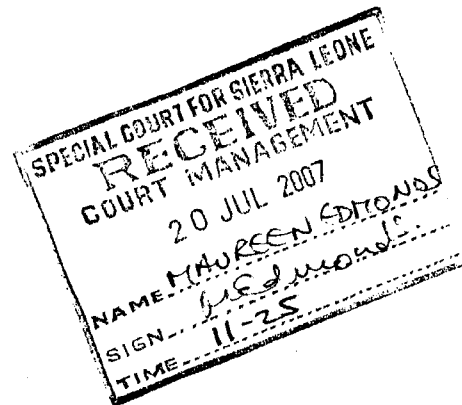
Date: 20 June 2007

Case No.: SCSL-04-16-T

PROSECUTOR

Against

**Alex Tamba BRIMA
Brima Bazy KAMARA
Santigie Borbor KANU**



JUDGEMENT

Office of the Prosecutor:

Karim Agha
Christopher Staker
Charles Hardaway
Lesley Taylor
Melissa Pack
Vincent Wagona
Shyamala Alagendra

Defence Counsel for Alex Tamba Brima:

Kojo Graham
Glenna Thompson

Defence Counsel for Brima Bazy Kamara:

Andrew Daniels
Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu:

Geert-Jan Alexander Knoops
Agibola E. Manly-Spain
Carry Knoops

**V. GENERAL REQUIREMENTS FOR ARTICLES 2, 3 AND 4 OF THE
STATUTE**

A. Article 2 of the Statute: Crimes Against Humanity

210. The Accused are charged with seven counts of crimes against humanity pursuant to Article 2 of the Statute: extermination (Count 3), murder (Count 4), rape (Count 6), sexual slavery and other forms of sexual violence (Count 7), enslavement (Count 13) and other inhumane acts (Count 8 and 11).

1. The Law

211. Article 2 of the Statute is entitled 'Crimes against humanity' and provides as follows:

The Special Court shall have power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:

- a. Murder;
- b. Extermination;
- c. Enslavement;
- d. Deportation;
- e. Imprisonment;
- f. Torture
- g. Rape, sexual slavery, enforced prostitution; forced pregnancy and any other form of sexual violence;
- h. Persecution on political, racial, ethnic or religious grounds;
- i. Other inhumane acts.

212. Article 2 of the Statute differs from similar provisions in the governing statutes of other international tribunals in that it does not specifically require such crime to have been committed "during armed conflict" (unlike its ICTY counterpart³⁶¹), or "on national, political, ethnic, racial or religious grounds" (unlike its ICTR counterpart³⁶²), or with the perpetrator's "knowledge of the attack" (unlike its ICC counterpart³⁶³).

³⁶¹ ICTY Statute, Article 5.

³⁶² ICTR Statute, Article 3.

³⁶³ ICC Statute, Article 7; *see also* United Nations Transitional Administration in East Timor (UNTAET) Regulation No. 2000/15, Section 5.

213. The Trial Chamber endorses the following chapeau requirements or contextual elements of crimes against humanity pursuant to Article 2 of the Statute, as articulated in its Rule 98 Decision.³⁶⁴

(a) There must be an attack

214. An 'attack' has been defined as a "campaign, operation or course of conduct directed against a civilian population and encompasses any mistreatment of the civilian population".³⁶⁵ The concepts of 'attack' and 'armed conflict' are distinct and separate notions, even though, under Article 2 of the Statute, the attack on any civilian population may be part of an armed conflict.³⁶⁶ The 'attack' can precede, outlast, or continue during an armed conflict, thus it may, but need not be, be part of an armed conflict as such.³⁶⁷

(b) The attack must be widespread or systematic

215. The requirement that the attack must be either widespread or systematic is disjunctive, so that once either requirement is met, it is not necessary to consider whether the alternative is also satisfied.³⁶⁸ Proof that the attack occurred either on a widespread basis or in a systematic manner is sufficient to exclude isolated or random acts.³⁶⁹ Each act occurring within the attack need not itself be widespread or systematic. It is sufficient that the act or various acts form part of an attack upon the civilian population that is either "widespread" or "systematic".³⁷⁰ While isolated or random acts unrelated to the attack are usually excluded from the definition of crimes against humanity, a single act perpetrated in the context of a widespread or systematic attack upon a civilian population is sufficient to bestow individual criminal liability upon the perpetrator. Similarly, a perpetrator need not commit numerous offences to be held liable for crimes against humanity.³⁷¹ In the context of

³⁶⁴ Rule 98 Decision, para. 41.

³⁶⁵ *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23-A & IT-96-23/1-A, Judgement, 12 June 2002 ("Kunarac Appeal Judgement"), paras 82-89; *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998 ("Akayesu Trial Judgement"), para. 581; *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, Case No. IT-03-66-T, Judgement, 30 November 2005 ("Limaj Trial Judgement"), para. 182; *Prosecutor v. Naletilić and Martinović*, Case No. IT-03-66-T, Judgement, 31 March 2003, ("Naletilić and Martinović Trial Judgement"), para. 233.

³⁶⁶ *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002 ("Vasiljević Trial Judgement"), para. 30; *Kunarac Appeal Judgement*, para. 86.

³⁶⁷ Rule 98 Decision, para. 42; *Limaj Trial Judgement*, para. 182; *Kunarac Appeal Judgement*, para. 86; *Prosecutor v. Duško Tadić (aka "Dule")*, Case No. IT-94-1-A, Judgement, 15 July 1999 ("Tadić Appeal Judgement"), para. 251; *Prosecutor v. Duško Tadić (aka "Dule")*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 ("Tadić Jurisdiction Decision"), para. 141; *Kunarac Appeal Judgement*, para. 86.

³⁶⁸ *Kunarac Appeals Judgement*, para. 93.

³⁶⁹ *Prosecutor v. Tadić*, ICTY IT-94-1-T, Trial Chamber Judgement, 7 May 1997, ("Tadić Trial Judgement") para. 646.

³⁷⁰ *Kunarac Appeals Chamber Judgement*, paras 96-97.

³⁷¹ *Tadić Trial Judgement*, para. 649.

crimes against humanity, International Tribunals have defined the term “widespread” to denote “massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed at multiple victims”; and the term “systematic” to denote “organised action following a regular pattern and carried out pursuant to a pre-conceived plan or policy, whether formalised or not.”³⁷² That the crimes were supported by a policy or plan to carry them out is not a legal ingredient of crimes against humanity. However, it may eventually be relevant to establish the widespread or systematic nature of the attack and that it was directed against a civilian population.³⁷³ Patterns of crimes, *i.e.*, the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of ‘systematic’ occurrence.³⁷⁴ Accordingly, the Trial Chamber endorses the interpretation of the ICTY Appeals Chamber that

[t]he assessment of what constitutes a ‘widespread’ or ‘systematic’ attack is essentially a relative exercise in that it depends upon the civilian population which, allegedly, was being attacked. A Trial Chamber must therefore ‘first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic’. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a ‘widespread’ or ‘systematic’ attack vis-à-vis this civilian population.³⁷⁵

(c) The attack must be directed against any civilian population

216. There is an absolute prohibition against targeting civilians in customary international law.³⁷⁶ The term “civilian population” has been widely defined to include not only civilians in the ordinary and strict sense of the term, but all persons who have taken no active part in the hostilities, or are no longer doing so, including members of the armed forces who laid down their arms and persons placed hors de combat by sickness, wounds, detention or any other reason.³⁷⁷ The targeted population must be predominantly civilian in nature and the presence of a number of non-civilians in their midst does not change the civilian character of that population.³⁷⁸ The term “directed against” connotes that the civilian population must be the primary object of the attack and in

³⁷² *Akayesu* Trial Judgement, para. 580; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber Judgement, 21 May 1999, (“*Kayishema and Ruzindana* Trial Judgement”), para. 123; *Kunarac* Appeals Judgement, para.94; *Tadić* Trial Judgement, para. 648.

³⁷³ *Limaj* Trial Judgement, para. 184; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić* Appeal Judgement”), paras 100, 120; *Kunarac* Appeal Judgement, para. 98: “neither the attack nor the acts of the accused needs to be supported by any form of ‘policy’ or ‘plan’ [...] It may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic (especially the latter) to show that there was in fact a policy or plan, but it may be possible to prove these things by reference to other matters.”

³⁷⁴ *Kunarac* Trial Judgement, para. 429; *Kunarac* Appeal Judgement, para. 94.

³⁷⁵ *Kunarac* Appeal Judgement, para. 95 (footnotes omitted).

³⁷⁶ *Blaškić* Appeal Judgement, para 109; *Limaj* Trial Judgement, para. 186.

³⁷⁷ *Akayesu* Appeal Judgement, para. 582; *Tadić* Appeal Judgement, paras 637-638.

³⁷⁸ *Tadić* Appeal Judgement, paras 644.

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determining whether or not an attack is so directed the Trial Chamber should consider, *inter alia*, the means and methods used in the course of the attack, the status and number of the victims, the nature of the crimes committed in course of the attack, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.³⁷⁹

217. The use of the word 'population' does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack,³⁸⁰ although the targeting of only a limited and randomly selected number of individuals cannot satisfy the requirements of Article 2.³⁸¹

218. The presence of combatants within the "civilian population" does not change the civilian nature of the population. However, the Trial Chamber notes that the Prosecution defined the term "civilian" and "civilian population" as "persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities."³⁸² This definition is usually used for persons protected under Common Article 3 and Additional Protocol II and also covers combatants who no longer take active part in hostilities (*hors de combat*). The definition proposed by the Prosecution would appear to cover all the references to the terms "civilian" and "civilian population" in the Indictment. With regards to alleged crimes under Article 2 of the Statute, however this definition is overly broad and inconsistent with customary international law.

219. Referring to principles of international humanitarian law, the Galić and Blaškić Appeal Judgements, distinguished between a person *hors de combat* and a civilian:

Persons *hors de combat* are certainly protected in armed conflicts through Common Article 3 of the Geneva Conventions. This reflects a principle of customary international law. Even *hors de combat*, however, they would still be members of the armed forces of a party to the conflict and therefore fall under the category of persons referred to in Article 4(A)(1) of the Third Geneva Convention; *as such, they are not civilians* in the context of Article 50, paragraph 1, of Additional Protocol I. Common Article 3 of the Geneva Conventions supports this conclusion in referring to "[p]ersons taking no active part in the hostilities, including *members of armed forces* who have laid down their arms *and those placed hors de combat* by sickness, wounds, detention, or any other cause". [emphasis added]³⁸³

Therefore, the Trial Chamber concludes that the term civilian must be narrowly defined in order to ensure a distinction in an armed conflict between civilians and combatants no longer participating

³⁷⁹ *Kunarac* Appeal Judgement, para.91.

³⁸⁰ *Limaj* Trial Judgement, para. 187; *Kunarac* Appeal Judgement, para. 90; *Blaškić* Appeal Judgement, para. 105; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003 ("*Galić* Trial Judgement"), para 143.

³⁸¹ *Limaj* Trial Judgement, para. 187; *Kunarac* Appeal Judgement, para. 90.

³⁸² Indictment, para. 20.

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in hostilities. The fact that the persons are *hors de combat* during the commission of a crime, does not render them "civilian" or being part of the "civilian population" for the purposes of Article 2 of the Statute. This distinction is particular important in a case were the Prosecution alleges that crimes against humanity were committed in a situation of armed conflict.

(d) The acts of the perpetrator must be part of the attack

220. In order for the offence to amount to a crime against humanity, there must be a sufficient nexus between the unlawful acts of the perpetrator and the attack.³⁸⁴ Although this nexus depends on the factual circumstances of each case, reliable indicia of a nexus include the similarities between the perpetrator's acts and the acts occurring within the attack; the nature of the events and circumstances surrounding the perpetrator's acts; the temporal and geographic proximity of the perpetrator's acts with the attack; and the nature and extent of the perpetrator's knowledge of the attack when he commits the acts.³⁸⁵

(e) The perpetrator must have knowledge that his acts constitute part of a widespread or systematic attack directed against a civilian population

221. The mens rea or mental requisite for crimes against humanity is that the perpetrator of the offence must be aware that a widespread or systematic attack on the civilian population is taking place and that his action is part of this attack.³⁸⁶ Evidence of knowledge depends on the facts of a particular case; thus the manner in which this legal element may be proved may vary from case to case.³⁸⁷ However, the perpetrator need not have been aware of the details of the pre-conceived plan or policy when he committed the offence and need not have intended to support the regime carrying out the attack on the civilian population.³⁸⁸

222. It does not suffice that an accused knowingly took the risk of participating in the implementation of a policy, plan or ideology.³⁸⁹ Nevertheless, the accused need not know the details of the attack or approve of the context in which his or her acts occur;³⁹⁰ the accused merely needs to

³⁸³ *Galić* Appeal Judgement, footnote 437; *Blaškić* Appeal Judgement, fn. 220.

³⁸⁴ *Akayesu* Trial Judgement, para. 579

³⁸⁵ *Tadić* Appeal Judgement, paras 632.

³⁸⁶ *Kunarac* Appeal Judgement, para. 121; *Tadić* Appeal Judgement, para. 255.

³⁸⁷ *Blaškić* Appeals Judgement, para. 126.

³⁸⁸ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 ("*Blaškić* Trial Judgement"), paras 254-257.

³⁸⁹ *Limaj* Trial Judgement, para. 190; *Blaškić* Appeal Judgement, paras 125-126.

³⁹⁰ *Limaj* Trial Judgement, para. 190; *Kunarac* Appeal Judgement, para. 102.

understand the overall context in which his or her acts took place.³⁹¹ The motives for the accused's participation in the attack are irrelevant; the accused need only know that his or her acts are parts thereof.³⁹²

2. Submissions of the Parties

223. The Prosecution submits that the evidence adduced at trial suffices to prove the general requirements for crimes against humanity.³⁹³ The Joint Defence submitted at the close of the Prosecution case that the Prosecution failed to prove the general requirements for crimes against humanity, although no specific detail was provided in support of this submission and it was not reiterated in their Final Briefs.³⁹⁴

3. Findings

224. The Trial Chamber finds that it is established beyond reasonable doubt that a widespread or systematic attack by AFRC/RUF forces was directed against the civilian population of Sierra Leone at all times relevant to the Indictment. The context in which the crimes alleged in the Indictment were committed has been described earlier in this Judgement.³⁹⁵ Unless stated otherwise in the Factual Findings, the Trial Chamber is satisfied that each incident described therein formed part of a widespread or systematic attack within the meaning of Article 2 of the Statute. In arriving at this finding, the Trial Chamber has taken into consideration reliable witness testimony adduced in respect of any locations in Sierra Leone within the Indictment period and documentary evidence from a number of sources, having carefully considered each document cited and being satisfied as to its authenticity and reliability.

225. The attack against the civilian population of Sierra Leone during the period relevant to the Indictment evolved through two distinct stages and the Trial Chamber has divided its consideration of the evidence accordingly. The first stage coincides with the rule of the AFRC/RUF military government, from the May 1997 coup until the intervention of ECOMOG in February 1998. The

³⁹¹ *Limaj* Judgement, para. 190; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 ("*Kordić* Trial Judgement"), para. 185.

³⁹² *Limaj* Trial Judgement, para. 190; *Tadić* Appeal Judgement, paras 248, 252; *Kunarac* Appeal Judgement, para 103: "[a]t most, evidence that [acts were committed] for purely personal reasons could be indicative of a rebuttable assumption that he was not aware that his acts were part of that attack."

³⁹³ Prosecution Final Brief, paras 956-964.

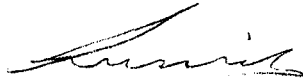
³⁹⁴ Joint Legal Part of the Rule 98 Motion, para. 47.

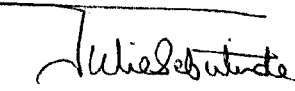
³⁹⁵ See Context of the Alleged Crimes, *supra*.

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Count 8: Other inhumane act, a Crime against Humanity, punishable under Article 2(i) of the Statute.

Dated this 20th day of June 2007, at Freetown, Sierra Leone.


Justice Richard Lussick


Justice Julia Sebutinde
Presiding Judge


Justice Teresa Doherty

Justice Teresa Doherty appends a partly dissenting opinion to the Judgement.

Justice Julia Sebutinde appends a separate concurring opinion to Judgement.



[Seal of the Special Court for Sierra Leone]

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